

# NEW MEXICO INJURY ATTORNEY BLOG

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## Discovery Abuse May Lead to Dismissal of Claims in the 10th Circuit

In litigation of any kind, often the most time-consuming, expensive and frustrating task is discovery. Many times, parties and or their attorneys simply will not cooperate in the discovery process. The 10th Circuit Court of Appeals in *Lee v. Max International* has ruled that failure to abide by the rules of discovery can result in the dismissal of a claim.

In the *Max International* case, the plaintiff failed to provide lawful discovery. Some of the missing discovery items were tax returns which are readily available and easy to provide. The defendant was forced to file several Motions to Compel Discovery, each time resulting in an order from the district court directing plaintiff to provide the discovery. In fact, there were two such orders both of which the plaintiff failed to follow. The district court dismissed the plaintiff's claims.

The 10th Circuit affirmed the dismissal stating that "Our justice system has a strong preference for resolving cases on their merits whenever possible, but no one, we hold, should count on more than three chances to make good a discovery obligation."

The plaintiff did not deny that it had failed to abide by the court's orders. In fact, the plaintiff had issued a certificate stating that all discoveries had been provided. The 10th Circuit Court of Appeals took particular exception to the false certificate filed by the plaintiff.

The Court further ruled that the district court will be allowed considerable discretion in the issuance of discovery sanctions, including the rather extraordinary sanction of dismissal. Citing Charles Alan Wright in support of the district court's broad discretion, the Court stated "the district courts must have latitude to use severe sanctions for purposes of general deterrence."

The Federal Rules of Procedure are intended to ensure "the just, speedy, and inexpensive determination of every action." The Court recognized that this is far from the reality but recognized also that allowing parties to repeatedly violate orders from the court would most assuredly defeat those purposes.

Max International will certainly not stop discovery abuses. However, the Court's suggestion that the district courts have wide discretion in doling out even extreme sanctions for discovery abuse should at least cause some pause for those parties and attorneys that engage in such practices.

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