IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DAVID GROCHOCINSKI, not individually but solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of CMGT, INC.,	)	
Plaintiff,	)	No. 06 C 5486
v.	)	Judge Virginia M. Kendall
MAYER BROWN ROWE & MAW LLP and RONALD B. GIVEN	)	
Defendants.	)	

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SANCTIONS AGAINST EDWARD T. JOYCE & ASSOCIATES, P.C.

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Defendants Mayer Brown LLP ("Mayer Brown") and Ronald B. Given ("Ronald") (collectively, "Defendants"), by their attorneys, Novack and Macey LLP, submit this reply memorandum in further support of their motion for sanctions against Edward J. Joyce and Associates ("Joyce").[1]

I. SUMMARY OF ARGUMENT

Joyce's response to Defendants' motion for sanctions ("Joyce's Response" or "J. Resp. at __") spins an extremely long-winded tale, and attempts to show that Joyce acted reasonably at every turn. It fails to acknowledge that the Court's factual findings contained in the Opinion are no longer up for debate. As will be shown in greater detail in Section III below, it also fails to come to grips with at least three overarching defects in the abusive lawsuit that Joyce engineered and pursued.

First, to prevail, the Trustee (through Joyce) would have had to prove that Spehar's claims in California were meritless and would have been defeated if opposed. Yet, if Joyce proved that Spehar's claims were bogus and that Defendants committed malpractice by not defeating them, the primary beneficiary of Joyce's victory would have been Spehar -- the very party whose claims Joyce would have just proved were meritless. Thus, as the Court found, the lawsuit that Joyce purported to file on behalf of CMGT was in actuality brought to benefit Spehar, the same Spehar who selected Joyce as counsel and directed Joyce's prosecution of the claims. Even more perverse, it was Spehar who had harmed CMGT by blocking it from obtaining its last hope of financing and forcing it into bankruptcy. By bringing such a deviant

[1] Capitalized terms used but not defined herein shall have the meaning given them in Defendants' Memorandum in Support of Their Motion for Sanctions (Docket No. 177) (the "Opening Memorandum" or "Op. Mem. at __".)

suit, Joyce not only joined in Spehar and the Trustee's wrongful actions, but, above everyone else, made them possible.

Second, Joyce did not conduct a real investigation of the facts before filing suit. Joyce failed to talk to any witness about the case -- at least, anyone except Spehar. (Op. at 9.) Thus, at Spehar's direction, Joyce filed suit without conducting a proper investigation of the facts. (Id. at 11.) Joyce now claims to have reviewed documents, but those documents raise serious and practical doubts about the conclusions Joyce says he drew from them. For example, the central assertion of the Complaint that Joyce prepared is that Defendants were required to defend CMGT against the California Action. Yet, exhibit 1 to the Complaint is Defendants' engagement letter, and it shows that Defendants were hired as transactional attorneys for "corporate activities," not as litigation counsel. (Complaint, Ex. 1; see also Op. at 2.) The scope of Defendants services could be expanded only upon written, mutual consent. (Id.) Moreover, exhibit 15 to the Complaint is a September 17, 2003 email that Ronald sent to all of CMGT's shareholders about Spehar's lawsuit, stating "Mayer Brown has not been retained to deal with this matter, and we do not expect to be." (Id., Ex. 15; emphasis added; see also Op. at 4-5.) How can Joyce claim to have done a document investigation when the documents attached to the Complaint contradict the Complaint's central allegation?

Third, there was no reasonable basis to sue Defendants, and Joyce ignored and continues to ignore the glaring factual defects in the Trustee's case. Indeed, as just mentioned, Joyce sued attorneys for malpractice for not defending a case that they were not retained to defend. Nothing in any of the documents described in Joyce's 35-page Response contradicts this fact. For example, nothing indicates that Defendants were ever hired to be CMGT's litigation counsel or that any CMGT shareholder objected to Ronald's email or requested that Defendants defend

CMGT in Spehar's lawsuit. Instead, Franco, Baliga and Wong interviewed other potential counsel and concluded that CMGT could not afford to hire any counsel to defend itself. (See Defendants' Local Rule 56.1(a) Statement of Undisputed Facts In Support of Their Motion for Summary Judgment Based on Their Unclean Hands Defendants ("Defs. 56.1 Statement") (Docket No. 137), ¶ 126.) CMGT and its officers and shareholders had more than six months after Ronald's September 2003 email and before the Default Judgment was entered to hire counsel to fight the California Action if they so desired. They also could have hired counsel to vacate the Default Judgment. They did not do so. Joyce never asked why.

It is clear that the answer to this basic question was staring Joyce in the face and clamoring for attention. Franco and several CMGT shareholders wrote the Trustee to tell him that CMGT's demise was the result of Spehar's actions to block CMGT's last hope of funding, and that CMGT defaulted because it did not have the financial ability to defend itself in Spehar's California lawsuit. (Op. at 11-12.) As counsel for the Trustee, Joyce saw these letters. Moreover, Joyce's own client recognized (when it suited him) that the Default Judgment was entered "largely due to the lack of funds by [CMGT]," (id. at 12), and that the bankruptcy estate (i.e., CMGT) had no funds to hire counsel to set aside the Default Judgment. Nonetheless, Joyce never honestly considered these facts or spoke to any witnesses. Instead, he deliberately closed his eyes and ears to the clear and direct evidence that CMGT's default was not the result of Defendants' negligence but rather a simple economic decision by CMGT -- not Defendants. CMGT was failing as a business, and its shareholders were not willing to throw more good money after bad just for the privilege of engaging in a distant and economically pointless litigation with Spehar.

Moreover, these fundamental defects did not require a great effort to uncover; they were obvious from the start. As Joyce admits, Spehar approached Joyce with a plan to collect the Default Judgment from CMGT's attorneys, a request that, in and of itself, sounds wrong. Assuming a client legitimately owes damages for its breach of a contract obligation, why would the client's attorney be liable for those damages? As attorneys themselves, Joyce should have recognized that straightforward point. But, when Spehar encouraged Joyce to file suit without conducting a proper pre-litigation investigation, Joyce readily agreed. Joyce had already decided to file suit and was not going to let the truth get in the way of those plans.

This scheme should have set off alarm bells -- particularly given Joyce's forty years of experience as an attorney. Instead, Joyce heard the sound of a cash register and willingly joined Spehar's scheme in the hopes of reaping a payoff from a deep pocket defendant. Joyce cannot disavow culpability now. Nor can Joyce hide behind the claim that its lawyers were just doing their job. So were the lawyers Joyce baselessly sued. After attacking first, Joyce should not be shielded from the consequences of its conduct.

II. THIS COURT'S AUTHORITY TO AWARD SANCTIONS

As shown in the Opening Memorandum, pursuant to the Court's inherent authority, the Court may impose sanctions on Joyce if it finds that Joyce "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991) (citation and internal quotation marks omitted). As the Supreme Court further explained:

> In this regard, if a court finds that fraud has been practiced upon it, or that the very temple of justice has been defiled, it may assess attorney's fees against the responsible party, as it may when a party shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order.

Id. at 46 (citations and internal quotation marks omitted).

Similarly, a court has discretion to impose sanctions under 28 U.S.C. §1927 when an attorney has acted in an "objectively unreasonable manner" by engaging in "serious and studied disregard for the orderly process of justice," pursued a claim "without a plausible legal or factual basis and lacking in justification," or "pursue[d] a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound." Jolly Group, Ltd. v. Medline Indus., Inc., 435 F.3d 717, 720 (7th Cir. 2006) (citations omitted). Section 1927 does not require proof of subjective bad faith. Rather, "[i]f a lawyer pursues a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound, the conduct is objectively unreasonable and vexatious." Riddle & Assocs. P.C. v. Kelly, 414 F.3d 832, 835 (7th Cir. 2005) (quoting Kapco Mfg. Co. v. C & O Enters., Inc., 886 F.2d 1485, 1491 (7th Cir. 1989). Also, "a district court acting under § 1927 is not bound by the parties' motions and may, in its sound discretion, impose sanctions *sua sponte* as long as it provides the attorney with notice regarding the sanctionable conduct and an opportunity to be heard." Jolly Group, 435 F.3d at 720. In sum, under the Court's inherent authority and Section 1927, the Court should impose sanctions if it finds that Joyce did any one or more of the following:

- Acted in bad faith in conducting the litigation (inherent authority);
- Attempted to perpetrate a fraud upon the Court or defile the "temple of justice" (inherent authority);
- Engaged in a serious and studied disregard for the orderly process of justice (§ 1927);
- Pursued a claim without a plausible legal or factual basis and lacking in justification (§ 1927); or
- Pursued a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound (§ 1927).

Chambers, 501 U.S. at 45-46; Jolly Group, 435 F.3d at 720.

As already found by this Court, Joyce's conduct meets each of these standards. As a result, the Court need not sort out which conduct is sanctionable under Section 1927 versus the Court's inherent authority. See Chambers, 501 U.S. at 50-51 (approving use of inherent authority to sanction course of misconduct, even though some conduct could have been sanctioned pursuant to a specific rule or statute). Where, as here, an attorney's "entire course of conduct throughout the lawsuit evidenced bad faith" the Court is not required "first to apply Rules and statutes containing sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct . . . ." Id. (citing Advisory Committee's Notes on 1983 Amendment to Rule 11).

Joyce's Response does not dispute the standard for imposing sanctions under the Court's inherent authority. (J. Resp. at 19-20.) Joyce does, however, misstate the applicable legal standard under Section 1927 in two major respects. First, Joyce's Response contends (at 20) that Section 1927 can be invoked only to address delay. Yet, as just described, Section 1927 is not so limited. In fact, the only case Joyce's Response cites to support its restricted reading of Section 1927 recognizes that, in addition to delay, "[a]n assessment of fees under § 1927 may be appropriate in other situations, such as improper procedural conduct," Knorr Brake Corp. v. Harbil, Inc., 738 F.2d 223, 227 n.1 (7th Cir. 1984). Even if Section 1927 were as limited as Joyce's Response contends, that would simply mean that more of Joyce's misconduct would fall under the Court's inherent authority to impose sanctions. In all events, all of this is moot because the Supreme Court instructs courts not to waste time debating over which misconduct is covered by Section 1927, and which is covered by inherent authority. Chambers, 501 U.S. at 50-51. Courts may sanction such misconduct under either or both powers. Id.

Second, Joyce's Response fails to address the full range of the Court's authority to sanction him under Section 1927. Instead, it analyzes only the "plausibility" test. (J. Resp. at 20.) Even worse, in discussing this test, Joyce's Response conflates the use of "plausible" in connection with Section 1927 with the standard for a motion to dismiss. The unreported district court case cited by Joyce's Response (at 20) on "plausibility" has nothing to do with sanctions. Hemme v. Airbus, S.A.S., Case No. 09 C 7239, 2010 WL 1416468 (N.D. Ill. April 1, 2010). In that case, among other things, the court dealt with and denied a motion to dismiss a products liability claim arising out of an airplane crash. Id. at *3-*4.

Joyce's Response appears to be arguing that, because the claim Joyce brought survived a motion to dismiss, it must be plausible. This ignores the fact that the Court has already found that the Complaint Joyce filed was an effort to "pervert the legal process." (Op. at 32.) The excuse appears to be that Joyce did not realize the claims were unfounded. As shown above, that cannot be true, because the claims were facially perverse and contradicted by facts Joyce knew. Even if, for the sake of argument, one assumes Joyce did not realize the claims were unfounded, Joyce should have dropped them once Defendants demonstrated their complete lack of merit. Joyce did not. Instead, Joyce pressed on without any justification in the hopes of extracting a settlement. At a bare minimum, the facts found by the Court demonstrate that Joyce pursued a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound. Jolly Group, 435 F.3d at 720. Joyce should be sanctioned for this misconduct under the Court's inherent authority -- or Section 1927 -- or both.

III. SANCTIONS SHOULD BE AWARDED

There are three overarching reasons why sanctions should be awarded against Joyce: (A) the malpractice case Joyce filed was an attempt to "pervert the legal process" (Op. at 32); (B) Joyce failed to investigate the claim on behalf of the Trustee (Op. at 11, 13, 22); and (C) there

was no reasonable basis for the claim (Op. at 22) (this case was filed "to accuse attorneys who were in no way involved in the action to be held responsible for [Spehar's] artificially inflated judgment"). We discuss each in turn.

A. Joyce's Attempt To "Pervert The Legal Process"

Joyce was hand selected by Spehar to sue CMGT's transactional lawyers for litigation malpractice as part of a scheme by which Spehar could collect on an artificially inflated Default Judgment against CMGT. In order to prevail on the malpractice claim, Joyce had to prove that Spehar's claims were bogus and that if CMGT had defended itself, Spehar's claims would have been defeated. However, if successful in demonstrating this, the Trustee would then turn around and give the lion's share of the recovery to Spehar as payment for those baseless claims. The twisted nature of this scheme is nothing short of remarkable. Yet, Joyce joined in willingly and, above everyone else, made the perverted claim a reality by drafting and filing it and then by defending it at all costs.

Based on the foregoing, the Opinion found (at 32) that Joyce participated in a scheme intended "to pervert the legal process." In fact, Joyce was "hand-selected" by Spehar to take on the starring role in this scheme. (Id. at 23.) Joyce was the scheme's champion and its staunchest defender before this Court. Even now, Joyce is unrepentant, arguing that the Court's findings are wrong, and that Joyce's conduct was reasonable. In making these arguments, however, Joyce fails to address the critical problems with the claims. From the beginning, Joyce was attempting to perpetrate a fraud upon the Court because Joyce, purporting to represent the interests of CMGT, was actually representing the interest of Spehar. (Id. at 18 n.7 & 25.) Defendants responded with a motion to dismiss, and although the Court declined to decide the issue based just on the pleadings, it found Defendants' assertions "very persuasive," and ordered the parties to conduct discovery on Defendants' defenses. (Id. at 14-15.)

Joyce knew then that the details of the scheme were about to be uncovered. Reasonably careful attorneys would never have found themselves in this situation, but if they did, at this point they certainly would have backed down. Not Joyce. Instead, Joyce tried to obstruct the Court-ordered discovery. As this Court found:

> [During the Trustee's deposition] . . . Spehar's hand-selected attorney, Joyce, repeatedly obstructed the truth-seeking process during the questioning by inserting improper evidentiary objections, by berating defendant's counsel with name calling (e.g., "You are either hard of hearing or dumb"), and by accusing Defendants with perpetrating their own fraud on the court by "taking advantage of the fact that [this] Court is not a bankruptcy court."

(Id. at 23-24; footnotes omitted.)

Joyce's Response (at 24) says that Joyce "disagrees" with the Court's conclusion that Joyce was working for Spehar "and has a reasonable basis for that disagreement." Indeed, Joyce's Response trumpets its disagreement with the Court, stating in bold that Joyce "Respectfully Disagrees" with the Court's findings on multiple issues. (Id. at 22, 23.) This misses the point. The Court already rendered its findings -- including its determination that Joyce was working for Spehar. (Id. at 18 n.7 & 25.) Neither the Trustee nor Joyce (on behalf of anyone) filed a motion for reconsideration of any of the Court's findings, and Joyce should not be allowed to use this proceeding as a platform to launch a collateral attack on any of them.

Moreover, the basis for Joyce's "disagreement" with the Court's conclusions are unpersuasive. First of all, everything the Joyce Response cites to show that Joyce was supposedly not in cahoots with Spehar occurred after Joyce agreed to participate in Spehar's plan in 2006. Specifically, Joyce's Response (at 23-27) cites a deposition taken in 2008, an adversary proceeding filed by the Trustee against Spehar in 2009, and an affidavit of a shareholder of CMGT -- submitted to the Court by Spehar -- in 2010. None of these documents contradicts the

Court's finding that Joyce was working for Spehar from the beginning. Further, the shareholder affidavit is, at best, equivocal and not based on personal knowledge. Indeed, the best line in that affidavit that Joyce could find to quote says that, based on Spehar's version of events it "appears most likely that Mayer Brown and Franco may have" done something wrong. (Id. at Ex. F, ¶ 11.) Thus, the strongest claimed indictment of Defendants is the shareholder's purported evaluation of Spehar's slanted presentation of the case and, even then, the conclusion is subject to at least three equivocal modifiers. (Id.) More importantly, while the shareholder affiant now appears to want the claims against Defendants to proceed, he fails to explain: (1) why he did not object when he was told that Defendants did not represent CMGT as to Spehar's suit; (2) why he did not object when he was given notice of each step in the California proceedings -- TRO, Preliminary Injunction, Amended Complaint or Default Judgment; and (3) why he failed to pony up any cash to defend CMGT at the time. And, tellingly, although Edward Joyce himself submitted an affidavit as Exhibit G to Joyce's Response, he does not deny in that affidavit that he was working for Spehar. Instead, Joyce argues that there is a reasonable basis to disagree with that finding. There is not.

Based on the foregoing, Joyce's "entire course of conduct throughout the lawsuit evidenced bad faith." Chambers, 501 U.S. at 51. Thus, the Court should sanction Joyce pursuant to its inherent authority. Id. Further, the Court should find that Joyce's assertion of a claim designed to manipulate the legal system shows that Joyce: (1) acted in an "objectively unreasonable manner" by engaging in "serious and studied disregard for the orderly process of justice;" (2) asserted a claim "without a plausible legal or factual basis and lacking in justification;" and (3) at a bare minimum, "pursue[d] a path that a reasonably careful attorney would have known, after appropriate inquiry, to be unsound." Jolly Group, 435 F.3d at 720

(citations omitted). Therefore, the Court should also award sanctions pursuant to 28 U.S.C. § 1927.

The fact that this Court decided not to dismiss the Complaint initially does not change the fact that Joyce pursued a baseless and perverted claim. In deciding Defendants' Motion to Dismiss, the Court noted "[a]t this point, the only evidence before this Court is a copy of the facially valid default judgment entered by the California court." (June 28, 2007 Memorandum Opinion and Order (Dkt. 49) at 7 ("June 28, 2007 Op. at __"); emphasis added.) Based on that, the Court was unwilling to dismiss the Complaint on the pleadings. Yet, on summary judgment, the Court had the benefit of sworn evidence developed thereafter, all of which showed that the "facially valid default judgment" was actually part of a broad, fraudulent scheme, as found by the Court. (Op. at 20-21.) At that point, the Court did have "clear and convincing evidence" that there was a fraud on the Court, which it did not have in ruling on the motion to dismiss. (See June 28, 2007 Op. at 7.) Joyce knew or should have known this from the start.

Additionally, Joyce's Response (at 31) states that Magistrate Judge Denlow's praise for the organization of Joyce's privilege log somehow refutes Joyce's bad faith. The fact that Joyce put together a well-organized privilege log may be commendable, but that does not excuse the fact that the claim Joyce pursued was fundamentally baseless and perverse, nor does it sanitize Joyce's other conduct in the litigation -- such as Joyce's threatening witnesses with lawsuits and acting like a bully during depositions in an attempt to hide the weakness and perversity of the claim. None of those issues was before Magistrate Judge Denlow.

Finally, the fact that the Court decided to base its summary judgment on the legal rubric of judicial estoppel is of no moment. Defendants asserted the identical set of facts in support of its summary judgment motion that they had been arguing since the get-go. Those same facts are

the basis for the Court's decision. And, as noted, Joyce never filed a motion for reconsideration alleging that he was surprised by the Court's reliance on the doctrine of judicial estoppel -- or that his client was in any way prejudiced by the Court's application of the doctrine. More to the point, the legal basis on which the Court entered judgment on the Complaint is not the legal basis that governs the award of sanctions. Joyce should be sanctioned for its own improper actions which include, among other things, its failure to investigate the facts, its drafting of a perverse and deviant complaint, its orchestration of Spehar's fraud on the court system, and the improper behavior of its principal attorney during the depositions. Joyce's acts are not sanctionable just because of the legal label used by the Court. They are sanctionable because they were wrong.

B. Joyce Failed To Investigate The Claim

The Opinion (at 20) found that Spehar prepped Joyce with his (Spehar's) version of events and his ultimate goal of collecting the Default Judgment that, in this action, Joyce would have to prove was baseless. Joyce admits that he knew this was Spehar's goal. (J. Resp. at 29.) Nevertheless Joyce's Response (at 28) asserts that the "key to Joyce's pre-filing investigation was obtaining contemporaneous documents that came from Defendants' own files." Joyce's Response, however, fails to cite any evidence or affidavit to support this contention. The obvious conclusion is that Joyce -- like the Trustee -- did not perform any meaningful pre-filing investigation to assess the validity of Spehar's claims.

Reasonably careful attorneys would have investigated Spehar's claims and discovered that they were baseless. Reasonably careful attorneys would have seen that Defendants were not retained to defend CMGT in the California litigation, and that CMGT had no money and could not afford to defend itself against Spehar's spurious allegations -- or to settle with him. (See Op. at 4-6, 21-22; Defs. 56.1 Statement ¶¶ 116-18.) Reasonably careful attorneys also would have spoken to CMGT's officers and shareholders and asked them why CMGT did not settle with

Spehar or defend itself in the California Action, they would not simply assume that such failures were the product of Defendants' negligence or worse. As shown above, reasonably careful attorneys would have learned very quickly that CMGT had no assets with which to settle with Spehar or to defend itself.

Careful attorneys also would have asked a very important set of questions -- obvious questions that arise from what happened after Ronald's September 17, 2003 email in which Ronald said that Defendants would not represent CMGT in the California Action. There were at least three separate and important events that took place over the six-month period after Ronald sent that email: first, a preliminary injunction was entered in favor of Spehar and against CMGT; second, Spehar moved to amend his complaint to seek damages for breach of contract; and third, the Default Judgment was entered. The documents that Joyce had in its possession show that CMGT and every one of its shareholders got written notice of each of these events, yet none of them ever: (1) demanded that Defendants represent CMGT or asked why they were not doing so; (2) hired any counsel to defend CMGT; or (3) sought to vacate the preliminary injunction or the Default Judgment. These subsequent events cannot be explained by Defendants' alleged malpractice in failing to defend CMGT. Those facts are significant because, as every first year law student knows, causation and mitigation of damages are important parts of any case sounding in negligence -- including legal malpractice. The actual events scream out -- not that Defendants negligently failed to defend CMGT over and over again and that CMGT and its shareholders sat there like helpless infants not knowing what to do -- but rather that CMGT and its shareholders, all of whom were adults and most of whom were experienced business people or professionals, affirmatively decided to throw in the towel. Joyce failed to draw that

obvious conclusion, and never bothered to check whether it was true. Joyce's blindness to such obvious matters is willful.

Joyce's argument that two of CMGT's officers refused to talk to him is just as baseless. Joyce did not actually make any attempt to talk to them. Rather, Joyce sent each of them a threatening letter with a tolling agreement -- which they each signed and returned. (Op. at 13; see also, Defs. 56.1 Statement, ¶¶ 142, 145.) Those letters were dated August 21, 2006 (to Franco) and August 22, 2006 (to Wong). (Defs. 56.1 Statement, ¶¶ 142, 145; Appendix Exs. B, ¶ 18 & E; Dkt. 138-17 at 27-34.) On August 23, 2006, without making further contact with Franco or Wong, Joyce filed this suit. Before sending those letters on the eve of filing, Joyce had months to investigate the claim. Joyce had months to utilize the powerful pre-suit discovery devices available to him and the Trustee through the Bankruptcy Court -- most particularly, Joyce could have used Bankruptcy Rule 2004 to take depositions. If Mr. Joyce really wanted to talk to anyone, he could have. And his client refused the shareholders' requests to talk to him. This makes it even more obvious that Joyce intentionally did not investigate the claim.

In short, reasonably careful attorneys would have used the tools available to them to investigate the claims, and would have discovered that there was no basis to "accuse attorneys who were in no way involved in the action" of malpractice. (Op. at 22.)

C. Joyce Had No Basis To Claim That Defendants Represented CMGT In The California Action

Despite not talking to the shareholders or otherwise investigating, Joyce already had enough information to realize that there were glaring factual defects in the case. The exhibits to Joyce's own Complaint reveal that the Trustee sued attorneys for malpractice for not defending a case that they were not retained to defend. As already noted, Exhibit 1 to the Complaint, Defendants' engagement letter, shows that Defendants were hired as transactional attorneys for

"corporate activities," not as litigation counsel. Critically, Exhibit 15 to the Complaint is a September 17, 2003 email that Ronald sent to all of CMGT's shareholders stating that "Mayer Brown has not been retained to deal with this matter, and we do not expect to be." (Id.; emphasis added; see also Op. at 4-5.) Joyce has not pointed the Court to a shred of evidence to overcome these facts. Joyce also alleges that the Defendants should have settled Spehar's claim. With what money? Everything indicated that CMGT was broke. Indeed, on September 19, 2003, Ronald sent another email to all the shareholders explaining that, even though Spehar's lawsuit was not well-founded, "CMGT has no money to fight this battle." (Complaint, Ex. 16.) That is why CMGT did not defend Spehar's claim, and that is one of the reasons why Spehar's claims could not be settled (even if Defendants had been retained to deal with them).

In sum, even if the Court believes that Joyce reviewed documents before filing this action, the documents cited by Joyce objectively reveal that Defendants explicitly did not represent CMGT in the California Action. (E.g., Complaint, Ex. 15.) And it was clear that no one at CMGT objected to this or demanded that Defendants appear and defend the case, despite getting written notice that Defendants were not representing them and having months and months to raise an objection or to hire new counsel as Spehar's suit against CMGT proceeded. Despite these obvious facts, Joyce filed an action "to accuse attorneys who were in no way involved in the action to be held responsible for [Spehar's] artificially inflated judgment." (Op. at 22.) Joyce's Response offers no excuse for this defect in the claims Joyce filed.

Joyce's Response is a classic example of failing to see the forest for the trees. Instead of seeing the forest -- i.e., the fundamental problems the Court saw with the suit Joyce filed -- Joyce's 35-page Response provides a rambling account of individual trees. First, Joyce argues that the claims in the Complaint must have been at least plausible because the Court did not grant

Defendants' Motion to Dismiss. The fact that the suit Joyce created could not be dismissed on the pleadings does not mean that it was proper for Joyce to bring a claim that had no valid basis on the facts. As shown above, different standards apply to motions to dismiss and to motions for sanctions. Moreover, Joyce ignores the fact that the Motion to Dismiss led the Court to be suspicious of Joyce's claims and its conduct. The discovery ordered by the Court brought forth evidence that confirmed the Court's suspicions.

Second, Joyce argues with the Court's findings. Here we go again. Joyce did not move to reconsider any of those findings -- nor has it set forth any basis for the Court to do so. Thus, Joyce's disagreement is irrelevant. If anything, this stubborn disagreement confirms why sanctions are appropriate.

For instance, Joyce disagrees that Spehar lied to the California court when he said the value of his stock compensation would be $16 million. (J. Resp. at 22-23.) Joyce goes so far as to suggest that Spehar is not blame worthy because the California court must have known that Spehar's testimony was exaggerated and false. Yet, that would not absolve Spehar nor excuse Joyce for furthering Spehar's agenda. If Joyce is right, and the California judge knowingly entered an inflated Default Judgment based on Spehar's facially suspect testimony, the California judge did so only because he thought the Default Judgment did not matter. As the California judge indicated on the record, he expected that CMGT either would move to vacate the Default Judgment or CMGT would declare bankruptcy and the Default Judgment for all practical purposes would become meaningless (either because the bankruptcy trustee would move to set it aside or because the Default Judgment would not be collectible.)

The trial judge did not anticipate the scheme that Spehar, the Trustee and Joyce put into motion. Indeed, defying the logic of most creditors, Spehar put CMGT into (involuntary)

bankruptcy. Then Spehar convinced the Trustee not to set aside the Default Judgment (which the Trustee has admitted would have been in the best interests of the estate) and not to close CMGT's estate as a no asset bankruptcy (which the Trustee should have done and once threatened to do), but instead to try to collect the Default Judgment that Spehar knew was based on his false testimony. That is where Joyce came into the act. Supposedly serving as the Trustee's independent counsel, Joyce blessed Spehar's scheme, ignored the documentary evidence that Defendants were not hired to represent CMGT in the California Action, did no genuine fact investigation and filed suit against Defendants to enforce the Default Judgment on a malpractice theory. In effect, Joyce helped Spehar take advantage of the California trial judge who believed that CMGT's bankruptcy would put an end to the Default Judgment. Instead, Spehar, the Trustee and Joyce used CMGT's (involuntary) bankruptcy to breathe life into the worthless Default Judgment and to make it the basis for a brand new litigation.

In a similar vein, Joyce goes to great lengths to attack Ronald, claiming that he had a conflict of interest. (E.g., J. Resp. at 14.) This is yet another example of Joyce's *modus operandi*: "Attack, attack, attack!" These unfounded attacks are completely irrelevant. Even assuming that Ronald, after three years of providing free legal services to CMGT, wanted to be paid something before he did more legal work to put the CMGT/Newco deal together (and wanted Newco as a future client), that would have no bearing on the fundamental facts that: (1) Defendants never agreed to represent CMGT in the California Action; (2) Defendants told all of the shareholders that they were not doing so at least six months before the Default Judgment was entered; and (3) no officer, employee or shareholder ever objected or asked Defendants to represent CMGT. There is no point to Joyce's purported "conflict" argument other than to throw more mud at the Defendants he unjustifiably sued.

* * *

In sum, Joyce's Response misses the point and attempts to distract the Court with accusations of misconduct by Ronald. But Joyce's Response cannot overcome the fact that Joyce had no basis to accuse Defendants of malpractice in failing to defend the California Action when it was undisputed that they were not retained to do so. Thus, Joyce asserted a claim "without a plausible legal or factual basis and lacking in justification," authorizing sanctions pursuant to Section 1927. Walter v. Fiorenzo, 840 F.2d 427, 433-34 (7th Cir. 1988); (quoting Knorr Brake, 738 F.2d at 227). Further, as set forth above, because Joyce's entire course of conduct in this litigation has evidenced bad faith, the Court may also use its inherent power to sanction Joyce, without parceling out which conduct is being sanctioned under which authority. Chambers, 501 U.S. at 50-51.

IV. CONCLUSION

Based on the foregoing, the Court may and should enter an award of sanctions against Joyce pursuant to the Court's inherent authority and/or 28 U.S.C. § 1927. Accordingly, Defendants respectfully request that the Court grant their Motion for Sanctions against Joyce, set the matter for a prove-up of Defendants' attorneys' fees and costs incurred in defending this case, and grant Defendants such other and further relief as is appropriate.

Respectfully submitted,

MAYER BROWN LLP and RONALD B. GIVEN

By: /s/ Stephen Novack
One of Their Attorneys

CERTIFICATE OF SERVICE

Stephen Novack, an attorney, hereby certifies that he caused a true and correct copy of the foregoing Defendants' Reply Memorandum in Support of Their Motion for Sanctions Against Edward T. Joyce & Associates, P.C. to be served through the ECF system upon the following:

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on this 18th day of April, 2011.

By: /s/ Stephen Novack