

EXERCISE

PRELIMINARY STATEMENT IN A BRIEF

Background

You're defending a major insurance company. The plaintiffs sustained damage from a natural disaster and had their insurance claims denied. They first brought the lawsuit in state court eleven months after their claims were denied, but that case was dismissed because the court did not have jurisdiction. They refiled in federal court, but now two years have elapsed since the denial of their claims. Their insurance policies required that any lawsuit be filed no later than one year after the denial of any claims.

In the past, your client had had to defend against lawsuits that were filed decades after claim denials, so they inserted the claim deadline language into their policies. The paragraph is bolded, and insurance agents are required to point it out to customers and to have the customer initial next to the paragraph.

In the complaint, plaintiffs allege that, as a practice, insurance agents purposefully did not point the language out. But they also attached an exhibit with copies of plaintiffs' insurance policies, and 49 out of 50 of them have customer initials next to that paragraph.

Instructions

You're moving to dismiss the suit based on the plaintiffs' failure to timely file. Please come prepared to discuss the following questions:

- How will you figure out a theme for your brief?
- In your preliminary statement, will you address plaintiffs' claim that the paragraph was routinely not pointed out to customers? What will you consider when deciding?
- What information will you include in the introductory paragraph of your preliminary statement?
- How will you characterize the parties in your preliminary statement?
- What facts will you include in your preliminary statement, aside from the ones needed to show you've met the legal standard?