

**QUESTION 3 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I**

The Chips, Chips, and More Chips Cookie Company (Chips) has been baking and selling cookies for 40 years. One of its best customers, Warbucks Coffee, refused to pay for a purchase of 2400 dozen cookies for its many stores because Warbucks said Chips had changed its decades-old, beloved recipe without notice. After Chips could not persuade Warbucks that the recipe was the same as ever, Chips sued Warbucks for the purchase price, \$28,800 or \$1 per cookie. Warbucks filed an answer to Chips' complaint, disputing it owed Chips the money.

The case was assigned to a Michigan circuit court judge who, in accordance with the court rules, referred the case for case evaluation. Chips was happy with the referral because, as its president complained, "I don't want to spend \$25,000 on lawyers and all of their nonsense to get my \$28,800." After both sides attended the case evaluation, the panel made a unanimous award of \$24,700 to Chips. Chips accepted the award but Warbucks rejected, all the while contending the recipe had changed and the cookies were not right.

Wanting to bring the lawsuit to an end, Chips' attorneys then prepared and filed a motion for summary disposition. Warbucks responded and the court heard oral arguments from counsel. During oral argument, Warbucks' lawyer was pressed on the validity of his client's defense: i.e., that Warbucks did not owe the money because of the changed cookie recipe. Warbucks' lawyer responded that indeed the cookies had been delivered and the number of cookies was correct. The problem, counsel argued, was that the recipe had changed. When pressed again, counsel responded (1) he did not know how it had changed; (2) he had made no inquiry into the subject; (3) that he had relied on Warbucks because they knew more about cookies than he did; and (4) Warbucks was a good, long-time client and he would not doubt the word of its employees. Counsel conceded he had signed the answer to the complaint and the response to the motion.

The trial judge granted the motion for summary disposition by Chips and entered judgment for the \$28,800 requested. The trial judge ruled that Warbucks had failed to show there was a genuine issue of material fact under MCR 2.116(C) (10).

Happy about winning, but irritated about the money Chips had to "spend on lawyers," Chips' president wants Warbucks, or someone to pay for "all the lawyers' fees" Chips paid.

What motion(s) should Chips' lawyers make under any applicable Michigan statutes and the Michigan Court Rules to be reimbursed for money Chips spent on legal fees? What is the possibility of success of each motion? Explain your answers.

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