

Question MEE 6 – July 2024 – Selected Answer 1

I. Initial Disclosures

The issue is whether the man was required to include information about his insurance policy and the identity of the other three witnesses to the accident in his initial disclosures.

Under the Federal Rules of Civil Procedure, the parties are required to provide each other with certain information in initial disclosures without any request by the other party. These initial disclosures must include any information about relevant insurance coverage pertaining to the claim that would cover any portion of the alleged injuries, the identities and contact information of witnesses whom the party knows it will call to support its case, other documents and tangible items that the party will use to support its case, and information to support the party's damages demand. The party must also, at some point in discovery but not necessarily in initial disclosures, provide information about any expert witnesses that it plans to call to testify.

Here, the man violated this requirement in reference to the insurance policy but not in reference to the other three witnesses. Because the insurance party was a car insurance policy providing coverage of up to \$1 million for personal injuries and property damage, it related to the car accident personal injury claim at issue and thus had to be disclosed in the initial disclosures. Even though it would likely not be admissible evidence at trial because evidence of insurance coverage is not admissible to prove negligence, it is still required in initial disclosures in discovery, so he should have submitted it. However, the identities of the other three witnesses were not required in the initial disclosures because they would not be called to support the man's case: instead, their testimony would be damaging to him because they would all say he was looking at his phone during the accident. Therefore, because initial disclosures only require identifying supportive witnesses, he was not required to identify them in the initial disclosures.

II. Motion to Compel

The issue is whether the court ruled correctly on the woman's motion to compel. A party can file a motion to compel when the opposing party is not complying with a discovery request and good faith discussions with the party to procure the disclosure have not been successful. Because the standard for relevance on discovery is broader than the standard for relevance under the rules of evidence at trial, the court should compel discovery in response to such a motion unless it is entirely irrelevant, imposes an undue hardship on the responding party disproportionate to the needs of the case, or violates a privilege. The court has substantial discretion regarding rulings on motions to compel and would only be reversed on an abuse of discretion standard.

Here, the court likely should have compelled the man to answer questions about his eyesight. The court's stated reason for not doing so was that the man's physical

condition and mental health are irrelevant in this tort suit. But the woman's questions about eyesight are not about his mental health and physical condition broadly; rather, they are focused on an issue very relevant to driving: eyesight. Whether someone can see well is indeed relevant to whether they are driving negligently or carefully. Moreover, such questions do not subject the man to undue hardship: he is not being asked to undergo a medical exam, for example, and thus the intrusion is quite limited. And finally, there seems to be no privilege that would render the information about his eyesight beyond the reaches of discovery.

Therefore, the court did not rule correctly on the motion to compel. But given the abuse of discretion standard and the fact that this error seems like a reasoned response to the possibility that the woman was seeking broader information about his physical condition and mental health, the decision would likely not be reversed on appeal.

III. Motion for Judgment as a Matter of Law

The last issue is whether the court should grant the woman's motion for judgment as a matter of law. A motion for judgment as a matter of law is a motion during trial that asks the court to find for the moving party on the basis that no reasonable person could disagree that the law and the presentation of evidence entitles the party to judgment as a matter of law. The court may rule on the motion after the opposing party has finished presenting its evidence on the issue in the motion, and in ruling, the court must view the evidence in the light most favorable to the nonmoving party. The judge cannot make credibility determinations on the jury's behalf in making the decision.

Here, the court should deny the woman's motion for judgment as a matter of law. Though the woman presented evidence of the man's negligence in the form of three witnesses testifying that he was looking at his phone while driving, which constitutes evidence of breach, and evidence of her damages in the form of her physician's testimony, the man also presented testimony to counter that evidence: his brother's testimony that he was not looking at his phone. Viewing the evidence in the light most favorable to the man, the nonmoving party, the brother could be deemed a more credible witness, despite his biases, and judgment for the man could be deemed proper. Because such credibility determinations must be left to the jury and the evidence must be viewed in the light most favorable to the nonmoving party, the standard for granting judgment as a matter of law has not been met, as a reasonable person could still potentially find in the man's favor.

Therefore, the court should deny the woman's motion for judgment as a matter of law.

Question MEE 6 – July 2024 – Selected Answer 2

1. Initial disclosures are disclosures to be provided within 14 days after the initial meet-and-confer between the parties, or within 30 days if a new party is introduced thereafter. Initial disclosures must identify a number of things, including the identities of persons with discoverable information such as witnesses, and any insurance policies that are relevant to the claims and damages calculations at hand. Initial disclosures also must be supplemented as necessary throughout the litigation process. However, a party need only to disclose, in these initial disclosures, the identities of witnesses that provide bases for their own case in chief or defense. If a particular witness's information will not be used to help the party himself and the party plans not to use it in his case, then he need not disclose in initial disclosures.

1a. The issue is whether the man needed to initially disclose the insurance policy. Applying the law outlined above, the man likely needed to disclose the insurance policy in his initial disclosures. His car insurance policy is directly relevant to the woman's claim regarding the car accident. As relevant insurance policies to the claim are a required disclosure during initial disclosures, the man likely was required to disclose the policy at the outset of the litigation process.

1b. The issue is whether the man needed to disclose the three other witnesses. Applying the law outlined above, the three witnesses other than the brother perceived the man to be on his phone while driving. This information is not helpful to the brother's defense. Further, at trial, he did not call any of them to the stand to testify. Therefore, not only was the information unhelpful to his defense, but he did not ultimately use the brothers in his defense. Therefore, the man likely was not required to disclose the identity of these three witnesses, but was required to disclose his brother's identity, which he did.

2. The issue is whether the trial court erred in denying the woman's motion to compel. A motion to compel must be supported by good cause. If a party does not provide the discovery that is requested and does not provide a sufficient basis for the refusal, then a motion to compel can be filed for good cause. Further, if a party seeks the motion to compel because the evidence will be directly relevant and helpful to the litigation process, then a party can likely argue good cause.

Here, the man's attorney refused to let his client answer questions about his eyesight. He characterized the questioning as irrelevant and improper. This is not a sufficient basis for refusal to provide requested testimony in a deposition, because a driver's eyesight is directly, obviously relevant to a lawsuit regarding a car accident in which the deponent was a driver. The woman can show good cause for her motion to compel, and the court erred in denying her request.

3. The issue is whether the woman's motion for judgment as a matter of law ("JMOL") should be granted.

In federal civil lawsuits, a motion for judgment as a matter of law is a motion for a verdict in the moving party's favor based upon a lack of issue of material fact. The court must consider the motion in the light most favorable to the nonmoving party, and must grant a motion for judgment as a matter of law if the court finds that no reasonable jury could find in favor of the nonmoving party. This essentially means that a motion for JMOL should be granted if no reasonable jury could possibly find any dispute of material fact, and could not possibly return a verdict for the nonmoving party.

Here, the woman presented evidence from multiple witnesses that the man was looking at his phone at the time of the accident. However, the man called his brother to testify to the contrary. The brother provided evidence to the jury that the man was not looking at his phone. Therefore, there is a dispute of material fact, and fact issues are for the jury to decide. When there is such a dispute of material fact, a JMOL is not proper. Therefore, the court should deny the woman's motion for JMOL since there is a dispute of material fact on the record at the jury trial.

Question MEE 6 – July 2024 – Selected Answer 3

1. At issue here is whether the man's initial disclosure obligations required him to disclose information about the insurance policy and the identity of the other three witnesses to the accident.

Initial disclosures in a suit are mandatory and do not hinge upon any discovery requests by the opposing party. All required information must be disclosed if not privileged. Examples of required information are the names and addresses of people who could be used to support a claim or defense by the party making the initial disclosure, a description of documents or evidence that would support that person's claim or defense, a method of computing damages or how damages were computed, and any insurance policy.

The man had to disclose the insurance policy. Even though insurance policies are not admissible to prove a party's ability to pay, they are required for the purposes of initial disclosures. Therefore, the man was required to disclose his insurance policy.

Regarding the three other witnesses to the accident, he was not required to disclose them in his initial disclosures. The three individuals whom the man did not provide in

his initial disclosures are the bystander and the two friends who had been in the car. All of those individuals would have stated that the man had been reading directions on his phone at the time. This would be an example of potentially negligent behavior. Therefore, there was no reason that the man would use any of those individuals to support any of his claims or defenses - his defense would be that he was not negligent, and their only purpose would be to show that he was.

The man's initial disclosure obligation is related to individuals who might be used to support *his* claim or defense, not any party's claim or defense. Therefore, he did not have to disclose the identity of the three other witnesses to the accident.

2. The issue here is whether the man's attorney validly prevented his client from asking about his eyesight and ending the deposition because that question was irrelevant. The court ruled incorrectly.

A party may inquire into any matter that is relevant and not privileged during a deposition. Unlike testimony at trial, an attorney may not instruct a client to avoid answering a question during a deposition for non-privilege grounds, including relevance. Therefore, in the first place, the man's attorney was not allowed to end the deposition and instruct the man to end the deposition. The court was wrong for that reason alone.

However, a further issue is that the court's ruling on relevance is completely incorrect. Relevance refers to when a fact has a tendency to make any matter of material consequence to the action any more or less likely to be true or false, or to exist or not exist. Relevance does not require that it *actually* make the fact more or less likely not to be true. A matter of material consequence is one that has an outcome on the result of the case. A fact does not to be dispositive of the case; it merely needs to matter to the resolution of the case.

Here, the claim is negligence in driving. The woman claimed that the man was negligent in driving and therefore caused the accident that injured her. One important aspect of whether a driver's conduct was negligent or not is whether or not he should be driving in the first place. For example, some drivers are required by law while they drive to wear corrective vision aids such as glasses or contact lenses. If he did not do so, he would be potentially violating a statute *and* potentially acting negligently given his need to use it. Furthermore, somebody's eyesight could be a reason that they should not be driving anyway. Negligence is when a person does not act as a reasonably prudent person would given the circumstances. A reasonably prudent person might not drive if their eyesight was sufficiently impaired, or might take specific steps to ensure it was not a problem for the road. Regardless of the exact way

by which it might be negligent, it is extremely relevant to a driver negligence cause of action whether or not the driver had the proper eyesight to be on the road in the first place, or the proper tools to correct it if not naturally sufficient.

Therefore, the court incorrectly ruled on the matter and should have granted the woman's motion to compel.

3. At issue here is whether the man produced legally sufficient evidence to allow a jury finding in his favor.

Judgment as a matter of law is only available on a claim or defense or an element of a claim or defense when the non-moving party has fully presented their evidence in their case-in-chief on that claim or defense or the element of the claim or defense and rested. At that point, the moving party may ask for judgment as a matter of law, which must be granted if the non-movant has failed to produce enough evidence on the claim or defense or element of the claim or defense to be legally sufficient to allow a reasonable jury finding in their favor.

Judgment as a matter of law is not based upon the persuasiveness of the evidence presented, whether to the judge or the jury. It is based upon the pure legal sufficiency - the question is whether the non-movant has met the burden of production to submit that claim, defense, or element thereof to a reasonable jury to get a ruling that could be in his favor. Here, the woman moved as a matter of law on the issue of the man's liability for negligence. Negligence requires four elements. First, a duty. Second, a breach. Third, causation. Fourth, damages. It is unclear, but this motion would appear to be on the first three elements and not damages.

Duty is already decided by the judge. It is a question of law, not a question of fact for the jury. It is therefore irrelevant here as it would not be submitted to the jury. However, the second element, breach, is relevant and dispositive here. That is because both sides presented competent evidence on it. The woman called both man's friends and the bystander to the stand to testify. They testified that the man had been looking at his cell phone at the time of the accident. Looking at one's cell phone while driving could certainly be considered negligent. The man called his brother, who testified he had not been looking at his cell phone. If he was not looking at this cell phone, it would be evidence the man was not negligent. And, given that the only dispute seemed to be whether the man was looking at his cell phone, it would definitely be evidence that he was not. The fact that three witnesses testified to the evidence for the woman versus only one for the man is irrelevant. Again, it is not the relative weight of the evidence, or the persuasiveness of the evidence, that matters. It is merely whether the man submitted enough evidence that a reasonably jury could

decide a verdict for him. Here, he did submit enough evidence. He submitted an individual who was in the car at the time and testified the man was not committing the only act of negligence implicated by these facts.

When the non-movant produces enough evidence to be legally sufficient to submit the issue to the jury, then the motion for judgment as a matter of law cannot be granted. The judge has no discretion on this. It is not even important to reach the matter of causation, because if any element of negligence is missing, the man cannot be held liable for negligence. Therefore, the court should deny the woman's motion for judgment as a matter of law.