

EXERCISE OPPOSITION BRIEFS

Background

You're defending a car parts manufacturer against products liability claims for injuries the plaintiffs allege they received using your products. During discovery, you turned over evidence that showed your products repeatedly passed a number of trials and regulatory approvals, but that also showed that you did not rerun an internal safety test that would have been required by company policy. You also learned from the deposition of a doctor who treated the plaintiffs that one of the tests that the doctor ran suggested that your products didn't cause the injuries.

You've just received plaintiffs' motion seeking summary judgment and asserting that no disputes of material fact remain. In the brief, plaintiffs rely on a portion of the doctor's deposition where he states that four diagnostic tests he ran supported his theory that your products caused plaintiffs' injuries.

You're sitting down to begin outlining your opposition brief.

Instructions

Come prepared to discuss these questions:

- When you do your first general assessment of the opening brief, what kinds of things should you be looking for?
- As you get more granular in your review, what types of flaws in the other side's arguments should you be looking for?
- Where might you look for factual support to refute plaintiffs' argument that your client's products caused the injuries?
- Is this how you'd want to lead off your argument that there's a question of fact as to whether your client's products caused the injuries? Why or why not?

“Plaintiffs argue that there is no dispute of material fact because Plaintiffs’ doctor concluded that the injuries were caused by Defendant’s products. However, that argument fails for several important reasons.”

- If you don't have a strong rebuttal to plaintiffs' argument about your client failing to follow its own safety protocols, should you try to counter it anyway?