

EXERCISE

DISCOVERY MOTIONS

Background

You're on a litigation team defending a truck manufacturer in a products liability suit. You've filed a cross claim against a co-defendant, the manufacturer of the allegedly defective brake pedal that plaintiffs claim caused several fatal accidents over the last six years. In their answer, the brake manufacturer stated that final product safety test results are always reviewed and approved at board meetings.

Four discovery disputes have arisen between your client and the brake pedal manufacturer regarding the requested item being either privileged or unduly burdensome to produce. These are the disputes:

1. The brake pedal manufacturer refuses to turn over product safety testing results going back ten years, objecting that the request is unduly burdensome, and they've produced the results for the relevant years.
2. They object to a request for email exchanges between the CEO and Chief Engineer that are in any way related to the brake pedal because it would be too burdensome to produce these emails and they've produced what is relevant.
3. They object on privilege grounds to your request for the minutes of a board meeting where final product safety test results were reviewed because the General Counsel was present.
4. You object to the brake pedal manufacturer's request for documents allegedly related to damages dating back more than ten years on the grounds that the request is unduly burdensome and that you've already produced documents dating back six years.

You had several meet-and-confers by phone with opposing counsel, and you were able to resolve the fourth dispute. But, despite having made several offers to compromise on the scope of your initial requests, you were unable to resolve the other three disputes.

Instructions

You're now drafting a motion to compel. Come prepared to discuss these questions:

- What steps could you have taken to make the record of the meet-and-confer as strong as possible?
- What facts should you include about each discovery request in the facts section of your brief?
- How might you respond to the brake pedal manufacturer's objection in dispute #1?
- What are some ways you might organize your arguments?
- What are some things you might attach as exhibits to your motion?