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1. Motion to compel requested discovery

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Usually discovery is done by cooperation of the parties. Discovery can be had on any nonprivileged relevant material that is reasonably likely to lead to the discovery of admissible evidence. (Rule 26(b)). However, if a recalcitrant party is disobeying discovery orders, the other party may make a motion compelling the recalcitrant party to obey discovery orders. (Rule 37 (a)). The court will allow the parties to present their opposing views on the discovery request and make a ruling on whether the discovery request is proper.

YES  
Work product which is documents or other tangible things that are prepared in anticipation of litigation by or for an attorney or his representative (Rule 26(b)(5)). Work product that includes the attorney's mental impressions, legal conclusions, strategies, or opinions are absolutely privileged and are not discoverable. All other work product receive a qualified immunity. Qualified immunity means that the work product will be protected unless the requesting party can show a substantial need for the information and that information cannot be obtained by other means without undue hardship.

The attorney's interview records with the crew would be considered Work Product because they are prepared in anticipation of litigation. The attorneys were on the ship for the purpose of gathering information for trial. Any records that contain the attorney's mental impressions would not be discoverable. All other types of records from the interviews could potentially be discoverable if the requesting party can show substantial need and undue hardship to obtain. *what about sailors now at sea*

Physical examinations are discoverable upon a motion to the court for good cause and when the physical characteristic is in controversy. (Rule 35) YES

Jon Cota's physical condition is in controversy in the case because the NTSB found that he had degraded cognition from extended use of prescription medication.

Mao Cai Sun's physical condition is not in controversy because the NTSB only ruled that he ineffectively oversaw John.

The court will grant the motion to compel discovery for Jon's physical and any interview records that do not contain mental impressions of the attorneys. The court will deny the motion to compel for any of the work product that contained the attorney's mental impressions and Mr. Sun's physical exam. The court will not let the requesting party go on a "fishing expedition" with its discovery request.

2. Motion for Summary Judgment

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Summary judgment is a way for the courts to dispose of a case before it goes to trial. The judge will go behind the pleadings in making its decision on whether to grant to motion. The judge will decide on the motion based on the pleadings and admissible evidence available to him at the time, such as affidavits and various fruits of discovery (depositions, interrogatories, physical exams, etc.) There is a public policy to allow parties to have their day in court, thus the standard for obtaining a summary judgement is very difficult to meet. If the judge determines that there is no genuine issue of material fact then he can grant the judgment as a matter of law.

As the party making the motion for summary judgment, Hanjin has the burden of production which would be the burden to show that there is not genuine issue of material fact. In order to meet this burden, Hanjin needs to present evidence that there are no issues of material fact. It cannot simply deny that there are any issues of material fact and ask the court to grant its motion. Bubba Gump's evidence of "common knowledge" is evidence which could support that there is a material fact that needs to be tried. The court will make its ruling in the light that is most favorable to the non movant.

*needs rule 56*

The court will deny the motion for summary judgement because there are issues of material fact.

### 3. Motion in Limine

#### Collateral Estoppel

Collateral estoppel is when issue has been previously litigated and determined in a valid final judgement on the merits, the same issue should not be litigated again. For collateral estoppel to apply, there must be a valid final judgement on the merits in a previous case, the issue must have been actually litigated and determined in case, the issue must have been essential to the previous case, the party collateral estoppel is used against, must have been a party to the previous case, and depending on jurisdiction the party using collateral estoppel may (mutuality) or may not (non-mutual ) be required to be a party to the previous case. CE is also known as issue preclusion.

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The NTSB judgment is a valid final judgment on the merits. The three issues of jon's cognition, Suns lack of over sight , and Hanjins failure to train were actually litigated and determined. The issue was essential to NTSB judgment because NTSB was trying to determine responsibility for the accident. Hanjin was a party to the NTSB action. If we are in a jurisdiciton that respects mutuality, Bubba cannot use collateral estopppe because it was not a party to the previous action. If we are in a non mutuality jurisdiciton, Bubba may potentially be able to use an offensive non mutual collateral estoppel, since it is the plaintiff in the case. Most jurisdicitons do not allow for offensive use, but this is gradually changing. Defensive non mutual collateral estopppe, where the defendant is using it, is acceptable in more jurisdictions.

The plaintiff usually has the burden of production and burden of persuasion. The burden of production is that once basic facts are met, presumed facts will be determined true, unless the opposing side presents challenges to the presumed facts. The burden of persuasion is by a preponderance of the evidence (i.e. more likely than not or greater than 50%) in civil actions. Depending on the jurisdiction, the burden of persuasion may or may not shift with shifts in the burden of production. In a jurisdiction applying the bursting bubble theory, the burden of persuasion does not shift. Once the opposing side meets the burden of production, the bubble bursts and the presumption vanishes. In some other jurisdictions, once the plaintiff meets the burden of production, the burden of production and burden of persuasion will both shift to the defendant. In this situation, the defendant will have to meet the burden of production and also show that it meets it by a preponderance of the evidence.

One of the claims Bubba Gump will bring against Hanjin is that it negligently caused the accident. Bubba Gump has filed a suit against Hanjin for the accident. As the plaintiff, Bubba Gump has the burden of production and burden of persuasion. Once the burden of production has been met by the plaintiff, the defendant can meet the attack by presenting evidence that it is not responsible for the accident. Hanjin's evidence denying its negligence is evidence that

*meet low  
burden  
to meet &  
preponderance*

will meet the attack. If the court grants the motion in limine, Hanjin will not be able to present its evidence denying negligence. This will result in Hanjin not being able to meet the attack.

Since the use Bubba is trying to use offensive non mutual CE, the granting of the motion in limine will depend on the jurisdiction.

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### 1. Class Action

In order to meet the class action requirements of Rule 23, the plaintiff will to meet the elements of Numerosity, Commonality, Typicality, and Adequate Representation. Numerosity is met if the number of class members is too great to join by joinder. Commonality means that members of a class share common issues of law or fact. Typicality means that Class Representative's issues are typical of the class members. Adequate representation means that the class representative adequately represents members of the class.

Jerry Jones as the person filing the class action lawsuit is the class representative. He is filing his class action on behalf of the "all Future Bliss ("FB") members". There are over 2000 FB members, meaning that they are too numerous to join in one lawsuit. The numerosity requirement is met. The commonality requirement is met because FB is selling the private contact information of all its members. All the members share a common issue of FB selling their private contact information in violation of the terms of its membership agreement. Jerry as a member of FB who has had his private contact information sold has an issue that is typical of the class, thus the typicality requirement is met. From the fact it appears that Jerry is adequately representing members of the class. He has filed a class action lawsuit on behalf of all FB members.

The plaintiffs meet the class action requirements.

### 2. Jury Trial

The seventh amendment of the constitution states that in any common law action, where the value in controversy exceeds twenty dollars, the right to trial by jury shall be preserved. Legal actions have a right to jury trial. Equitable actions do not. Where a case has both legal and equitable issues, the courts will hear the legal issues by jury first, if so requested. (Beacon). If the legal issues are only incidental to the lawsuit, the courts will still have a jury trial first to determine the legal issues (Dairy Queen). The courts will look to statutory actions from 1791 to determine if action is more similar to legal action or equitable actions in 1791. The courts will also look at the remedies to determine whether the remedies being sought were more legal or equitable in 1791.

The class members will be entitled to jury trial on those that are legal. They will even get jury trial for legal issues that are incidental to the claim.

### 3. Motion for Directed Verdict

The motion for Directed verdict is now known as the Motion for Judgement as a matter of law. When a party has been fully heard on a particular issue and there is no legally sufficient

evidentiary basis for a reasonable jury to side with that party, the court may grant a motion for directed verdict against that party with respect to that particular issue. (Rule 50 (a)). Directed verdict should be given if the weight of the evidence is such that the complaint is supported and there is no substantial support for the alleged defense. The directed verdict motion must be made before the jury gets to determine the verdict of the case.

*and Kwan*

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The court was correct in denying the defendant's directed verdict motion. There is evidence that FB has been selling lists to sales organizations and there is evidence that these sales are in violation of the membership agreements. The only way this motion should be granted is if reasonable jurors would not differ. There is no legally sufficient evidentiary basis for a reasonable jury to side with FB.

#### 4. Motion for judgment as a matter of law and motion for a new trial.

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Motion for judgment as a matter of law requires that when a party has been fully heard on a particular issue and there is no legally sufficient evidentiary basis for a reasonable jury to side with that party, the court may grant a motion for judgment as a matter of law against that party, with respect to that issue. This is the same standard as Directed verdict. The party making this motion under Rule 50(b) has 10 days from entry of judgement to make the motion and should have made the Directed Verdict motion prior to the jury deciding the verdict. When the court is making its decision on granting the motion for judgement as a matter of law, it should also rule on any Rule 59 motions. (Rule 50(c)). If a party is denied a motion for judgment as a matter of law, it has 10 days from entry for judgement to file a Rule 59 motion.

#### Motion for new trial (Rule 59)

A motion for new trial shall be granted for any reason that was previously used as a basis for granting the motion. The motion can be granted for juror misconduct; misconduct of the judge, jury, or counsel; verdict against the weight of the evidence; inconsistent verdict; newly discovered evidence; error in law; or excessive or inadequate damages. The motion can also be granted unless the plaintiff accepts less damages (remittitur) or the defendant agrees to pay more damages (additur)

Rule 60 reopening of the judgement can be granted if within one year it mistake, inadvertance, surprise, or excusable neglect; fraud or misconduct of the adverse party; or newly discovered evidence not discoverable with due diligence since the time for motion of new trial.

The denial for motion for judgment as a matter of law was correct. The defendant did not meet the standard for getting a judgment as a matter of law.

The motion for new trial was also properly denied because at the time, there was not showing of any of the above reasons for new trial.

#### 5. Remedies

The defendant could try to get a new trial because of misconduct of the judge. The defendant can also make an appeal since there is a final judgement. The final judgement rule states that an appeal can only be made on a final judgment. Appeals are for determining if errors were committed. The final judgement rule meets the public policies of judicial economy and finality of judicial decisions because judges do not have to examine appeals on a piecemeal basis.

Here the appeal would probably be granted because of misconduct of the judge.

**Motion for new trial (Rule 59)**

A motion for new trial shall be granted for any reason that was previously used as a basis for granting the motion. The motion can be granted for juror misconduct; misconduct of the judge, jury, or counsel; verdict against the weight of the evidence; inconsistent verdict; newly discovered evidence; error in law; or excessive or inadequate damages. The motion can also be granted unless the plaintiff accepts less damages (remittitur) or the defendant agrees to pay more damages (additur)

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The D should could potentially get the judgment reopened and then have the grant a motion for new trial again. The rule 59 motion should be granted because of the judges misconduct. A rule 60 reopening of the judgment can also be allow for any reason within a reasonable time.

90 *This is a rule 60 issue*

**END OF EXAM**