

EXERCISE

APPELLATE BRIEFS

Background

You're on a litigation team defending a cosmetics corporation sued by one of its distributors for breach of contract. The dispute centers on the interpretation of one of the contract's clauses and whether your client acted in good faith to resolve the dispute before terminating the contract, as required by the termination provision.

The lower court granted summary judgment to the opposing party, finding that your client's interpretation of the provisions was wrong and that your client failed to act in good faith as a matter of law. Your team is appealing the decision based on some or all of the following circumstances:

- Your jurisdiction's caselaw overwhelmingly supported your arguments as to the interpretation of the contract and whether your client's actions amounted to good faith;
- The lower court judge is widely considered by your legal community to be incompetent and was recently overturned by the circuit court of appeals on an unrelated matter; and
- After the lower court decision, opposing counsel disclosed that they improperly asserted privilege over several important documents relevant to your summary judgment motion.

Instructions

You are working on a first draft of the appellate brief. Come prepared to discuss these questions:

- What standard of review do you think the appellate court will apply?
- If your appellate brief is required to include a corporate disclosure statement, what information will it need to include?
- In your Issues Presented section, how might you draft the issue before the court?
- Would you include the fact that the lower court judge was recently overruled by the circuit court of appeals? Why or why not?
- Would you raise the improper privilege assertion in your brief? Why or why not?