

A construction worker sued an insulation manufacturer in federal court, claiming that he had developed a chronic health condition as a result of 20 years of exposure to the manufacturer's insulation at his work sites. The manufacturer answered, denying all liability and stating that it had never supplied its insulation to the worker's employer.

The worker's attorney deposed the manufacturer's president, and the manufacturer's attorney deposed the worker. Immediately thereafter, the manufacturer moved for summary judgment on the ground that the worker had no evidence showing that the insulation had ever been used by the worker's employer.

What would be the worker's best response to the motion for summary judgment?

- A. Argue that more time is needed for additional discovery to show the manufacturer's liability, and attach a declaration describing the desired discovery.
- B. Argue that the motion should be denied, because a central issue in the case will be the manufacturer's credibility on the question of its distribution of the insulation, and only a jury can decide questions of credibility.
- C. Argue that the motion should be denied, because the manufacturer failed to attach any evidence to its motion to show that the insulation was not used by the worker's employer.
- D. Make a cross-motion for summary judgment arguing that the manufacturer has introduced no evidence to show that its insulation did not harm the worker.

## Explanation:

### Motion for summary judgment

(FRCP 56)

- |                           |  |
|---------------------------|--|
| <b>Time to file</b>       | <ul style="list-style-type: none"><li>• Motion may be filed until 30 days after close of discovery OR time set by local rule or court</li></ul>  |
| <b>Burden of proof</b>    | <ul style="list-style-type: none"><li>• Movant has initial burden to establish standard<ul style="list-style-type: none"><li>– may support by relying on pleadings, affidavits, declarations, discovery, or other materials containing admissible facts</li></ul></li><li>• If initial burden is met, burden shifts to nonmovant to either:<ul style="list-style-type: none"><li>– show specific disputed facts through affidavits, declarations, discovery, or other materials containing admissible facts (cannot rely on pleadings) <i>or</i></li><li>– request postponement for additional discovery &amp; support with affidavit or declaration</li></ul></li></ul> |
| <b>Standard for grant</b> | <ul style="list-style-type: none"><li>• No genuine dispute as to any material fact AND movant entitled to judgment as a matter of law<ul style="list-style-type: none"><li>– evidence must be viewed in light most favorable to nonmovant</li><li>– all doubts must be resolved in nonmovant's favor</li></ul></li></ul>   |

**FRCP** = Federal Rule of Civil Procedure.

A motion for **summary judgment** requests that the court enter judgment without a full trial because (1) there is no genuine dispute of material fact and (2) the movant is entitled to judgment as a matter of law. The movant can meet this burden by asserting that the **nonmovant lacks evidentiary support** for any issue that the nonmovant has the burden to prove—eg, no evidence that the manufacturer's insulation had been used by the worker's employer. If this occurs, the nonmovant can **avoid summary judgment by** either:

- presenting evidence to support that issue through affidavits, declarations, discovery, or other materials containing admissible evidence *or*
- requesting that the court **postpone consideration** of the motion until **additional discovery** can take place and including an affidavit or declaration that describes the desired discovery and why it is needed.

Since the manufacturer moved for summary judgment after only two depositions, the worker likely needs additional discovery to obtain evidence showing that its employer *had* used the manufacturer's insulation. Therefore, the worker should argue that more time is

needed for additional discovery and attach a declaration or affidavit describing the desired discovery.

**(Choice B)** Although the manufacturer's credibility will be an important issue at trial, a court never considers the credibility of evidence when making a summary judgment determination. Instead, it will assume that the manufacturer's no-evidence assertion is true unless the worker (nonmovant) presents evidence creating a genuine dispute of material fact. That evidence will then be viewed in the light most favorable to the worker.

**(Choices C & D)** Since the worker has the burden to prove that the insulation was used by his employer and harmed him, the manufacturer is not required to provide evidence negating these assertions. It need only claim that the worker lacks evidence to support those elements of his claim.

**Educational objective:**

After receiving a motion for summary judgment, the nonmovant can request that the court postpone considering it until additional discovery can take place. This request must include an affidavit or declaration specifying why the evidence has not been obtained and describing the desired discovery.

**References**

- Fed. R. Civ. P. 56 (summary judgment).
- Celotex Corp. v. Catrett, 477 U.S. 317, 323–24 (1986) (explaining when summary judgment is proper).

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