IN THE COURT OF APPEALS
STATE OF GEORGIA

FORD MOTOR COMPANY, Defendant-Appellant, v. KIM HILL and ADAM HILL, surviving children and Co-Administrators of the Estates of Melvin Hill and Voncile Hill, deceased, Plaintiffs-Appellees.	CASE NO. A24A0657

BRIEF OF AMERICAN TORT REFORM ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT

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INTERESTS OF THE *AMICUS CURIAE*

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For over two decades, ATRA has filed *amicus curiae* briefs in cases before state and federal courts that have addressed important liability issues. ATRA submits this *amicus curiae* brief to address the disturbing absence of proportionality in the sanctions order entered by the trial court.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves the largest punitive damages award in Georgia history, dwarfing anything that preceded it. That award was not the product of a comprehensive trial on the merits with due consideration of competing evidence. Instead, it sprang from an order imposing sanctions grossly disproportionate to the alleged litigation misconduct.

Proportionality – having the punishment fit the "crime" – is the keystone of any sanction. Trial courts "should take pains neither to use an elephant gun to slay a mouse nor to wield a cardboard sword if a dragon looms." *Anderson v. Beatrice Foods Co.*, 900 F.2d 388, 395 (1st Cir. 1990). Yet, the civil "death penalty" sanction imposed in this case – effectively a default judgment – was an exercise in overkill that violated both proportionality and due process.

Appellate courts across the country carefully scrutinize sanction awards to determine whether a direct relationship exists between the conduct and the sanction entered. Further, appellate courts require the trial court to specifically address whether lesser sanctions will suffice. The courts are particularly concerned that sanctions orders not effectively determine the outcome of a case, thereby taking away a party's right to be heard on the merits.

The sanctions order on appeal in this case failed all these prongs. It did not address the availability of lesser sanctions. It imposed issue preclusion with respect to matters wholly unrelated to the conduct that the order purported to address. Ford was subjected to "trial by sanctions," all but mandating a verdict for punitive damages. Due process demands more.

ARGUMENT

I. Proportionality and Georgia law.

Without using the word "proportionality," this Court has required a trial court's sanctions award to be proportional to the conduct being redressed. For instance, extreme sanctions such as dismissal or default (functionally equivalent to what occurred in this case) should be imposed only where "a lesser sanction would not better serve the interests of justice." *North Druid Dev., LLC v. Post, Buckley, Schuh & Jernigan, Inc.,* 330 Ga. App. 432, 435, 767 S.E.2d 29, 32 (2014); *Harwood v. Great Am. Mngmt & Inv., Inc.*, 171 Ga. App. 488, 490, 320 S.E.2d 269, 271 (1984). Similarly, this Court has recognized that compliance with due process requires that any imposition of discovery sanctions be "both 'just' and 'specifically related to the particular "claim" which was at issue in the order to provide discovery.'" *Resource Life Ins. Co. v. Buckner*, 304 Ga. App. 719, 738, 698 S.E.2d 19, 35 (2010) (quoting *Serra Chevrolet v. Gen. Motors Corp.,* 446 F.3d 1137, 1151 (11th Cir. 2006)). That language was derived from the decision of United States Supreme Court in *Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982), in which the Court upheld a finding of personal jurisdiction based on the violation of a discovery order under Federal Rule of Civil Procedure 37(b)(2).

The Supreme Court there affirmed the sanction as "just" only after closely examining several relevant factors. For one, the sanctioned party *repeatedly* disregarded the trial court's discovery order. Even then, the sanctioned party was given an additional opportunity to avoid application of the sanction by producing information that would show an absence of personal jurisdiction. Further, the sanction was just because it specifically related to the underlying misconduct. That is, the remedy for the party's refusal to meaningfully participate in discovery regarding minimum contacts – "the critical issue in proving personal jurisdiction" – was a directed finding by the trial court that personal jurisdiction existed. 456 U.S. at 709.[1]

In a decision issued after the sanctions order here, the Georgia Supreme Court held, in review of an order excluding a witness, that the trial court should

[1]Most of the case law related to sanctions arises in the context of discovery disputes. The ultimate effect of a "death penalty" sanction is often the same, however, whether it arises in that context or, as in this case, in the putative exercise of the court's "inherent authority" to control litigation conduct. As a result, discovery cases are also discussed herein. Nonetheless, it bears noting that a common rationale for the imposition of such sanctions in the discovery context – the presumption that undisclosed evidence would have vitiated or at least severely damaged the withholding party's case – is not present in this case or other cases premised on conduct at trial. *See, e.g., Hammond Packing Co. v. State of Ark.*, 212 U.S. 322, 325 (1909) (recognizing the historical view that "for failure to give or produce such evidence, the law might authorize a presumption in a proper case against the party refusing, justifying the rendering of a judgment by default, as if no answer had been filed").

consider, among other factors, "whether a less harsh remedy than the exclusion of the witness would be sufficient to ameliorate the prejudice and vindicate the trial court's authority." *Lee v. Smith,* 307 Ga. 815, 824, 838 S.E.2d 870, 871 (2020). Consistent with this Court's earlier holdings, the Supreme Court reasoned that consideration of the level of remedy necessary and other factors would "allow a trial court to properly balance the circumstances surrounding a party's failure to comply with a pretrial scheduling, discovery, or case management order with the trial court's need to fashion an appropriate remedy when a party fails to comply with such an order." 307 Ga. at 824, 838 S.E.2d at 877-78. The Court emphasized that "[t]rial courts must remain mindful that only 'in an extreme case [should] the plaintiff's action . . . be dismissed or *the defendant [be] precluded from introducing evidence relating to his defense*, [because] these remedies are too drastic if less harsh sanctions are appropriate.'" 307 Ga. at 824, 838 S.E.2d at 878 (quoting *Ambler v. Archer*, 230 Ga. 281, 289, 196 S.E.2d 858 (1973) (italics added)).[2]

[2] In *General Motors Corp. v. Conkle*, 226 Ga. App. 34, 42, 486 S.E.2d 180, 188 (1997), this Court set out 12 factors for consideration in determining whether to impose the ultimate sanction of default or dismissal, including "the efficacy of alternative sanctions against the party or counsel." As a subsequent case later noted, however, that decision was physical precedent only. *Daniel v. Corp. Prop. Investors*, 234 Ga. App. 148, 505 S.E.2d 576 (1998). Neither of Georgia's appellate courts has since purported to apply the 12-factor test set out in *Conkle*.

In short, Georgia appellate courts require "balance," including the selection of "less harsh" sanctions where readily available, and that the sanctions "specifically relate[] to the particular 'claim'" at issue. Here, however, the sanctions order was not balanced, it was not close to a "lesser sanction" necessary to sustain the court's inherent authority, and it was wholly unrelated to the putative conduct at issue.

II. Proportionality throughout the Nation.

Courts throughout the nation generally require proportionality. *See, e.g., Pinkstaff v. Black & Decker (U.S.) Inc.*, 211 P.3d 698, 702 (Colo. 2009)(en banc)(sanctions "should be applied in a manner that effectuates proportionality between the sanction imposed and the culpability of the disobedient party"); *Millbrook Owners Ass'n, Inc. v. Hamilton Standard*, 257 Conn. 1, 17-18, 776 A.2d 1115, 1126 (2001) ("the sanction imposed must be proportional to the violation"); *Gonzalez v. Nissan N. Am., Inc.,* 369 Ill. App. 3d 460, 471, 860 NE.2d 386, 395 (2006) ("Because the dismissal was disproportionate to plaintiffs' misconduct and came without warning, it was an unjust sanction."); *Indiana State Police v. Est. of Damore,* 194 N.E.3d 1147, 1162 (Ind. Ct. App. 2022), *transfer denied,* 205 N.E.3d 200 (Ind. 2023) ("We must balance the prejudice from the violation of the motion in limine with the available sanctions. The sanctions must be proportional to the harm or prejudice."); *Grasser v. Grasser,* 909 N.W.2d 99, 104 (N.D. 2018)

("Sanctions must be reasonably proportionate to the misconduct."); *Adams v. Illinois Cent. R.R. Co.*, 2022 WL 170134 (Tenn. App. Jan. 19, 2022) ("The trial court must therefore consider whether the sanction is proportional to the failures at issue and whether 'other sanctions may be appropriate' under the circumstances."); *TransAmerican Natural Gas Corp. v. Powell,* 811 S.W.2d 913, 917 (Tex. 1991) ("The punishment should fit the crime."); *Carroll v. Akebono Brake Corp.*, 22 Wash. App. 2d 845, 887, 514 P.3d 720, 746 (2022)("when a trial court imposes a discovery sanction, the sanction imposed 'should be proportional to the discovery violation and the circumstances of the case'").

Indeed, as these courts recognize, "[t]he power to impose sanctions is a potent weapon and should, therefore, be deployed in a balanced matter. For that reason, proportionality is often a proxy for appropriateness." *Navarro-Ayala v. Nunez,* 968 F.2d 1421, 1426-27 (1st Cir. 1992) (reversing the trial court's imposition of a $20,000 sanction as "grossly disproportionate" and "therefore inappropriate"). Otherwise stated, "[t]he sanction imposed should be proportionate to the gravity of the offense." *Montana v. City of Chicago*, 535 F.3d 558, 563 (7th Cir. 2008).

When considering the proportionality of "death penalty" sanctions, a common refrain of other appellate courts across the nation is that such sanctions must bear a direct relationship to the behavior at issue and that harsh sanctions

should not be imposed when lesser sanctions are available. *See, e.g., TransAmerican,* 811 S.W.2d at 917 (noting the two requirements that "a direct relationship must exist between the offensive conduct and the sanction imposed" and a sanction "should be no more severe than necessary to satisfy its legitimate purposes"); *Stevenson v. Green,* 108 F.3d 333, at *3 (5th Cir. 1997) ("When the district court imposes such a 'death penalty' sanction, this court may also consider whether a less severe remedy would be more tailored to the specific misconduct at issue."). The appellate courts, moreover, are particularly and justifiably adverse to sanctions that effectively decide cases other than on the merits. *See, e.g., Ridgaway v. Mount Vernon Fire Ins. Co.,* 165 Conn. App. 737, 759, 140 A.3d 321, 335 (2016) ("the sanction of dismissal should be imposed only as a last resort, and where it would be the only reasonable remedy available"); *James v. Caterpillar, Inc.*, 824 F. App'x 374, 378 (6th Cir. 2020) ("motions for sanctions should not substitute for motions to dismiss or motions for summary judgment, which test the sufficiency of the complaint's allegations"); *Pinkstaff*, 211 P.3d at 703 ("If the trial court's actions in imposing sanctions 'substantially tip the balance in an effort to avoid prejudice and delay and thereby unreasonably deny a party his day in court, the reviewing court must overturn the decision of the trial court.'"); *Pamplin v. Victoria*, 138 Or. App. 563, 567, 909 P.2d 1245, 1247 (1996) (reversing trial court where it "made no attempt to explain why dismissal was the most appropriate

sanction as opposed to some other less onerous sanction"); *Gonzalez*, 369 Ill. App. 3d at 471, 860 N.E.2d at 395 ("such a drastic action, being the antithesis of a determination of a cause on its merits, should be employed only as a last resort after all other enforcement powers at the court's disposal fail") (quoting *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1054-55, 702 N.E.2d 274, 279 (1998)).

Reversing such a sanctions order in *Chudasama v. Mazda Motor Corporation*, 123 F.3d 1353 (11th Cir. 1997), the Eleventh Circuit noted that its "review should be particularly scrupulous lest the district court too lightly resort to this extreme sanction, amounting to judgment against the defendant without an opportunity to be heard on the merits." 123 F.3d at 1366 (quoting *Emerick v. Fenick Indus., Inc.*, 539 F.2d 1379, 1381 (5th Cir. 1976)). The court noted that "a district court abuses its discretion under Rule 37(b)(2) if it enters a default when 'less draconian but equally effective sanctions were available.'" *Id.* at 1371; *see also In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) ("The district court abuses its discretion if it imposes a sanction of dismissal without first considering the impact of the sanction and the adequacy of less drastic sanctions."); *Lawrence v. Curry Shack, Corp.,* 2019 WL 1493577, at *2 (S.D.N.Y. Apr. 3, 2019) ("dismissal without prejudice, rather than dismissal with prejudice, is proper because courts considering dismissal for failure to prosecute . . . must consider the efficacy of lesser sanctions"). "[T]he

imposition of such severe sanctions," the court in *Chudasama* wrote, "'is appropriate only as a last resort.'" *Id.* at 1372 (quoting *Malautea v. Suzuki Motor Co., Ltd.*, 987 F.2d 1536, 1542 (11th Cir. 1993).

Nine years later, in *Serra Chevrolet, Inc. v. Gen'l Motors Corp.*, 446 F.3d 1137, 1152, (11th Cir. 2006) the same court held that the striking of a defendant's affirmative defenses violated due process where those defenses "had no apparent relationship with the discovery abuse." "Because the legal defenses were not 'specifically related to the particular "claim" which was at issue in the order to provide discovery,' [cit.], the sanctions violated the due process rights of GM." *Id.* (quoting *Insurance Corp. of Ireland*, 456 U.S. at 707).

In 1993, the Florida Supreme Court concluded "that the trial courts need a meaningful set of guidelines to assist them in their task of sanctioning parties and attorneys for acts of malfeasance and disobedience." *Kozel v. Ostendorf*, 629 So.2d 817, 818 (Fla. 1993). The court emphasized that "if a sanction less severe than dismissal with prejudice appears to be a viable alternative, the trial court should employ such an alternative." *Id.*; *see also Ham v. Dunmire*, 891 So.2d 492, 498 (Fla. 2004) ("Although a trial court 'unquestionably has power to discipline counsel' for violating court orders, an action should not be dismissed when the malfeasance can be adequately addressed through the imposition of a contempt citation or lesser degree of punishment directly on counsel.").

The Texas Supreme Court has also established a framework for trial courts in determining whether and to what extent to impose sanctions, recognizing that "[t]he imposition of very severe sanctions is limited, not only by these standards, but by constitutional due process." *TransAmerican*, 811 S.W.2d at 917. "First," the court wrote, "a direct relationship must exist between the offensive conduct and the sanction imposed." *Id.* "This means," the court continued, "that a just sanction must be directed against the abuse and toward remedying the prejudice caused the innocent party." *Id.* "The point is," the court emphasized, "the sanctions the trial court imposes must relate directly to the abuse found." *Id.* As a second step, the Texas Supreme Court required that the courts "consider the availability of less stringent sanctions and whether such lesser sanctions would fully promote compliance." *Id.* Such sanctions "must not be excessive" and "[t]he punishment should fit the crime." *Id.* Thus, the court noted, "[a] sanction imposed for discovery abuse should be no more severe than necessary to satisfy its legitimate purpose." *Id.*

The trial court in that case had entered an order striking TransAmerican's pleadings after the company's president had not been made available for deposition in response to a notice. Noting that the sanctions were "the most devastating that a trial court can assess against a party," the Texas high court concluded that sanctions "cannot be used to adjudicate the merits of a party's claims or defenses

unless a party's hindrance of the discovery process justifies a presumption that its claims or defenses lack merit." *Id.* at 917-18. "Although punishment and deterrence are legitimate purposes for sanctions," the court continued, "they do not justify trial by sanctions . . . ." *Id.* at 917, citing *Hammond Packing*, 212 U.S. at 350-51. The Supreme Court granted mandamus with respect to the trial court's order, in effect remanding the case. Among other issues, there was "nothing in the record to indicate that the district court considered imposition of lesser sanctions or that such sanctions would not have been effective." *Id.* To the contrary, "the record strongly suggest[ed] that lesser sanctions should have been utilized and perhaps would have been effective," the court reasoned. *Id.*; *see also Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 850 (Tex. 1992) (reversing sanctions order striking pleadings where there was "no direct relationship between the offensive conduct and the sanction imposed," the sanction was "more severe than necessary to satisfy the legitimate purposes of sanctions," "no lesser sanction was first imposed," and there was no evidence to justify a presumption that the defendant's "claims or defenses lack merit").

The Texas and Florida courts are by no means alone in requiring that sanctions not exceed those reasonably necessary to address the misconduct in question. For example, the Arizona Supreme Court has made clear that "[t]he sanction of dismissal is warranted only when the court makes an express finding

that a party, as opposed to his counsel, has obstructed discovery, and that the court has considered and rejected lesser sanctions as a penalty." *Seidman v. Seidman,* 222 Ariz. 408, 413, 215 P.3d 382, 387 (2009) (quoting *Wayne Cook Enters., Inc. v. Fain Props. Ltd. P'ship*, 196 Ariz. 146, 149, 993 P.2d 1110, 1113 (Ariz. App. 1999)). "Without express findings from the court that it thoroughly considered whether less severe sanctions would suffice," the court wrote in *Seidman*, "we cannot conclude that [the sanctioned party] was afforded due process." *Id.*; *see also CMJ Management Co. v. Wilkerson*, 91 Mass. App. Ct. 276, 284-85, 75 N.E.3d 605, 612 (2017) ("Relevant factors in a due process examination include 'the degree of culpability of the . . . party [to be sanctioned]; the degree of actual prejudice to the other party; whether less drastic sanctions could be imposed; . . . and the deterrent effect of the sanction.'").

The Montana Supreme Court has required, among other things, an examination of "whether the sanction imposed proportionally relates to the nature and effect of the violation or abuse." *Montana State Univ.-Bozeman v. Montana First Judicial District Court*, 392 Mont. 458, 468, 426 P.3d 541, 550 (2018). "Extreme sanctions precluding or truncating litigation on the merits (i.e., claim dismissal, default judgment, striking of asserted defenses, or exclusion of evidence) are generally proper only when the predicate discovery abuse is so inexcusable and prejudicial that it outweighs the express preference [under

Montana statute] for adjudication on the merits." 392 Mont. at 469, 426 P.3d at 550. Finding that the default judgment entered by the trial court was "not reasonably proportional to the nature and extent of the breach of duty and any resulting prejudice," the court concluded that the trial court had abused its discretion in that case. 392 Mont. at 483, 426 P.3d at 559; *see also City of Philadelphia v. Fraternal Order of Police Lodge No. 5*, 604 Pa. 267, 284, 985 A.2d 1259, 1270 (2009) ("we highly disfavor dismissal of an action, whether express or constructive, as a sanction for discovery violations absent the most extreme of circumstances"). Otherwise stated, "it is clear in the exercise of judicial discretion in formulating an appropriate sanction order, the court is required to select a punishment which 'fits the crime.'" *Davis v. Showell*, Case No. 3806 EDA 2015, 2016 WL 7324297, at *3 (Pa. Super. Ct. 2016).

Sitting *en banc*, the Supreme Court of Washington ruled that "[w]hen a trial court imposes dismissal or default in a proceeding . . . it must be apparent from the record that (1) the party's refusal to obey the discovery order was willful or deliberate, (2) the party's actions substantially prejudiced the opponent's ability to prepare for trial, and (3) the trial court explicitly considered whether a lesser sanction would probably have sufficed." *Rivers v. Washington State Conf. of Mason Contractors*, 145 Wash.2d 674, 686, 41 P.3d 1175, 1181 (2002). Although the trial court's order in *Rivers* stated that lesser sanctions had been considered, the

supreme court reversed, finding the "limited language" of the trial court insufficient to determine whether the "drastic sanction of dismissal" was warranted. 145 Wash.2d at 696, 41 P.3d at 1186. "Before resorting to the sanction of dismissal," the court concluded, "the trial court must clearly indicate on the record that it has considered less harsh sanctions . . . ." *Id.*; *see also Henderson v. Hughes*, 2019 WL 1064108, at *2 (D. Nev. Mar. 6, 2019) ("key factors are prejudice and availability of lesser sanctions").

III. The sanctions order in this case defies any test of proportionality.

The trial court's sanctions order in this case does not satisfy any reasonable test of proportionality. The order is not remotely tethered to the issues addressed by the *in limine* orders purportedly violated. Less drastic sanctions could have been utilized to remedy any harm to plaintiffs. And, the sanctions that were imposed essentially decided the case without requiring the plaintiffs to introduce *any* evidence concerning the alleged underlying tort.

The order imposes "issue preclusion" sanctions, incorrectly implying that it is not in effect an ultimate default sanction, and identifies Ford's transgressions (all allegedly committed by its counsel in the heat of trial) as (1) improper reference to possible driver error ruled out by a motion in limine; (2) improper expert testimony as to cause of death, permitted for plaintiff's expert, but not for Ford's expert; and (3) improper reference to the use of safety belts by the Hills. Each of these issues

could have been cured at trial by an appropriate instruction to the jury to disregard the ruled-out evidence. Alternatively, the jury could have been instructed not to consider any seat belt testimony, that the cause of death was as stated by plaintiffs' expert, and that there was no driver error by Mr. Hill. Indeed, the issues could have been cured (and were cured) by the mistrial – requested by plaintiffs – and an order requiring Ford to pay the jury costs. Instead, going well beyond such measures, the trial court ordered that the following would be deemed established:

(1) the truck's roof (for models from 1999 to 2016) "was defectively designed and dangerously weak;"

(2) the roof (for models from 1999 to 2016) was "susceptible to collapse or crush in a foreseeable rollover wreck which can cause death or serious injury to occupants;"

(3) "the rollover wreck in this case was foreseeable;"

(4) Ford's "acts and/or failures to act, in selling trucks with such weak roofs amounted to a willful, and reckless, and a wonton [sic] disregard for life, for the purposes of the statute of repose;"

(5) Ford "knew of the dangers posed by the roofs in the subject trucks and therefore had a duty to warn members of the public of that danger, but willfully failed to warn the public;" and

(6) the "defect in the roof of Mr. and Mrs. Hill's truck resulted in roof crush that caused the injuries that led to the deaths of them both."

All that remained for a jury's consideration was the issue of compensatory and punitive damages. The order said as much:

> Thus, upon the retrial of this case, the **only** issues that the Court will allow for jury determination are (1) whether there is "clear and convincing" evidence that punitive damages should be imposed against Ford, (2) whether Mr. and/or Mrs. Hill endured pain and suffering, (3) the amount of compensatory damages, and (4) the amount of punitive damages, if any.

(Emphasis added.)

None of the testimony or evidence identified by the trial court touched on whether the truck's roof was "defectively designed," whether the roof was "susceptible to collapse," whether such a rollover wreck was "foreseeable," whether Ford's "acts and/or failures to act" were willful or wanton, whether Ford had a duty to warn of dangers posed by the roofs, or whether the purported "defect" resulted in roof crush. Nor did the trial court make any effort to explain how any of these matters were affected by the sanctioned conduct. In short, there was no relationship, direct or otherwise, between the complained-of conduct and

the sanctions that were entered. Instead, the trial court, with no elaboration, simply concluded that establishing these matters would "ensure an orderly and fair trial."[3]

The punishment did not fit the putative "crime." Again, the trial court did not even attempt to discuss whether lesser sanctions would effectively resolve the issues created by the putative misconduct, much less actually explain why they would not have sufficed. Mistrial is the universally recognized remedy for serious in-trial errors that cannot be remedied by jury instructions. The gratuitous addition of issue preclusion on top of the mistrial was a blatant abuse of discretion.

CONCLUSION

The sanctions order was, in effect, a direction to the jury to impose punitive damages on Ford, not because it was without a meritorious defense and not because its manufacturing design was in fact reckless or deliberately flawed, but because the trial court decided to impose sanctions out of proportion to the conduct sought to be punished. Indeed, all of this was accomplished without any effort by

[3]It is appropriate to consider whether the average Georgian, who is estimated to pay an annual "tort tax" of $1,213.80 due to excessive tort costs, would believe a trial in which only one side gets to put on evidence is "fair." *See* The Perryman Group, Economic Benefits of Tort Reform (Oct. 2022), p. 29 (https://cala.com/wp-content/uploads/2023/01/Perryman-Tort-Reform-Impact-12-20-2022-1.pdf).

the trial court to identify evidence which would "justif[y] a presumption that [Ford's] claims or defenses lack merit." *Chrysler Corp. v. Blackmon*, 841 S.W.2d at 850. In short, there is a disconnect between the conduct of defense counsel as set forth in the sanctions order and the death penalty sanctions imposed. If allowed to stand, the sanctions order will deprive Ford of a fair trial on the merits of its case. Due process has not been afforded in this case and will not be absent reversal.

This submission does not exceed the word count limit imposed by Rule 24.

This 19th day of January, 2024.

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