

ESSAY QUESTION #1

1. Plaintiff, Rusty Rustic, filed the following document in federal court in Fayetteville against Ace Trucking Co.:

In Federal Court in this District Rusty Rustic sues Ace Trucking. I cross street in front of Sam Walton's Store, mind my own business. I live here all my life. This truck company, Ace, come here from Texas and its truck knocks me down. Drive couldn't have been looking where he was going. I hit the ground and hurt real bad. I not able to work and had lots of doctor bills. I figure Ace Co., they owe me a couple of hundred thousand dollars for the trouble they caused me.

November 15, 2012 _____

The clerk of the court showed Rusty how to properly fill in a summons and instructed him how to properly serve it on Ace Trucking. Rusty followed those instructions.

You are a young associate in a defense firm. The senior partner brings you the above document and tells you "We represent Ace Trucking and have for many years. How do we respond to this? Tell me what motions we can file. I also want to know any thoughts you have on whether we should file and whether we are likely to succeed. Be thorough. Be objective. By the way, I'm only interested in preliminary motions. We'll worry about discovery later. And I don't need a treatise on every possibility."

Write the memo to the senior partner.

Essay Question 2

Nuclear Power Plant, Inc. (NPP) owns and operates a nuclear power plant in Utah. For one hour on each of three successive days in 2011, the plant emitted heavy radiation over the surrounding area. Patricia allegedly was injured by the radiation emitted on the third day, and she sued for “damages of more than \$100,000” in a proper federal district court against NPP. After describing the relevant facts, the complaint alleged only that NPP was responsible for “wrongful conduct”. Jurisdiction was based properly and exclusively on diversity of citizenship.

1. NPP moved to dismiss the complaint for failure to state a claim upon which relief could be granted. The federal district court denied the motion.
2. During discovery, the attorney for Patricia requested that NPP produce a memorandum (#A-62) concerning possible legal liability for nuclear power accidents, prepared by NPP’s legal staff prior to the accident. It discussed nuclear accidents at plants in other states and owned by other utility companies. NPP objected to discovery of #A-62 because of the so-called “work product” doctrine and because legal issues relating to accidents at other plants is not relevant.

The Utah legislature abolished the work product doctrine last year and would permit discovery of such a document. However, the Federal Rules of Civil Procedure (as interpreted by federal courts) would not permit the discovery of this type of document.

The federal district court held that the memorandum (#A-62) could be discovered.

Were the court’s rulings correct? Discuss. (5 points each).