The document below is hereby signed.

Dated: September 25, 2012.

S. Martin Teel, Jr.
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
W.A.R. LLP,	)	Case No. 11-00044
	)	(Chapter 7)
Debtor.	)	Not for publication in
	)	West's Bankruptcy Reporter.

MEMORANDUM DECISION FIXING
AMOUNT OF FEES TO BE AWARDED WILLIAM C. CARTINHOUR,
JR. ON HIS MOTION FOR SANCTIONS AGAINST WADE A. ROBERTSON

On May 4, 2012, this court ruled that, pursuant to the court's inherent power, William C. Cartinhour, Jr. was entitled to recover from Wade A. Robertson his attorney's fees and costs incurred by reason of Robertson's role in the preparation and filing of papers on behalf of Ray Connolly. Robertson then filed his *First Motion Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, & 9024 to Amend Findings, and/or Amend Judgment, and/or for New Hearing, and/or for Relief From Judgment of the Court's May 4, 2012 Memorandum and Orders*. That motion will be overruled, and a judgment will be entered awarding Cartinhour $21,901.

I

Robertson's motion rests on inability to pay sanctions, but he failed to raise the defense of inability to pay when he initially opposed Cartinhour's motion for sanctions, and he could be viewed as having waived the argument. *See White v. Gen. Motors Corp.*, 908 F.2d 675, 685 (10th Cir. 1990) ("Inability to pay what the court would otherwise regard as an appropriate sanction should be treated as reasonably akin to an affirmative defense, with the burden upon the parties being sanctioned to come forward with evidence of their financial status."); *Multiservice Joint Venture, LLC v. United States*, 374 F. App'x 963, 967 (Fed. Cir. 2010) ("The [trial] court found that she waived this argument when she failed to raise it as a mitigating factor in response to the government's application for attorney fees and costs. We agree."). Even if Robertson has not waived the defense, I nevertheless conclude that Cartinhour is entitled to recover all of his damages as a sanction.

II

A preliminary issue is whether ability to pay is a factor the court must take into account in deciding the amount of attorney's fees to impose as a sanction pursuant to the court's inherent power. The issue is one on which the courts are split.

A

The issue is not governed by decisions addressing the issue

under Fed. R. Civ. P. 11 or its bankruptcy analog, Fed. R. Bankr. P. 9011. Courts hold that the purpose of sanctions under either of those rules is not compensation, but deterrence. *See Brubaker v. City of Richmond*, 943 F.2d 1363, 1370 n.7 (4th Cir. 1991) ("The primary purpose of Rule 11 is not compensation of the offended party, but rather deterrence of future litigation abuse." (citing *In re Kuntsler*, 914 F.2d 505, 522 (4th Cir. 1990); *White*, 908 F.2d at 684 ("The appropriate sanction should be the least severe sanction adequate to deter and punish the plaintiff." (citations omitted)). Accordingly, in considering an imposition of attorney's fees under Rule 11 or Rule 9011, one factor to consider is the sanctioned party's ability to pay. *White*, 908 F.2d at 685; *Hilton Hotels Corp. v. Banov*, 899 F.2d 40, 46 (D.C. Cir. 1990). Nevertheless, inability to pay does not prevent a full award of the opponent's attorney's fees if necessary to serve the rule's deterrent purpose. *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1125 n.4 (9th Cir. 2002) ("The Advisory Committee's notes concerning the [1993] amendments [to Fed. R. Civ. P. 11] indicate that an attorney's financial wherewithal is only one of several factors that a district court may consider in deciding the amount of sanctions .... Nothing in Rule 11 mandates a specific weighing of this factor, however.").

B

In contrast, Cartinhour is seeking sanctions pursuant to the

court's inherent power. Robertson's motion asserts:

> when sanctions are to be imposed under a court's inherent powers, the sanctioned party's ability to pay is a factor to be considered. *See Martin v. Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1336-1337 (11th Cir. 2002) (reversing award of sanctions imposed under the court's inherent authority because although the court considered the combined finances of the parties, the court failed to consider whether each party had the ability to pay the full amount of the sanction) (citations omitted).

Not all courts agree that a sanctioned party's inability to pay is always a factor to take into account in imposing a monetary sanction pursuant to the court's inherent power. *See Telechron, Inc. v. Intergraph Corp.*, 91 F.3d 144 (6th Cir. 1996) ("We have not heretofore required an inquiry into a party's ability to pay when the court exercises its inherent powers and on the facts of this case, we decline to do so.").

As an exception to the American Rule, a court, pursuant to its inherent power, may shift to a losing party the prevailing party's attorney's fees attributable to the losing party having acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59 (1975). Thus, in contrast to Rule 11 or Rule 9011, the imposition of sanctions pursuant to a court's inherent power *is* a fee shifting power. In *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), the Court considered the boundaries of a federal court's awarding attorney's fees pursuant to its inherent power:

> [A] court may assess attorney's fees when a party has

> "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." ... The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the **dual purpose** of "vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy."

Id. at 45-46 (internal citations and quotations omitted) (emphasis added).

C

Does the dual purpose of vindicating judicial authority and compensating for damages caused by a party's bad faith conduct make inability to pay an inappropriate factor to consider in imposing sanctions under that power? To answer that question, it is useful to examine the issue of whether that factor must be considered (or must not be considered) when fees are awarded under 28 U.S.C. § 1927.[1] The imposition of attorney's fees pursuant to the court's inherent power is akin to the imposition of attorney's fees pursuant to 28 U.S.C. § 1927 against an attorney who has vexatiously multiplied proceedings, at least

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[1] Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

when § 1927 is interpreted as requiring a finding of bad faith.[2] *See Oliveri v. Thompson*, 803 F.2d 1265, 1273 (2d Cir. 1986) ("the only meaningful difference between an award made under § 1927 and one made pursuant to the court's inherent power is . . . that awards under § 1927 are made only against attorneys or other persons authorized to practice before the courts while an award made under the court's inherent power may be made against an attorney, a party, or both.")

Some courts hold that ability to pay is *not* a factor to take into account in making an award under § 1927. *See Shales v. Gen. Chauffeurs, Sales Drivers and Helpers Local Union No. 330*, 557 F.3d 746, 749 (7th Cir. 2009) ("a lawyer's ability to pay does not affect the appropriate award for a violation of § 1927," because "[a] violation of § 1927 is a form of intentional tort," and therefore, as with other intentional torts, "[d]amages depend on the victim's loss, not the wrongdoer's resources."); *Hamilton v. Boise Cascade Express*, 519 F.3d 1197, 1205 (10th Cir. 2008) ("the text of § 1927, unlike that of Rule 11, indicates a purpose to compensate victims of abusive litigation practices, not to deter and punish offenders."). In *Haynes v. City and County of*

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[2] Despite an apparent holding in *Reliance Ins. Co. v. Sweeney Corp., Md.*, 792 F.2d 1137 (D.C. Cir. 1986), that recklessness suffices, *United States v. Wallace*, 964 F.2d 1214, 1218 (D.C. Cir. 1992), expressed the view that the law in the D.C. Circuit is unsettled as to whether a court must find subjective bad faith or merely recklessness to impose sanctions under § 1927.

San Francisco, --- F.3d ----, 2012 WL 2989092 (9th Cir. July 23, 2012), however, the court of appeals rejected *Shales* and *Hamilton,* ruling that the use of the word "may" rather than "shall" or "must" in § 1927 reflects that § 1927 awards are discretionary such that the court may permissibly take ability to pay into account, although courts are not required to limit an award to the amount that the sanctioned attorney is able to pay.

D

A court's inherent power "must be exercised with restraint and discretion." *Chambers*, 501 U.S. at 44. Based on that, I will assume that ability to pay is a factor that, in the court's discretion, may be taken into account in imposing sanctions pursuant to the court's inherent power, but given the dual purpose of sanctions imposed under the court's inherent power, it would require a unique set of circumstances for a court to justifiably award less than the full amount of fees against an offender. One example is this: when multiple parties or attorneys have engaged in bad faith conduct, it may be appropriate to determine the financial ability of each of those individuals in deciding the amount of the opponent's fees to be recovered from each of them in order to make the opponent whole. *See Martin*, 307 F.3d at 1337. When no such circumstances are present, as was the case in *Robertson v. Cartinhour*, 2012 WL 3245424 (D.D.C. Aug. 10, 2012), I agree with Judge Huvelle that

inability to pay "is irrelevant to a sanction award under § 1927," *id.* at *6, or, as here, pursuant to the court's inherent powers. In any event, when a party has, as here, intentionally and maliciously caused a strawman to file papers, knowing that the papers were without merit, in an effort to run up his opponent's attorney's fees, it is not a just exercise of the court's discretion to allow the party, based on his inability to pay (an inability of which he was well aware when he engaged in his bad faith misconduct), to escape having imposed against him an award of the fees his bad faith conduct caused his opponent.

In the case of § 1927 sanctions, consideration of an individual's ability to pay does not require that the award be limited to the amount that the sanctioned individual is able to pay. *Haynes,* 2012 WL 2989092. Even when fees are awarded pursuant to Rule 11 or Rule 9011, a reduced fee award based on inability to pay is only appropriate if the court determines that a reduced fee award is sufficient to deter future violations. *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d 1224, 1230 (6th Cir. 1989). When fees are imposed as a sanction pursuant to the court's inherent power, consideration of inability to pay similarly ought not mandate limiting the fees awarded to those the offender is able to pay when other considerations weigh in favor of awarding the full amount of the opponent's fees arising from the bad faith conduct. I

acknowledge that *Martin* arguably expresses a contrary view. *See Martin*, 307 F.3d at 1338 n.5 ("We also are not limiting the district court's discretion to impose joint and several liability for the sanctions upon the parties. **We only say that a party may not be held jointly liable for an amount of sanctions the party does not have the ability to pay.**" (Emphasis added.)).[3] *Martin* reached this view by stating:

> Sanction orders must not involve amounts that are so large that they seem to fly in the face of common sense, given the financial circumstances of the party being sanctioned. What cannot be done must not be ordered to be done. *Miccosukee Tribe v. South Florida Water Management District*, 280 F.3d 1364, 1370 (11th Cir. 2002) (discussing injunctions). And, sanctions must never be hollow gestures; their bite must be real. For the bite to be real, it has to be a sum that the person might actually pay. A sanction which a party clearly cannot pay does not vindicate the court's authority because it neither punishes nor deters. *Cf. Malautea*, 987 F.2d at 1545 [*Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1545 (11th Cir. 1993)] (concluding that sanctions imposed under court's inherent power "justly punished" the offending parties and would hopefully deter others from engaging in similar conduct).

Martin, 307 F.3d at 1337. *Martin* failed to acknowledge that there may be considerations that warrant taking a different view, including, for example, that:

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[3] *Martin* expressed a concern that joint and several liability for all of the opponents' fees ought not be imposed against all offending parties if only one of them had a financial ability to pay the fees in full. *See Martin*, 307 F.3d at 1337. Perhaps *Martin* can be distinguished on the basis that it did not deal with a case in which there was only one offending party to sanction to make the opposing party whole.

- it may be necessary to make an award beyond a party's ability to pay in order to send a message that deters similar misconduct by others in future cases;
- making a full award of attorney's fees against a party who in bad faith files meritless papers with the specific purpose of driving up his opponent's attorney's fees can be just punishment even if the party is unable to pay the full amount of fees; and
- beyond the need to vindicate the court's authority, an award pursuant to the court's inherent powers also serves a purpose of compensating the opposing party, and sometimes it is just to allow the opposing party to pursue collection of a judgment for the full amount of fees based on the offending party's financial circumstances as they change over time.

Accordingly, I respectfully disagree with the view in *Martin* that an award pursuant to the court's inherent authority must be limited to the amount the offender is able to pay.

III

In exercising discretion to fashion an appropriate sanction, I will take into account Robertson's financial condition as well as other pertinent considerations. Although decisions under Rule 11 or Rule 9011 are not squarely on point in this case, it is useful to look to the factors courts consider in imposing

sanctions under those rules. In doing so, it is important to bear in mind that, in contrast to those rules, sanctions imposed pursuant to the court's inherent power serve the dual purpose of vindicating the court's authority and compensating the opponent harmed by the bad faith misconduct. In deciding what level of monetary sanctions to impose in order to serve the deterrent purpose of Rule 11 or Rule 9011, it is appropriate to consider (1) the reasonableness of the injured party's attorney's fees and costs; (2) the minimum amount of sanctions necessary to deter; (3) the offending party's ability to pay; and (4) other factors related to the severity of the violation. *White*, 908 F.2d at 684-85.

There is a feature that distinguishes this and other inherent power cases from many Rule 11 or Rule 9011 cases. In contrast to imposition of sanctions under Rule 11 or Rule 9011, which does not require a finding of bad faith, the imposition of sanctions here under the court's inherent power always requires a finding of bad faith. In imposing Rule 11 or Rule 9011 sanctions, a court, in addressing the severity of the violation, should consider "the offending party's history, experience, and ability, the severity of the violation, **the degree to which malice or bad faith contributed to the violation**, the risk of chilling the type of litigation involved, and other factors as deemed appropriate in individual circumstances." *White*, 908 F.2d

at 685 (citation omitted; emphasis added); *In re Kuntsler*, 914 F.2d at 524. In other words, when Rule 11 or Rule 9011 misconduct entails bad faith, that weighs in favor of fully compensating the opposing party in order to serve the rule's deterrent purposes.[4] It follows that in awarding fees pursuant to the court's inherent power for bad faith misconduct, the court may fully compensate the opposing party, despite present inability of the offending party to pay, in order to protect the judicial process and deter future misconduct by the offending party or future litigants.

Applying the Rule 11 factors here, I conclude that a full award of Cartinhour's fees is warranted. As to the first factor, Robertson has not challenged the reasonableness of the fees and costs sought by Cartinhour, other than making a legal argument that Cartinhour had a duty to mitigate his damages. In his opening statement at the hearing of July 11, 2012, he elaborated that he thought that Cartinhour had failed to mitigate his

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[4] As observed by Arthur R. Miller and Mary Kay Kane in 5A Wright & Miller Fed. Prac. & Proc. Civ. § 1336.3 (3d ed. updated Apr. 2012):

> On occasion, [in cases decided prior to the 1993 amendments of the rule] Rule 11 sanctions awarding attorney's fees and costs generated by frivolous litigation proved to be substantial in size. . . . Obviously, the more egregious the conduct, the more likely that the sanction would be substantial. That common sense principle should continue to be relevant under the present rule.

damages because Cartinhour failed to bring to this court's attention, earlier than he did, that Ray Connolly was barred from pursuing his claim in this case by reason of Connolly's having failed to schedule that claim as an asset in Connolly's own bankruptcy case. Robertson elected, however, not to present evidence in that regard, and the record does not in any way suggest that Cartinhour or his attorneys were aware of Connolly's bankruptcy case before they had opposed his various filings in this case.[5]

The second factor (the minimum amount necessary to serve the goal of deterrence) and the fourth factor (the severity of Robertson's misconduct) also weigh in Cartinhour's favor. In the *Memorandum Decision* of May 3, 2012, entered on May 4, 2012, the court concluded, based on clear and convincing evidence, that Robertson had engaged in bad faith,[6] and stated:

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[5] In his final remarks at the hearing of July 11, 2012, in apparent recognition that the meter was still running against him for the attorney's fees that Cartinhour was incurring in the pursuit of sanctions, Robertson appeared to indicate that he would not be pressing the mitigation of damages point, stating "I'm not going to file a motion regarding the duty to mitigate."

[6] *Shepherd v. Am. Broad. Cos.*, 62 F.3d 1469, 1478 (D.C. Cir. 1995), requires a finding of bad faith based on clear and convincing evidence before the court may impose sanctions pursuant to its inherent power. *See also Ali v. Tolbert*, 636 F.3d 622, 627 (D.C. Cir. 2011). All of my findings of bad faith in my *Memorandum Decision* of May 3, 2012, rested on an application of that standard of clear and convincing evidence. Applying that same standard, nothing that Robertson has presented since then alters those findings.

> Rarely has the court seen such an unrelenting pursuit of a patently frivolous argument undertaken with such complete indifference to the merits. And never before has the court witnessed such a bizarrely unethical strategy as that which Robertson employed through the ghostwriting of Connolly's papers, a strategy that caused an entirely unnecessary and exponential growth of these proceedings, and which served no purpose other than to needlessly delay the closing of this case and put Cartinhour to the burden and expense of defending against another round of meritless claims regarding the impact of the automatic stay on Cartinhour's right to recover against Robertson. The court finds that there is clear and convincing evidence that through the ghostwriting of Connolly's papers, Robertson has, in bad faith, advanced legally frivolous arguments and vexatiously multiplied proceedings as part of a campaign to frustrate Cartinhour's ability to gain access to the registry funds and to put him to the burden of unnecessary litigation.

Mem. Dec. at 76. Given the egregiousness of what Robertson did, in a deliberate effort to cause Cartinhour additional expense, the full amount of Cartinhour's fees arising from Robertson's misconduct relating to the Connolly filings is the minimum amount needed to deter such future misconduct by Robertson and also by others. Such an award sends a clear deterrent message to future litigants. When, as here, a litigant deliberately advances knowingly frivolous arguments in an effort to drive up his opponent's attorney's fees, deterrence is served by awarding the full amount of fees occasioned by the misconduct. *See Brandt v. Schal Assocs., Inc.*, 960 F.2d 640, 646 (7th Cir. 1992) ("If compensation was not a recognizable basis for Rule 11 awards, aggrieved litigants would have little incentive to pursue sanctions thus diminishing the important deterrent effect of Rule

11.”). Accordingly, awarding an opponent’s attorney’s fees arising from a litigant’s egregious purposeful misconduct in litigation “is not an unreasonable method to deter spurious suits and wasteful trial tactics.” *Id.* at 647 (applying Fed. R. Civ. P. 11). *See also Divane v. Krull Electric Co.*, 200 F.3d 1020, 1030 (7th Cir. 1999) (same conclusion after 1993 amendments to Rule 11); *Rentz v. Dynasty Apparel Indus., Inc.*, 556 F.3d 389, 400 (6th Cir. 2009) (“[A]lthough it is clear that Rule 11 is not intended to be a compensatory mechanism in the first instance, it is equally clear that effective deterrence sometimes requires compensating the victim for attorney fees arising from abusive litigation.”). This applies even more clearly to sanctions imposed pursuant to the court’s inherent authority based on bad faith. *See Chambers*, 501 U.S. at 57 (“It was within the court's discretion to vindicate itself and compensate NASCO by requiring Chambers to pay for all attorneys' fees.”). Here, the level of egregiousness at issue clearly necessitates a full award.

The third factor (regarding ability to pay) fails to warrant awarding Cartinhour less than the full amount of his attorney’s fees and costs. When I issued my decision authorizing Cartinhour to recover his attorney’s fees and costs as a sanction, I was well aware that Robertson already was the subject of a monetary judgment exceeding $7 million issued against him by the district court in favor of Cartinhour, and I was well aware that there was

a possibility that Robertson (like almost anyone else) might not be able to pay both that judgment and a full award of Cartinhour's attorney's fees occasioned by the papers Robertson filed on behalf of Connolly. Yet, I felt that a full award of attorney's fees was warranted.

Given Robertson's present lack of any meaningful assets or income, and the size of the district court judgment, there is a likelihood that Robertson will be unable to pay the district court judgment and a sanctions award by this court. Nevertheless, there is a substantial possibility that Robertson will be able to earn income in the future that would enable him to make a meaningful payment.[7] Robertson, who was 44 years old as of the hearing on July 11, 2012, is a graduate of Stanford Law School, one of the nation's preeminent law schools. Robertson also has an MBA from Yale University. His filings in this case regarding sanctions issues demonstrate that he has excellent writing and research skills. In other words, he has a high likelihood of being able to have substantial earnings in the future, as a lawyer or otherwise.

Even though there is little likelihood that he will actually earn enough in the future to pay in full both the district

[7] Robertson currently is able to look to family members to pay his expenses, and he has not disclosed the extent to which he might in the future receive an inheritance, but I need not rely on any potential inheritance in ruling against Robertson on the effect of his current inability to pay.

court's monetary judgment against him and Cartinhour's fees and costs occasioned by his misconduct in filing papers for Connolly in this court, that does not alter the propriety of awarding Cartinhour the full amount of his fees and costs arising from that misconduct. A litigant ought not be allowed to use his insolvency to immunize himself from an award of sanctions for intentionally causing his opponent to run up additional fees by filing meritless papers. Robertson prepared and filed papers on behalf of Connolly that he knew to be frivolous in a deliberate effort to cause added expense for Cartinhour. He did so knowing full well that he did not have the current ability to reimburse Cartinhour for the fees that Cartinhour was incurring. To give Robertson a free pass (based on his current insolvency) to engage in such litigation abuse without fear of Cartinhour's damages being imposed against him as a sanction would frustrate the deterrent purpose of the court's sanctions power.

This is not a case in which the award of fees to Cartinhour carries with it a risk of further adverse consequences to Robertson if he does not pay the award, such that the magnitude of the award arguably ought to be limited by Robertson's ability to pay. The award is not being made in a civil action or adversary proceeding in which Robertson's right to pursue some claim of his own is being conditioned on his paying the sanctions award. Nor will the award be enforceable by the court's contempt

powers. At the hearing on Robertson's motion on July 11, 2012, Robertson expressed a concern that a sanctions award in favor of Cartinhour could result in Robertson being held in contempt of court. Cartinhour, through his counsel, agreed that any award in favor of Cartinhour could be a monetary judgment for which a failure to pay would not be treated as a contempt.[8]

In addition, there is little danger that a full award of fees and costs will prevent Robertson from earning a living. Collection of any judgment awarded against him will be subject to whatever limitations regarding judgment execution process apply under federal law or state law (California being Robertson's state of residence). *See, e.g.*, 15 U.S.C. § 1673 (setting limits on amounts that may be collected via a levy on wages); Cal. Civ. Proc. Code §§ 703.010, *et seq.* (exemption provisions regarding enforcement of a monetary judgment) and §§ 706.010, *et seq.* (Wage Garnishment Law) (including § 706.051(b), which permits exemption of wages, beyond the amounts protected from garnishment by 15 U.S.C. § 1673,[9] for any additional portion of the judgment debtor's earnings that is necessary for the support of the

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[8] *See In re Estate of Bonham*, 817 A.2d 192, 195–96 (D.C. 2003) (use of contempt to collect counsel fee award not permitted). *See also In re Ali*, 2011 WL 1655578 (Bankr. D.D.C. Apr. 29, 2011).

[9] Cal. Civ. Proc. Code § 706.050 makes the amount of wages protected by 15 U.S.C. § 1673 an exemption amount, and § 706.051(b) is an additional exemption amount above and beyond what is provided for in § 706.050.

judgment debtor).

The award to Cartinhour is not being used "as a means of driving [Robertson] out of practice." *White*, 908 F.2d at 684. One of the implicit concerns in the Rule 11 case law, in looking to ability to pay as an important factor, is that a court not utilize its Rule 11 sanctions power in a vindictive fashion that is punitive beyond the extent necessary to achieve Rule 11's deterrence purpose. I have no desire to drive Robertson into financial ruin or to drive him from the ability to engage in making a living, and my ruling is based on the need to deter future misconduct of the type in which Robertson engaged in preparing and filing papers for Connolly, with the incidental benefit of awarding Cartinhour compensation for the damage he suffered as a result.

Finally, Cartinhour has plainly been damaged by Robertson's misconduct, and an award of less than the full amount of those damages would place Cartinhour on less than an equal footing with Robertson's other creditors, including Robertson's father who holds a substantial claim against Robertson for amounts lent to Robertson. Should Robertson eventually file a bankruptcy case or be the subject of an involuntary bankruptcy petition, it makes no sense that someone like Cartinhour, who Robertson intentionally and maliciously damaged by wrongful bad faith misconduct, would have been put in an inferior compensatory position for his

damages vis-à-vis Robertson's other creditors. Moreover, Robertson would obviously prefer that his father's potential recovery from him be maximized as against Cartinhour's recovery from him. By awarding Cartinhour a full recovery, thereby going against Robertson's presumed desire that the court's sanction award be cast in a way that favors his father's interests as a creditor, the award will more likely serve the goal of deterrence.

Although it dealt with Rule 9011 sanctions instead of sanctions imposed pursuant to the court's inherent power, and did not entail any purpose of compensating an opposing party as the sanction was payable to the court, *In re Letourneau*, 422 B.R. 132 (Bankr. N.D. Ill. 2010), is closely analogous to this case with respect to the court's balancing of the ability to pay and other factors when deciding on the appropriate sanction. There, the debtor, Letourneau, filed an involuntary petition against himself bearing the purported signatures of three creditors who had not signed the petition. Although Letourneau had not prepared the petition, the court found that Letourneau knew or should have known that the contents of the petition were false. 422 B.R. at 141 n.7. The improper petition caused an automatic stay to arise that stalled pending foreclosure efforts against Letourneau's home. The court found that:

- Letourneau had already been put to the expense of

hiring an attorney to represent him, and the public embarrassment of being found to have abused the bankruptcy system (422 B.R at 141);

- "[t]he monetary equivalent of a slap on the wrist would be enough to prevent recidivism" (citations omitted) (*id.*); and
- Letourneau's inability to pay weighed in favor of a light monetary sanction (422 B.R. at 142).

The court then stated:

> A heavier sanction must be imposed, however, to deter "comparable conduct by others similarly situated." Fed. R. Bankr.P. 9011(c)(2). The maneuver Letourneau employed here is a serious abuse of the bankruptcy system. . . .
>
> Only a fairly sophisticated person acquainted with bankruptcy law could come up with a scheme like this. It has to be nipped in the bud. A sanction larger than would be necessary in the usual civil case is therefore appropriate because, as this case amply demonstrates, "'bankruptcy proceedings are subject to a degree of manipulation and abuse not typical of civil litigation.'" *Collins*, 250 B.R. at 660 [*In re Collins*, 250 B.R. 645, 659, 660 (Bankr. N.D. Ill. 2000)] (quoting *In re Marsch*, 36 F.3d 825, 830 (9th Cir. 1994)).

Although fraud is not at stake in this case, as the passage quoted above from the *Memorandum Decision* of May 3, 2012, makes clear, Robertson's misconduct rose to a high level of egregiousness as in the case of the misconduct in *In re Letourneau*, and perhaps was more egregious because Robertson is highly sophisticated as a skillful attorney and knew quite well that he was engaging in improper conduct. As in *In re Letourneau*, it is appropriate to impose a substantial sanction

against Robertson even if he is unable to pay the sanction.

In conclusion, consideration of Robertson's inability to pay, and of the other relevant factors, mandates a finding that a full award of Cartinhour's fees is necessary to serve the deterrent purpose of imposing sanctions pursuant to the court's inherent power, and incidentally thereto, to serve the second purpose of compensating Cartinhour for his damages suffered by reason of Robertson's wrongful conduct.

IV

Cartinhour's attorney's affidavits (Dkt. Nos. 292, 363, and 368) establish that, prior to the hearing of July 11, 2012, Cartinhour had incurred $22,506.00 in fees by reason of Robertson's preparation of filings for Connolly. As stated at the hearing, Cartinhour incurred an additional $395 in attorney's fees prosecuting his sanctions motion, bringing the total amount of fees to $22,901. As this court previously ruled, that amount is subject to setoff of the $1,000 settlement payment recovered by William Cartinhour from Ray Connolly, and, accordingly, I will deny Robertson's motion insofar as it relates to Cartinhour's motion for sanctions, and issue a judgment in favor of Cartinhour against Robertson in the amount of $21,901.

[Signed and dated above.]

Copies to: All recipients of e-notification; Wade A. Robertson.