

Question 1 – 90 Minutes

On a foggy November 7, 2007 the container ship the Cosco Busan collided with the Bay Bridge causing a 54,000 gallon oil spill into the San Francisco Bay. The oil spill, worsened by strong winds and tides, fouled miles of shoreline and caused significant damage to wildlife.

The spill also had harmful effects on commercial Bay fisherman, tourist boat operators, and lead to the closing of 30 state and municipal beaches. The Cosco Busan was owned by the Hanjin Shipping Company of Seoul, South Korea. The master pilot at the time of the accident was Mao Cai Sun, a resident of Shanhai, China and the harbor pilot was John Cota, of Petaluma.

Within 24 hours of the accident harbor pilot John Cota was given a drug test and the results were “completely clean”. Within 30 days of the accident the law firm of Days and Thomas filed a lawsuit in United States District Court in San Francisco on behalf of Bubba Gump Shrimp, Inc., a Nevada Corporation operating on the San Francisco Bay, naming Hanjin Shipping Company and John Cota as defendants.

On November, 2008, one year post accident, plaintiffs have made the following discovery requests:

1. Records of defense attorney’s interviews with members of the ship, conducted prior to their return to sea in late December, 2007.
2. Physical and mental examination of Jon Cota and Master mao Cia Sun.

Defense counsel for each defendant refused to respond to the discovery requests on the grounds the requests “were beyond the scope of discovery”.

On December, 2009 the suit by Bubba Gump Shrimp, Inc. is nearing trial. Defendant shipowner moves for Summary Judgment. Hanjin produces no affidavits or other discovery material in support of their motion. Instead, the assert plaintiff has no evidence that it has suffered any damage as a result of the spill. Plaintiff asserts while it has no experts to testify as to the decline of the Bay fishery, plaintiff’s counsel asserts it is “common knowledge” that the Bay shrimp catch declined from 1,000 tons pre spill to 400 tons post spill, comparing the year pre spill to the year post spill.

The National Transportation Safety Board conducted its own investigation, taking testimony, conducting hearings, receiving evidence from all parties to the lawsuit as well as from Bay Bridge owner CalTrans and the U.S. Coast Guard. Prior to the U.S. District Court trial, the National Transportation Safety Board issued its report finding the crash was caused by:

(1.) Pilot John Cota degraded cognition from extended use of prescription medication.  
(2.) Master Mao Cai Sun's ineffective oversight of pilot John Cota. (3.) Hanjin Shipping Company's failure to train its crew which lead to the bow lookout eating breakfast in the galley instead of at his post prior to the collision.

1. How should the Court rule on plaintiff's Motion to Compel the requested discovery.  
(30pts)
2. How should the Court rule on defendant Hanjin's Motion for Summary Judgment.  
(30pts)
3. At trial, plaintiffs filed a Motion in Limine to prevent defendants from introducing evidence denying their negligence, how should the Court rule on the Motion.  
(40pts)

Question 2 – 90 minutes

Future Bliss is a Delaware corporation that offers video dating services throughout the western states. Prospective members pay a fee of \$2,000 to make a video presentation that is then “matched” to compatible members through a secure web site. Sales brochures guarantee complete confidentiality. Members pay \$300 per month for as long as they are members and are guaranteed at least 2 “matches” per month with Future Bliss providing contact information for the matches.

Unbeknownst to members, who number over 2,000, Future Bliss sells its membership lists to high end direct sales organizations. Jerry Jones, a Future Bliss member, files a class action lawsuit in U.S. District Court in Sacramento on behalf of “all Future Bliss members whose private contact information was sold in violation of the terms of membership”.

The suit seeks monetary damages as well as injunctive relief with the plaintiffs asking the Court to issue an injunction preventing Future Bliss from selling member’s information.

At trial plaintiffs are unable to offer any evidence of monetary damages as the evidence showed the information acquired by the direct marketers was for “statistical analysis, data bank use, and sales calls in the future that had not yet occurred”.

Defendant moved for a directed verdict which was denied and the jury returned a verdict against defendant in excess of \$1,000,000. Defendant then moved for a Judgment as a matter of law and a new trial. The Court denied both Motions.

Four months after the trial defendant learned the Judge had previously been a client of Future Bliss, a fact never disclosed to any of the attorneys.

1. Do Plaintiffs meet class action requirements? (30pts)
2. Is defendant entitled to a jury trial on all issues? (10 pts)
3. Was the Court’s ruling on defendant’s Motion for Directed Verdict correct? (20pts)
4. Was the Court’s ruling on defendant’s Motion for Judgment As a Matter of Law and Motion for New Trial correct? (20pts)
5. What remedies may defendant pursue regarding the Judge’s non-disclosed membership in Future Bliss? (20pts)