

1990 DAVIS MOOT COURT COMPETITION

FACTS

The background of this dispute starts in 1951, when Augustus Howard, (hereinafter Augustus), purchased the Mays farm products retail store in New Richmond, Lewis Hall. Howard changed the name of the store to the Howard Feed Company, (hereinafter Howard), and commenced selling dairy animal feeds to members of the neighboring farm communities in Virginia and Maryland. Most of the products sold by the Howard's were labeled with the name of the producer, but some were also sold under the store's own Howard label. Since 1951, Howard has advertised its trade name and palette of products in various media, including periodicals, trade publications and radio. The ads have been very successful and the demand for the feed has increased dramatically over the years.

As the ads began to pull in customers, Howard decided that he was going to need another processing plant in order to keep up with the ever increasing demand. In keeping with this plan Howard sent feelers out to look for a plant that could produce a minimum of 4 tons of base feed per month.

After six months of looking for the proper facility, one of its feelers found out that Bayou Feed Company, a Louisiana corporation, had decided to close their processing plant in Lake Charles, La. because they found a larger plant and cheaper source

of labor in Texas. Howard, seeing this as an opportunity to ease his highly strained production system, jumped at the opportunity. It offered to buy the plant as long as the plant's production capacity was equal to or greater than the capacity of its New Richmond plant, which was currently producing 5.5 tons of feed per month. Bayou assured Howard that the Louisiana plant has the capacity to produce at the very least 6 tons per month with the capacity to produce 30% more if the plant's equipment was upgraded. On January 25, 1990, Bayou accepted Howard's offer of \$376,000. The contract stated that the plant's equipment was only four years old. Howard gave Bayou a deposit, a cashiers check made out for \$100,000 and signed an agreement to purchase the processing plant for \$375,000. Under the terms of the agreement the plant must be able to produce at least 6 tons of feed per month. The property was to be transferred 60 days from the signing of the contract.

Over the next two days, another one of Howard's feelers found a processing plant for sale in Florida. The asking price for the Florida plant was \$250,000 and its capacity was equal to or slightly better than Bayou's Louisiana plant. Augustus Howard, president and sole shareholder of Howard Feed Company, began thinking that he might be able to refit the plant and increase the plant's capacity with the money it could save by not purchasing the more expensive Bayou plant. According to his contract with Bayou, however, Howard had already bought the Louisiana plant. After reveling in his coup for a few moments

and with the thought of greenbacks dancing in his head, Augustus faced the reality of his situation. What in the world was he going to do with two processing plants? Business was good but it was not that good! After thinking about the problem for a few minutes he decided to see if he could get out of the contract with Bayou by showing that the Louisiana plant was incapable of producing 6 tons of feed per month and that Bayou fraudulently misrepresented that fact in the contract. In order to do this, he drafted a phony Industrial Engineer's Report which stated that the Louisiana plant could only produce a maximum of 3.5 million tons of feed per month. Augustus also knew that Bayou had just lost a highly publicized civil suit in which it had been found to have defrauded some of its customers. Augustus thought that the threat of another public suit would force Bayou to give in to Howard's demand that the sale contract for the Louisiana processing plant be mutually rescinded.

To implement this plan Augustus decided to call upon a busy local attorney to see if she would be able to put his plan into action. He called Rosemary West. Ms. West had a good reputation and Augustus thought she probably had the ability to make his problems go away.

Augustus called West and set up an appointment for the following day, January 28, 1990, at 11:00 a.m., to discuss the matter. Augustus, who is always on time, was kept waiting for thirty-five minutes while West handled other matters. After his lengthy wait, Augustus was ushered into the inner sanctum and had

to wait another five minutes while West fielded phone calls. After West got off of the phone, Augustus explained the history of the contract and told West that he wanted her to see if she could sue Bayou for fraud. Augustus presented West with the phony report and told her that it was a bona fide Industrial Engineer's Report.

After looking over the report, West told Augustus that the report seemed to indicate that Bayou misrepresented the capacity of the plant. In making the statement, of course, West had no idea that the report was false in any way. Augustus then made it clear to West that he wanted her to go ahead and bring suit against Bayou, unless Bayou made an offer to settle.

The following day, January 29, 1990, West called Bayou's in house counsel, Robert Johnson, and informed him of Howard's intent to file suit against Bayou. West then told Johnson that she had a study which showed that Bayou had made misrepresentations of material fact in that they had in fact lied about the production capacity of the plant. Johnson replied that Bayou stood by its claim as to the capacity of the plant. West then stated that she had no recourse but to sue for fraud in the state court.

On behalf of Howard Feed Co., filed a complaint in the state court of Lewis Hall on February 7, 1990, seeking relief from its contractual obligations to Bayou. The allegations in the complaint were based solely upon West's reading of the Industrial Engineer's Report and the limited conversation that

she had had with Howard in her office. West did not do any legal or factual research beyond her conversation with Howard in her office and her reading of the Engineer's Report.

On February 7, 1990, in response to the complaint, Bayou's litigation attorneys petitioned the federal district court to have the case removed to federal court based upon diversity of citizenship. Bayou's petition was granted and the case was removed to the Federal District Court for the District of Lewis Hall.

Shortly after removal of the action to federal court, Augustus decided to "juice up" the allegations of fraud by alleging that, not only had Bayou misrepresented the production capacity of the plant, but that Bayou had lied about the age of the equipment in the plant. To this end, Augustus manufactured an Economic Report, which stated that "contrary to the provisions in the contract, the equipment in the plant was made in 1965, not 1985. As such the purchase of the Louisiana plant will have a damaging economic impact on Howard Feed Company." On March 3, 1990, Augustus gave the Economic Report to West, who again wrongly believed the second document to be totally authentic and true. Again, without making any inquiry into the authenticity of the Economic Report, West immediately amended her initial complaint to include the additional allegation that Bayou had fraudulently misrepresented the age of the plant's equipment. Therefore, the Amended Complaint contained two allegations of fraud. First, it alleged that Bayou fraudulently misrepresented

the production capacity of the plant. Second, it alleged that Bayou fraudulently misrepresented the age of the plant's equipment. After writing up the Amended Complaint, West signed it and filed it with the Federal District Court.

Bayou, on March 17, 1990 then answered the Amended Complaint and denied both allegations. At the same time, Bayou filed a 12(b)(6) motion to dismiss the case and also requested sanctions in the form of attorney's fees, costs and expenses against West and Howard under Federal Rules of Civil Procedure Rule 11, 28 U.S.C. §1927 and the court's inherent powers.

At the hearing on the motion, the District Court judge granted the motion to dismiss. Furthermore the District Court ordered Howard to pay Bayou Feed Company \$100,000, representing all of the attorney's fees that Bayou incurred in defending the suit. In addition, the court ordered Howard's attorney, Rosemary West, to personally pay Bayou, \$3500 representing the total amount of Bayou's expenses and costs.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF LEWIS HALL

AUGUSTUS O. HOWARD FEED COMPANY, INC.,

v.

THE BAYOU FEED COMPANY, INC.,

CIV. A. No. 89-4614

March 30, 1990

This matter comes before the court on a motion to dismiss for a failure to state a claim and for imposition of attorney's fees and costs upon Respondent and its attorney. The mover is the Bayou Feed Company, a Louisiana corporation. The respondent is the Howard Feed Company. The Howard Feed Company is represented by Rosemary West, an attorney admitted to practice in Lewis Hall.

The case arises out of a January 25, 1990 contract between the Howard Feed Co., (hereinafter Howard), and the Bayou Feed Company, (hereinafter Bayou), for the purchase of a feed processing plant in Lake Charles, Louisiana for \$326,000. Two days after completing the contract, Howard learned of an identical feed processing plant in Florida which it could purchase for \$126,000 less than the agreed upon contract price for the Louisiana plant. Upon learning of the availability of the cheaper plant, Howard sought to avoid performance of its contractual obligations with Bayou, in order to purchase the less

expensive plant in Florida.

In an effort to avoid its obligations under the August 25th contract, Howard devised a scheme in which it would attempt to void the sale by alleging that Bayou had fraudulently misrepresented the plant's production capacity in the contract. Pursuant to the scheme, Howard first generated a falsified Industrial Engineer's Report, stating that the Louisiana plant operated at a significantly lower production capacity than that stated in the contract. Howard then gave this report to its attorney, Rosemary West, and instructed her to file suit against Bayou in state court. Apparently, Howard believed that the threat of costly, public litigation in defending a suit involving fraud claims would convince Bayou to simply settle the matter by voiding the contract and, thereby, releasing Howard of its obligation to buy the plant.

When Bayou refused to mutually rescind its contract with Howard, Howard sued in state court for rescission of the contract due to fraud. On February 7, West filed a complaint in Lewis Hall State Court.

On February 28, Defendant Bayou made a motion in Lewis Hall State Court to remove the action to Federal District Court on the grounds of diversity. Consequently, the case was removed to this court. Following removal of the action, Howard created a second falsified report, entitled Economic Report, which showed that the equipment in the plant was 20 years older than the description of the equipment in the contract. Plaintiff's

attorney, West, signed and filed an Amended Complaint with this court making two allegations of fraud. First, the Amended Complaint alleged that Bayou fraudulently misrepresented the production capacity of the plant in the contract. Second, it alleged that Bayou fraudulently misrepresented the age of the plant's equipment in the contract. In the Amended Complaint, the falsified Engineer's Report and the Economic Report provided the sole basis for the two allegations. The Amended Complaint was filed on March 3, 1990. Furthermore, no evidence indicates that at any time prior to the hearing on these motions, West knew that the Engineer's Report and the Economic Report had been falsely manufactured as a way of forcing Bayou to give in to Howard's desire to rescind the contract.

On March 17, 1990, following the filing of the Amended Complaint, Bayou answered the Amended Complaint by denying the allegations of fraud. Defendant also moved for dismissal of the action under Fed.R.Civ.P. 12(b)(6), for failure to state a claim. Furthermore, Defendant moved for sanctions against Plaintiff and its attorney under Fed.R.Civ.P. 11, 28 U.S.C. §1927, and pursuant to this court's inherent powers.

MOTION TO DISMISS

With respect to Defendant's 12(b)(6) motion, this court has admitted presentation of matters outside the pleading and treats the motion as one for summary judgement under Fed.R.Civ.P. Rule 56. See, Fed.R.Civ.P. 12(b)(6). In response to Defendant's motion, Plaintiff has failed to reveal any fact supporting either

allegation made in the Amended Complaint. Furthermore, Defendant Bayou has clearly exposed the complete and utter falsehood of both Plaintiff's allegations. Defendant's motion, therefore, is granted and the action dismissed.

MOTION FOR SANCTIONS

In response to Defendant's Motion for Sanctions, this court finds that the conduct of both Plaintiff and his attorney merit sanctions under Rule 11, 28 U.S.C. §1927, and the court's inherent powers. In applying these sanctions, this court sees no need to refer to Lewis Hall state law. Instead, this court relies solely on its authority under Rule 11, §1927, and its inherent powers to police the conduct of parties and their attorneys in bringing a case into this courtroom.

In making its motion for sanctions, Defendant shows that as a result of this litigation it has incurred \$100,000 in attorney's fees and \$3,500 in expenses and costs. By virtue of its authority under Rule 11 and §1927, this court sanctions Plaintiff's attorney, Rosemary West, by ordering that she personally pay Defendant the \$3,500 it has incurred in expenses and costs arising from this litigation. By virtue of its authority under Rule 11, this court sanctions the Plaintiff, Howard, by ordering it to pay Bayou \$50,000, an amount representing one-half of the attorney's fees Bayou has incurred during this litigation. Under the court's inherent powers, this court imposes an additional sanction upon Plaintiff Howard by

ordering that it pay another \$50,000 to Bayou, representing the remaining half of the attorney's fees Bayou has incurred as a result of this litigation.

SANCTIONS AGAINST THE ATTORNEY

In imposing sanctions against West, this court relies on Rule 11 and §1927. We find that West's conduct in certifying the Amended Complaint constitutes a violation of the federal rule and the federal statute. Rule 11 requires that every pleading in a federal court must be signed by the attorney of record. Fed.R.Civ.P. 11. By placing her signature on the amended pleading, the attorney certifies that, "to the best of her knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law."

Id. (emphasis added.) The rule further states that:

[i]f a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Id.

In deciding whether conduct violates Rule 11, "the court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted." Fed.R.Civ.P. 11 (advisory notes). In analyzing

West's conduct in signing the Amended Complaint, we find that she violated Rule 11 by failing to conduct a "reasonable inquiry" into the veracity of the Engineer's Report and the Economic Report and the merits of her own client's allegations. Evidence presented by Defendant shows that minimal investigation and inquiry into readily available information would have revealed the falsity of the Engineer's Report, as well as the Economic Report, and the appalling untruths of Plaintiff's allegations. Therefore, we find that West recklessly disregarded her duty as a signing attorney under Rule 11 to the disrepute of the federal judiciary and the legal profession as a whole. Accordingly, this court imposes sanctions upon West in the form of expenses and costs pursuant to Rule 11.

This court also finds independent authority to sanction West under 28 U.S.C. §1927. The statute provides:

[a]ny attorney or other person admitted to conduct cases in any court of the United States or any territory thereof who so multiplies proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorney's fees incurred because of such conduct.

28 U.S.C. 1927. The statute gives federal courts the power to impose sanctions upon attorneys for "unreasonable and vexatious" conduct which impedes the processes of justice in the federal system.

This court believes that it does not need to find that the attorney acted with malice or conscious impropriety in order to invoke sanctions under §1927. Section 1927 does not require

this court to impose a subjective standard of bad faith in assessing an attorney's conduct. Rather, §1927 requires a more relaxed, objective standard that does not require conscious impropriety. We find, therefore, that the same reckless conduct of failing to perform a "reasonable inquiry" into the veracity of the Engineer's Report and Economic Report and the merits of her clients allegations constitutes the precise type of "unreasonable and vexatious" conduct sanctionable under §1927. Thus, under § 1927, this court finds that it has authority, independent of Rule 11, to sanction West for her failure to make a "reasonable inquiry" into the merits of Howard's Amended Complaint.

RULE 11 SANCTIONS AGAINST PLAINTIFF

In imposing sanctions against Plaintiff Howard in an amount equal to one half of the attorney's fees Bayou has incurred in this case, this court relies on Rule 11. Under Rule 11, Plaintiff is sanctionable because his attorney, West, in signing the Amended Complaint did not make the requisite "reasonable inquiry." The rule clearly states that even though the conduct of the signer of the pleading determines whether or not a violation of the rule has occurred, "the person who signed it, a represented party, or both," may be given the appropriate sanction.

This court believes that this case presents a clear illustration of why the Rule allows sanctions against not only the attorney who signs the objectionable pleading, but also the

party she represents. In this case, the Plaintiff knew that its allegations were false and in deliberate bad faith encouraged its attorney to file the Amended Complaint. Thus, the "represented party" has demonstrated an even greater disregard and disrespect for the federal courts than even its attorney, who recklessly filed the objectionable pleading. By allowing sanctions against both the attorney and the represented party in this case, Rule 11 effectively punishes not only the "snoozing" security guard who permits the crime to occur, but the criminal himself. Under Rule 11, therefore, this court imposes sanctions against the Plaintiff in the form of half of the attorney's fees Bayou has incurred.

SANCTIONS AGAINST PLAINTIFF PURSUANT TO INHERENT POWER

Finally, this court also finds a source of authority, independent of Rule 11, under which it can impose attorney's fees sanctions against the Plaintiff Howard. The source of this authority is the Supreme Court's holding in Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1974). In the decision written by Justice White, the Court recognizes an inherent authority of Federal District Courts to impose attorney's fees against a losing party who has acted in "bad faith, vexatiously, wantonly or for oppressive reasons." Id. at 258-59. This court understands the Alyeska decision to hold, however, that even though District Courts have inherent authority to shift attorney's fees, that power should be used sparingly. See, Id. The District Courts should only use inherent authority

to punish conduct that does not fall within the confines of a Federal Rule or a Federal Statute. See, Id. In the context of the case at bar, therefore, this court can only use its inherent power to shift attorney's fees in sanctioning conduct which does not fall within the purview of either Rule 11 or §1927.

The court finds that the Defendant's action in preparing falsified documents for the malicious purpose of deceiving or otherwise defrauding the federal courts constitutes the precise type of wanton and vexatious conduct sanctionable under the court's inherent power. We believe that Plaintiff Howard's wanton manufacture of the Engineering Report and Economic Report for the oppressive purpose of forcing Bayou to relinquish valid contractual rights or face the consequence of defending a frivolous suit in federal court simply cannot be tolerated and must be sanctioned. This court, however, recognizes that the necessary sanctions for this conduct cannot be imposed pursuant to either Rule 11 or §1927.

Since this court has found no evidence that the Plaintiff's attorney, West, took part in or even knew of Howard's falsification of the reports, this conduct falls outside the scope of Rule 11 and §1927. As previously explained, Rule 11 examines only the conduct and knowledge of the signer of the objectionable pleading at the time that he certifies it in determining a violation. Here, West, the signer, in no way participated in or even knew of the falsification of either report. Furthermore, Rule 11 provides sanctions for only those

documents which are themselves signed by an attorney. At no point in time did either West or Howard sign the Engineering Report or Economic Report and submit it to the court. Thus, Howard's conduct in falsifying the Engineer's Report and Economic Report and using it to coerce Bayou does not fall within Rule 11.

Similarly, Howard's falsification of the Engineering and Economic Reports for the wanton purpose of coercing Bayou does not fall within the purview of §1927. As previously stated, §1927 sanctions only "unreasonable and vexatious" conduct of attorneys. Here, the Plaintiff, Howard, falsified the document, not his attorney. West did not even know the documents were false and believed them to be accurate. Thus, the act of falsifying the document for the purpose of committing fraud upon the court cannot be sanctioned under §1927.

Therefore, the only way for this court to sanction the Plaintiff for his falsification of the Engineering and Economic Reports is under the court's inherent power to award attorney's fees. As a result, this court invokes its inherent authority to punish such conduct in ordering Howard to pay the remaining half of Bayou's attorney's fees.

IT IS ORDERED ADJUDGED AND DECREED that attorney,
Rosemary West, pay Defendant, Bayou, \$3,500 in
expenses and costs.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that the
Plaintiff, Howard Feed Co., pay Defendant, Bayou,
\$100,000 in attorney's fees.

/s/ S. Wayne Siegel, J.

IN THE UNITED STATES FIFTEENTH CIRCUIT
COURT OF APPEALS - LEWIS HALL

AUGUSTUS O. HOWARD FEED COMPANY, INC.,

v.

BAYOU FEED COMPANY, INC.,

Civil Appeal No. 90-8575

June 17, 1990

Howard Feed Company, purchaser of a feed processing plant, brought an action in Lewis Hall state court for rescission of the sales contract based on allegations of fraud. Seller, Bayou Feed Company, successfully removed the action to Federal District Court on the basis of diversity. After removal, Plaintiff Howard Feed Company, (hereinafter Howard), filed an Amended Complaint with the District Court. Defendant, Bayou Feed Corporation, (hereinafter Bayou), moved to dismiss the action under Federal Rule of Procedure 12(b)(6) for failure to state a claim and also moved for the imposition of sanctions against Plaintiff and his attorney pursuant to Federal Rule of Civil Procedure 11, 28 U.S.C. §1927 and the court's inherent powers. Trial judge granted both motions. In so doing, the trial judge dismissed the action and imposed sanctions of \$3,500 in expenses against Plaintiff's attorney and \$100,000 in attorney's fees against Plaintiff, himself. Plaintiff did not appeal the dismissal. Both Plaintiff and its attorney, however, appeal the trial court's imposition of sanctions. We now affirm.

Peter J. O'Doyle, Circuit Judge

The case now before this court raises fundamental questions concerning the power of federal courts to police the conduct of parties and their attorneys in litigating cases before them. The court below imposed sanctions upon Plaintiff and his attorney in the form of attorney's fees and expenses. On appeal, Appellant Howard contends that the trial court's imposition of attorney fees sanctions against it, pursuant to Rule 11 and the court's inherent power, was error. Howard asserts that the lower court erred by not applying controlling Lewis Hall state law, which forbids the imposition of attorney fees sanctions in the instant case. Likewise, Appellant West contends that the trial court's imposition of sanctions against her, pursuant to Rule 11 and 28 U.S.C. § 1927 was error. First, West argues that the trial court erred by ignoring controlling Lewis Hall state law. Second, West argues that even if the state law does not apply in this case, the trial court could not sanction her pursuant to Rule 11 or 28 U.S.C. § 1927.

STANDARD OF REVIEW

Whether state or federal law applies in a diversity action is a question of law, which we review de novo. Olympic Sports Products v. Universal Athletic Sales, 760 F.2d 910, 912 (9th Cir. 1985). Our de novo review extends to the District Court's construction of state law. Id. Although we are not bound by the District Court's construction of state law, we are bound to follow the decisions of the state's highest court in interpreting that state's law. Id.

In the court below, the trial judge presented no construction of state law. Instead, he simply asserted that state law did not apply to the case at bar. In conducting de novo review, therefore, this court must

consider only the Lewis Hall State Supreme Court's construction of Lewis Hall state law. It is that construction of state law that binds this court.

LEWIS HALL STATE LAW

As this court recognizes and both parties concede, the District Court's award of attorney's fees and expenses in this case was not authorized by Lewis Hall state law. Lewis Hall Rule of Civil Procedure 420 adopts the precise language of Rule 11, with one significant difference. The State Rule 420 changes the last sentence of Rule 11 to read:

[i]f a pleading, motion or other paper is signed in violation of this rule, the court upon motion or upon its own initiative shall impose only upon the signer the sanction of recommending to the Lewis Hall State Bar Association's Ethics Review Committee appropriate disciplinary action. No court may impose any sanction other than that provided for in this rule.

L.H.R.Civ.P. 420 (emphasis added).

Lewis Hall State Statute 59 L.H.C. §1500 provides:

[w]hen any attorney or other person admitted to conduct cases in any Lewis Hall State Court so multiplies the proceedings in any case, unreasonably and vexatiously, the court shall recommend that the Lewis Hall State Bar Association's Ethics Review Committee take disciplinary action against that attorney.

59 L.H.C. §1500.

In applying a construction to both the state rule and the state statute, the Lewis Hall Supreme Court stated:

[i]t is apparent from both the language of L.H.Civ.P. 420 and 59 L.H.C. §1500 and the available Advisory Notes and Legislative History, that both this court and the Lewis Hall State Legislature sought to impose a vastly different system of policing the courtroom than that used under the federal system.

First, Rule 420 is intended to allow the court only to punish the attorney who signs a document submitted to the court, not the party he or she

represents. The practical result of this policy is to force the victorious party in a litigation, who seeks to recover attorney's fees and expenses from the losing party, to file a separate action for malicious prosecution under 14 L.H.C. §1300. Both the state Supreme Court and the state legislature have recognized that under the federal system, Rule 11 has tended to discourage potential litigants from bringing actions, such as civil rights claims and other traditional "Plaintiff's claims", by imposing the immediate threat of monetary sanctions upon the party as imposed by the bench. Through the operation of Rule 420, the state has attempted to remove this impediment, by ensuring that those represented parties, accused of bringing frivolous claims receive a jury trial before any attorney fee liability can be imposed.

Second, the operation of both Rule 420 and §1500 operate together to enable the court to sanction attorney misconduct if that misconduct involves signed documents or other vexatious and wasteful conduct. Unlike the federal system, however, the state has sought not to create monetary liability for its attorneys. The punishment of an attorney is left solely in the hands of the State Bar Association who admitted them to practice. By so doing, the state has sought to create a uniform system of disciplinary measures for attorneys, instead of the case by case system of attorney sanctions currently used in the federal system.

McCool Films and Other Novelties v. Marlow Rubber and Doll Company, Inc., 646 L.H.3d 750 (1989).

Finally, Lewis Hall allows for attorney's fees only when a contract or statute specifically provides for them. Glove v. Campbell and the L.S.F.L. Football Commission, 872 L.H.3d 1650,1652 (1989). It does not recognize an exception for bad faith practice. Id. It is undisputed that neither the contract nor any Lewis Hall statute applicable here provides for attorney's fees.

In considering current Lewis Hall state law, as interpreted by that state's highest court, we find that Fed.R.Civ.P. 11 directly conflicts with L.H.R.Civ.P. 420. Furthermore, we find that 28 U.S.C. §1927 directly conflicts with 59 L.H.C. §1500. Finally, we find that any inherent power the

federal court may have to impose attorney's fees upon a losing litigant stands in direct conflict with the state's policy of awarding attorney's fees only when provided for in a contract or a state statute.

Faced with these conflicts between federal and state law, this court must determine which law the District Court, sitting in diversity, should have applied in the case at bar.

RULE 11, § 1927, AND THE RULES ENABLING ACT

When a non-statutory federal rule, such as a Federal Rule of Civil Procedure, stands in conflict with a state rule or statute, the applicability of the federal rule must be analyzed under the purview of the Rules Enabling Act. Hanna v. Plummer 380 U.S. 460 (1965). Since Rule 11 is a Federal Rule of Civil Procedure, the District Court's application of the rule must be analyzed with reference to the Rules Enabling Act. See, Id. The Enabling Act grants the Supreme Court the power to promulgate general rules of practice and procedure for use in the United States District Courts provided that:

[s]uch rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

28 U.S.C. §2072(b). Thus, the Enabling Act provides that any rule promulgated by the Supreme Court under subsection (a) of the statute that violates subsection (b) of the statute cannot stand.

As previously stated in this decision, Rule 11 directly conflicts with a state rule of civil procedure, Rule 420. In light of this conflict, we must consider whether under subsection (b) of the Enabling Act, Rule 11 must yield to State Rule 420 in this case. Both Appellants Howard and West argue

that Lewis Hall State Rule 420, as interpreted by the Supreme Court of Lewis Hall, reflects substantive policies of the state that can not be usurped by a federal court applying Rule 11. We disagree. Although we recognize that, indeed, Rule 11 conflicts with Rule 420, as interpreted by the Lewis Hall Supreme Court, the Enabling Act in no way requires a displacement of the Federal Rule in favor of the state rule. Contrary to Appellants' contentions, we find that Rule 420, as interpreted by the Lewis Hall Supreme Court, reflects mere procedural preferences of the state and in no way presents substantive policies which deserve protection from the application of a Federal Rule of Civil Procedure by a federal judge sitting in diversity. The District Court's application of Rule 11 in imposing sanctions against Howard and West, therefore, presents no error.

In addition to objecting to the trial judge's imposition of sanctions in the face of conflicting state law, Appellant West contends that, even if our foregoing analysis of Rule 11 is correct, the trial court's imposition of sanctions against her, pursuant to Rule 11 and § 1927 still cannot stand. In making this additional argument, West asserts that the trial judge erred when it imposed sanctions pursuant to § 1927 without a clear finding of "bad faith" conduct on her part. Furthermore, West contends that because § 1927 requires a showing of "bad faith", the imposition of Rule 11 sanctions against her for merely "reckless conduct" violates the Rules Enabling Act. Thus, West concludes that the trial court's imposition of sanctions against her, in the form of expenses and costs, was error.

We disagree. Under our reading of § 1927, a trial court can sanction attorney misconduct in the form of expenses and costs without a showing of "bad faith" on the part of the attorney. As the court below correctly stated,

we believe that Rule 11 and §1927 are both designed to sanction the same type of reckless disregard of professional duty. Therefore, we find no error in the trial court's imposition of sanctions against West pursuant to Rule 11 and §1927.

ATTORNEY FEES SANCTIONS AND THE COURT'S INHERENT POWERS

In addition to imposing a \$50,000 attorney's fees sanction against Appellant Howard under Rule 11, the court below also imposed a \$50,000 attorney fees sanction pursuant to its inherent powers. The District Court found Howard's deliberate manufacture of false documents for use in a federal proceeding constituted a bad faith, wanton, and vexatious abuse of the federal system. That finding of fact is not at issue on this appeal.

Appellant Howard concedes that if the District Court had been presiding over a federal question, the imposition of the \$50,000 attorney's fees sanction against it would have been appropriate. See Roadway Express Inc. v. Piper 447 U.S. 752 (1980). Appellant points out, however, that the court below was sitting in diversity. Howard contends that although federal district courts have inherent authority to shift fees upon a losing party who has acted vexatiously and in bad faith when presiding over a purely federal questions, they do not necessarily possess that inherent power when sitting in diversity.

To support his contentions, Howard directs the court's attention to the Supreme Court's ruling in Alyeska Pipeline Service Co. v. Wilderness Society 421 U.S. 245 (1974). In Alyeska, the Supreme Court held that federal courts follow the American Rule that the prevailing party is not permitted to recover attorney's fees, with few exceptions. The court stated, however, that one such exception is the inherent power to impose attorney's fees upon a

losing party who has acted "in bad faith, vexatiously, wantonly or for oppressive reasons." Id. Despite this ruling, however, a footnote in the Alyeska opinion complicates the issue in diversity cases:

In an ordinary diversity case where state law does not run counter to a valid federal statute or rule of court, and usually it will not, state law denying the right to attorney's fees or giving a right thereto, which reflects a substantial policy of the state, should be followed. Prior to the decision in Erie RR. Co. v Tompkins, 304 U.S. 64 (1938), this court held that a state statute requiring an award of attorney's fees should be applied in a case removed from the state courts to the federal courts: "It is clear that it is the policy of the state to allow attorney's fees in certain cases, and it has made that policy effective by making the allowance of the fee mandatory on its courts in those cases. It would be at least anomalous if this policy could be thwarted and the right so plainly given destroyed by removal of the cause to the federal court."... We see nothing after Erie requiring a departure from this result. The same would clearly hold for a judicially created rule, although the question of the proper rule to govern awarding attorney's fees in federal diversity cases in the absence of state statutory authorization loses much of its practical significance in light of the fact that most states follow the restrictive American rule

421 U.S. at 259, n. 31 (citations omitted).

In presenting its argument, Howard points out that Lewis Hall does not permit a court to impose attorney's fees in the absence of a contractual provision or state statutory authority and recognizes no "bad faith" exception to the restrictive American Rule. As this court has already stated, neither the contract, nor any Lewis Hall Rule or statute permitted the court to impose attorney fees sanctions against Howard in this case. Given the current state law of Lewis Hall, therefore, Howard contends that in the Alyeska footnote, the Supreme Court has recognized that a federal court must apply state law concerning attorney's fees when it directly conflicts with the court's inherent powers.

We disagree. In analyzing this issue, this court looks to the Rules of Decision Act. The Rules of Decision Act provides:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. §1652. In reviewing the trial court's use of inherent powers to impose attorney fees sanctions in light of the Rules of Decision Act, we cannot agree with Howard's contention that a federal court must apply state law when deciding whether to sanction a party who has acted in bad faith. Contrary to Appellant's assertions, we are not persuaded that the Supreme Court intended the footnote in Alyeska to hold that in a rare case, such as this one, in which state law makes no provision for attorney's fees, that a federal court cannot exercise its inherent authority to do so. The power to control his own courtroom is the appropriate and necessary province of a federal judge. We believe that the Erie doctrine in no way mandates the displacement of that power just because the judge happens to be sitting in diversity. We, therefore, find no error in the trial judge's use of inherent powers in imposing the additional \$50,000 sanction against Howard.

Affirmed.

IN THE SUPREME COURT OF THE UNITED STATES

SITTING IN LEWIS HALL

AUGUSTUS O. HOWARD FEED COMPANY, INC.,

v.

BAYOU FEED COMPANY, INC.,

Supreme Court No. LH90-111590

Appellants' writ of certiorari is hereby granted and the questions to be briefed and presented at oral argument are the following:

- I. DID THE DISTRICT COURT ERR BY IMPOSING SANCTIONS IN THE FORM OF ATTORNEY'S FEES, EXPENSES AND COSTS AGAINST HOWARD AND WEST PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 11 AND 28 U.S.C. §1927 WHEN DIRECTLY CONFLICTING STATE LAW PROHIBITS THE IMPOSITION OF SUCH SANCTIONS?

- II. DID THE TRIAL COURT ERR BY IMPOSING ADDITIONAL ATTORNEY'S FEES AND SANCTIONS AGAINST HOWARD PURSUANT TO THE COURT'S INHERENT POWERS WHEN DIRECTLY CONFLICTING STATE LAW PROHIBITS THE IMPOSITION OF SUCH SANCTIONS?

DAVIS MOOT COURT COMPETITION

ERRATA SHEET

Please note that the purchase price of the processing plant was \$375,000 and the deposit for the plant was \$100,000.

The purchase price of the Florida Plant was \$250,000 - \$125,000 less than the price of the Louisiana Plant.

Any further questions should be submitted, in writing, to the Moot Court Board.

Please note that Claude and Jack will have office hours beginning Monday September 10, 1990, from 7 - 9 p.m..