

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
JANET LEA FISHER,)	Case No. 01-42406
)	Chapter 13
Debtor.)	
_____)	

**ORDER PARTIALLY GRANTING, AND PARTIALLY DENYING,
MOTION FOR RECONSIDERATION, AND ORDERING SANCTIONS**

Facts Underlying Motion for Sanctions

On September 5, 2001, Janet Lea Fisher filed this Chapter 13 bankruptcy. Debtor's Chapter 13 Plan provided for the discharge of almost 85% of a criminal restitution obligation owed to Performance Tire and Wheel (hereinafter PT&W) as a result of her criminal conviction for embezzlement from PT&W, her former employer. The Plan, under "Special Class," indicated:

SN County District Court	Amount: \$5,000	To be paid: 100%
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Debtor will pay \$5,000 of the \$31,184.50 restitution ordered in case number 00 CR 1446. The balance of restitution, costs and fees will be discharged.

Debtor did not list PT&W as a creditor, and thus PT&W received no copy of the Plan, nor was it otherwise made aware of the filing of the bankruptcy. Instead, Debtor's counsel chose to send the notice to "SN County District Court." *See* Schedule F, Creditors Holding Unsecured Nonpriority Claims. PT&W was not listed as a creditor even though the debt to PT&W was ten times larger than the next largest debt dealt with in this bankruptcy.

Section 1328(a)(3) of Title 11, unequivocally and unambiguously, provides that a court will grant a discharge of all debts provided for by the plan "except any debt —(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime." Attempts to discharge criminal restitution

obligations are prohibited by the Bankruptcy Code, even within the confines of a Chapter 13 filing where discharge of many types of debts is much more liberal than in a Chapter 7 proceeding. *See, e.g., In re Young*, 237 F.3d 1168, 1177 (10th Cir. 2001). There is no dispute that the underlying debt Debtor owes to her former employer, Performance Tire & Wheel, is such a debt. *See* Exhibit C to PT&W's Complaint to Revoke Discharge, Doc. No. 1/Adversary No. 02-7031.

PT&W apparently first learned of the bankruptcy, and Debtor's attempt to discharge all but \$5,000 of its nondischargeable debt, several months after the bankruptcy had been filed, and after the plan had been confirmed. PT&W's president telephoned Debtor's counsel to inquire about the restitution obligation. Mr. Brunton should have advised PT&W that he had made a mistake by attempting to discharge this criminal restitution obligation and would forthwith amend the plan to remove the offending provision. Instead, Mr. Brunton advised PT&W's representative to hire a lawyer to resolve the matter.

PT&W did just what Mr. Brunton suggested; it hired Ms. Bonebrake, who entered her appearance April 8, 2002 (Doc. No. 19). She then attempted, by sending letters and making telephone calls, to persuade Mr. Brunton to undo what should never have been done in the first place (i.e., place the restitution discharge provision in the plan), but Mr. Brunton refused to simply remove the offending language, which by then even he admitted was incorrect. *See* Docket No. 19, Exhibits A-E. Instead, he held hostage the admittedly required plan revision, in exchange for PT&W's agreement to forgive its request for what was, at that time, a very modest attorney fee. This attempt to condition his compliance with the Bankruptcy Code on the forgiveness of attorney fees thus compounded his original problem, and that proved to be true over the next many months.

When Mr. Brunton refused to amend the plan after informal demands by its counsel, PT&W was faced with potentially losing a \$30,000 claim, or filing some pleading with the Court contesting the potential discharge of the restitution claim.¹ PT&W thus made the decision to file the adversary proceeding, *Performance Tire and Wheel v. Fisher*, Case No. 02-7031. In her answer to that adversary complaint, Debtor essentially admitted that her attempt to discharge the restitution obligation was in error. The answer acknowledged that had PT&W received proper notice, it would have objected, and that the discharge of the restitution obligation would not have been confirmed over the objection.

Debtor's answer further admitted that "the debtor offered on several occasions, prior to the commencement of this [adversary] action, to amend her plan, or alternatively to an agreed order which would strike the objectionable language, but the creditor refused unless the Debtor agreed to pay creditor's attorney's fees." See Docket No. 4/Adversary No. 02-7031. Thus, Mr. Brunton clearly conditioned his duty to correct an admittedly non-confirmable plan on PT&W's agreement to forgive its potential attorney fee claim. This decision was improper, and resulted in the Court using its resources in the connected

¹ Because of the Tenth Circuit's decision in *Andersen v. UNIPAC-NEHELP (In re Andersen)*, 179 F.3d 1253 (10th Cir. 1999), some debtors' attorneys have adopted the misguided notion that they can insert discharge and other provisions in Chapter 13 plans that the Bankruptcy Code otherwise prohibits, because if the creditor fails to object, and the Trustee fails to notice, or raise, the issue with the Court, the debtor can thereby in essence change the Code's provisions through an Order of Confirmation. This occurs through the use of the principles of estoppel. With literally hundreds of Chapter 13 plans being filed each year, it is nearly impossible for a court to use its limited judicial resources to flyspeck the provisions of all plans. For example, in the year ending May 31, 2003, 1,178 Chapter 13 cases were filed in Topeka, Kansas, alone. The inability of the Court to review each such plan is exacerbated by the fact that some plans in this Court run as many as 7 single spaced pages, containing thousands of words. See, e.g., Chapter 13 plan, Docket No. 3, *In re Reed*, Bankruptcy No. 03-41122-13. Accordingly, PT&W, faced with the *Andersen* decision that criticized the student loan creditor for waiting until the completion of a five-year plan to raise the issue, decided it must forthwith raise the issue lest it be estopped from later objecting.

adversary proceeding. The Court ordered the parties to prepare a Parties' Planning Meeting Report, which the Court then had to review, and the Court scheduled and then conducted a Scheduling Conference.

Mr. Brunton's decision to file an answer in the adversary, rather than simply amend the plan at that point, also resulted in counsel for PT&W having to assist in preparation of a planning meeting report, provide Fed. R. Civ. Proc. 26(a)(1) disclosures and attend the Scheduling Conference, not to mention drafting several letters, making several phone calls, drafting the underlying complaint, serving Debtor and counsel, appearing several times at hearings, etc. These were all acts that were caused solely by Mr. Brunton's decision to put the offensive language in the plan in the first instance, but more importantly under the facts of this case, by his decision, upon being confronted with the impropriety of that decision, not to forthwith remove the offending language. And these were all acts that required PT&W's counsel to incur time and expenses that had to be billed to PT&W.

Even after Judge Pusateri, at the Scheduling Conference held September 23, 2002, ordered Mr. Brunton to amend the plan to remove the restitution discharge language, the file reflects no plan amendment, or any other pleading, was filed by Mr. Brunton until January 13, 2003—almost four months later. *See* Courtroom Minute Sheet, Doc. No. 22. And what was ultimately filed was an Order on Post-Confirmation Chapter 13 Plan Modification (Doc. No. 16/Adversary No. 02-7031), which simply indicates the language attempting to discharge the criminal restitution obligation is stricken from the plan. This document had the same effect as an amendment to the plan, but was not precisely what Mr. Brunton was ordered to do, and had agreed to do, almost four months earlier, on September 23, 2002. *See* Courtroom Minute Sheet, Doc. No. 11/Adversary No. 02-7031.

Thus, from approximately March 2002 through January 13, 2003, Mr. Brunton's failure to file a one sentence amendment to the plan, stating that the plan would not discharge the restitution obligation, resulted in considerable attorney fees for PT&W, and unnecessary litigation for the Court.

Procedural History

Now retired Judge Pusateri decided, at a March 20, 2003 hearing, that PT&W's Motion for Sanctions should be granted based on the facts set out above, and continued to the April docket the issue of what amount of fees and expenses should be awarded. *See* Courtroom Minute Sheet, Doc. No. 23/Adversary No. 02-7031 and order entered April 14, 2003, Doc. No. 26/Adversary No. 02-7031.² On April 28, 2003, a hearing was held concerning the amount of sanctions to be awarded to PT&W on its Motion for Sanctions Against Debtor's Attorney (Doc. No. 19/Adversary No. 02-7031). Debtor's Counsel also filed a Motion to Reconsider Judge Pusateri's decision (Doc. No. 27/Adversary No. 02-7031). Oral argument was also heard on that matter April 28, 2003.

After hearing oral argument, reviewing briefs filed by the parties on the issue of sanctions, and reviewing the underlying bankruptcy file as well as the file in the adversary proceeding, this Court indicated at the April docket that it intended to deny the Motion to Reconsider Judge Pusateri's oral ruling, where he found that sanctions should be awarded. As to the amount of sanctions to be awarded, PT&W's counsel indicated she wished to amend her fee statement, as she feared she might not have used the correct hourly billing rate. Accordingly, the Court granted PT&W's counsel two days' additional time to amend, and thereafter granted Debtor's counsel an additional twelve days, until May 12, 2003, to file any response

²Mr. Brunton filed a Notice of Appeal of this decision with the United States Bankruptcy Appellate Panel for the Tenth Circuit on May 6, 2003, but apparently realized the appeal was premature. He then filed a Motion for Voluntary Withdrawal of Appeal, which was granted. The Appeal was dismissed June 3, 2003.

to that fee statement. Debtor's Counsel had indicated at the April 28, 2003 hearing that he did not have any objection to any particular time entry or the hourly rate, and that his objection solely concerned whether PT&W's counsel was entitled to any fees, not the amount.

After the hearing, PT&W's counsel notified the Court and Debtor's counsel that her fee statement was accurate, and that she did not intend to amend it. Debtor's counsel then filed a Response to Application for Attorney Fees (Doc. No. 36/Adversary No. 02-7031), but that response contained no reference to the reasonableness of the time and expenses for which PT&W's counsel seeks reimbursement. Instead, this filing was essentially another brief in support of the underlying merits of Debtor's counsel's original motion for reconsideration on the issue of whether sanctions should be ordered in the first instance.

In preparing for the May 29, 2003 docket, this Court again reviewed all the parties' briefs, and decided that there was some merit to Mr. Brunton's allegation that sanctions should not be awarded against him under Bankruptcy Rule 9011(c)(1)(A), for reasons more fully discussed below. The Court also noted, however, that Rule 9011 was not the only basis upon which PT&W had sought sanctions, and the Court was also persuaded that it had inherent power to sanction Mr. Brunton's conduct. But because Mr. Brunton had not been given notice that the Court was considering granting sanctions on its own initiative, pursuant to Rule 9011(c)(1)(B), as well as under its inherent powers, the Court notified Mr. Brunton at the May 29, 2003 hearing that it was considering imposing sanctions on those additional bases. *See* Courtroom Minute Sheet, Docket No. 39.

Given that new posture, the Court asked Mr. Brunton whether, in light of the Court's position that it was considering ordering sanctions based on other grounds, he wished to have any additional evidentiary hearings, or submit any additional briefs before the Court issued its final order. The Court then gave Mr.

Brunton ten days to consider and inform the Court whether he wanted additional hearing or briefing. Mr. Brunton sent a letter to the Court indicating he simply wanted to “start fresh with a show cause order.” The Court, finding that it would be a waste of judicial resources to start completely over on this matter, issued an Order Setting Deadlines for Sanctions Proceedings, giving Mr. Brunton until June 20, 2003 to file any additional brief, and giving him until June 17, 2003 to make a request for an evidentiary hearing before the Court would make any decision on sanctions. Doc. No. 41/Adversary No. 02-7031

Mr. Brunton made no such request for any evidentiary hearing, and filed no additional briefs. At the hearing on this matter held June 23, 2003, Mr. Brunton reiterated that he had no need for any further due process, by declining any additional hearings or briefing opportunities, and the Court announced it would take the matter under advisement. The Court is now prepared to rule.

Analysis Regarding Sanctions

Mr. Brunton’s position is that sanctions should not be ordered against him for essentially three reasons. His first reason is that he has never before been sanctioned. The second is that PT&W did not follow the strict mandates of Bankruptcy Rule 9011, by failing to separately serve a motion for sanctions on him. The third basis is that he thought his underlying decision to attempt to discharge most of the criminal restitution obligation was acceptable because, according to him, plans are like “offers,” which a creditor can accept or reject. *See* Docket No. 36.

Dealing with the third reason first, assuming, *arguendo*, that Mr. Brunton’s theory is correct that he can attempt to discharge an admittedly nondischargeable debt by merely inserting discharge language into a plan, it was impossible for this creditor to accept or reject any “offer,” due to the total failure of Debtor and her counsel to serve PT&W with the plan or the bankruptcy schedules. In addition, at the

Scheduling Conference in September 2002, Judge Pusateri made it clear to Mr. Brunton that attempting to discharge this nondischargeable debt was unacceptable, and told him to forthwith amend the plan. Four months later, he finally filed a document curing the defect, and all the while it was on this Court's docket, and PT&W was having to pay counsel to deal with the issue. But even more importantly, both Judge Pusateri, as he orally noted on the record, and this Court see a clear distinction between the student loan line of cases, where the Code expressly allows discharge of student loans under certain limited factual conditions, and this case, where the Code expressly bars discharge of criminal restitution obligations under any circumstances.

Several courts have held, and this Court agrees, that it is pure gamesmanship for a debtor's counsel to try to discharge a student loan debt without a good faith basis for including language in the plan that the non-discharge would constitute an undue hardship on the debtor, as that has been applied by the courts. *Cf. In re Hensley*, 249 B.R. 318 (Bankr. W.D. Okla. 2000); *In re Lemons*, 285 B.R. 327 (Bankr. W.D. Okla. 2002). And the Fourth Circuit has further opined that an attempt to discharge a student loan debt must come through an adversary proceeding. *Banks v. Sallie Mae Servicing Corp. (In re Banks)*, 299 F.3d 296, 302 (4th Cir. 2002).

But at least in the student loan context, a debtor has a fighting chance, if his or her future financial circumstances are so dismal that he or she might meet the strict undue hardship test, to be able to prove undue hardship, and to receive a discharge under 11 U.S.C. § 523(a)(8). A debtor with a criminal restitution obligation cannot, under any set of facts, discharge that obligation. Thus, by definition, an attorney who attempts to do so in a plan has no good faith basis for signing and filing the pleading that attempts to discharge the debt, unless the attorney has been able, in advance, to settle the restitution

obligation for a lesser amount with the creditor. In this Court's opinion, the attempt to discharge a clearly nondischargeable criminal restitution order, under the facts of this case, violated Bankruptcy Rule 9011. Mr. Brunton has produced no evidence that he had a good faith basis for believing this creditor would accept \$5,000 of its \$31,000 restitution obligation.

Mr. Brunton's second argument is that because he has never before been sanctioned, this Court should not sanction him now. Although the Court agrees that this is an important factor for the Court to consider in determining the amount of sanctions, it is not as important in determining if sanctionable conduct has occurred in the first instance.

Finally, Mr. Brunton argues this Court should not grant sanctions to PT&W for his actions in this case because PT&W did not follow the procedural requirements of Rule 9011(c)(1)(A). That Rule requires that

“A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion ... the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected”

(Emphasis added). Mr. Brunton claims that neither the letters sent by PT&W before it filed the adversary proceeding, nor the adversary proceeding itself, constituted such a separate pleading, and he claims he was not given the 21 day safe harbor period required by the Rule to withdraw the offensive pleading. By the time PT&W filed the Motion for Sanctions in February of 2003, the plan had finally been amended by entry of the Order dated January 13, 2003, which made it clear that the criminal restitution obligation would not be discharged. Therefore, there was no pleading for Mr. Brunton to withdraw by that late date.

Judge Pusateri held that PT&W's counsel had provided similar advance notice to that required by Rule 9011(c)(1)(A), in the form of letters sent prior to the filing of the adversary proceeding, warning Mr. Brunton that if he did not withdraw the offending language in the plan, she would seek sanctions, even if she had not precisely followed the language in Rule 9011(c)(1)(A). That series of notifications lasted much longer than the 21 day safe harbor period, and Judge Pusateri held that that advance notice provided all the safeguards that Rule 9011(c)(1)(A) guaranteed.

The record reflects that Ms. Bonebrake's first letter, hand-delivered to Mr. Brunton March 1, 2002, indicated that she wished to resolve the situation by Monday, March 11, 2002, or she would seek revocation of the discharge and sanctions pursuant to Rule 9011. (See Exhibit A to Doc. No. 19/Adversary No. 02-7031). The matter was not finally resolved until January 13, 2003, over nine (9) months later, when Mr. Brunton finally filed the Order on Post-Confirmation Chapter 13 Plan Modification (Doc. No. 22). This was the first date that PT&W knew it no longer needed its attorneys to fight a battle that it should never have needed to fight in the first instance. Thus, the letters provided Mr. Brunton not only 21 days to correct his error, but effectively over 300 days to do so.

Judge Pusateri held that Mr. Brunton should never have attempted to discharge the restitution obligation in the first instance. But assuming, *arguendo*, that Mr. Brunton was somehow misled by *Andersen v. UNIPAC-HEBHELP (In re Andersen)*, 179 F.3d 1253 (10th Cir. 1999), once it became clear to him that this creditor had not received proper notice, did not "consent" to the treatment, and therefore could not be estopped by its failure to object to the plan, he had a unilateral duty to quickly remove the offending language so that PT&W would have to expend no amount on litigation to get what

the Code mandates—a nondischarged debt. This he failed to do, notwithstanding several notices prior to PT&W filing its adversary complaint and prior to its seeking sanctions.

Unfortunately, PT&W did not precisely follow the requirements of Rule 9011(c)(1)(A), in that it did not make the request for sanctions in a separate pleading, served on Mr. Brunton with a 21 day safe harbor provision. Its failure to do so should have been unnecessary, as Mr. Brunton should well have known that the pleading was improper at its inception, but this Court is concerned that the failure to strictly comply with the provisions of Rule 9011(c)(1)(A) could serve to disallow the request for sanctions. Federal cases interpreting Rule 11 have determined that failure to comply with the safe harbor provision is fatal to a motion for sanctions. *See, Barber v. Miller*, 146 F.3d 707 (9th Cir. 1998) (reversing Rule 11 sanctions because the motion for sanctions was not served 21 days before filing it); *Ridder v. City of Springfield*, 109 F.3d 288, 294-95, 297 (6th Cir. 1997) (disallowed Rule 11 sanctions because defendant failed to comply with the Rule's explicit procedural prerequisite); *AeroTech, Inc. v. Estes*, 110 F.3d 1523, 1528-29 (10th Cir. 1997) (holding plain language of Rule 11 indicates cure provisions are mandatory).

Even if PT&W's request for sanctions was not properly presented under Rule 9011(c)(1)(A), however, because it was not made separately from other motions or requests, this Court has the authority, after providing due process to the attorney whose conduct appears to violate Rule 9011(b), to sanction an attorney in a fashion meant to deter repetition of the conduct, or comparable conduct by others similarly situated. *See* Rule 9011(c)(2).

Mr. Brunton has been given the opportunity to show cause why the Court should not enter sanctions against him on its own initiative. The Court announced at a hearing held May 29, 2003, that it

was considering entering sanctions against him under Rule 9011(c)(1)(B), as well as under the Court's own inherent powers, because of its concerns with PT&W's failure to strictly follow Rule 9011(c)(1)(A). Mr. Brunton was thereafter given the opportunity to present any evidence he desired, or to provide any additional brief, after being so advised. *See* Docket No. 39. He declined the opportunity to do so, indicating he had had full opportunity to present all evidence in his favor on the sanctions issue.

Accordingly, the Court finds that under Rule 9011(c)(1)(B), sanctions should be imposed against Mr. Brunton for failure to delete the offending language immediately upon learning that PT&W objected to its inclusion. This Court's dissatisfaction with Mr. Brunton's conduct in this case was certainly increased by what at least appeared to be an odd coincidence that Debtor totally failed to notify PT&W of the bankruptcy in the first instance, when she intended to use that vehicle to discharge a significant portion of PT&W's nondischargeable debt.

PT&W has also requested sanctions, in the alternative to Rule 9011, under this Court's inherent power to sanction an attorney for bad-faith conduct in the course of litigation. This results from certain implied powers in 11 U.S.C. 105(a). *See In re Courtesy Inns, Ltd., Inc.*, 40 F.3d 1084, 1089 (10th Cir. 1994). *Also see In re United States Voting Machine, Inc.*, 224 B.R. 165, 171 (D. Colo. 1998). Upon the receipt of the first telephone call from PT&W's counsel, if not from the original call from PT&W's President, himself, Mr. Brunton should have known that PT&W was objecting to the discharge of its debt, that he could not discharge the debt in question, and that he had an independent and unilateral duty to immediately withdraw the offensive language from the plan. Mr. Brunton could not condition his obligation to correct the erroneous pleading on the creditor's agreement to withdraw its request for attorney fees. He should have immediately amended the plan, and defended the attorney fee issue, if any was pressed,

later. Accordingly, this Court also finds that sanctions can and should be entered, in addition to under Rule 9011(c)(1)(B), under this Court's inherent and implied powers and under 11 U.S.C. § 105(a).

Amount of Sanctions

Mr. Brunton has argued that even if sanctions are to be entered against him, the proper measure of amount is not the amount of the attorney fees of PT&W, but instead the least amount necessary to deter him and others from similar conduct. This is certainly true under Bankruptcy Rule 9011(c)(2). Mr. Brunton also argues that the Court need not enter sanctions against him in any amount as a deterrent; he argues he has learned his lesson and will not again try to discharge nondischargeable obligations in a plan. The Court wishes to believe that Mr. Brunton will reform his conduct, and his statement that he has learned his lesson is appreciated by this Court, and certainly impacts the amount of sanctions to be awarded.

Unfortunately, however, his late apology, coming in response to the potential for a several thousand dollar sanctions award, does not speak as loudly as his inappropriate actions, over a period of almost nine months, that unreasonably and vexatiously multiplied the proceedings herein.³ To fail to sanction an attorney who improperly includes language in a plan, then over months and months refuses to remove that offending language, simply because, upon being caught, he or she finally apologizes, would be to send an incorrect message to Mr. Brunton and the bar that the conduct can be engaged in with impunity.

³This Court has used the language in 28 U.S.C. § 1927 because it is very descriptive of Mr. Brunton's conduct in this case, but does not rely on that statute to provide a legal basis for imposing sanctions, as that statute is not available to the Bankruptcy Courts. *See In re Courtesy Inns, Ltd., Inc.*, 40 F.3d 1084, 1086 (10th Cir. 1994) (holding that bankruptcy courts do not have the power to impose sanctions pursuant to 28 U.S.C. § 1927).

That said, this Court also finds that Rule 9011(c)(2) is not a fee-shifting device, even though it is clear that Mr. Brunton's position and conduct most assuredly caused unnecessary attorney fees for PT&W. In addition, under both this Court's inherent powers to sanction, and as part and parcel thereof, the powers granted in 11 U.S.C. § 105(a), the Court wishes to fashion a sanction that will deter future similar conduct by Mr. Brunton, and send a message that such conduct will not be tolerated by others similarly situated. For that reason, the Court imposes a sanction in the amount of \$1,000,⁴ which amount should be paid forthwith to PT&W, through their counsel of record,⁵ to attempt to defray the attorney fees it incurred, totaling over \$3,200, as a direct result of Mr. Brunton's conduct. Although this award does not in any fashion make PT&W whole, because 9011(c)(2) is not a fee-shifting device, and because Mr. Brunton has not previously been sanctioned by this Court, the Court believes the amount awarded is fair and reasonable under the circumstances.⁶

Finally, as stated in open court on May 29, 2003, this Court does not want to be viewed as a court that freely sanctions lawyers, but instead, wishes to be a place where lawyers practice ethically, while vigorously representing the interests of their clients, because it is the right way to practice law, not because

⁴Mr. Brunton specifically waived any argument that inability to pay a sanctions award, for financial reasons, should be considered as a factor in this case, when asked in open court if he had such a defense.

⁵Mr. Brunton shall also notify the Court of this payment by filing a Notice of Compliance with this Court's order.

⁶Mr. Brunton was also given additional time to file a brief on the issue of amount of sanctions, after PT&W's counsel added additional fees for hearings that had occurred subsequent to its initial fee request. Although at a prior hearing he had indicated he had no argument with the specific amounts sought, or hourly rate proposed, his brief filed July 3, 2003 did raise arguments both against specific amounts sought and the hourly rate. The Court has reviewed this objection, but finds his objections mooted by this Court's decision not to award fees in the total amount requested.

they fear sanctions. That said, when lawyers act considerably outside the bounds of what is objectively reasonable, and what a reasonably prudent lawyer would do in similar circumstances, the Court owes it to the parties and counsel to enforce the rules, and will not hesitate to do so. *White v. General Motors Corp., Inc.*, 908 F.2d 675, 680 (10th Cir. 1990)

IT IS, THEREFORE, ORDERED, that Mr. Brunton is required to forthwith pay sanctions to PT&W, through its counsel, in the amount of \$1,000 under Bankruptcy Rule 9011(c)(a)(2) and under this Court's inherent power to sanction a party who has acted in bad faith or otherwise unreasonably and vexatiously multiplied the proceedings, including under 11 U.S.C. ¶ 105(a). The Court further grants that part of Mr. Brunton's Motion for Reconsideration on the basis that sanctions should not be granted against him under Bankruptcy Rule 9011(c)(1)(A), because of PT&W's failure to strictly comply with its procedural prerequisites, and the Court has not granted sanctions under that subsection.

IT IS SO ORDERED this ___ day of July, 2003.

JANICE MILLER KARLIN, Bankruptcy Judge
United States Bankruptcy Court
District of Kansas

CERTIFICATE OF MAILING

The undersigned certifies that a copy of the Order Partially Granting, and Partially Denying, Motion for Reconsideration, and Ordering Sanctions was deposited in the United States mail, prepaid on this _____ day of July, 2003, to the following:

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