



Memorandum

Date: February 19, 1998
To: [Seminar Students]
From: John-Mark Stensvaag
Re: *Assignment of Defense Counsel, Suggested Readings, and Advice About the Next Written Product*

The defendants in our various suits have retained the following defense firms:

Hawkeye Aluminum Company: [Student Names]
Iowa Lumber Company: [Student Names]
Roto Plate International: [Student Names]
Iron City Water Department: [Student Names]

Please note that your next assignment is to come up with a draft defense strategy memo. As with the draft plaintiff's strategy memo, I am suggesting here an outline of what might be useful in such a document, which you may use, modify, or ignore, as you wish. The memo should be a formal, polished memorandum with complete sentences and paragraphs; it is not meant to be an outline.

As you prepare your strategy memo, you should think about the next two documents that you will be filing in the case: (1) the Answer; and (2) a Motion (or Motions) to Dismiss under Federal Rule 12. In that connection, I strongly urge you to read Federal Rules of Civil Procedure 8 and 12, **and** the following portions of R. Haydock, D. Herr & J. Stemple, *FUNDAMENTALS OF PRETRIAL LITIGATION* (3d ed. 1994) (on general reserve in the library): pages 115-18 (answer), 141-54 (attacks on pleadings), 469-81 (mechanics of motion practice), and 569-89 (strategy for motion practice).

The following is the suggested outline for the defendant's strategy memo:

- I. Client (Defendant)
- II. Plaintiff
- III. Currently Available Documents (Set Forth & Describe in Logical Order)
- IV. Summary of Complaint [With Analytical Commentary]
 - A. Forum
 1. Court
 2. Subject Matter Jurisdiction
 3. Venue
 - B. Cause(s) of Action
 - C. Alleged Violation(s)
 - D. Remedies
- V. Potential Defenses [With Analytical Commentary]

- VI. Anticipated Procedural Steps [With Notes on Timing and Analytical Commentary]
 - A. Initial Response to Notice of Request for Waiver of Service
 - B. Answer
 - 1. Responses to Allegations: Must Respond to **Every** Allegation in the Complaint
 - a) Admissions
 - b) Denials
 - c) Partial Admissions/Denials (Rule 8(b))
 - d) Insufficient Information (Rule 8(b))
 - 2. Rule 12(b) Defenses [Answer **or** Motion (see VI.C.1)] *
 - 3. Affirmative Defenses
 - C. Defensive Motions
 - 1. Rule 12(b) Motions [Unless Set forth in Answer (see VI.B.2)] * **or**
 - 2. Rule 12(c) Motion [to Bring 12(b) Defenses and Affirmative Defenses in Answer to a Ruling by the Judge] *
 - 3. Other Motions
- VII. Issues Needing Legal/Factual Research
- VIII. Prospects for Successful Defense
- IX. Other Strategy Considerations

* Although the Rule 12(b) defenses may be raised in the Answer ***or*** in a Motion to Dismiss, please use the Motion technique for our class. The record will be much cleaner. Affirmative Defenses, however, must be set forth in the Answer, and brought to a ruling through a Rule 12(c) motion or a motion for summary judgment.