

A distributor brought a diversity action against a manufacturer in a federal court for breach of contract. During discovery, the distributor's attorney signed and served a request that the manufacturer produce every contract that the manufacturer entered during the past 50 years. The manufacturer's attorney objected in writing to the request, arguing that the request was unduly burdensome and inconsistent with the relevant case law.

The distributor's attorney filed a motion to compel the manufacturer to produce the requested documents. After a hearing on the motion, the trial judge concluded on the record that she agreed with the manufacturer's objections. The judge then ordered the distributor to pay the reasonable expenses incurred by the manufacturer related to the request and hearing.

At the conclusion of trial, the jury returned a verdict for the distributor, and the judge entered judgment on the verdict. The distributor has appealed the award of sanctions.

Is the appellate court likely to overturn the sanctions?

- A. No.
- B. Yes, because the jury entered a verdict in favor of the distributor.
- C. Yes, because the manufacturer did not request the sanctions.
- D. Yes, because the trial judge should have issued the sanctions against the distributor's attorney, not against the distributor directly.

Explanation:

Discovery certifications

(FRCP 26(g))

Every discovery disclosure, request, response & objection must be signed by attorney (or unrepresented party), thereby certifying that:

- disclosure is complete & correct *or*
- request, response, or objection is:
 - consistent with existing law or supported by nonfrivolous argument to extend, modify, or reverse existing law or to establish new law
 - not made for improper purpose (eg, harass, cause unnecessary delay, needlessly increase cost of litigation) *and*
 - reasonable & not unduly burdensome or expensive

FRCP = Federal Rule of Civil Procedure.

Discovery is the pretrial phase of a lawsuit during which the parties make **required disclosures** and seek information through various discovery requests, including **requests for production**. Every disclosure, request, response, or objection must be signed by an attorney or unrepresented party. By signing, the **attorney or party certifies** to the best of the person's knowledge that (1) the **disclosure is complete and correct** or (2) the **request, response, or objection is:**

- **consistent with existing law** or supported by a nonfrivolous argument to extend, modify, or reverse existing law or to establish new law
- **not made for any improper purpose**, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation *and*
- reasonable and **not unduly burdensome or expensive**.

A **violation** of these rules, without substantial justification, requires the court to impose **appropriate sanctions** on the signer, the party on whose behalf the signer acted, or both. Sanctions may include an order to **pay reasonable expenses**, including attorney's fees, caused by the violation.

Here, the trial judge determined that the request for production signed by the distributor's attorney was unduly burdensome and inconsistent with the relevant case law. As a result, the judge had the authority to order the distributor (party on whose behalf the attorney acted) to pay the manufacturer's reasonable expenses **(Choice D)**. Therefore, the appellate court will likely uphold, not overturn, the sanctions.

(Choice B) Sanctions may be imposed on a party or its attorney for improper behavior even if that party ultimately prevails on the merits of the case (as seen here).

(Choice C) The fact that the manufacturer did not request sanctions is irrelevant because a court may impose sanctions on its own initiative (ie, sua sponte).

Educational objective:

A court must impose appropriate sanctions on an attorney, party, or both when a discovery disclosure, request, response, or objection is improperly certified. Sanctions may include an order to pay reasonable expenses, including attorney's fees, caused by the violation.

References

- Fed. R. Civ. P. 26(g) (certification of discovery requirements).
- 8A Charles Alan Wright et al., Federal Practice and Procedure § 2052 (3d ed. 2020) (explaining what sanctions may be issued for improper discovery certification).

Copyright © UWorld. All rights reserved.