

A pedestrian sued an out-of-state driver in a federal district court for allegedly hitting the pedestrian in a crosswalk, which the pedestrian claims resulted in \$1 million in medical expenses, lost wages, and pain and suffering. The driver filed an answer denying liability.

Which of the following must the pedestrian automatically provide the driver without waiting for a discovery request?

- A. A copy of the pedestrian's medical bills for her alleged injuries.
- B. A copy of the pedestrian's medical insurance agreement.
- C. A list of the cases in which the pedestrian has been a witness over the previous four years.
- D. The name of a witness who knows about the driver's past car accidents.

Explanation:

Required discovery disclosures

(FRCP 26(a))

Type	Required disclosures	Time to disclose
Initial disclosures*	<ul style="list-style-type: none">• Persons with relevant information• Items in party's possession that support claim/defense• Computation of damages & supporting material• Relevant insurance policies	<ul style="list-style-type: none">• ≤ 14 days after initial planning conference• ≤ 30 days after post-conference service or joinder• As court orders or parties stipulate
Expert testimony	<ul style="list-style-type: none">• Identity of expert witnesses• Expert's written report• If no report, subject matter & summary of testimony	<ul style="list-style-type: none">• ≥ 90 days before trial• ≤ 30 days after disclosure to rebut evidence• As court orders or parties stipulate
Pretrial disclosures*	<ul style="list-style-type: none">• Testifying witnesses• Deposition testimony to be used at trial• Documents/exhibits to be used at trial	<ul style="list-style-type: none">• ≥ 30 days before trial• As court orders

FRCP = Federal Rule of Civil Procedure.

*Does not apply to evidence used solely for impeachment.

Under Federal Rule of Civil Procedure 26(a), parties are **required** to make **initial disclosures**, disclosures of expert testimony, and pretrial disclosures even without a discovery request. A party must initially disclose:

- the name, address, and phone number of persons with relevant information that the party may use to support a claim or defense
- all documents, electronically stored information, and tangible things in the party's possession that the party may use to support a claim or defense
- any insurance agreement with a company that may be liable for all or part of any judgment *and*

- a **computation of damages** and the **materials on which it was based**.

All of this information must be disclosed within 14 days after the initial planning conference or by a date set by the court or parties.* Here, since part of the pedestrian's damages are based on her medical expenses, she must provide the driver with a copy of her medical bills without waiting for a discovery request.

*If a party is added after the initial planning conference, initial disclosures must be made within 30 days after service or joinder of that party.

(Choice B) The pedestrian does not need to provide a copy of her health insurance agreement because her insurance company will not be liable. Instead, the driver must provide his automobile insurance agreement because his insurance company may be liable for the pedestrian's damages.

(Choice C) A testifying expert witness (not seen here) must disclose a [written report](#) that lists the cases in which the witness has testified over the past four years. But this is only required if the witness (1) is a specially hired expert or (2) regularly gives expert testimony as part of his/her employment duties with the party.

(Choice D) Testimony from a witness who knows about the driver's past driving habits may be used to impeach the driver's trial testimony. But initial disclosures do not apply to witnesses or evidence used solely for impeachment.

Educational objective:

A party's initial disclosures must include (1) persons and items that the party may use to support a claim or defense, (2) any insurance agreement with a company that may be liable, and (3) a computation of damages and the materials on which it was based.

References

- Fed. R. Civ. P. 26(a)(1) (required initial disclosures).