

A homeowner brought a diversity action against a mining company in federal court for negligence, claiming that the company's negligent mining practices caused extensive damage to her property. Forty-five days before trial, the homeowner sent the company the evidence that she plans to use at trial, including a witness whose testimony she intends to present by deposition. The homeowner also attached a transcript of the pertinent depositions. Twenty-one days later, the company objected to the use of the deposition testimony on the ground that it is inadmissible hearsay.

Should the court hear the merits of the company's objection?

- A. No, because the company failed to object at least 30 days before trial.
- B. No, because the company failed to object within 14 days after the homeowner disclosed the deposition testimony she intended to use at trial.
- C. Yes, because the company objected within 30 days after the homeowner disclosed the deposition testimony she intended to use at trial.
- D. Yes, because the homeowner failed to disclose the deposition testimony at least 90 days before trial.

Explanation:

During discovery, parties must **automatically disclose** certain information through [required disclosures](#). This includes **pretrial disclosures**, which must contain the following:

- The name, address, and phone number of **each witness**, separately identifying witnesses expected to testify at trial and those who may be called if the need arises
- The designation of witnesses whose testimony will be presented by **deposition**, including a **transcript** of the pertinent parts of a deposition that was not taken stenographically (ie, by shorthand)
- All **documents and exhibits**, separately identifying items expected to be offered as evidence and those that may be offered if the need arises

These must be disclosed **at least 30 days before trial**. Any **objections** to the use at trial of deposition testimony, documents, or exhibits must be made **within 14 days after the disclosures**.^{*} An objection not made within this time is waived unless (1) excused by the court for good cause or (2) the objection is based on [relevance](#).

Here, the homeowner timely disclosed 45 days before trial the witness whose deposition testimony she intends to present at trial and attached the deposition transcript. The company *untimely* objected 21 days later to the use of the deposition testimony at trial. There is no indication that the company's untimely objection is excused by good cause, and the objection is based on hearsay—not relevance. Therefore, the company waived its objection, and the court should not hear the merits of the objection **(Choice C)**.

^{*}A court may also set different deadlines for the parties to make pretrial disclosures and object to such disclosures.

(Choice A) Pretrial disclosures, not objections to such disclosures, must be made at least 30 days before trial. Objections to pretrial disclosures must instead be made within 14 days after the disclosures.

(Choice D) Expert witness testimony, not pretrial disclosures, must be disclosed at least 90 days before trial.

Educational objective:

Pretrial disclosures must be made at least 30 days before trial. Objections to the use at trial of disclosed deposition testimony, documents, or exhibits must be made within 14 days after the disclosures or such objections are generally waived.

References

- Fed. R. Civ. P. 26(a)(3) (pretrial disclosures).
- 8A Charles Alan Wright et al., Federal Practice and Procedure § 2054 (3d ed. 2020) (explaining when pretrial disclosures and objections to such disclosures must be made).

Required disclosures timeline

