IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
KAISER GROUP INTERNATIONAL, INC., et al.,	)	Case No. 00-2263 (MFW)
	)	
Debtors.	)	
_____	)	(Jointly Administered)
	)	
KAISER GROUP INTERNATIONAL, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
NOVA HUT a.s. and INTERNATIONAL FINANCE CORPORATION,	)	
	)	
Defendants.	)	Adversary No. 01-928 (MFW)
_____	)	

MEMORANDUM OPINION[1]

Before the Court is the Motion of Mittal Steel Ostrava, a.s. (formerly Nova Hut, a.s.) for sanctions under Rule 9011 against Saul Ewing LLP. For the reasons set forth below, the Court will deny the Motion.

I. BACKGROUND

In 1997, Nova Hut, a.s., and ICF Kaiser Netherlands B.V. ("Kaiser Netherlands"), a non-debtor subsidiary of Kaiser Group International, Inc., (the "Debtor") entered into an agreement

[1] This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

(the “Agreement”) whereby Kaiser Netherlands agreed to design and construct phase I of a steel mill at Nova Hut’s facility in Ostrava, Czech Republic. Under the Agreement, the steel mill constructed by Kaiser Netherlands was required to pass a mandatory quality and quantity standards performance test. The Debtor guaranteed Kaiser Netherlands’ performance under the Agreement and pledged its assets as collateral for a letter of credit (“Performance Letter of Credit”), which required annual renewal. Nova Hut financed the project with funds loaned to it by the International Finance Corporation (the “IFC”). In exchange for the loan, the IFC was provided a conditional assignment of Nova Hut’s rights under the Agreement and the guarantee.

On June 9, 2000, the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code. Kaiser Netherlands failed to renew the Performance Letter of Credit. As a result, on February 16, 2001, Nova Hut drew $11.1 million on the Performance Letter of Credit.

On April 9, 2001, the Debtor initiated an adversary proceeding against Nova Hut, alleging breach of contract for the draw upon the Performance Letter of Credit. The adversary complaint was later amended three times. The last amended complaint (the “Third Amended Complaint”) added, as a party plaintiff, Kaiser Engineers, which had also filed a chapter 11

petition. The Debtor seeks from Nova Hut a return of the $11.1 million drawn on the Performance Letter of Credit under breach of warranty, breach of contract, unjust enrichment and quantum meruit theories and asserts a $5.25 million claim related to a fee associated with a Memorandum of Understanding. Additionally, Kaiser Engineers alleges that it is owed $510,000 for engineering and financial services provided to Nova Hut under a Letter of Intent.

On October 28, 2002, Nova Hut moved to stay the adversary proceeding and compel arbitration, or alternatively, for dismissal of the Third Amended Complaint. The Court denied the motion in its entirety and Nova Hut appealed. On March 18, 2004, the District Court reversed the decision, ordered the adversary proceeding stayed and compelled arbitration of the claims between Nova Hut and the Debtor. Kaiser Group Int'l v. Nova Hut, a.s. (In re Kaiser Group Int'l), 307 B.R. 449 (D. Del. 2004).

Thereafter, Kaiser Netherlands arbitrated its claims against Nova Hut before the International Court of Arbitration. On April 26, 2006, the Arbitration panel entered a Final Award (the "Arbitration Award"), concluding that Kaiser Netherlands had failed to build the steel mill in accordance with the performance requirements of the Agreement.

On December 13, 2006, Nova Hut filed a motion in the adversary proceeding to lift the automatic stay and for summary

judgment ("Summary Judgment Motion") on res judicata and collateral estoppel grounds based on the Arbitration Award. On January 25, 2007, the Debtor filed a cross-motion for partial summary judgment and a motion for an oral examination and production of documents from IFC, Nova Hut and related parties or, alternatively, an equitable bill of discovery (the "Discovery Motion"). In its response to Nova Hut's Summary Judgment Motion and in its Discovery Motion, the Debtor, through its counsel Saul Ewing LLP ("Saul Ewing"), asserted that Nova Hut and its counsel Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb") may have improperly influenced the arbitration outcome. As evidence, the Debtor stated that Cleary Gottlieb had posted a press release dated April 26, 2006 (the date the award was signed but three weeks before the arbitration award was made public) detailing the favorable outcome of the arbitration.

At the hearing on the Discovery Motion held on April 25, 2007, the Court denied the motion on the same grounds that the adversary proceeding had originally been stayed. Specifically, the Court ruled that the disputes between the parties were subject to arbitration and that, therefore, any discovery relating to those disputes should be conducted in that forum in accordance with the applicable arbitration rules.

In the interim, on April 18, 2007, Nova Hut filed a motion for sanctions against Saul Ewing contending that Saul Ewing

failed to conduct a reasonable inquiry into the actual date the press release was posted on the website before filing the Debtor's Discovery Motion. Briefing on the sanctions motion is complete and the matter is now ripe for decision.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O).

III. DISCUSSION

A. Standard of Review

Rule 9011 of the Federal Rules of Bankruptcy Procedure provides that all representations made to the Court must have evidentiary support or "are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Bankr. P. 9011(b)(3). Rule 9011 tracks the language of Rule 11 of the Federal Rules of Civil Procedure. See, e.g., Cinema Serv. Corp. v. Edbee Corp., 774 F.2d 584, 585-86 (3d Cir. 1985) ("The text of [Bankruptcy Rule 9011] tracks Fed. R. Civ. P. 11, with only such modifications as are appropriate in bankruptcy matters. In providing for sanctions, Rule 9011 discourages in bankruptcy proceedings the same type of conduct which Fed. R. Civ. P. 11 proscribes . . . ."). "Rule 11

. . . is intended to discourage pleadings that are 'frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad faith'." Lieb v. Topstone Indus., Inc., 788 F.2d 151, 157 (3d Cir. 1986) (quoting Zaldivar v. City of Los Angeles, 780 F.2d 823, 831 (9th Cir. 1986), abrogated on other grounds by Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 399 (1990).

The test is an objective one of reasonableness under the circumstances. Topstone Indus., 788 F.2d at 157. The court should consider the reasonableness of the party's belief at the time the motion or pleading was filed and not in hindsight. Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 94-95 (3d Cir. 1988) ("[A] proper Rule 11 analysis should focus on the circumstances that existed at the time counsel filed the challenged paper. Imposing a continuing duty on counsel to amend or correct a filing based on after-acquired knowledge is inconsistent with the Rule."). Upon a determination that a party has violated Rule 9011, the court may impose appropriate sanctions. Id.; Fed. R. Bankr. P. 9011(c).

B. Motion for Sanctions

In its memorandum of law in opposition to Nova Hut's Summary Judgment Motion and in support of the Debtor's Discovery Motion, Saul Ewing, as Debtor's counsel, argues that the Arbitration Award may be tainted for a number of reasons. Saul Ewing relies,

among other things, on the fact that Cleary Gottlieb posted a press release on its website that details the Arbitration Award. The press release was dated April 26, 2006. While the Arbitration Award was signed on April 26, 2006, the parties were not officially notified of the award until May 16, 2006. On October 12, 2006, Saul Ewing sent a letter to the International Court of Arbitration ("ICC") requesting an investigation into the matter. On October 20, 2006, the ICC replied that "we do not conduct investigations as requested . . . ."

Nova Hut argues that Saul Ewing failed to conduct a reasonable inquiry into the truth of the allegations before filing its pleadings. Prior to the filing of the Debtor's pleadings, Nova Hut had responded to Saul Ewing's allegations and contended that Cleary Gottlieb was notified of the Arbitration Award on May 16, 2006, and the press release was posted on Cleary Gottlieb's external website on June 30, 2006. It further asserts in the present motion that it is Cleary Gottlieb's standard practice to identify the press release date as the date of the decision or order rendered by a tribunal in a litigation or arbitration matter. Nova Hut contends that Saul Ewing's failure to make a reasonable inquiry into Cleary Gottlieb's procedures for posting press releases and its failure to notify the Court of Nova Hut's explanation is potentially libelous and a Rule 9011 violation. Accordingly, Nova Hut requests that the allegations

be removed from the pleadings, and that monetary sanctions, including attorneys' fees and costs associated with the instant motion and other just and proper sanctions, be awarded.

Saul Ewing responds that Rule 9011 does not apply to discovery motions, that the Discovery Motion was the proper mechanism for making a reasonable inquiry into the allegations of impropriety, that the Discovery Motion included no false statements, and, in the alternative, that striking portions of a motion is not an available remedy for a violation under Rule 9011.

The Court agrees, in part, with Saul Ewing. The offensive language in the memorandum in opposition to Nova Hut's Summary Judgment Motion states:

> With respect to the tribunal's decision in favor of Nova Hut on Nova Hut's counterclaim for liquidated damages, Debtors have reason to question the integrity of this award, which was issued under suspicious circumstances and which contradicted both the vast weight of evidence and Nova Hut's prior admissions that Kaiser had passed the performance test. The suspicious circumstances surrounding the issuance of the award include, for example, the timing of a press release relating to the award. Nova Hut's attorneys, the law firm of Cleary Gottlieb Steen & Hamilton ("Cleary Gottlieb"), which represented Nova Hut in the Kaiser Netherlands arbitration, posted a press release on its website dated April 26, 2006 – <u>three weeks before the ICC released the award to the parties on May 17, 2006</u> – summarizing the results of the award. The date of the release, coupled with the other matters addressed more fully in the Debtor's Discovery Motion and in section C below, call into question the integrity of the award.

(Kaiser's Memorandum in Opposition to Nova Hut's Summary Judgment

Motion at 6, 12-17 (emphasis in original).) (See also Discovery Motion at 2-3, 19-22 (repeating the same argument).)

Contrary to Saul Ewing's argument, Rule 9011 does apply to a memorandum in opposition to a summary judgment motion and to a discovery motion under Rule 2004 of the Federal Rules of Bankruptcy Procedure, Rule 56(f) of the Federal Rules of Civil Procedure and the Court's equitable powers. Fed. R. Bankr. P. 9011(b) (Rule 9011(b) applies to "a petition, pleading, written motion, or other paper" presented to the court).

While Rule 9011 does "not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037," that is not the case here. Fed. R. Bankr. P. 9011(d). Rules 7026 through 7037 regard general provisions governing discovery, deposition procedures in adversary proceedings, stipulations regarding discovery procedures, interrogatories, production of documents and things, physical and mental examinations of persons, requests for admissions, and sanctions for failure to make discovery. These Rules do not apply to the Discovery Motion which was filed by Saul Ewing pursuant to Rules 2004 and 7056(f).

The Court agrees with Saul Ewing, however, that there were no false statements in the Discovery Motion. Saul Ewing stated the facts as it observed them. Cleary Gottlieb's website displayed a press release date of April 26, 2006, which was three

weeks before the Arbitration Award was made public. Saul Ewing sought formal discovery concerning this observed circumstance. See, e.g., Fed. R. Civ. P. 9011(b) (providing that in papers presented to the court "the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.") (emphasis added)).

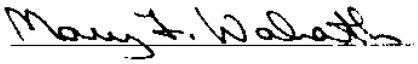
Accordingly, the Court concludes that no violation under Rule 9011 has occurred.

IV. CONCLUSION

For the foregoing reasons, the Court concludes that Saul Ewing's conduct did not constitute a violation of Rule 9011. Consequently, the Court will deny Nova Hut's request for sanctions under Rule 9011.

An appropriate Order is attached.

BY THE COURT:



Dated: July 9, 2007

Mary F. Walrath
United States Bankruptcy Judge

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FOR THE DISTRICT OF DELAWARE

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KAISER GROUP INTERNATIONAL, INC., et al.,	)	Case No. 00-2263 (MFW)
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Debtors.	)	
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KAISER GROUP INTERNATIONAL, INC., et al.,	)	
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Plaintiffs,	)	
	)	
v.	)	
	)	
NOVA HUT a.s. and INTERNATIONAL FINANCE CORPORATION,	)	
	)	
Defendants.	)	Adversary No. 01-928 (MFW)
_____	)	

O R D E R

AND NOW, this **9th** day of **July**, **2007**, upon consideration of the Motion of Mittal Steel Ostrava, a.s. (formerly Nova Hut, a.s.) for sanctions under Rule 9011 against Saul Ewing LLP, it is hereby

ORDERED that the Motion is **DENIED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: Victoria Counihan, Esquire[1]

[1] Counsel is to distribute a copy of this Opinion and Order on all interested parties and file a Certificate of Service with the Court.

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