Dated: February 07, 2023
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re ISLAND INDUSTRIES, INC., Debtor.	Case No. 22-20380-L Chapter 11, Subchapter V
Sigma Corporation, Movant, v. Island Industries, Inc. and R. Glenn Sanders, Respondents.	Motion for Sanctions and Responses thereto [ECF Nos. 227, 238, and 244]
Final Application for Allowance of Glankler Brown, PLLC for Compensation	[ECF No. 223]
Application of John D. Horne, Attorney, for Compensation	[ECF No. 230]

MEMORANDUM OPINION
ON MOTION FOR SANCTIONS
AND FEE APPLICATIONS

Sigma Corporation's ("Sigma") *Motion for Sanctions Pursuant to Federal Rule of Bankruptcy Procedure 9011*, filed December 20, 2022, came before the Court for hearing on January 19, 2023. A *Response in Opposition* to the motion was filed by Island Industries, Inc. ("Island" or the "Debtor") on January 12, 2023, and a reply was filed by Sigma on January 17, 2023 [ECF Nos. 227, 238, and 244]. Sigma asserts that cause exists to sanction Island and its president, R. Glenn Sanders, pursuant to Federal Rule of Bankruptcy Procedure 9011 and Section 105(a) of title 11 of the United States Code for the bad faith filing of a Chapter 11 bankruptcy petition on behalf of Island. Sigma seeks a monetary sanction of $200,000 to be assessed jointly and severally against Island and Mr. Sanders. Island and Mr. Sanders oppose the motion. Counsel for the Debtor have filed their final fee applications [ECF Nos. 223, 230]. No objections were filed, but the Court has exercised its independent obligation to review these applications in light of the result obtained in this case. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44, 111 S.Ct. 2123, 2132 (1991); *In re Village Apothecary, Inc.*, 45 F.4th 940, 951 (6th Cir. 2022).

BACKGROUND FACTS

Mr. Sanders signed the petition that commenced the Chapter 11 case of Island on February 2, 2022. Island is represented by Michael P. Coury and Ricky L. Hutchens of Glankler Brown, PLLC [ECF No. 1].

Sigma filed a *Motion for an Order Dismissing the Debtor's Chapter 11 Case* on July 20, 2022 [ECF No. 161], which was joined by ASC Engineered Solutions, LLC ("ASC"), on August 5, 2022 [ECF No. 172]. Sigma and ASC asserted that the bankruptcy petition was not filed in good faith but rather as a litigation tactic.

The Debtor filed a *Response in Opposition to Sigma Corporation's Motion for an Order Dismissing the Debtor's Chapter 11 Case* on October 7, 2022 [ECF No. 190], and Sigma filed a *Reply* on October 14, 2022 [ECF No. 194].

The Court conducted an evidentiary hearing on October 27, 2022, at which testimony was given by Mr. Sanders, president, and David Barnett, secretary, treasurer, and chief financial officer of Island. After considering the testimony of the witnesses, the pleadings, the exhibits, and the arguments presented by the parties, the Court granted the *Motion to Dismiss* on November 15, 2022 [ECF No. 210]. No appeal was taken from the order of dismissal, and it is now final.

In its written opinion, the Court found that the only reason given by Mr. Sanders for filing the bankruptcy petition was to avoid the posting of an appellate bond to stay collection of ASC's judgment against Island in the amount of $1,500,000 for theft of trade secrets.

As described in the *Order Granting Motion to Dismiss*, on August 2, 2021, Island received $2,144,773.96 in settlement proceeds in connection with the False Claims Action.[1] Even though ASC had received its jury award against Island just three days before, Mr. Sanders did not consult counsel before he caused Island to begin distributing some $1,000,000 of the settlement proceeds to reward himself and others for their work on the False Claims Action. Among these distributions was a $200,000 cash bonus he paid to himself on August 6, 2021, and $336,712.77 paid to First Horizon Bank in repayment of a debt owed by another company owned by Mr. Sanders.

Sigma's counsel sent a letter to Island's counsel, Kelly B. Kramer of Mayer Brown LLP, on September 29, 2021. It informed him that Sigma intended to file a lawsuit similar to that of ASC against Island for theft of trade secrets. Sigma's counsel demanded $11 million in lieu of litigation. *Order Granting Motion to Dismiss* [ECF No. 210], p.5. Mr. Sanders testified that he did not take the demand seriously. In fact, when Island later filed its bankruptcy petition, Sigma was not listed as a creditor. Mr. Coury stated in the hearing on the *Motion for Sanctions* that Sigma was not listed because he was not informed of the potential claim of Sigma.

[1] Capitalized terms not otherwise defined have the meaning given in the *Order Granting Motion to Dismiss.*

On October 7, 2021, a jury found Sigma liable for violating the False Claims Act in the False Claims Action. The Debtor, as relator, was awarded $24,256,638.09 plus civil monetary penalties in the amount of $1,824,145.00. *See Debtor's Motion to Quash and Vacate Order Directing Rule 2004 Examination*, May 19, 2022 [ECF No. 97]. That award was stayed and is currently on appeal before the Ninth Circuit Court of Appeals.

Notwithstanding the judgment awarded to ASC and the demand made by Sigma, Island continued to pay bonuses and purchased a luxury vehicle for the personal use of Mr. Sanders, all at his direction. While Island was negotiating with ASC during January 2022 for resolution of its judgment, Mr. Sanders caused Island to pay $99,734 for repairs to Island's headquarters, a property owned by Mr. Sanders, and to engage Mr. Coury to prepare Island's bankruptcy petition.

Island filed its bankruptcy petition on February 2, 2022, to prevent ASC from executing upon its assets to satisfy its judgment. Sigma was not listed as a creditor and did not receive notice of the filing.

Sigma learned of the filing of Island's bankruptcy petition on March 3, 2022, when Mr. John D. Horne, attorney for Island, filed a *Notice of Bankruptcy Filing* in the ASC v. Island Industries case pending before the United States District Court for the Western District of Tennessee. *Response in Opposition to Sigma Corporation's Motion for Sanctions . . .* [ECF No. 238], Exh. 2.

On April 6, 2022, Island filed a *Motion for Relief from Stay* in its own bankruptcy case asking that this Court retroactively annul the stay to permit it to file briefs and prosecute its appeal to the Sixth Circuit Court of Appeals of the District Court judgment in favor of ASC [ECF No. 55]. ASC promptly objected on April 18, 2022, suggesting at that early date that "this case is driven entirely by the Debtor's efforts to deal with the ASC judgment" [ECF No. 63]. ASC argued that Island should be compelled to pursue the Chapter 11 process rather than continuing its appeal. The

Court did not grant the motion because the Debtor filed its proposed plan on May 3, 2022 [ECF Nos. 70, 80].

Counsel for Sigma filed notices of appearance and a motion for Rule 2004 Examination of the Debtor on May 6, 2022 [ECF Nos. 75, 76, and 79]. On May 9, 2022, Sigma filed its proof of claim [Claim No. 5-3] and an adversary proceeding against Island alleging theft of trade secrets under New Jersey and Tennessee law [Adversary Proceeding Number 22-00050]. Sigma immediately asked for withdrawal of the reference of the adversary proceeding, which was granted by the United States District Court for the Western District of Tennessee on October 4, 2022. [Adv. No. 22-00050, ECF No. 37].

On May 3, 2022, Island filed its proposed plan of reorganization [ECF No. 72], which provided for payment of ASC's claim and other unsecured claims a pro rata share of $500,000 upon the effective date of the plan and a pro rata share of any recovery from Sigma and another False Claims Action defendant, Vandewater, upon receipt. No provision was made for the claim of Sigma. Sigma filed its *Motion to Dismiss* on July 20, 2022 [ECF No. 161], which ASC joined on August 5, 2022 [ECF No. 172].

On August 10, 2022, Sigma and ASC filed a *Joint Motion … to Stay All Proceedings for Purposes of Mediation* [ECF No. 175], which was granted on August 23, 2022 [ECF No. 180]. On October 11, 2022, the parties gave notice that the mediation was unsuccessful [ECF No. 192].

On October 14, 2022, Sigma filed its *Motion for Entry of An Order Authorizing Sigma Corporation to Derivatively Assert Fraudulent Transfer Claims on Behalf of the Debtor's Estate* [ECF No. 195]. Sigma sought permission to pursue recovery of Island's assets transferred to and for the benefit of Mr. Sanders and certain other affiliates of the Debtor. This motion was rendered moot when the Court granted Sigma's *Motion to Dismiss* on November 15, 2022.

After the *Motion to Dismiss* was granted, Sigma filed its *Motion for Sanctions* on December 20, 2022. ASC did not join in the motion because in the interim between the Court's order of dismissal and the filing of the *Motion for Sanctions*, ASC and Island settled their differences. A copy of their *Settlement and Release Agreement* was made part of the record of the hearing on the *Motion for Sanctions* as Exhibit A.

Sigma argues that Island and Sanders should be required to pay $200,000, or such other amount as determined by the Court, as a sanction for their acts in initiating the bankruptcy case for the improper purpose of avoiding and/or delaying creditors and gaining a tactical advantage in current and anticipated litigation. Sigma asserts that the filing of the bankruptcy petition by Island caused it to incur substantial legal fees and expenses. Attached to its motion is the *Declaration of Roberto J. Kampfner*, partner in the law firm of White & Case, LLP ("White & Case"), which indicates that his firm expended some 850.7 hours in connection with the bankruptcy case. Sigma was also represented by the firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., as co-counsel, but time records for that firm were not provided. Sigma suggests that if it is awarded $200,000 as it requests, that would result in a blended hourly rate for the services performed by White & Case of $235.10 per hour.

Glankler Brown, PLLC has submitted a *Final Application for Allowance of Glankler Brown, PLLC for Compensation and Reimbursement of Expenses to Attorneys for Debtor in Possession* [ECF No. 223] seeking fees in the amount of $249,306.75 and expenses in the amount of $7,813.17 for a total of $257,119.92. In addition, Mr. Horne filed an *Application ... for Allowance and Payment of Compensation* [ECF No. 230] for representation of the Debtor both pre- and post-petition in the litigation with ASC in the amount of $19,800.00. Although no objection was filed with respect to either of these applications, the Court took both under submission to consider them in connection with the *Motion for Sanctions*.

ANALYSIS

A. The Legal Standard

Sigma's *Motion for Sanctions* is based upon 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9011(b)(1). Section 105(a) provides:

> **(a)** The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of … title [11]. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

It is clear that "[f]ederal courts, including bankruptcy courts, have inherent and statutory authority to impose sanctions upon parties for their abuse of the litigation process." *Maloof v. Level Propane Gasses, Inc.*, 316 Fed. Appx. 373, *3 (6th Cir. 2008); *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 285 (9th Cir. 1996)(Bankruptcy court has inherent power to impose sanctions on debtor's principal who caused debtor to file a petition in bad faith.).

Among the inherent powers of any federal court are "the power to control admission to its bar and discipline attorneys who appear before it," and "the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 41-46, 111 S.Ct. 2123, 2133 (1991). This may include the relatively severe sanction of dismissal of a lawsuit, or the less severe sanction of assessment of attorney fees. *Id.* "A court may assess attorney fees when a party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Id.* quoting *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258-259, 95 S.Ct. 1612, 1622-23 (1975). A court's inherent power to award attorney fees is limited to cases in which a litigant has engaged in bad faith conduct or willful disobedience of court orders. *Id.*, 501 U.S. at 47, 111 S.Ct. at 2134. Where bad faith conduct may be adequately sanctioned under the Rules of Civil or Bankruptcy Procedure, a court should rely upon those Rules, but "if in the informed discretion of the court, neither the statute [28 U.S.C. § 1927] nor the Rules [Fed. R. Civ.

P. 11 or Fed. R. Bankr. P. 9011] are up to the task, the court may safely rely upon its inherent power." *Id.*, 501 U.S. at 50, 111 S.Ct. at 2136.

Federal Rule of Bankruptcy Procedure 9011(b) provides in relevant part:

> **(b) Representations to the Court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, 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, —
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation[.]

Rule 9011 further provides:

> **(c) Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may … impose an appropriate sanction upon the attorneys, law firms or parties that have violated subdivision (b) or are responsible for the violation.

Rule 9011(c) provides further guidance on the imposition of sanctions:

> **(2) Nature of Sanction; Limitations.** A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.
>
> (A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).
>
> (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.
>
> **(3) Order.** When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Rule 9011 was amended in 1991 to conform to the 1983 amendments to Rule 11. The Supreme Court has said that the central purpose of Rule 11 as amended "is to deter baseless filings in district [and bankruptcy] court, and thus, consistent with the Rules Enabling Act's grant of authority,

streamline the administration and procedure of the federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393, 110 S.Ct. 2447, 2454 (1990); see Advisory Committee Note to Federal Rule of Bankruptcy Procedure (1991) and Advisory Committee Note to Federal Rule of Civil Procedure 11 (1983) ("The amended rule attempts to deal with the problem [that the prior rule had proved ineffective in deterring abuses] by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in litigating or conducting litigation. Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessoning frivolous claims or defenses." (citation omitted)). Rule 9011 was amended again in 1997 to conform to the 1993 changes to Federal Rule of Civil Procedure 11, which eliminated discovery requests, responses, objections, and motions from the reach of Rule 11. See Advisory Committee Note to Federal Rule of Bankruptcy Procedure (1997) and Advisory Committee Note to Federal Rule of Civil Procedure 11 (1993) ("The rule continues to require litigants to 'stop-and-think' before initially making legal or factual contentions. It also, however, emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable and by generally providing protection against sanctions if they withdraw or correct contentions after a potential violation is called to their attention.") Significantly, under Rule 9011(c)(1)(A), a debtor is not provided the 21-day safe harbor to avoid sanctions when the abusive pleading is the petition itself. Fed. R. Bankr. P. 9011(c)(1)(A).

Invocation of the jurisdiction and protections of the bankruptcy court is a momentous step with far-reaching consequences affecting numerous parties. It should never be invoked lightly or for an improper purpose. The Court dismissed Island's bankruptcy case because it was filed for an improper purpose. In fact, the Court said that it represented a classic bad faith filing – one in which

the petitioner's only goal is to use the automatic stay to avoid posting an appeals bond. This conclusion was exacerbated by the numerous and substantial insider transfers made in the months leading up to the bankruptcy filing. The filing of the petition violated Rule 9011(b)(1) and represented an abuse of process, which a bankruptcy court may remedy through the statutory powers established in section 105(a) and its inherent powers as a federal court. *Chambers*, 501 U.S. at 50, 111 S.Ct. at 2136. See also, *Mapother & Mapother, PSC v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996); *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

B. Should Additional Sanctions be Imposed Beyond the Dismissal of the Bankruptcy Case?

Having found these violations, the Court must determine an appropriate remedy. The dismissal of the bankruptcy case is itself a significant sanction of the filing. As the result of the dismissal, Island abandoned its appeal and entered into the *Settlement and Release Agreement*, which (1) calls upon Island to pay the full amount of ASC's judgment, $1,500,000, together with costs in the amount of $9,000 over a twelve-month period; (2) grants ASC a security interest in Island's share in the False Claims Action and the judgment preservation insurance policy that Island apparently acquired after the bankruptcy case was dismissed; and (3) requires the personal guaranty of Mr. Sanders.

Island and Mr. Sanders argue that no further sanction is necessary for three reasons. First, they argue that their conduct was not particularly egregious. Second, they argue that the award of sanctions is not necessary to deter similar conduct by themselves or by third parties. Third, they argue that Sigma's request is unreasonable because the monetary amount requested is too high, Island displayed bad faith as to ASC but not as to Sigma, and Sigma's true aim in filing the *Motion for Sanctions* is seeking a litigation advantage.

1. Was the Conduct of Island's Attorneys or Mr. Sanders Egregious?

The facts in this case make the Court's decision somewhat difficult. The attorney who pressed Mr. Sanders to file the bankruptcy petition, according to Mr. Sanders, was Mr. Horne, but Mr. Horne did not sign the bankruptcy petition. According to Mr. Coury, neither Mr. Horne nor Mr. Sanders (nor anyone else) told him about the demand made by Sigma in September 2021. It is not clear to the Court how Mr. Coury would have discovered that information – contained in a letter addressed to Mr. Kramer – from records available to him. In the record created in support of the *Motion to Dismiss*, the Court found nothing to suggest that concern about Sigma's demand entered into the discussions between Mr. Sanders and Island's counsel leading up to the filing of the bankruptcy petition. The September 29 demand letter was addressed to Mr. Kramer of Mayer Brown, LLP and no one else. At the hearing on the *Motion to Dismiss*, Mr. Sanders acknowledged that he was made aware of the Sigma demand at the time or shortly after it was made. He was clearly aware of Sigma's demand at the time the bankruptcy petition was filed. Mr. Kramer, too, of course, was knowledgeable about these facts, but Mr. Kramer is not presently before the Court. Mr. Kramer spoke with Mr. Coury on the day the bankruptcy petition was filed and was later engaged by Island as special counsel to defend it in the adversary proceeding brought by Sigma. *See Application to Employ Mayer Brown, LLP as Special Counsel for the Debtor Effective February 2, 2022* [ECF No. 109]. Mr. Kramer has not filed an application for approval of fees and expenses earned during his representation of the Debtor, however. There is nothing in the time entries of Mr. Coury or Mr. Horne to indicate that there were discussions about the Sigma demand during the period between the filing of the petition and the entry of appearances by counsel for Sigma. Reviewing all of this information confirms the Court's prior finding that the filing of the petition was not directed at Sigma but at avoiding the posting of an appellate bond in the face of the judgment obtained against Island by ASC.

Mr. Horne, Mr. Sanders, and Mr. Woehrel, an employee of Island, discussed the possibility of a bankruptcy filing on September 17, shortly after the ASC judgment was entered on July 30, 2021. *Order Granting Motion to Dismiss* [ECF No. 210], p.4. The Court does not have Mr. Horne's time records from this period, but the record reflects that Island's first response to the judgment was a motion for new trial filed August 27, 2021. [ASC's] *Objection to Debtor's Motion for Relief from Stay* [ECF No. 63], Exh. A, Annex 6. That effort was not successful. Mr. Horne's time records start at December 14, 2021, when he was preparing and filing the notice of appeal. The first mention of a discussion concerning a bond occurs in the entry for December 28, 2021, which reflects that Mr. Horne had a "telephone conference with First Horizon Bank re: Bond on Appeal." *Application of John D. Horne* [ECF No. 230], Ex. A. Mr. Horne's time records reflect additional time spent concerning the obtaining of a bond or letter of credit. These entries end on January 16 and on January 17, Mr. Coury's name appears for the first time in an entry in Mr. Horne's time records. On January 18, Mr. Horne and Mr. Sanders discussed the filing of an emergency petition with Mr. Coury. What is not addressed in Mr. Horne's time records and was not revealed in Mr. Sanders' testimony is the reason why the discussion turned from "preparation for Bond" on January 16 to "status of Bankruptcy filing" on January 28. The record reflects that settlement discussions with ASC occurred on January 21, 24, 25, 30, and 31. *Order Granting Motion to Dismiss* [ECF No. 210], p. 7. In other words, Island appears to have decided to file its bankruptcy petition while discussions with ASC were ongoing. As the Court noted in its prior opinion:

> [Mr. Sanders] generally indicated that he left that [the obtaining of a bond] to his attorneys. He did testify that he understood that there was some discussion about obtaining a letter of credit in lieu of a bond. He testified that First Horizon wanted substantial collateral to secure the letter of credit and that it asked for his personal financial information, too. Mr. Sanders indicated that negotiations with ASC continued through January but that he did not feel that Island could meet the payment terms requested in those discussions. The Court was left with the impression that notwithstanding Mr. Sanders' strong statements that he did not want to file a bankruptcy petition because he felt it was "immoral," he never seriously undertook steps to ensure that ASC would be paid its judgment in the

> event that Island's appeal failed. The Court also felt that Mr. Sanders did not understand that it was his obligation to show to the Court that he was acting in good faith when he decided to file the bankruptcy petition for Island.

Order Granting Motion to Dismiss [ECF No. 210], pp. 8-9. The Court concluded from the evasiveness of Mr. Sanders that one of the motivations for the filing of the bankruptcy petition could have been Mr. Sanders' desire to protect the transfers made to him. It also appears from Mr. Horne's time records and the testimony of Mr. Sanders that Mr. Sanders did not want to pledge his personal assets to ensure that ASC would be paid or that a bond or letter of credit would be issued by First Horizon.

In its argument that Island's conduct was not particularly egregious, Island asks the Court to distinguish the conduct of Mr. Sanders and Island's attorneys from that of the debtor Sunril Parikh. *See Desiderio v. Parikh (In re Parikh)*, 508 B.R. 572 (Bankr. E.D. N.Y. 2014). Mr. Parikh filed his bankruptcy petition to avoid paying his creditor, John Desiderio, even though he had the ability to do so. Mr. Parikh fraudulently conveyed equity in his home by making a large draw on his home equity line and transferred other assets to shield them from collection. The court found that the debtor filed his petition in bad faith, engaged in discovery misconduct, filed frivolous motions, and lied during his Code § 341 meeting. Nevertheless, the court declined to impose the monetary sanctions requested by Mr. Desiderio (reimbursement of his attorney fees) because the court imposed the ultimate sanction – denial of discharge – on the debtor and did not feel that additional sanctions would add further deterrence value. The court noted that the debtor had removed himself to India, so that it seemed unlikely that an award of sanctions could be collected. In other words, the court seems to have concluded that although the creditor was free to pursue the debtor for all of his damages as the result of the denial of discharge, the imposition of sanctions would be a wasted effort.

Island and Mr. Sanders suggest that the Court should not grant additional sanctions in the present case in reliance on the court's failure to award sanctions in the *Parikh* case. They argue that notwithstanding Island's filing the petition in bad faith, its actions after the filing of the petition suggest that no further sanctions are required. They note that it proposed a plan that would have paid ASC in full, sought an insurance policy to ensure that it could do so, participated in settlement negotiations with ASC and Sigma, committed no discovery misconduct, and filed no frivolous motions. *Response in Opposition* [ECF No. 238], p. 8.

The facts in Island's case are, of course, very different from those in *Parikh*. It is not the case here that the imposition of sanctions would be a wasted effort because Mr. Sanders has not left the country and has not sought personal bankruptcy relief. While Island did not commit the same acts described in *Parikh*, it did vigorously defend its position in the face of Sigma's and ASC's opposition to its filing resulting in a year's delay in providing for payment of ASC's claim and substantial expense to ASC and Sigma. Island could have dismissed its petition in the face of the ASC's motion for relief from stay or the *Motion to Dismiss* (both of which called into question the propriety of the filing), but it chose not to do so. Moreover, the Court found Mr. Sanders' testimony concerning the *Motion to Dismiss* not credible in at least two instances. It is reasonable to infer from Mr. Sanders' refusal to testify concerning the reasons for the bankruptcy filing and subsequent events, that at least one reason for Mr. Sanders' choice to have Island file a bankruptcy petition rather than obtain an appellate bond was the requirement that he provide personal financial information and/or a personal guaranty to First Horizon. Mr. Sanders attempted to gain a personal advantage from the bankruptcy filing and engaged in conduct in the presence of this judge that cannot be condoned. *Jones v. Bank of Santa Fe (In re Courtesy Inns, Ltd., Inc.)*, 40 F.3d 1084, 1089-90 (10th Cir. 1994.) (Imposing sanctions on corporate debtor's president and sole

shareholder was appropriate after he caused corporation to file a petition on the eve of foreclosure "purely for the purpose of delaying the creditor from enforcing its rights.").

2. Are Further Sanctions Necessary to Deter Similar Conduct by Island's Attorneys, Mr. Sanders, or Third Parties?

Island argues that additional sanctions are unnecessary to prevent further abuse because the Court specifically found that Island's conduct was not intended to gain a litigation advantage over Sigma. *Response in Opposition* [ECF No. 238], p. 8. Island argues that it has already taken steps in the face of ASC's collection activity after the dismissal of the bankruptcy case that demonstrate that Island will not file another bankruptcy petition. *Id.* at 9. The Court does not interpret Island's activities in quite the same manner. It is entirely possible that Island will need bankruptcy protection at some point in the future. Island's financial condition has changed dramatically as the result of its settlement with ASC and the filing of Sigma's adversary complaint. It would not be improper for Island to seek bankruptcy protection if its financial condition requires it. Island was sanctioned not for filing a bankruptcy petition but for filing a bankruptcy petition for an improper purpose. That is the conduct that sanctions against Island and/or Mr. Sanders would be intended to deter. More importantly, sanctions, when warranted, are intended to deter others from following the same improper course of conduct.

The Court is distressed that Island and Mr. Sanders continue to argue that their current situation is somehow Sigma's fault. They argue that if Sigma had done something in addition to sending a lengthy letter detailing its potential claim, they would have understood that Sigma was serious about pursuing its claim for misappropriation of trade secrets. Further, counsel uses inflammatory language concerning Sigma rather than simply stating their arguments – "Sigma lay in waiting for 60 days"; "fought Island on every motion it filed, costing Island thousands of dollars in legal fees"; and "Sigma's true aim in seeking sanctions is not to deter future conduct but rather to bleed Island of its resources to gain an advantage in the Trade Secrets Action." *Response in*

Opposition, pp. 10, 15. From the issuance of the ASC judgment, Mr. Sanders permitted and/or encouraged his counsel to engage in numerous tactics to delay the collection of the judgment while transferring company assets to and for the benefit of insiders. These efforts culminated in the bad faith filing of Island's chapter 11 petition and continue in the arguments pursued by counsel to avoid additional sanctions. Even though the bankruptcy petition has been dismissed, Sigma correctly argues that Island and Mr. Sanders accomplished their purpose to delay the collection of ASC's judgment by more than a year. Sigma also correctly argues that the actions of Island, Mr. Sanders, and their counsel needlessly increased the costs borne by ASC and Sigma. The Court does not hesitate to find that further sanctions are necessary to deter these persons and third parties similarly situated from engaging in such conduct.

3. Is Sigma's Request Unreasonable?

Finally, Island and Mr. Sanders argue that Sigma's request is unreasonable because the monetary amount requested is too high, Island displayed bad faith as to ASC but not as to Sigma, and Sigma's true aim is seeking a litigation advantage. The first argument has to do with the amount of an appropriate additional sanction. The second argument is directed to whether additional sanctions should be paid to Sigma or to someone else. The third argument is a continuation of Island's and Mr. Sanders' unsubstantiated argument that Sigma is engaged in bad faith conduct of its own with respect to Island. The Court will focus on the question of the amount necessary to deter similar conduct in the future.

a. The Attorneys

With respect to Island's counsel, the Court has the ability to express its displeasure in deciding the amount of fees to be awarded in connection with their work in this case. The Sixth Circuit Court of Appeals has directed that the lodestar method be used to determine attorney fees to be awarded in bankruptcy cases. *In re Boddy*, 950 F.2d 334, 338 (6th Cir. 1991). In addition to

considering the reasonable hours actually worked and a reasonable hourly rate, "the bankruptcy court may also exercise its discretion to consider other factors such as the novelty and difficulty of the issues, the special skills of counsel, *the results obtained*, and whether the fee awarded is commensurate with fees for similar professional services in non-bankruptcy cases in the local area." *Id.* (emphasis added); *see, also, In re Village Apothecary, Inc.*, 45 F.4th 940, 947-949 (6th Cir. 2022)("[11. U.S.C.] Section 330(a)(3) does not preclude courts from considering "results obtained" as a relevant factor [in the lodestar analysis].") Mr. Coury is a highly experienced bankruptcy practitioner and Mr. Hutchens served as a law clerk to Chief Bankruptcy Judge David S. Kennedy before beginning his practice with the Glankler Brown law firm. The narrative description of their services reflects that as early as March 31, 2022, Mr. Hutchens undertook "Research re using automatic stay to post appeals bond." *Final Application* [ECF No. 223], Ex. A. This occurred prior to the entry of Sigma into the case and appears to have been related to Island's motion for relief from stay to enable it to pursue its appeal of the ASC judgment without having to post an appellate bond. *Motion for Relief from Stay* [ECF No. 55]. In its objection to the motion for relief from stay, ASC asserted:

> By all indication, this case is driven entirely by the Debtor's efforts to deal with the ASC judgment. Rather than proceed with its Sixth Circuit appeal (and the then-pending circuit mediation process), the Debtor chose to file bankruptcy…. These facts and the other circumstances of this case suggest that this case is nothing more than a litigation tactic focused on a single creditor, ASC.

Objection to Debtor's Motion for Relief from Stay [ECF No. 63], p. 1. ASC called into question the Debtor's motives in filing the bankruptcy petition long before Sigma made its appearance and Mr. Coury and Mr. Hutchens (and Mr. Horne, discussed below) knew it.

The Court is aware that Island had other counsel at the time the bankruptcy petition was filed including Mayer Brown, Mr. Kramer's firm. Island sought permission to engage Mayer Brown to continue to represent it in the False Claims Action and in proceedings related to it, and

to represent Island in defense of the adversary proceeding commenced by Sigma. Mayer Brown has not filed a fee application with this Court. Mr. Horne was engaged by the Debtor to represent it in connection with the ASC appeal. Mr. Horne has filed an application that includes both pre- and post-bankruptcy services.

Although Mr. Sanders testified in his 2004 Examination that it was Mr. Horne who pushed him toward the filing of the bankruptcy petition for Island, the Court believes and finds that any of the attorneys engaged on behalf of Island could have and should have instructed Mr. Sanders that it was improper to do so. The filing of the improper petition tainted all of the results received in this case, including the significant delay and expense visited upon ASC and Sigma. Even though the Debtor has capitulated to ASC's demands, it is appropriate for the Court to consider these improper motives and activities in awarding attorneys' fees to counsel for the Debtor. The Court finds that, in order to deter similar conduct by these attorneys and others in the future, it is appropriate to reduce the fee requests related to representation of the Debtor in connection with the bankruptcy case by 25%. For Glankler Brown this results in a reduction of $62,326.69, for a total fee award of $186,980.06. No reduction will be made in the request for reimbursement of expenses in the amount of $7,813.17. The total award for Glankler Brown shall be $194,793.23.

With respect to Mr. Horne, the Court realizes that he did not sign the bankruptcy petition and that 16.3 hours of his time predated his appearance in the bankruptcy case. Fees for non-bankruptcy related services fall outside the reach of this Court. Mr. Horne performed an additional 49.7 hours of services during his representation of the Debtor after the filing of the bankruptcy petition at an hourly rate of $300, for a total of $14,910. Although the Court finds the number of hours and the hourly rate to be reasonable, the Court also finds the Mr. Horne's efforts were tainted by the improperly filed bankruptcy petition. Although Mr. Horne did not act as bankruptcy counsel in this case, he has appeared before this Court numerous times and should have been aware that

the petition was filed for an improper purpose. Thus, the Court finds that his fee for his activities during the bankruptcy case should be reduced by 25%, or $3,727.50, for a total award in connection with his service as special counsel to the Debtor of $11,182.50.

b. The Corporation

Reduction in attorneys' fees, which the Court intends as a deterrence to these attorneys and others similarly situated, has the effect of conferring a benefit upon the Debtor. The Court intends that this benefit will make it easier for Island to pay its debt to ASC and finds that the imposition of an additional sanction upon Island would make it more difficult for it to do so. For this reason, no additional sanction will be imposed upon the corporation.

c. Mr. Sanders

With respect to Mr. Sanders, however, the Court notes that Island is a closely-held corporation controlled entirely by him. The Court believes that the reduction in attorneys' fees should benefit Island's creditors, principally ASC, rather than Mr. Sanders. Although the Debtor argues that the amount requested by Sigma as a monetary sanction is too high by comparing it with the fee application filed by Glankler Brown, the Court thinks that it is better compared to the "bonus" Mr. Sanders awarded himself in the face of ASC's judgment against Island. The Court has found that it is reasonable to infer that Mr. Sanders' desire to protect the assets transferred to himself and other insiders drove the decision to file the bankruptcy petition rather than post an appellate bond, at least in part. Therefore, the Court finds that Mr. Sanders, individually, should pay 25% of his $200,000 "bonus," or $50,000, to Sigma as an additional sanction.

This is far short of the amount that Sigma requested. Sigma has provided proof that it incurred substantial attorneys' fees and expenses in connection with the bad faith filing by Island. It argues that it also was compelled to file its Trade Secrets Action in Memphis rather than New Jersey as the result of the filing. Island has not disputed these facts, but merely argues that Sigma's

appearance in the bankruptcy case was a "litigation tactic." This, without proof, is not a legal or factual argument. The Court does not find it appropriate to reimburse Sigma for all or even a substantial portion of its attorneys' fees. The result would be compensation rather than deterrence, which is the proper focus of Rule 9011(c) as amended. The Court does believe, however, that compelling Mr. Sanders to pay some portion of the fees incurred by Sigma as the result of his bad faith actions is appropriate to deter others similarly situated from pursuing similar activities. The Court finds that $50,000 is the appropriate amount because it represents a substantial part (but not all) of the personal benefit that Mr. Sanders attempted to protect by his actions.

CONCLUSION

For the reasons stated above, the Court finds that dismissal of the bankruptcy petition alone is not a sufficient sanction to deter these persons and third parties similarly situated from filing a bankruptcy petition in lieu of posting an appellate bond for a debtor that has the financial ability to do so. The Court finds that the additional sanction to be imposed upon the attorneys is the reduction of their fees by 25%. The Court intends that this will enable the Debtor to more easily pay its debt to ASC. The Court finds that an additional sanction against Mr. Sanders is appropriate because it will deter him and other company owners similarly situated from filing a bankruptcy petition for their company in order forestall collection of an outstanding judgment and to gain some personal advantage. With respect to Mr. Sanders, the additional sanction shall be an order to pay Sigma $50,000 because that represents 25% of the $200,000 "bonus" that he paid himself -- a portion of the benefits he attempted to shield by causing Island to file its bankruptcy petition. The Court finds that no additional sanction should be imposed upon Island because the result would be to deplete assets that are necessary for it to pursue its ongoing business which will result in full payment of its obligation to ASC.

The Court will enter separate orders consistent with this Memorandum Opinion.

cc: Debtor
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