

UPDATE ON FEDERAL RULE CHANGES AND PLEADING REQUIREMENTS

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- New Federal Rules Take Effect December 1, 2010
- Rules Enabling Act
- Approved by the United States Supreme Court in April
- www.uscourts.gov

- Amendments to Federal Rules of Civil Procedure
 - Change to Rule 8 deleting “discharge in bankruptcy” as affirmative defense
 - Change to Rule 26 extending work product protections to draft expert reports
 - Change to Rule 56 requiring pinpoint citations, and types of statements allowed
 - Rule 56 changes allowing Court more options on incomplete motions, and challenging the admissibility of evidence in MSJ.

- Amendments to the Federal Rules of Appellate Procedure
 - Adding District of Columbia as a “state” under Rule 1
 - Rule 29 Disclosures of Persons on Amicus Briefs
 - Changes to Form 4 to limit personal-identifier information.

- Amendments to Federal Rules of Evidence
 - Rule 804 Requires government to show corroborating circumstances as a condition for admission of unavailable declarant's statement against penal interest. Old Rule just required the defendant to make such a showing

- Other Amendments to Federal Rules of Bankruptcy and Criminal Rules
- www.uscourts.gov

- PLEADING REQUIREMENTS IN FEDERAL COURT
 - RULE 12(B)(6)
 - PLEADING REQUIREMENTS ARE MORE STRINGENT POST “TWOMBLY” AND “IQBAL”
 - BELL ATLANTIC CORP. v. TWOMBLY, 127 S.Ct. 1955, 550 U.S. 544 (2007)
 - ASHCROFT v. IQBAL, 129 S.Ct.1937 (2009).

RECENT EIGHTH CIRCUIT COURT OF APPEALS DECISIONS

– BRADEN v. WAL-MART, 588 F.3d 585 (8TH Cir. 2009)

ERISA case

Trial Court granted Motion to Dismiss

8th Circuit Reversed

GREGORY v. DILLARDS, 565 F.3d 464 (8th
Cir.2009)

42 U.S.C. Section 1981 and Missouri Human
Rights Act case alleging racial discrimination

Dismissal by District Court was affirmed.

- ZOLTEK CORP v. STRUCTURAL POLYMER GROUP, 592 F.3d 893 (8th Cir. 2010)
 - Diversity Fraud case applying Missouri law
 - Motion to Dismiss granted
 - 8th Circuit affirmed dismissal stating that Zoltek's claim was implausible even with all inferences in its favor

DUBINSKY v. MERMART LLC, 595 F.3D 812 (8TH
Cir.2010)

Breach of Contract/Fraud case

Trial Court dismissed

8th Circuit affirmed noting that a “threadbare”
assertion of a cause of action is not enough.

- COLE v. HOMIER DISTRIBUTING COMPANY, INC, 599 F.3d 856 (8th Cir. 2010)
 - Breach of Oral Contract/other torts
 - Mere possibility of misconduct not enough
 - 8th Circuit affirmed the granting of the Motion to Dismiss most of the state law claims

- C.N. v. WILLMAR PUBLIC SCHOOLS, 591 F.3d 626 (8th Cir. 2010)
 - Ind. With Disabilities in Education Act case
 - Motion to Dismiss granted by District Court
 - 8th Circuit affirmed
 - Facts alleging substantive due process violation too general lacking context and dates

- ZUTZ v. NELSON, 601 F.3d 842 (8th Cir.2010)
 - 42 U.S.C. Section 1983/Defamation case
 - District Court granted Motion to Dismiss
 - 8th Circuit Affirmed
 - Formulaic recitations of elements of a cause of action is not enough

WHAT TO DO NOW!

- ACT LIKE ITS MISSOURI STATE COURT (FACT PLEADING)
- GIVE AS MUCH DETAIL AS YOU CAN ABOUT WHO, WHAT, WHERE, AND WHEN
- DON'T FORGET TO SHOW HOW THE DEFENDANT'S CONDUCT IS RESPONSIBLE FOR THE DAMAGE
- PLEADING ELEMENTS ALONE WON'T WORK

- INVESTIGATE YOUR CASES
- NOTICE/FACT HYBRID
- THE DAYS OF TWO PAGE CIVIL RIGHTS AND EMPLOYMENT DISCRIMINATION COMPLAINTS ARE OVER
- DON'T BE AFRAID TO AMEND