

A farm employee sued four pesticide companies in a federal district court. The employee claimed that his exposure to the pesticide manufactured by one of these companies caused him to suffer a terminal illness.

The companies filed a joint motion to dismiss the claim on the ground that the employee did not allege which company manufactured the pesticide to which he was exposed. The court denied the companies' motion, concluding that the employee did not need to specifically allege which company manufactured the pesticide because market-share liability applied. The court also informed the parties that all requests for jury instructions must be filed by the start of trial. Neither side filed a request by the deadline.

At the close of evidence, the companies filed a request that the court use the companies' jury instructions on market-share liability. The court denied the companies' request on the ground that the companies filed their request too late.

Did the court properly deny the companies' request?

- A. No, because although the companies did not submit their request by the deadline, they could not have reasonably anticipated that market-share liability would be an issue.
- B. No, because the companies submitted their request at the close of evidence.
- C. Yes, because only the court may formulate jury instructions.
- D. Yes, because the companies did not submit their request by the deadline and should have reasonably anticipated that market-share liability would be an issue.

Explanation:

Jury instructions

(FRCP 51)

Requests Party:

- must file request by close of evidence unless earlier, reasonable deadline set by court
- may file request after close of evidence when:
 - request relates to issue that party could not have reasonably anticipated by deadline *or*
 - court permits late submission related to any issue

Instructions Court:

- must inform parties of proposed instructions before instructing jury & closing arguments
- must allow parties to object on record & outside jury's presence before instructing jury & closing arguments
- may consider objection made after court instructs jury if instruction constituted plain error
- may instruct jury at any time before discharge

Objections Party:

- must distinctly state objection & its grounds on record
- must object at court-appointed time or promptly after learning of proposed instruction

FRCP = Federal Rule of Civil Procedure.

A court must provide **jury instructions** that advise the jurors on their deliberation procedures and the applicable law. These instructions can be formulated by the court or the parties (**Choice C**). Each party can **request** specific jury instructions before or at the close of evidence *unless* the court sets an **earlier, reasonable deadline**—eg, by the start of trial (as seen here) (**Choice B**).* Additionally, a request may be **filed after the close of evidence** if:

- the request relates to an **issue** that the party could **not have reasonably anticipated** by the deadline *or*
- the **court permits** a late submission that relates to any issue.

Here, the companies filed no jury instructions by the deadline set by the court. And the companies should have reasonably anticipated that market-share liability would be an

issue. That is because the court concluded that market-share liability applied to this case when it denied the companies' motion to dismiss **(Choice A)**. Therefore, the court properly denied the companies' jury-instruction request on market-share liability.

*To request a jury instruction, a party generally must file a written request with the court and furnish it to every other party. Some courts allow verbal requests, but they are highly disfavored.

Educational objective:

A party must request specific jury instructions at the close of evidence unless an earlier, reasonable deadline is set by the court. A request can be filed after the close of evidence only when (1) the instruction relates to an issue that could not have been reasonably anticipated by the deadline or (2) the court grants permission.

References

- Fed. R. Civ. P. 51(a) (jury-instruction requests).