A pharmaceutical retailer sued a drug manufacturer in federal court for antitrust and unfair-competition violations under federal and state law. After the parties completed discovery, the retailer submitted a pretrial narrative statement designating a broad set of facts and issues to be tried. The manufacturer disputed the statement and submitted a much narrower one. At the final pretrial conference, the court entered its final order, ruling in favor of the retailer's broader statement as the one the court would read to the jury during voir dire and would use to define the facts and issues to be tried.

The manufacturer's attorney is concerned that trying many of the facts and issues listed in the pretrial order would reveal litigation strategies important in other actions pending against the manufacturer.

What is the best way for the manufacturer's attorney to seek relief from the court's ruling on the pretrial statement?

A. Appeal from the final pretrial order, arguing that it is overbroad on its face.

B. Object in the trial court and appeal any adverse ruling on the objection.

C. Object in the trial court and file a motion to delay the trial.

D. Object in the trial court and move to modify the order to prevent manifest injustice.

Explanation:

A federal district court judge may hold one or more pretrial conferences with the parties' attorneys or unrepresented parties. At these conferences, the judge has broad discretion to address and act on a wide range of issues to help expedite litigation, improve the trial's quality, and facilitate settlement. At the **final pretrial conference**, the judge will enter a final pretrial order that **formulates a plan for trial**.* The court may **modify this order** only to **prevent manifest injustice**.

Here, the federal district court entered its final order at the final pretrial conference. In that order, the court adopted the retailer's broad narrative statement to use during voir dire and to define the facts and issues to be tried. Since the manufacturer's attorney wants to narrow this narrative statement, the best way to seek relief is to object in the trial court and move to modify the order to prevent manifest injustice.

*A final pretrial conference must be held as close to the start of trial as is reasonable and must be attended by at least one attorney who will conduct the trial for each party or by any unrepresented party.

(Choice A) Under the final-judgment rule, an appeal cannot be taken before a final judgment has been entered unless limited exceptions apply. A final pretrial order is not a final judgment and none of the exceptions apply, so an immediate appeal is unjustified.

(Choice B) The manufacturer's attorney must move to modify the order at the trial court level to preserve the issue for appeal, where the order will be reviewed for abuse of discretion. A mere objection will not suffice.

(Choice C) A motion to delay the trial will not help the manufacturer's attorney seek relief from the final pretrial order. Instead, the attorney should move to modify the order to prevent manifest injustice.

Educational objective:

At the final pretrial conference, a federal district court judge will issue a final pretrial order that formulates a plan for trial. The court may modify this order only to prevent manifest injustice.

References

- Fed. R. Civ. P. 16(e) (final pretrial conference and orders).
- 6A Charles Alan Wright et al., Federal Practice and Procedure § 1527.1 (3d ed. 2020) (explaining how a party can modify or seek relief from a pretrial order).