IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-0054
Linn County No. 06571 ESPR044198

IN THE MATTER OF THE ESTATE OF CONNIE JO TROUT, Deceased

Appeal from the Iowa District Court in and for Linn County
The Honorable Valerie Clay, Judge

Appellants' Final Brief

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ABA Section on Litigation, *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101 (1988).

Routing Statement

This case may be properly transferred to the Court of Appeals as it presents the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

Statement of the Case

Connie Trout entered into a vehicle loan agreement with Dupaco Community Credit Union in July of 2017 to purchase a 2014 Chevy Equinox. She refinanced her loan with Dupaco in 2020. (App. 22-27, 131) Connie passed away intestate on June 18, 2021 in Cedar Rapids, Iowa. A month later, an estate was opened for Connie and Cory Trout, Connie's son, was appointed as Administrator. (App. 15, 18)

Amy Manning, the Legal and Asset Recovery Supervisor for Dupaco's Member Solutions Department, filed a claim in Connie's estate in the amount of $11,593.17 for the unpaid vehicle loan on November 3, 2021. (App. 22-28) On April 1, 2022, Trout's attorney filed an affidavit of mailing claiming he sent a notice of disallowance of claim to Amy Manning on March 4, 2022. (App. 36) Neither Amy nor any other employee at Dupaco ever received a notice of disallowance of claim for Connie's estate. (App. 51, 130, 198 L:1-14; 229 L:2-7)

Dupaco filed a request for hearing on May 13, 2022. (App. 37) Trout filed a resistance insisting Dupaco's request for hearing was untimely. Trout attached to his resistance a domestic return receipt for the notice of disallowance signed by a "Ron LeConte." (App. 42) The district court entered an order instructing Dupaco to file a reply to Trout's resistance, which it did on June 1, 2022. No one in the Member Solutions Department or the main mailroom at Dupaco recognized the name "Ron LeConte." In its reply, Dupaco argued that LeConte was not an employee or agent of Dupaco. (App. 46-52)

The district court set the matter for a 30-minute hearing on July 1, 2022 at the Linn County Courthouse. (App. 55) Prior to the hearing, counsel for both parties agreed that 30 minutes was not enough time to present testimony so the hearing would be for argument only. (App. 70, 134) The hearing was before Judge Paul D. Miller, who ruled that an evidentiary hearing was necessary and set the hearing for August 31, 2022. (App. 67, 202 L1-25; 203 L:1-21)

Dupaco moved to dismiss its request for hearing once it uncovered that it had an oral contract with Swift Delivery, which was owned by LeConte. (App. 92-101, 135-36) The district court granted Dupaco's motion to dismiss on the same day. (App. 108) After the dismissal, Trout filed a motion for sanctions under Iowa Rule of Civil Procedure 1.413 against Dupaco and its attorneys, McKenzie Blau and Thomas Bright, and sought $24,351.45 in legal fees, costs and expenses. (App. 110-114) Dupaco resisted the motion for sanctions and a

hearing was held on November 3, 2022 before Judge Valerie Clay at the Linn County Courthouse. (App. 130-167)

The district court granted Trout's motion for sanctions, finding that Dupaco's court-ordered reply filed on June 1, 2022 warranted sanctions. The district court found Trout's request for $24,431.45 in attorney fees was unreasonable, and instead assessed a total of $14,387.60 in sanctions, with $5,000 assessed against Attorney McKenzie Blau, $2,000 assessed against Attorney Thomas Bright and $7,387.60 assessed against Dupaco. (App. 185-86) This appeal[1] followed. (App. 188-90)

Statement of the Facts

Dupaco is a not-for-profit credit union founded in Dubuque, Iowa in 1948. Currently, Dupaco has nearly 700 employees who serve over 142,000 credit union members at more than 20 branches across Iowa, Illinois and Wisconsin. (App. 119, 127, 228 L:5-7)

Connie's vehicle loan with Dupaco

[1] While appeal is the appropriate procedure for challenging the denial of a motion for sanctions, Dupaco and its counsel acknowledge certiorari is the proper means to review a district court's order imposing sanctions. *Mathias v. Glandon*, 448 N.W.2d 443, 445 (Iowa 1989). As permitted in Iowa R. App. P. 6.108, Dupaco and its attorneys respectfully request that this Court treat its appeal as a petition for writ of certiorari. *Weigel v. Weigel*, 467 N.W.2d 277, 278 (Iowa 1991).

Connie Trout entered into a vehicle loan agreement with Dupaco in July of 2017 to purchase a 2014 Chevy Equinox. Three years later, Connie refinanced the loan and Dupaco inadvertently coded Connie's refinance as a total payoff. Dupaco's mistake released its lien notation on the SUV's title and returned the title to Connie. (App. 23-27, 131, 147, 185) Upon discovering its error, Dupaco attempted to contact Connie via letters and phone calls for several months to correctly note its security interest on the title. Although Connie did not respond to Dupaco's attempts to fix the title issue, she regularly made payments on the refinanced loan until February of 2021. (App. 148-49)

Dupaco's claim against Connie's estate

Connie passed away intestate on June 18, 2021 in Cedar Rapids, Iowa. (App. 15) A few days after her death, Connie's son, Cory Trout, came to a Dupaco branch in Cedar Rapids and asked about the balance owed on his mother's vehicle loan. (App. 148) A month later, an estate was opened for Connie and Trout was appointed as Administrator. (App. 18) Trout designated Scott Shoemaker, an attorney in Cedar Rapids, as his attorney to assist in the administration of his mother's estate. (App. 17)

Amy Manning, the Legal and Asset Recovery Supervisor for Dupaco Member Solutions Department, timely filed a claim in Connie's estate in the amount of $11,593.17 for the unpaid vehicle loan on November 3, 2021. Amy

signed the claim on behalf of Dupaco, the Claimant. (App. 22-28) Mercy Medical Center and the Iowa Department of Human Services (DHS) also filed claims in Connie's estate for $4,553.55 and $8,921.09, respectively. (App. 20-21)

On the Report and Inventory for his mother's estate, Trout estimated the debts to his mother's estate at $25,067.81, which was the sum of the three claims filed by Dupaco, Mercy and DHS. After subtracting the estimated debts, Connie's estate was valued at $90,932.19. Trout also listed Connie's Chevy Equinox on Schedule F of the Report and Inventory and valued it at $5,000. (App. 29-34)

Trout disallowed Dupaco's claim

On April 1, 2022, Trout's attorney filed an affidavit of mailing claiming that he sent a notice of disallowance of claim to Dupaco via regular and certified mail four weeks earlier. (App. 36) No one at Dupaco ever received a notice of disallowance of claim for Connie's estate. (App. 51, 130, 198 L:1-14; 229 L:2-7)

Shortly after disallowing Dupaco's claim, Trout applied for a $10,000 loan with Dupaco using Connie's Chevy Equinox as collateral. Trout did not inform the loan officer at Dupaco that his recently deceased mother had a loan at Dupaco where the same Chevy Equinox served as collateral. (App. 154-58) Trout then had a new certificate of title for the SUV issued in his name, noted

Dupaco's lien on the title and provided the newly issued certificate of title to Dupaco. (App. 151-53) When title processors at Dupaco were entering the certificate of title to the Chevy Equinox into the loan system in May of 2022, they found that the VIN for the SUV was already linked to an existing vehicle loan with Connie. (App. 23, 132, 154, 172)

When the Member Solutions Department at Dupaco learned about Trout using Connie's Chevy Equinox as collateral for his own loan, it prompted them to check on the status of the claim filed in Connie's estate. Lisa Elskamp, the manager of the Member Solutions Department at Dupaco, called Trout to follow up on the claim filed in Connie's estate. During the phone call, Trout said his attorney sent Dupaco a 20-day notice and Dupaco never responded so its claim was disallowed. Surprised to hear that a notice had been sent, Lisa requested his attorney's contact information so she could inquire further. (App. 147-48)

Upon learning from Lisa about the disallowance, Amy immediately checked the Iowa Courts Online website and saw that an affidavit of mailing the notice of disallowance had been filed. Amy then contacted Attorney Shoemaker, but her call was not answered. Amy left a voicemail message for Shoemaker requesting a call back, but Shoemaker never returned Amy's call. (App. 147, 172, 226 L:9-24)

Dupaco's request for hearing

Amy called Dupaco's attorneys, McKenzie Blau and Thomas Bright with O'Connor & Thomas, P.C., with whom she worked with often, and explained that Trout had said Dupaco's claim was barred because no request for hearing was filed within 20 days of the notice of disallowance. Amy had gone through all her correspondence and claim files and no notice of disallowance was found. Receipt of the disallowance had not been logged in Dupaco's Workflow History either. (App. 147-48, 220 L:5-23; 221 L:4-25; 222 L:1-19; 226 L:9-25) Amy checked with all the other employees in the Member Solutions Department to see if anyone received the notice of disallowance by mistake and no one had. Because Dupaco had no record of receiving the disallowance of claim, Dupaco's attorneys filed a request for hearing on May 13, 2022. (App. 37, 228 L:1-11)

Within hours, Trout filed a resistance arguing Dupaco's request for hearing was untimely. The following documents, all of which Dupaco had never seen before, were attached to his resistance:

- **(A)** a notice of disallowance of Dupaco's claim indicating a mailing date of March 4, 2022;
- **(B)** a certified mail receipt showing an item was addressed to Amy Manning, PO Box 179, Dubuque Iowa 52004-0179;

- **(C)** an undated, partially filled out domestic return receipt signed by a "Ron LeConte," and;
- **(D)** a USPS tracking printout from USPS's website. (App. 38-45)

After Trout filed his resistance, the district court entered an Order finding that,

> [A] reply argument that addresses [Trout's] contention that the Request for Hearing is untimely…will be helpful to the [district court] in resolving the parties' dispute…Dupaco…is ordered to file a reply to [Trout's] Resistance…prior to 4:30 p.m. on June 2, 2022…Failure of Dupaco…to file a reply may result in the [district court] denying the Request for Hearing for the reasons stated in the Resistance.

(App. 46)

Dupaco and its attorneys' pre-reply investigation

To prepare the reply by the [2]one week deadline, Dupaco's attorneys spoke with Amy at length regarding her process for filing claims in estates. Amy revealed that she had been employed at Dupaco for seven years. As the Member Solutions Legal and Asset Recovery Supervisor, she oversaw all legal duties, including the filing of small claims, claims in bankruptcy and claims in estates. Amy knew the disallowance procedure for estate claims and was cognizant of the tight deadline in requesting a hearing. (App. 220 L:1-19; 224 L:15-25) She estimated that for the last five years, she has filed 15 to 20 claims

[2] The district court's Order instructing Dupaco to file a reply by June 2 was entered on the afternoon of May 25, 2022. Memorial Day was May 30, 2022, which shortened the time available to Dupaco and its counsel to investigate, research and prepare the reply. (App. 46)

in estates per month, so she was very familiar with notices of disallowance. Amy reported this was the first time she had a problem receiving a notice of disallowance. (App. 234 L:13-23; 251 L:19-21)

Dupaco's attorneys also questioned Amy about Ron LeConte, the individual whose signature appeared on the domestic return receipt. (App. 42) Neither Amy nor any other employee in the Member Solutions Department had heard the name "Ron LeConte" before. Since Dupaco had nearly 700 employees at more than 20 locations spanning three states, Amy searched Dupaco's phone directory where all Dupaco employees were listed. LeConte's name was not listed in the employee phone directory. She also checked Dupaco's intranet, which lists all employees, and LeConte's name was nowhere to be found. Amy searched Dupaco's internal messages and intranet links for any mention of "Ron LeConte" which similarly yielded no results. (App. 133, 227 L:12-23; 228 L:1-10)

When counsel asked about Dupaco's general mail processes, Amy did some research and advised that all mail addressed to Dupaco at a Dubuque area address was transferred to its main mailroom at its [3]JFK branch, the hub of all mail activity. (App. 133-35, 254 L:14-19; 255 L:1-3) All Dupaco's mail was

[3] The actual address of the "JFK branch" is 3299 Hillcrest Road, Dubuque. It is located on the corner of John F. Kennedy Road and Hillcrest Road in Dubuque, which is a different location from the Member Solutions Department location on Saratoga Road in Asbury. (App. 22-8)

sorted in the main mailroom and then delivered to local branches by Dupaco employees. Amy explained that all legal related mail and filings go to the Member Solutions Department on Satatoga Road in Asbury, Iowa. She pointed out that if a notice of disallowance or any other legal filing was sent to another Dupaco department or branch by mistake, it would be immediately re-routed to the Member Solutions Department. (App. 133-35, 227 L:1-6)

To further the pre-reply investigation, Amy met with Abby Kramer, the head associate in the main mailroom at Dupaco's JFK branch. Amy regarded Abby as the employee most likely to know who was authorized to sign certified mail on behalf of Dupaco. (App. 228 L:11-15) While Abby did not recognize the name "Ron LeConte," she thought he was the gentleman she occasionally saw dropping off mail at the JFK branch. However, Abby believed that gentleman was not an employee of Dupaco but was employed by the post office. (App. 133, 228 L: 11-22)

Based on the knowledge of the Member Solutions Department and the associates in the main mailroom, this was the first time Dupaco encountered any type of problem receiving its certified mail. Since Dupaco had been receiving its certified mail regularly without incident, both prior to this incident and after, its employees did not need or have the opportunity to examine the signatures on the domestic return receipts related to its certified mail to see who had been signing. If LeConte was a postal worker and had signed the

domestic return receipt for the notice of disallowance, Dupaco concluded that it was an isolated incident and there was no continuing threat to its certified mail. (App. 245 L:13-25; 246 L:1-7)

Dupaco's Reply

Dupaco filed its reply on June 1, 2022 alongside an affidavit of Amy where she made the following statements under oath:

> I never personally received, and no one acting on my behalf or Dupaco's behalf received, a Notice of Disallowance related to Dupaco's November 3, 2021 claim, whether at P.O. Box 179 or any other address associated with Dupaco.
>
> ***
>
> In May 2022, I conducted an internal review of incoming mail received by Dupaco to determine whether Dupaco ever received the Notice of Disallowance in this Estate. My review uncovered no records indicating that Dupaco ever received the Notice of Disallowance.
>
> ***
>
> Ron LeConte is not an agent, employee, or representative of Dupaco. ***To the best of my knowledge***, Ron LeConte is an agent of the United States Postal Service.

(App. 51-2) (Emphasis added)

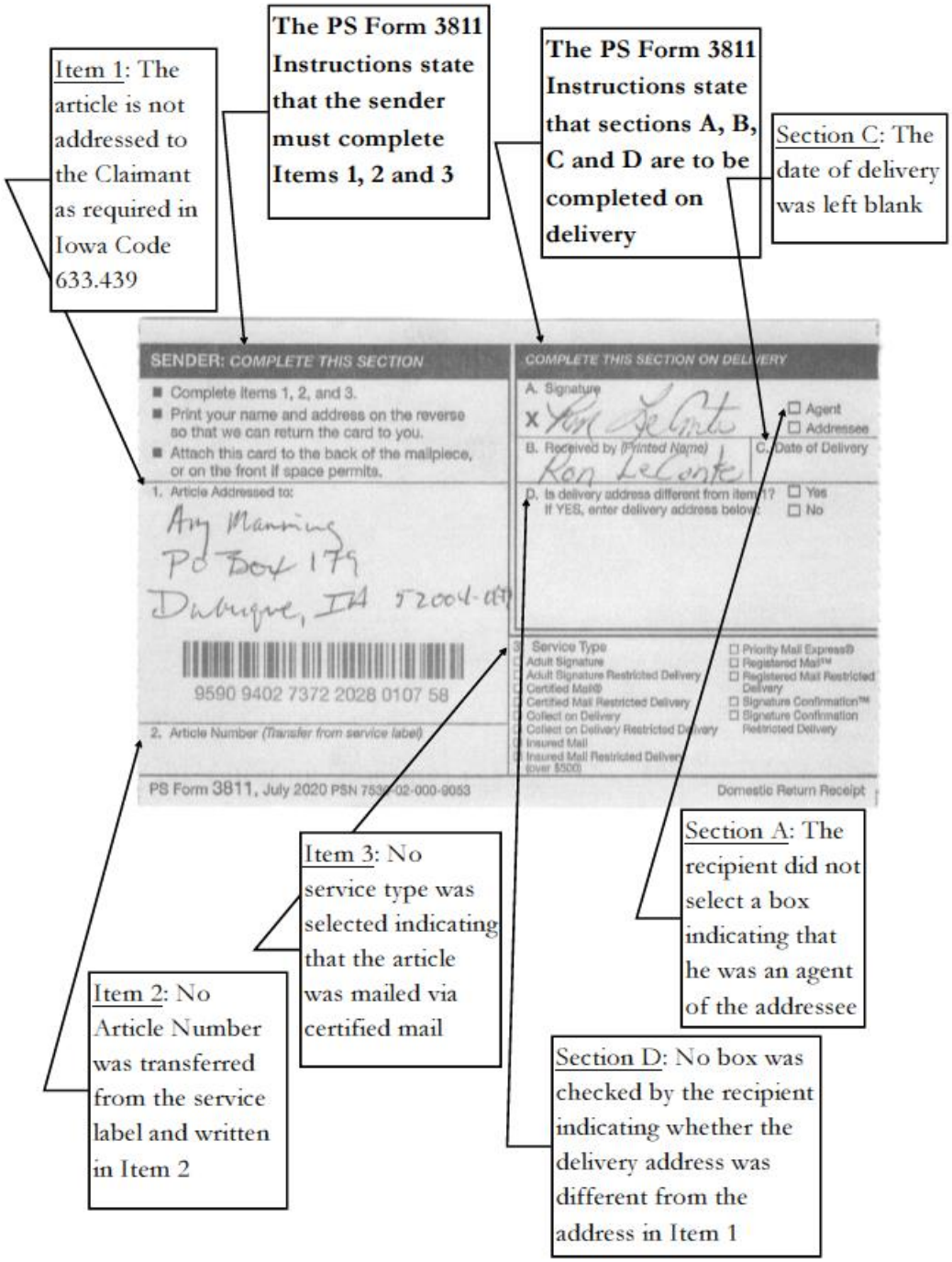
Domestic return receipt and USPS tracking printouts

Dupaco's attorneys also asserted in the reply that there were enough irregularities in the undated, partially completed domestic return receipt and in the USPS tracking printouts that,

> …the Notice of Disallowance was not given to [Dupaco] via certified mail addressed to [Dupaco] at the address stated in the claim, and [Trout's] Attachments do not constitute "proof of service." *See* Iowa

Code §§ 633.439; 633.442. Therefore, [Dupaco's] Request for Hearing is timely. (App. 49)

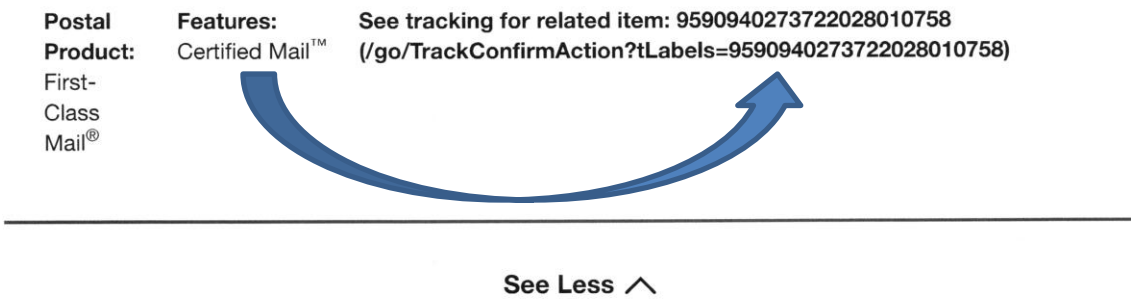
Specifically, as to the domestic return receipt, Dupaco highlighted the following abnormalities:



(**Diagram 1**; App. 48-9; 199 L:24-25; 200 L:1-17[4]; 241 L:1-12)

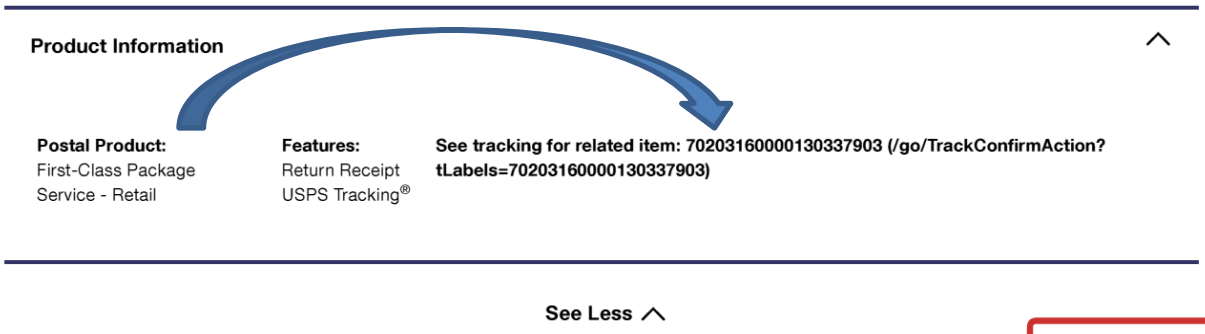
With regard to the USPS tracking printout provided by Trout, Dupaco and its counsel argued: (1) Trout's USPS tracking printout showed a mailing was delivered to a postal facility in Dubuque, Iowa, but it did not indicate who picked up the mailing or the contents of the mailing; (2) The tracking number on Trout's USPS tracking printout ([5]7020) was not the same tracking number that was on the domestic return receipt (9590); and (3) On page two of Trout's USPS tracking printout,[6] see below, Dupaco's counsel interpreted the first-class mailing postal product and the certified mail feature as applying to the related item with tracking number 9590 and concluded that tracking number 9590 was for a first-class mailing that included certified mail as a feature. (Diagram 1; App. 42-44, 49, 138) This argument was not made again by Dupaco in any other filing.

[4] Diagram 1 is an annotated version of the undated, partially filled out domestic return receipt attached to Trout's resistance to Dupaco's request for hearing. (App. 49, 199 L:15-25; 200 L:1-23; 240 L:4-25; 241 L:1-16)
[5] Only the first four digits of the tracking numbers will be included.
[6] Diagram 2 is a portion of the second page of Trout's USPS tracking printout with a blue arrow added. (App. 44)



Dupaco's attorneys also attached their own USPS tracking printout as Attachment 2 to their reply where they input the tracking number on the domestic return receipt (9590) into the USPS tracking tool on its website. Dupaco and its counsel made the following points about Attachment 2 in their reply: (1) The USPS tracking tool indicated that the domestic return receipt was delivered to a mailbox in Cedar Rapids, Iowa, which is not the address provided on Dupaco's claim; and (2) On the bottom of Dupaco's Attachment 2[7], see below, Dupaco's attorneys read the First-Class Package Service – Retail postal product information as applying to the related item with tracking number 7020 and concluded that tracking number 7020 was for a first-class retail package mailing that did not have certified mail as a feature. (App. 49, 53)

[7] Diagram 3 is the bottom portion of Dupaco's Attachment 2 with a blue arrow added. (App. 53)



Attachment 2

Trout opposed Dupaco's request for Amy to testify remotely.

After Dupaco filed its reply, the district court entered an Order setting a 30-minute hearing for July 1, 2022 at the Linn County Courthouse. In its Order, the district court held "that the parties dispute whether Dupaco ***received*** the notice of disallowance of claim from the Estate. **This issue** will be considered at the July 1, 2022 hearing." (App. 55) (Emphasis added) While Dupaco was fighting to get a hearing on the merits of its claim, Trout paid off the other two claims filed in Connie's estate by DHS and Mercy Medical Center. (App. 60-61)

Shortly after the July 1, 2022 hearing was set, Dupaco sought leave from the district court to allow Amy to participate in the 30 minute hearing remotely since she would be 39 weeks pregnant and travel more than one hour away from her healthcare provider was not advised. Dupaco clarified in its

application that counsel for Dupaco would attend the hearing in person. (App. 57) Trout filed a resistance to Dupaco's application where he opined that,

> … It is unreasonable to believe that the minuscule amount of travel involved in order to participate in this hearing would represent any real danger to [Amy Manning], especially given the Linn County Courthouse's proximity to first-rate medical facilities.

The district court entered an Order the day before the hearing allowing Amy to participate via Zoom. (App. 58, 62) However, by that point, counsel for Trout and Dupaco had already agreed that 30 minutes was not enough time to present testimony, evidence and argument. Counsel for both parties stipulated ahead of time that the hearing on July 1, 2022 would be for argument only. (App. 70, 134)

The July 1, 2022 hearing

In the early morning hours of July 1, 2022, Amy informed counsel for Dupaco that she was beginning her maternity leave. (App. 134) Dupaco's Attorney Bright drove from Dubuque to the Linn County Courthouse for the hearing before Judge Paul D. Miller where the following was discussed:

- ***Ron LeConte***
    - Attorney Shoemaker argued that Mr. LeConte has been authorized by Dupaco to sign for its certified mail for many years.
    - Attorney Bright argued that Mr. LeConte was not authorized by Dupaco to sign for its certified mail, that LeConte not an employee of

Dupaco and that, upon information and belief, Mr. LeConte was employed by the post office. (App. 191 L:11-20; 197 L:1-25)

- ***Dupaco never received the notice of disallowance***
  - Attorney Bright emphasized that the notice of disallowance was apparently sent to Dupaco twice via certified and regular mail and neither notice was received by Dupaco. (App. 197 L:23-25; 198 L:1-6)

    Judge Miller chimed in and the following exchange took place,

    > THE COURT: Yeah. But, first, so are you telling me that if Amy Manning was here today, she's -- she would testify she never received it? Is that what you're saying?
    > MR. BRIGHT: Yes, Your Honor. And more than that, that no one affiliated with Dupaco, as an employee of Dupaco or someone authorized to receive their mail, had any knowledge of any of these mailings at any time.
    > THE COURT: And, Mr. Shoemaker, does it matter whether or not they say they received it, or just that it was sent by certified mail? (App. 198 L:8-17)

  - Attorney Shoemaker retorted that Dupaco's actual receipt of the notice of disallowance was irrelevant; service of the notice of disallowance was complete under the statute when it was placed in the stream of mail. (App. 198 L: 15-25; 199 L:1-13)
  - Attorney Bright asserted that there was a factual issue as to the placement of the disallowance in the stream of mail. He highlighted that the domestic return receipt was partially filled out and undated, the

affidavit of mailing was signed and filed four weeks after the mailing was sent, Trout's USPS tracking printout only showed the mailing was picked up by an "individual," and it did not indicate the contents of the mailing and the only piece of evidence that mattered in terms of the adequacy of addressing is the envelope itself, and that envelope was not in evidence. (App. 199 L:15-25; 200 L:1-25)

- Judge Miller asked both attorneys who they would call as witnesses if a longer evidentiary hearing was set.
    - Attorney Bright responded that he would call a representative from Dupaco, either Amy Manning, if she was available, or another individual in the Member Solutions Department. (App. 201 L:7-19)
    - Attorney Shoemaker stated he would call LeConte, a US Post Office employee and witnesses who could attest to Amy Manning's character as he contended her "reputation for truthfulness is seriously in doubt." In response to Attorney Shoemaker's criticism, the following exchange took place:

      THE COURT: You contest some of things in her affidavit?
      MR. SHOEMAKER: That's correct. I contest almost all factual and legal assertions made in this case.
      THE COURT: So you're saying, if I would take this today, you would not want me to rely on her affidavit?
      MR. SHOEMAKER: I believe Ms. Manning's affidavit is completely false.
      THE COURT: I think we're going to have to have Ms. Manning or someone with knowledge come in.

***

> THE COURT: So that's what we're going to do. I don't think we can go any further without her, actually.

(App. 202 L1-25; 203 L:1-21) The entire hearing on July 1, 2022 took twenty minutes (App. 191 L:12-13; 204 L:12-13). There was some back and forth amongst the district court and the attorneys for Trout and Dupaco in getting the evidentiary hearing scheduled. The hearing was initially set for August 19, 2022, but was eventually reset to August 31, 2022. (App. 67; 165-66)

Trout subpoenaed Amy on maternity leave

Amy gave birth to a baby girl on July 3, 2022 and was on maternity leave until September 26, 2022. Following the birth, Amy's daughter went to the University of Iowa Stead Family Children's hospital for post-birth complications. Counsel for Dupaco notified the district court and Shoemaker in an email on July 7, 2022 that Amy would be on maternity leave for 12 weeks starting on July 1, 2022. (App. 134-35, 165-66)

Counsel for Dupaco confirmed that they would bring a substitute Dupaco representative up to speed before the hearing. Dupaco's attorneys explained that the intended substitute was supposed to be Lisa Elskamp, the manager of the Member Solutions Department. But Lisa was not going to be available for the foreseeable future because her seventeen-year-old daughter was tragically killed in a car accident on July 1, 2022. Dupaco's attorneys now

believed that the anticipated substitute would be Julie Hoffmann, another employee in the Member Solutions Department. Neither the district court nor Shoemaker objected to Dupaco's proposal to have Julie Hoffmann be the substitute representative for Dupaco during Amy's maternity leave and Lisa's bereavement. (App. 135, 165-66)

Attorney Shoemaker arranged for the Dubuque County Sheriff's Office to serve a subpoena to appear at the evidentiary hearing on Amy at her home address during her maternity leave. (App. 88)

Swift Delivery uncovered by Dupaco

Julie Hoffmann met with counsel for Dupaco on August 23, 2022 to prepare for the evidentiary hearing. To gain first-hand knowledge regarding the investigation into LeConte and Dupaco's mail procedures, Julie retraced each of the steps Amy took prior to going on maternity leave. Like Amy, Julie had never heard the name "Ron LeConte" before and confirmed through the employee phone directory and Dupaco's intranet that he was not employed by Dupaco. Julie similarly spoke with Abby Kramer in the main mailroom at Dupaco's JFK branch and Abby reiterated to Julie the same information she told Amy. (App. 135, 245 L:1-10)

After Julie thoroughly reconstructed Amy's steps, she began performing her own inspection. After brainstorming additional investigative avenues with Dupaco's counsel, Julie decided to contact Deb Digman, the long-time

executive secretary to Dupaco's leadership team. While Julie did not think Deb had any special knowledge of Dupaco's mail procedures, she knew Deb had vast institutional knowledge relating to Dupaco. Deb confirmed to Julie that LeConte was not an employee of Dupaco but told Julie he may have a courier business under a different name. After Deb did some research of her own, she called Julie and explained that LeConte owned a business called Swift Delivery, and while she could not locate any contract or written document verifying the agreement, she believed Dupaco had an oral contract with Swift Delivery to sign for certified mail. (App. 135, 243 L:10-16; 244 L:1-5; 255 L:1-13)

Trout retained a private investigator to find LeConte

Meanwhile, Shoemaker retained a private investigator in early August to track down LeConte. Shoemaker received a report from his private investigator on August 9, 2023 and first spoke with LeConte on the phone several weeks later on August 23, 2022. The next day, without notifying counsel for Dupaco, Shoemaker drove to Dubuque to obtain LeConte's signature on an affidavit, and then returned to Cedar Rapids. (App. 170, 186)

Dupaco and its attorneys did not know that Shoemaker had located LeConte until the affidavit of LeConte was filed on the afternoon of August 24, 2022, right around the same time Dupaco was uncovering its connection to Swift Delivery. According to LeConte's affidavit, Swift Delivery retrieved Dupaco's mail from the post office, placed it in a bin, took the bin to Dupaco's

JFK branch and left it in the vestibule. LeConte had no contact with any Dupaco employees during this process. (App. 89)

Dupaco dismissed its request for hearing

Once Dupaco learned LeConte owned Swift Delivery, which had an oral contract with Dupaco, its attorneys moved to dismiss its request for hearing, which was granted by the district court on the same day. While Dupaco maintained (and still maintains) it never received the notice of disallowance, it conceded that the evidence showed that the notice of disallowance was mailed to Dupaco via certified mail and received by LeConte, an agent of Dupaco. (App. 92-101, 108-109)

Trout sought $24,351.45 in sanctions

After the district court granted Dupaco's motion to dismiss and canceled the evidentiary hearing, Trout filed a motion for sanctions against Dupaco and its attorneys, McKenzie Blau and Thomas Bright. According to Trout, Dupaco's argument that the notice of disallowance was not given to Dupaco via certified mail addressed to Dupaco at the address stated in the claim was not warranted by existing law. (App. 112) Trout also contended that Dupaco and its attorneys,

> filed its claim for an improper purpose, specifically to coerce a settlement from… [Trout] on a debt that [Dupaco] knew… [Connie's estate] did not owe at the time of filing.

(App. 114) Trout did not explain why he included a claim he believed his mother's estate did not owe in the estimated debts on the Report and Inventory. (App. 29-34)

Trout also stated that Dupaco failed to conduct a reasonable investigation and that Dupaco intentionally presented false information to the district court. No invoices, hourly rates, expense entries or billing descriptions were included with Trout's motion for sanctions to support his claim for $24,351.45 in legal fees, costs and expenses. (App. 114-127)

Dupaco and its counsel filed a timely resistance to Trout's motion insisting that Dupaco's request for hearing and arguments in support thereof were based on a reasonable investigation into the facts at the time they were filed, reasonably based on current law, and were withdrawn within 48 hours after Dupaco discovered additional facts while preparing for the August 31, 2022 hearing. Dupaco also emphasized in its resistance that neither Dupaco nor its attorneys intentionally presented false information to the district court. Dupaco also averred that its claim was legitimate, filed for a proper purpose, and based on a loan that Connie was paying prior to her death. The resistance was verified by Julie Hoffmann on behalf of Dupaco. (App. 130-144)

Motion for sanctions hearing

The hearing on Trout's motion for sanctions against Dupaco and its counsel was held on November 3, 2022 at the Linn County Courthouse before Judge Valerie Clay. (App. 171) The morning of the hearing, Shoemaker filed an attorney fee affidavit with a one-page itemization of legal services attached to support Trout's request for $24,431.45 in sanctions. The itemization of services contained little detail. Many entries had one- or two-word descriptions of the services performed (i.e. "Research", "Review File", "Review Order" and "File Affidavit"). (App. 168-170) Dupaco's attorneys objected to the admission of the attorney fee affidavit and itemization of services because they were filed that morning and Dupaco's counsel did not have the opportunity to review it prior to the hearing. Judge Clay overruled Dupaco's objection and admitted it into evidence. (App. 213 L:22-25; 214 L:1-3)

According to the itemization of services, Shoemaker's hourly rate was $350 and he performed 68.2 hours of work in response to the sanctionable filings. Shoemaker explained that a portion of the nearly 55 hours of research time he included in his itemization was spent interviewing post office workers so he could understand postal relations and how the post office processed mail. (App. 218 L:13-25)

Attorney Blau, Attorney Bright, Amy Manning and Julie Hoffmann traveled to Cedar Rapids for the hearing. Trout did not appear at the hearing. Attorney Shoemaker's main arguments at the hearing were that it was

"inconceivable" that any reasonably competent attorney would file a request for hearing after the 20-day bar date and that service of the notice of disallowance was complete under the statute when it was placed in the stream of mail. (App. 214 L:16-21; 215 L1-25)

Attorney Bright advocated on behalf of Dupaco that it was critical to consider what Dupaco and its attorneys knew at three key points in time: (1) on May 13, 2022 when the request for hearing was filed; (2) on June 1, 2022 when its reply was filed; and (3) on July 1, 2022 when Attorney Bright attended the short hearing at the Linn County Courthouse. On May 13, 2022, all Dupaco and its attorneys knew was that its claim had been disallowed, that Shoemaker's affidavit claimed that notice had been sent in the mail to Dupaco and that no one at Dupaco had received the notice. (App. 236 L:2-25; 237 L:1-25; 238 L:1-25)

On June 1, 2022, Dupaco and its attorneys knew that an undated, partially filled out domestic return receipt was signed by a "Ron LeConte," who was not an employee of Dupaco. Nobody in the Member Solutions Department or the main mailroom at the JFK branch knew who LeConte was. Dupaco and its counsel were also aware of irregularities in some of the other exhibits attached to Trout's resistance. (App. 240 L:1-25; 241 L:1-25; Diagram 1). Dupaco and its attorneys did not uncover any additional facts prior to the July 1 hearing because the parties stipulated ahead of time that the hearing

would be for legal argument only. (App. 242 L:1-25; 243 L: 1-18) Finally, Attorney Bright averred that this issue would not happen again because Dupaco has changed its mail practices relating to estate claims. (App. 251 L:15-21)

Amy Manning's testimony

Amy testified in-person at the hearing that she has an associate degree from Northeastern Iowa Community College and she has been employed by Dupaco for seven years. When counsel for Dupaco asked Amy what kind of loan Connie had with Dupaco, Shoemaker objected claiming any background information was irrelevant to the motion for sanctions. Judge Clay sustained Shoemaker's objection. (App. 220 L:1-23; 223 L:7-25)

Barred from eliciting basic background information relating to the claim, Amy moved on and discussed her extensive experience with filing claims in estates as well as the steps she took to investigate the identity of LeConte. She emphasized that she did not know about Dupaco's oral contract with Swift Delivery when she signed her affidavit. (App. 224 L:12-23; 228 L:1-25; 229 L:1-25; 230 L:1-25)

District court levied sanctions against Dupaco and its attorneys

The district court granted Trout's motion for sanctions finding that Dupaco's reply filed on June 1 violated rule 1.413. The district court specifically

took issue with Dupaco's counsel and Amy's failure to contact the post office to confirm whether LeConte was an employee before filing the reply. The district court downplayed Dupaco's one week deadline to file the court-ordered reply, finding that "a reasonable attorney would have simply asked the Court for an extension of time…" (App. 183)

The district court ruled that counsel's assertions in paragraphs 9, 10, 12 and 13 of Dupaco's reply relating to the tracking numbers were "patently incorrect," the district court was "unable to explain what Blau was looking at when she reached her conclusions," and that Attorney Blau's assertions caused the district court confusion and wasted time. The district court also criticized Attorney Blau for not correcting her errors through subsequent filings, "leaving this [district court] to have to sift through the arguments." (App. 184-85)

As to the amount of sanctions, the district court found Trout's request for $24,431.45 for 68.2 hours of work was not reasonable and was not supported by the record. The district court, without explanation, decided that the amount should be limited to 40 hours at Shoemaker's hourly rate of $350, with $5,000 assessed against Attorney Blau, $2,000 assessed against Attorney Bright and $7,387.60 assessed against Dupaco. This appeal followed. (App. 185-86, 188-190)

ARGUMENT

Iowa Rule of Civil Procedure 1.413 requires that all motions and pleadings must, to the best of counsel's knowledge and belief after reasonable inquiry, be well grounded in fact and either warranted by existing law or by a good faith argument for the modification of existing law. Rule 1.413 further provides that if a motion or pleading is filed in violation of the rule, the court is to impose an appropriate sanction on the person who signed it. Iowa Code § 619.19 mirrors rule 1.413 in substance.

Rule 1.413 creates three duties: "reading, inquiry, and purpose elements." *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 272-73, 276-77, 279 (Iowa 2009). Compliance with the rule is determined at the time the paper is filed and not with hindsight gained from evidence discovered later. *Id.*; *Weigel,* 467 N.W.2d at 280-81. The test is "reasonableness under the circumstances," and the standard to be used is "that of a reasonably competent attorney admitted to practice before the district court." *Id.* Because rule 1.413 is based on Federal Rule of Civil Procedure 11, courts look to federal decisions applying rule 11 for guidance. *Mathias*, 448 N.W.2d at 445.

I. Dupaco and its counsel undertook a reasonable investigation into the facts supporting its filing and sought a hearing on their claim in good faith.

Preservation of Error

Error was preserved as Dupaco and its counsel argued in their resistance to the motion for sanctions and at the hearing that a reasonable investigation into the facts had been conducted. (App. 133-39, 227 L:1-25; 228 L:1-25; 229 L:1-15; 246 L:22-25; 247 L:1-10) The district court's order finding a violation of rule 1.413 and assessing sanctions found otherwise. (App. 183-85)

Standard of Review

Review of an order imposing sanctions is by writ of certiorari and is reviewable for an abuse of discretion. *Mathias,* 448 N.W.2d at 445. The Court will find an abuse "when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Schettler v. Iowa Dist. Court,* 509 N.W.2d 459, 464 (Iowa 1993). "Unreasonable" in this context means not based on substantial evidence. *Citizens' Aide/Ombudsman v. Rolfes,* 454 N.W.2d 815, 819 (Iowa 1990).

A. Dupaco and its counsel conducted a reasonable inquiry into the facts.

Under rule 1.413, an attorney must conduct a reasonable inquiry into the facts before a paper is filed with the court. *Mathias,* 448 N.W.2d at 445. The ABA Section on Litigation as set forth a list of factors to be considered in determining whether a reasonable inquiry into the facts has been made, including the following factors that are relevant here: **(a)** the amount of time that was available to the signer to investigate the facts; **(c)** the extent to which

pre-signing investigation was feasible; **(d)** the extent to which pertinent facts were in possession of opponent or third parties or otherwise not readily available to the signer; **(e)** the knowledge of the signer; and **(f)** the extent to which counsel relied upon his or her client for the facts underlying the pleading, motion or other paper. ABA Section on Litigation, *Standard and Guidelines for Practice under Rule 11 of the Federal Rules of Civil Procedure* (1988), *reprinted in* 121 F.R.D. 101, 114 (1988).

Dupaco and its counsel conducted a reasonable inquiry into the facts prior to the one-week deadline it had to file the reply. First, Dupaco's attorneys interviewed Amy about her process for filing claims in estates and receiving disallowances. Amy had been filing 15-20 claims in estates per month month for the last five years. Out of approximately 1,200 claims filed, this was the first time she failed to receive a notice of disallowance. (App. 227 L:1-25; 234 L:13-23; 251 L:19-21) Amy and Dupaco's counsel also investigated whether LeConte had authorization to sign certified mail on behalf of Dupaco. Amy checked in three different databases to determine if LeConte was an employee of Dupaco. All three databases showed he was not an employee. Amy also researched Dupaco's general mail processes and met with Abby Kramer, the head associate in the main mailroom at Dupaco's JFK branch. Abby thought LeConte was the gentleman she occasionally saw dropping off mail, but she

believed that gentleman worked for the post office. (App. 133-35, 228 L:1-22; 254 L:14-19)

1. *Dupaco and its counsel conducted reasonable inquiries that were likely to lead to relevant evidence.*

The district court chided Amy and Dupaco's counsel for failing to confirm LeConte's employment status with the post office prior to filing the reply. (App. 183) Dupaco and its counsel included the very qualified information relating to the post office in Amy's affidavit ("***To the best of my knowledge***, Ron LeConte is an agent of the United States Post Office") because it was the view of the head mailroom associate at Dupaco that LeConte worked for the post office, and it provided an explanation for LeConte's signature on the domestic return receipt. (App. 51-2, 228 L:11-22) (Emphasis added) Had Dupaco or its counsel called the post office (assuming the post office would have been able to answer the question as to whether LeConte was an employee) the answer would not have led Dupaco any closer to figuring out who LeConte was, other than ruling out that he was an employee of the post office. (App. 89)

The amount of investigation required in any case depends on both the time available to investigate and on the probability that more investigation will turn up important evidence. *Szabo Food Serv., Inc. v. Canteen Corp.*, 823 F.2d 1073, 1083 (7th Cir. 1987) Inquiry that is unlikely to produce results is

unnecessary. *FDIC v. Elefant,* 790 F.2d 661, 667 (7th Cir. 1986). Here, the inquiry that the district court found Dupaco and its counsel should have made would not have yielded probative evidence. Given the one week Dupaco had to investigate before the district court-imposed deadline, it was reasonable for Dupaco and its counsel to forgo investigative avenues that were unlikely to lead to relevant information.

2. *The fictitious name of LeConte's business was not readily available to Dupaco.*

Swift Delivery, the name of LeConte's business, was the key piece of information that was needed to uncover the connection between LeConte and Dupaco. The first time "Swift Delivery" appeared in the record for this case was August 24, 2022, when LeConte's affidavit was filed with the district court. 48 hours later, the district court granted Dupaco's motion to dismiss its request for hearing. (App. 89, 92-101)

Dupaco's investigative efforts to identify LeConte's connection to Swift Delivery were hampered by LeConte's failure to complete the domestic return receipt properly by indicating he was an agent of Swift Delivery. (App. 42) Moreover, all Dupaco employees who were questioned by Amy had never heard of LeConte. LeConte similarly admitted in his affidavit that he had no interaction with Dupaco employees since all he did was drop off a mail bin in an enclosed entrance at Dupaco's JFK branch. Finally, the fact that the

contract between Dupaco and Swift Delivery was oral further complicated Dupaco's efforts. Since there was no documentation to substantiate the relationship, it required locating the one employee who had knowledge of the oral contract. (App. 89, 135, 138, 244 L:1-5; 255 L:1-13)

3. *Counsel for Dupaco reasonably relied on first-hand information from experienced employees of Dupaco.*

Dupaco's counsel reasonably relied on Amy and other employees of Dupaco in obtaining the facts that formed the basis for its reply. (App. 51) The Iowa Supreme Court has held that relying on representations of experienced individuals with knowledge of key facts does not rise to the level of sanctionable conduct. *See Schettler,* 509 N.W.2d at 468 (relying on client's prior attorney and client's accountant regarding a company's net worth constituted a reasonable investigation into the facts).

Counsel for Dupaco reasonably relied on Amy's statement that she never received the notice of disallowance because there was no other source for that information besides Amy, and possibly other employees in the Member Solutions Department with whom Amy had already consulted. Amy had first-hand information that she had not received the notice of disallowance. (App. 220 L:1-19; 227 L:1-8) Still, counsel for Dupaco questioned her thoroughly and did not accept Amy's version of the facts on faith alone. Receipt of the

disallowance was also not logged in Dupaco's Workflow History where all correspondence was tracked. (App. 147-49) Counsel for Dupaco pressed Amy for further information and learned that all legal filings were routed to her at the Member Solutions Department. Also, after Trout filed his resistance with the attachments, Dupaco's counsel learned that the disallowance was incorrectly addressed to "Amy Manning at P.O. Box 179…" instead of to Dupaco, as the Claimant. Iowa Code § 633.439. As the addressee, Amy was the person who should have received the notice of disallowance and she emphatically stated that she had not received it. (App. 41-2, 196 L:7-9; 241 L:6-12)

Amy's account that she had not receive the notice of disallowance was also plausible. Amy had worked at Dupaco for seven years and it was one of her job duties to prosecute estate claims on behalf of Dupaco. She filed at least 15-20 estate claims per month. If Amy received the disallowance, she would have had every incentive to promptly file a request for hearing, as she had done so many times in the past. (App. 220 L:1-23; 224 L:13-25; 234 L:13-23) There is no reason for Dupaco's counsel to distrust Amy's narrative or find it not plausible. An attorney is not required to resolve all factual issues against the client. *Mar Oil, S.A. v. Morrissey*, 982 F.2d 830, 844 (2d Cir. 1993).

As to determining the connection between Dupaco and Swift Delivery, Dupaco's attorneys questioned Amy diligently on this point. After checking

three different databases to determine if LeConte was an employee and asking every other employee at the Asbury branch if they knew LeConte, Amy took her inquiry to the main mailroom at the JFK branch to see if the mailroom employees knew of LeConte. Counsel for Dupaco and Amy reasonably believed that the head associate in the main mailroom, whose job duties exclusively involved dealing with the mail, would know the name of an individual who was authorized to sign certified mail on behalf of Dupaco. (App. 133, 227 L:12-23; 228 L:1-22)

At the hearing on Trout's request for sanctions, Attorney Bright explained how Julie Hoffmann eventually uncovered the oral contract between Dupaco and Swift Delivery after meeting with the long-time executive secretary to the leadership team, Deb Digman, who also undertook an investigation of her own to discover this information. (App. 135, 244 L:1-5; 255 L:1-13) The district court was displeased that there was an employee at Dupaco who knew about the oral contract, and yet it took Dupaco's counsel until August 24, 2022 to uncover the specifics. (App. 243 L:19-23) The district court characterized it as "sloppy internal procedures where…one hand does not know what the other is doing…" (App. 246 L:9-11; 251 L:8-10)

The district court's notion that the institutional knowledge of a long-time executive secretary should be imputed to every other employee of Dupaco is an unreasonable standard. The district court's finding implied that Dupaco

and its counsel should have interviewed all 700 of Dupaco's employees to see if any had knowledge relating to LeConte. This would have been impossible given the one-week deadline. There is no support in Iowa law for such a robust and protracted pre-filing investigation. (App. 246 L:9-11; 251 L:8-10) "It is not necessary that an investigation into the facts be carried to the point of absolute certainty." *Kraemer* v. *Grant County,* 892 F.2d 686, 689 (7th Cir. 1990). Additionally, courts have found that the failure to perform a particularly onerous task does not amount to egregious conduct warranting sanctions. *Dubois v. U.S. Dep't of Agric.,* 270 F.3d 77, 83 (1st Cir. 2001). In *Dubois*, the 1st Circuit held that counsel's failure to independently survey 150 Forest Service units was not a violation of rule 11. In this case, failing to interview 700 employees of Dupaco in a one-week timeframe also did not violate rule 1.413. *Id.*

In the context of deposing a corporate designee, courts have found that "i]t is often impossible in an enterprise where employees have distinct roles for there to be one person who can answer all questions posed during a deposition…" *Weinstein v. D.C. Hous. Auth.*, 931 F. Supp. 2d 178, 185 (D.D.C. 2013). Similarly, courts have held that a deposing party may not demand that a corporate designee be prepared to speak with encyclopedic authority about the corporation. *CMI Roadbuilding, Inc. v. Iowa Parts, Inc.,* 322 F.R.D. 350, 361 (N.D. Iowa 2017). The district court abused its discretion in foisting an unreachable

standard of knowledge and investigation on Dupaco and its counsel that was not supported by Iowa law.

4. *Dupaco conducted a reasonable investigation given the one-week deadline.*

The district court's order instructing Dupaco to file a reply by 4:30PM on June 2 was entered the Wednesday afternoon before Memorial Day weekend. Dupaco and its counsel took the one-week deadline seriously since the Order warned that the, "[f]ailure of Dupaco…to file a reply may result in the [district court] denying the Request for Hearing for the reasons stated in the Resistance." (App. 46-47) In its order granting the motion for sanctions, the same district court and judge that instituted the one-week deadline also found that "a reasonable attorney would have simply asked the Court for an extension of time to conduct further inquiry." (App. 183) This finding was not based on substantial evidence. The order mandating that Dupaco file a reply indicated that if a timely reply was not filed, its request for hearing was in danger of being denied. (App. 46) A reasonable attorney would have considered it an unreasonable risk to request additional time given the district court's threat of denying Dupaco's request for hearing if a timely reply was not filed.

B. Dupaco's filings had a reasonable basis in fact.

Rule 1.413 requires that a pleading, motion, or paper be well grounded in fact. A document is well grounded in fact if it has a reasonable basis in fact. The rule is intended to deter baseless filings in district court. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). The United States Supreme Court has equated the term "clearly baseless" to "fantastic," "fanciful" or "delusional." *Denton v. Hernandez*, 504 U.S. 25, 33-34 (1992). Sanctions are not appropriate merely because a pleading or motion does not prevail on the merits. Losing on the merits, without more, does not warrant the imposition of sanctions. *Hartman v. Hallmark Cards, Inc.*, 833 F.2d 117, 124 (8th Cir. 1987).

In its order assessing sanctions, the district court picked apart Dupaco's allegations involving the tracking numbers on the mailings. These arguments were part of a bigger premise asserted by Dupaco and its attorneys; that there were enough irregularities in the exhibits to Trout's resistance that reasonably called into question whether Dupaco was "given" notice under the operative statute. *See* Iowa Code §§ 633.439; 633.442. (App. 49, 173, 174, 176, 180, 184, 185, 240 L:4-25; 241 L:1-16)

A few of the irregularities highlighted by Dupaco and its counsel in support of its overarching argument were that:

- The notice of disallowance of claim was dated March 4, 2022 but the affidavit of mailing was not signed or filed until April 1, 2022; (App. 40, 45, 138, 200 L:7-11)

- The domestic return receipt was (1) not dated; (2) was not addressed to the claimant, Dupaco, as required by Iowa Code §633.439; and (3) no service type was selected indicating that the article was mailed via certified mail; and (Diagram 1; App. 48-9, 138, 200 L:1-17; 241 L:8-12)
- Trout's USPS tracking printout showed a mailing was delivered to a postal facility in Dubuque, Iowa but it did not indicate who picked up the mailing or the contents of the mailing. (App. 43)

The district court did not criticize any of these points in its Order assessing sanctions against Dupaco and its counsel. (App. 171-186)

In addition to the above irregularities, Dupaco and its counsel also examined Trout's USPS tracking printout, which was two pages long and was designated as Exhibit D. On the second page of Exhibit D, tracking number 9590 was the only tracking number listed on that page. Dupaco's counsel interpreted the first-class mailing postal product information and the certified mail feature on page two as applying to the related item with tracking number 9590 and concluded that tracking number 9590 was for a first-class mailing that included certified mail as a feature. (Diagram 2; App. 43)

Counsel then took tracking number 9590, which counsel believed was for a first-class mailing that included certified mail as a feature and input it into the USPS website tracking tool. The tracking tool indicated that the article was

delivered to a mailbox in Cedar Rapids, Iowa, which was not the address on Dupaco's claim. (App. 22) Based on all the foregoing irregularities in Trout's exhibits A through D, Dupaco's counsel reasoned that the "…the Notice of Disallowance was not given to [Dupaco] via certified mail addressed to [Dupaco] at the address stated in the claim…" (Diagram 1; App. 49, 86, 138)

Counsel now sees that it misinterpreted the information on Trout's Exhibit D and that the first-class mailing and the certified mail feature applied to tracking number 7020 on page one and not to tracking number 9590 directly adjacent to the product information on page two. (App. 43-4) Dupaco's attorneys made this statement in its reply, and it was fleetingly discussed at the beginning of the July 1, 2022 hearing until Shoemaker clarified that Dupaco was tracking the wrong item. Shoemaker explained that the domestic return receipt (9590) was delivered to his office in Cedar Rapids and the mailing with the notice of disallowance (7020) was delivered to a postal facility in Dubuque. (App. 196 L:10-19) Dupaco made no mention of that argument after that hearing.

The district court relied heavily on the transposition of the tracking numbers in finding that Dupaco's reply violated rule 1.413 and warranted sanctions. (App. 173-74, 176, 180, 184, 185) Rule 1.413, however, permits the imposition of sanctions only when the "pleading, motion, or other paper" itself is frivolous, not when one sub-argument in support of an otherwise valid

motion is deemed by the district court to be unjustified. *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1540–41 (9th Cir. 1986). The tracking number error did not make Dupaco's overall argument "fanciful" or "delusional." *Denton*, 504 U.S. at 33-34. The domestic return receipt was still not dated and was not addressed to the Claimant, Dupaco, as required by Iowa Code § 633.439. *See* Diagram 1. The affidavit of mailing was still signed and filed four weeks after it was purportedly mailed. In short, even without the tracking number argument, there were still enough irregularities in Trout's exhibits to raise doubts as to whether Dupaco was "given" notice under the operative statute.

Counsel regretted the error regarding the tracking numbers that was made in the reply. Litigants and attorneys make mistakes. Like Federal Rule 11, rule 1.413 is not directed to isolated factual errors that do not undermine a party's legal theory. *Forrest Creek Assoc., Ltd. v. McLean Sav. and Loan Ass'n,* 831 F.2d 1238, 1244–45 (4th Cir.1987). As the 8th Circuit found in *Burull v. First Nat. Bank of Minneapolis*, "…every unsuccessful complaint, at some level of analysis, contains either a flawed argument or an unsupported allegation." 831 F.2d 788, 789–90 (8th Cir. 1987); *see also Navarro-Ayala v. Hernandez-Colon*, 3 F.3d 464, 467 (1st Cir. 1993)(Rule 11 neither penalizes overstatement nor authorizes an overly literal reading of each factual statement). Here the district court abused its discretion in finding a violation of rule 1.413 when it failed to

look at Dupaco's reply as a whole and instead fixated on one isolated error that did not jeopardize Dupaco's overarching argument. (App. 184-85)

The district court also found that counsel's tracking number reversal "distracted the parties and the Court…" and caused "confusion and waste of time..." The tracking numbers were only brought up briefly at the July 1, 2022 hearing and Judge Miller asked no questions and made no comments on that topic. Moreover, the tracking numbers were not what convinced Judge Miller to set an evidentiary hearing since he held, "I think we're going to have to have Ms. Manning or someone with knowledge come in…I don't think we can go any further without her, actually." (App. 184-85, 202 L:1-25; 203 L:1-21) The district court's conclusion that the tracking numbers wasted time and distracted the court was not based on substantial evidence in the record and constituted an abuse of discretion.

Even though a generous portion of the district court's order was devoted to attacking Dupaco's tracking number argument, the tracking numbers were not mentioned at the hearing on the motion for sanctions at all. Judge Clay interjected several times throughout the hearing to ask questions of counsel and Amy Manning, but she never asked a single question about the tracking numbers. (App. 173-74, 176, 180, 184, 185, 234 L:1-25; 243 L:17-23)

The district court characterized Attorney Blau's conclusions relating to the tracking numbers as "patently incorrect." Similarly, Attorney Shoemaker

called the assertions a "farce," and said, "I can't even find the words to respond to it because it's just so ridiculous." Yet, at the same time, the district court pointed to the 50 hours of research Shoemaker apparently had to do to "make sense" of Blau's allegations. (App. 184, 196 L:3-4; 197 L:2-3) This is akin to the Eighth Circuit's finding in *Kirk Capital Corp. v. Bailey*, where the Court reduced the district court's award of attorneys' fees, and observed,

> there is something very inconsistent with the assertion that the plaintiffs filed a patently frivolous complaint meriting sanctions under Rule 11 and contending that it took 279.10 or even 179.10 hours of legal work in order to reveal what the defendants contend is obvious.

16 F.3d 1485, 1491 (8th. Cir. 1994). It is equally incompatible for the district court to proclaim Dupaco's assertions were "patently incorrect" and then in the same paragraph, justify Shoemaker's contention that it took him 50 hours of research to make sense of those "patently incorrect" assertions. *Id.* (App. 184)

The district court also denounced Attorney Blau for failing to correct the tracking number transposition error through subsequent filings. (App. 184) Even though the tracking number assertions were confined to the reply and were not made in any other filing, the Iowa Supreme Court has specifically rejected any notion that rule 1.413 imposes a continuing duty on counsel to dismiss an action if counsel later learns that the facts are not as counsel believed prior to filing. *Mathias*, 448 N.W.2d at 447. Any facts developed after a paper is filed are simply irrelevant to the propriety of the filing. The perfect

acuity of hindsight has no place in a rule 1.413 motion for sanctions. *Schuettler,* 509 N.W.2d at 468.

C. Dupaco's filings were interposed for a proper purpose.

"The improper purpose clause seeks to eliminate tactics that divert attention from the relevant issues, waste time, and serve to trivialize the adjudicatory process." Mark S. Cady, *Curbing Litigation Abuse and Misuse: A Judicial Approach,* 36 Drake L.Rev. 483, 499 (1987) (hereinafter Cady). Dupaco filed its probate claim based on a legitimate loan that Connie was paying prior to her death. Trout included Dupaco's claim in the estimated debts on his mother's Report and Inventory. (App. 33) Dupaco filed its request for hearing and its reply because it did not receive, and has never received, a notice of disallowance of claim for Connie's estate. Neither of these purposes are improper.

II. The arguments presented by Dupaco and its counsel were reasonably rooted in existing law or a good faith argument for the extension of existing law.

Preservation of Error

Dupaco urged in its resistance to Trout's motion for sanctions and at the hearing that its arguments were warranted by existing law or for a good faith

argument for the extension, modification, or reversal of existing law. The district court held otherwise when it found Dupaco and its' attorneys violated rule 1.413 and assessed sanctions. (App. 139-44, 180, 186, 248 L:14-25; 249 L:1-25)

Standard of Review

The Court reviews a district court's order imposing sanctions for an abuse of discretion. *First Am. Bank & C.J. Land, LLC v. Fobian Farms, Inc.*, 906 N.W.2d 736, 744 (Iowa 2018). A district court abuses its discretion when it exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Rowedder v. Anderson*, 814 N.W.2d 585, 589 (Iowa 2012) (quoting *Schettler*, 509 N.W.2d at 464). An erroneous application of the law is clearly untenable. *Id.*

Argument

Rule 1.413 imposes upon the pleader the duty to present an objectively reasonable argument in support of its view of what the law is or should be. *Schettler*, 509 N.W.2d at 466. For a legal argument to warrant sanctions "it must be clear … that there is no chance of success under the existing precedents, and where no reasonable argument can be advanced to extend, modify or reverse the law as it stands." *Adams v. USAA Cas. Ins. Co.*, 863 F.3d 1069, 1083 (8th Cir. 2017). Conversely, where the law is unsettled, or where the issue is one of first impression, unsuccessful legal arguments are unlikely to violate rule

1.413. *City of Burlington v. S.G. Cons. Co.,* No. 12-1985, 2014 WL 3747692 at *6 (Iowa Ct. App. July 30, 2014).

A. Dupaco's legal argument had merit given the lack of Iowa precedent addressing when the notice of disallowance was effective.

The Iowa Code requires the administrator of an estate to give the claimant a notice of disallowance by certified mail addressed to the claimant at the address stated in the claim. Iowa Code § 633.439. One of the legal disputes between the parties was whether the giving of the notice of disallowance was effective upon mailing or whether it was effective upon receipt. There was no case law in Iowa that addressed this issue in the context of a disallowance of a probate claim under Iowa Code § 633.439.

Trout has claimed throughout the proceedings that it was irrelevant that Dupaco did not receive the notice of disallowance, all that mattered was that the disallowance was placed in the stream of mail. This proposition was apparently so well developed that Shoemaker contended that "the Iowa Supreme Court has held many, many times….there are dozens of citations…" that hold that a disallowance is effective upon mailing. (App. 199 L:2-13; 215 L:3-7) One of the "dozens of citations" Shoemaker relied upon was the dissenting opinion in *Escher v. Morrison* which involved a restricted certified mailing of a notice of termination of a farm tenancy. 278 N.W.2d 9 (Iowa

1979). Significantly, the majority opinion of the Court in *Escher* held that notice cannot be given if it is not delivered and returned unclaimed. *Id.* at 11. *Escher* is distinguishable to this case as it involved a restricted certified mailing to terminate a farm tenancy under a specific Iowa statute. The majority opinion, however, stands for the proposition that notice cannot be "given" when a certified mailing is not properly delivered, which mirrored Dupaco's position in this case. *Id.*

Trout's attorney also cited *Gengler v. Orozco*, which he incorrectly claimed was an Iowa Supreme Court case, in support of his contention the disallowance was effective upon mailing. No. 11-1583, 2012 WL 5356039 (Iowa Ct. App. 2012). (Tr. I 8 L:18-25) *Gengler* is unpublished and not on point because it dealt with whether a notice of tax sale and right of redemption was properly delivered when it arrived at the correct address and received by the intended recipient's son. *Id.* Here, Dupaco reasonably believed that the disallowance, if delivered at all, was given to someone without authority to sign on behalf of Dupaco.

Finally, Shoemaker cited to *Ross v. Hawkeye Ins. Co.*, from 1891, where the Court found that mailing was all that was required to effect service of a notice of cancellation of an insurance policy for failure to pay a premium. 83 Iowa 586, 587 (Iowa 1891). This case is not relevant because it involved a private insurance cancellation where the statute at issued required that, "such

notice may be served either personally or by registered letter addressed to the assured at his post office address named in or on the policy…" *Id.* The statute in this case required Trout to **give** notice via certified mail addressed to Dupaco, as the Claimant, at the address stated in the probate claim. Iowa Code § 633.439. The statute in *Ross* had different language and did not require the cancellation to be **given** to the insured. *Id.*

Dupaco and its counsel argued that there was no case law in Iowa that addressed this issue in the context of a disallowance of a probate claim, but argued that in *Hearity,* the Iowa Supreme Court noted that receipt of certified mail, not mere certified mailing in-and-of-itself, constituted notice as a matter of law. *Iowa Supreme Ct. Att'y Disciplinary Bd.* v. *Hearity,* 812 N.W.2d 614, 620 (Iowa 2012); *See Burgess v. Great Plains Bag Corp.*, 409 N.W.2d 676, 680 (Iowa 1987). (App. 139, 250 L:1-10) At the sanctions hearing, Shoemaker argued that Dupaco was misrepresenting the law in *Hearity,*

> …and even in their resistance to the Motion for Sanctions, they continue to misrepresent the law…I'm pointing…to the citation to Hearity… which…they hold…[stands] for the proposition that receipt of certified mail…constitutes notice and that… is not at all what that case says … that case says, and I quote, "Plaintiffs deem to have notice of the contents… of accepted certified mail regardless of whether he read the document." So it has to do…with whether…plaintiff read the documents and not whether they were delivered.

(App. 216 L:13-25; 217 L:1-4) Shoemaker was looking at the wrong case when he made his misguided argument. Shoemaker was correct that the Court in

Burgess v. Great Plains Bag Corp. held that the plaintiff was deemed to have notice of contents of accepted certified mail regardless of whether he read the documents. 409 N.W.2d 676, 680 (Iowa 1987). But the Court in *Hearity* held that an attorney had acknowledged that he received the order suspending his law license and, "[r]eceipt of certified mail constitutes notice as a matter of law." 812 N.W.2d at 620. Dupaco and its counsel properly cited *Hearity* in support of their argument.

The district court concluded in its order for sanctions that, according to *L.F. Noll, Inc., v. Eviglo*, actual receipt is not required. 816 N.W.2d 391, 397 (Iowa 2012). (App. 180) In *L.F. Noll, Inc.*, the Court was interpreting the notice requirement in Iowa's long-arm statute, which was not identical to Iowa Code § 633.439. *Id.* at 394. The district court eventually acknowledged that, regardless of whether notice is given by mere mailing or by receipt, non-receipt of the mailing is circumstantial evidence as to whether or not the notice was actually sent. *Duder v. Shanks*, 689 N.W.2d 214, 218 (Iowa 2004) ("proof that an addressee did not receive a piece of mail is competent evidence that it was not mailed.")(citing *Liberty Mut. Ins. Co. v. Caterpillar Tractor Co.*, 353 N.W.2d 854, 858 (Iowa 1984)). And circumstantial evidence is equally as probative as direct evidence. *State v. Crawford*, 974 N.W.2d 510, 517 (Iowa 2022). Similarly, in *Allen v. City of Waukee,* a property owner's statement under penalty of perjury that he did not receive the notice was sufficient to generate a fact question as to defeat

summary judgment. No. 21-1814, 2022 WL 3067060, at *3 (Iowa Ct. App. Aug. 3, 2022) Likewise, in this case Amy stated under penalty of perjury that she had not receive the disallowance. (App. 51-2)

Dupaco and its attorneys' argument that service of the notice was complete upon delivery was not a frivolous argument. Iowa case law does not specifically address this issue, so there was no precedent to guide Dupaco and its counsel. *See City of Burlington,* No. 12-1985, 2014 WL 3747692 at *6 (Court of Appeals affirmed denial of sanctions because there was no precedent interpreting the mediation language in the contract). (App. 139)

B. Dupaco was justified in questioning whether the disallowance had been given.

Iowa Code § 633.439 provides that the estate may give the claimant a written notice of disallowance of claim. Iowa Code § 633.440 provides that such notice shall advise the claimant that the claim has been disallowed and be forever barred unless the claimant, within 20 days after the date of mailing the notice, files a request for hearing. Trout has protested that it was "inconceivable" that Dupaco and its counsel would file a request for hearing after the bar date. (App. 214 L:16-21)

The 20-day disallowance rule has been criticized as a "harsh rule" by the Iowa Supreme Court. *Bruce v. Wookey*, 154 N.W.2d 93, 96 (Iowa 1967).

In *Wolder v Rahm*, the Iowa Supreme Court noted that 20-day deadline was apparently chosen by the drafters to be consistent with the answer deadline, but the Court noted that the claimants are not actually given 20 days because the 20-day bar is triggered by the mailing of the notice. 249 N.W.2d 630, 633 (Iowa 1977).

Similarly, in *Bruce v. Wookey*, the Iowa Supreme Court found that the default procedures set forth in Iowa Rule of Civil Procedure 1.972 did not apply to a claimant who failed to file request for hearing within 20 days after disallowance of claim by administrator. 154 N.W.2d 93, 96 (Iowa 1967). The Supreme Court remarked in *Bruce* that "[w]ere we writing the statute, we would be inclined to subject the failure to file the request for hearing to the default procedures." *Id.* The Court in *Wolder* found the disallowance procedures incongruous and further held that,

> Operation of the statute is made still harsher by the judicially-noted recent breakdown in United States mail deliveries…Provisions of [§] 633.442 are more stringent than either the Uniform Probate Code or the Model Probate Code. They were apparently recommended more in the interest of neat and tidy estate proceedings than in the legitimate interests of claimants.

Id. Given the harshness of the disallowance provisions, Dupaco should not be required to take Trout or his attorney's affidavit of mailing at face value when Dupaco did not receive the notice of disallowance. This is especially true considering Trout had previously misrepresented to a Dupaco loan officer that

there were no other security interests or liens on the Chevy Equinox even though Trout knew that Dupaco already had a lien on the Equinox through the loan with his mom. (App. 154-58) It would not be unfathomable for Dupaco to question Trout's claim that he mailed the disallowance to Dupaco given his prior misrepresentations.

III. The district court abused its discretion when it ignored the *Rowedder* factors and assessed sanctions in an excessive amount against Dupaco and its counsel.

Preservation of Error

In its resistance to Trout's motion for sanctions, Dupaco and its counsel argued that sanctions were not warranted and the amount of sanctions sought by Trout was baffling, especially considering that no invoices, hourly rates, expense entries or billing descriptions were included with the motion. (App. 142) The district court admitted, over Dupaco's attorneys' objections, Shoemaker's attorney fee affidavit and the one-page itemization of services that he filed the morning of the hearing. (App. 213 L:22-25; 214 L:1-3) The district court awarded Trout $14,387.60 in sanctions, with $5,000 assessed against Attorney Blau, $2,000 assessed against Attorney Bright and $7,387.60 assessed against Dupaco. (App. 186)

Standard of Review

The Court's review is for an abuse of discretion, but it will correct erroneous applications of law. *Weigel,* 467 N.W.2d at 280.

Argument

Dupaco and its attorneys urge this Court to sustain the writ of certiorari and find that sanctions were not warranted in this case. Nevertheless, if the Court finds a violation of rule 1.413, Dupaco and its counsel implore this Court to find the district court abused its discretion in awarding sanctions in an exorbitant amount.

The primary purpose of rule 1.413 sanctions is to deter attorney and litigant misconduct, not to compensate the opposing party. *Barnhill,* 765 N.W.2d at 276. Under the American Rule, the losing litigant does not normally pay the opposing party's attorney's fees. *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y,* 421 U.S. 240, 247 (U.S. 1975). Therefore, any sanction imposed does not need to reflect actual expenditures. *Rowedder*, 814 N.W.2d at 589. The sanction chosen by the district court should be the least severe sanction adequate to deter a party from filing frivolous pleadings. *Navarro–Ayala,* 968 F.2d at 1426–27; *see Kirk Capital Corp.*, 16 F.3d at 1491.

In determining the proper sanction, the district court is to make specific findings as to "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the … violation." *Rowedder*, 814 N.W.2d at 590 (quoting *In re*

Kunstler, 914 F.2d 505, 523 (4th Cir.1990)). In weighing the severity of the violation, the district court is to consider the American Bar Association factors set forth in the *Barnhill* decision. *Id.* at 276–77.

In assessing sanctions against Dupaco and its counsel, the district court looked to Trout's request for sanctions in the amount of $24,431.45 and determined that it was "not reasonable and unsupported by the record." The district court then reviewed Shoemaker's affidavit where he claimed he spent 68.2 hours of work and decided, without any explanation whatsoever, that the amount should be limited to 40 hours of work at Shoemaker's hourly rate. (App. 185) The district court's lack of a substantive analysis of the reasonableness of Shoemaker's attorney fees constitutes an abuse of discretion.

Before the district court awarded sanctions in this case, it needed to find that the attorney fees sought by Trout and Shoemaker were reasonably necessary to defend against the sanctionable motions, "[w]hen a petition contains a mixture of frivolous and founded claims, only those expenses incurred in defending the frivolous claims may be awarded." Cady at 506. Perhaps the district court failed to determine the reasonableness of the fees because Shoemaker's itemization of services presented severe obstacles in making an accurate determination of attorney fees. The itemization of services provided was utterly devoid of details necessary to determine the reasonableness of the services and fees. (App. 170) Fee applications should

include contemporaneous time records of hours worked and rates claimed, plus a detailed description of the subject matter of the work with supporting documents if any. *Hensley v. Eckerhart,* 461 U.S. 424, 433, (1983). *Hensley* adds that "[w]here the documentation of hours is inadequate, the district court may reduce the award accordingly." *Id.* at 433. Because Trout's documentation of hours was grossly inadequate, the district court should have reduced the award much more than it did.

Moreover, a reasonableness inquiry necessarily requires a determination as to what extent Trout's expenses and fees could have been avoided and were self-imposed. When an attorney is called upon to defend against an adversary's purported unreasonable motion practices, the attorney must mitigate damages by correlating his response, in terms of hours and funds expended, to the merit of the claims. The mitigation requirement prevents a party from misusing rule 1.413 sanctions in order to benefit from the errors of opposing counsel. *INVST Fin. Grp., Inc. v. Chem-Nuclear Sys., Inc.*, 815 F.2d 391, 404 (6th Cir. 1987). The district court did not even attempt to determine what expenses of Shoemaker's could have been avoided or were self-imposed, which led to a sanction amount that is higher than Dupaco's claim. (App. 22)

A comparison of the *Barnhill* case to the case at bar illustrates that the sanctions in this case were out of line. In *Barnhill,* the Iowa Supreme Court found that a $25,000 sanction against an attorney was reasonable. 765 N.W.2d

at 280. The $25,0000 sanction was imposed by the district court, which found that,

> …the pleadings…filed by Barnhill…have in general such a confusing, convoluted, self-contradictory and elusively vague, ambiguous, indirect and constantly shifting quality as to compel the conclusion that the case was made up as it went along.

Id. at 271. Humphreys, the party seeking sanctions against Barnhill, requested $148,596.37 in sanctions. *Id.* at 277. In determining the amount of the sanction, both the district court and the Iowa Supreme Court emphasized the detail in Humphreys' itemization of services presented to the Court as well as the extent of the proceedings,

> …it was over sixteen, single-spaced pages with about 400 entries and the court file…of over four years…was at least twenty-two volumes… there were six sanctionable counts…five petitions, more than a dozen individually-named plaintiffs, eight motions for summary judgment against nine individually-named plaintiffs, a class certification appeal, limited remand procedures, and a summary judgment appeal…

Id. at 277-78. The Iowa Supreme Court concluded that the $25,000 sanction was appropriate. *Id.* at 280.

Here the district court found $14,387.60 was an appropriate amount to sanction Dupaco and its counsel for filing a reply which necessitated one 20-minute hearing. (App. 185) Likewise, Trout's itemization of services, which requested $24,431.45 in attorney fees, was less than one page long and contained 93 total words that were supposed to describe 33 separate fee entries and 68.2 hours of services. The word "Research" constituted the complete

description of services for 12 of Attorney Shoemaker's fee entries. (App. 170) In terms of the extent of the proceedings and the detail in the itemization of services, this case and *Barnhill* are polar opposites. The fact that the sanction in this case was only $10,000 lower than the sanction in *Barnhill* exemplifies the district court's abuse of discretion.

In weighing the severity of the violation, the district court was to consider the American Bar Association factors that were outlined in the *Barnhill* decision, including the following factors relevant here: (a) the good faith or bad faith of the offender; (d) any prior history of sanctionable conduct on the part of the offender; (l) burdens on the court system attributable to the misconduct, including consumption of judicial time; (m) the degree to which the offended person attempted to mitigate any prejudice suffered by him or her; and (p) the time of, and circumstances surrounding, any voluntary withdrawal of a pleading, motion or other paper. *Id.* at 276-277 (quoting *Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure American Bar Association Section of Litigation*, 121 F.R.D. 101, 125–26 (1988)).

Applying the severity factors demonstrates that if a violation is found at all in this case, it was slight. The request for hearing and subsequent filings were made in good faith on the basis that Dupaco had not received the notice of disallowance. (App. 229 L:2-7) Neither Attorney Blau nor Attorney Bright have previously been sanctioned and neither attorney has any disciplinary

history[8] in Iowa. Prior to Trout's motion for sanctions, this case took up very little of the court's time as only one 20 minutes hearing was held.

Likewise, Trout failed to mitigate any prejudice suffered by him. Shoemaker's refusal to communicate with Dupaco's counsel was cost prohibitive. (App. 136) Instead of contacting counsel for Dupaco and informing them that he located LeConte, Shoemaker chose to keep Dupaco in the dark, draft an affidavit and then spend three hours driving to and from Dubuque getting LeConte's signature. Similarly, the large amounts of time Shoemaker spent researching are unjustified given that the central dispute was a factual issue regarding whether LeConte had authority to sign for certified mail on behalf of Dupaco. (App. 170) Once Dupaco learned of the oral contract it had with Swift Delivery, its attorneys moved to dismiss its request for hearing, which was granted by the district court the same day. (App. 108) Given the modest infraction, if any, as well as the lack of detailed descriptions to make any kind of reasonable analysis, the district court abused its discretion is sanctioning Dupaco and its attorneys $14,387.60.

[8] Dupaco and its attorneys request that this Court take judicial notice of Blau and Bright's disciplinary history which can be found by searching the lawyer database on the Office of Professional Regulation's website at www.iacourtcommissions.org. Any attorney licensed in Iowa can be searched to see if the Iowa Supreme Court has entered any discipline orders, such as a public reprimand or a suspension order.

CONCLUSION

Dupaco and its counsel request that this Court sustain the writ of certiorari and reverse the district court's award of sanctions as the district court abused its discretion in finding a violation of rule 1.413 in this case.

REQUEST FOR NONORAL SUBMISSION

Dupaco and its attorneys respectfully request that this matter be submitted for review without oral argument.

By: /s/ McKenzie R. Blau

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Proof of Service & Certificate of Filing

I certify that on June 22, 2023, I, the undersigned party or person acting in their behalf, did serve Appellants' Final Brief on counsel for all parties to this action using the Iowa Judicial Branch EDMS system, which will send notification of such filing to all counsel and all parties to this action.

I further certify that on June 22, 2023, I filed Appellants' Final Brief with the Clerk of the Iowa Supreme Court using the Iowa Judicial Branch EDMS system.

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Dated this 22nd day of June 2023.

/s/ McKenzie R. Blau