

A miner sued a coal company in a federal district court to recover damages for severe injuries he sustained during a mining explosion. Sixty days prior to trial, the company's attorney interviewed a forklift operator who witnessed the incident. The operator stated that he saw the miner violate several safety protocols leading up to the explosion.

At trial, the company sought to have the forklift operator testify to support its contributory negligence defense. The miner's attorney objected and moved for sanctions on the ground that the company had failed to disclose the operator's identity prior to trial. The company's attorney stated that she did not disclose the operator's identity because the miner's attorney never made a formal request.

The district court then sanctioned the company by (1) prohibiting the operator from testifying, (2) informing the jury of the company's nondisclosure, and (3) ordering the company to pay the miner's reasonable expenses. After the jury returned a verdict for the miner, the company appealed the sanctions.

How should the appellate court rule?

- A. Affirm all the sanctions.
- B. Affirm the sanction ordering the company to pay the miner's reasonable expenses but reverse the other sanctions.
- C. Affirm the sanction prohibiting the operator from testifying at trial but reverse the other sanctions.
- D. Reverse all the sanctions.

Explanation:

Parties are required to make initial disclosures, disclosures of expert testimony, and pretrial disclosures without waiting for a discovery request. Such required disclosures are designed to prevent surprises at trial. As part of their pretrial disclosures, parties must disclose the identity of witnesses who may testify at trial. Since the company intended to call the forklift operator as a witness, it was required to disclose his identity as part of its pretrial disclosures. However, the company failed to do so.

To underscore the importance of such disclosures, a court has wide discretion to impose sanctions on a party who **fails to make required disclosures**. The most common sanction is to **prohibit the use of the undisclosed information unless** the nondisclosure was **substantially justified or harmless**. In addition to or in lieu of this sanction, the court may:

- order the payment of the opposing party's reasonable expenses, including attorney's fees, caused by the nondisclosure
- inform the jury of the party's failure to disclose *and*
- impose any other appropriate sanction (except for [contempt of court](#)).

Here, the company provided no justification for its failure to disclose the forklift operator's identity, and this nondisclosure was harmful to the miner since he had no time to prepare for the operator's testimony. As a result, the court did not abuse its discretion in prohibiting the operator from testifying, informing the jury of the nondisclosure, and ordering the company to pay the miner's reasonable expenses. The appellate court should therefore affirm all the sanctions **(Choices B, C & D)**.

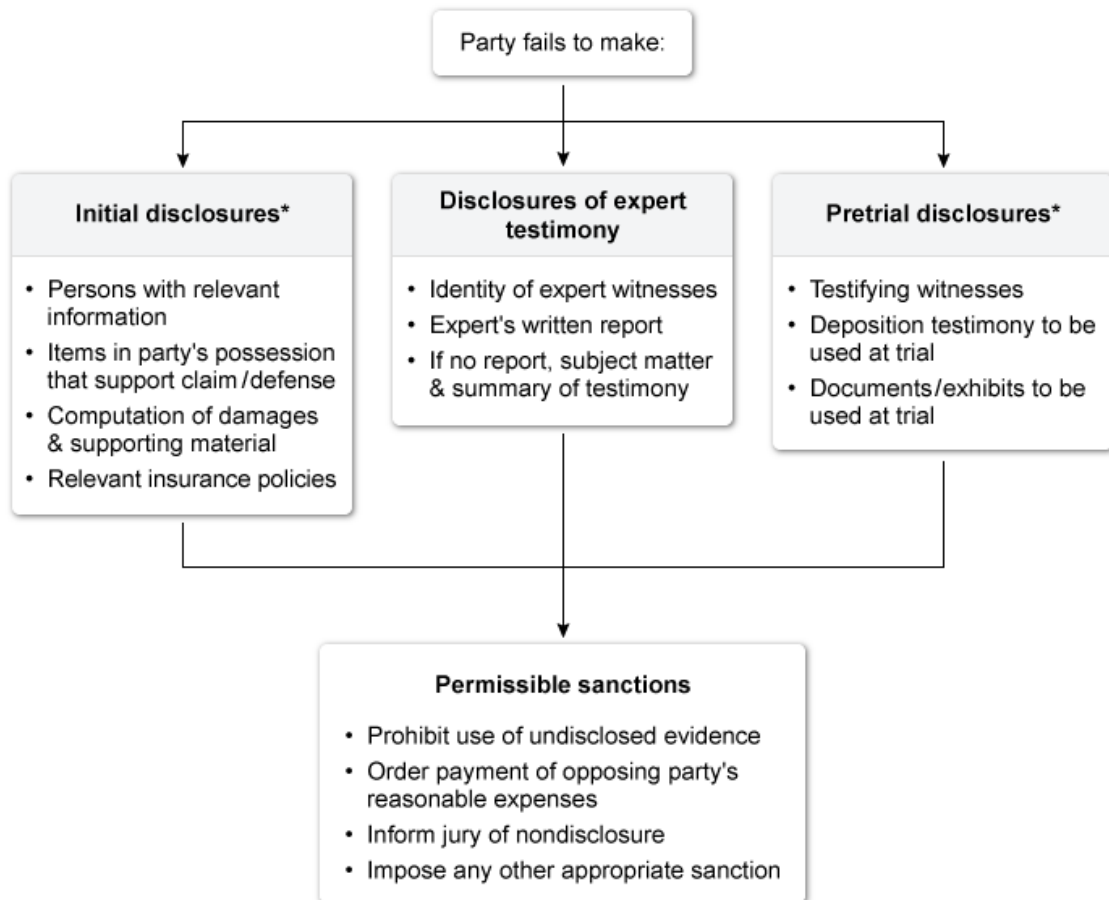
Educational objective:

A court may impose the following sanctions on a party who fails to make required disclosures: (1) prohibit the use of the undisclosed evidence, (2) order the payment of the opposing party's reasonable expenses, (3) inform the jury of the nondisclosure, and (4) impose any other appropriate sanction (except for contempt of court).

References

- Fed. R. Civ. P. 26(a) (mandatory-disclosure requirements).
- Fed. R. Civ. P. 37(c)(1) (sanctions for failure to make mandatory disclosures).
- 8B Charles Alan Wright et al., Federal Practice and Procedure § 2289.1 (3d ed. 2020) (explaining when sanctions are appropriate for failure to make required disclosures).

Sanctions for failure to make required disclosures



*Does not apply to evidence used solely for impeachment.

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