**Lect 3**

What did we do last time –

Played around with three important ways factual allegations in a complaint can be improper

* Want to make you aware of the different ways that the fed rules take care of them

1. Legal sufficiency of factual allegations
   1. do the facts alleged, if true, entitle the P to relief
      1. distinguish elements of a cause of action from affirmative defenses, which the D must plead and prove
   * Can you resolve that during the pleading period?
   * Yes, through motion to dismiss for failure to state a claim – a motion before the answer
     + **FRCP 12(b) How to Present Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:  
       ...(6)failure to state a claim upon which relief can be granted; and ...
     + defense can also be in your answer
2. Specificity of the factual allegations

* 8(a)(2) – generous to plaintiff
* Rule 8. General Rules of Pleading  
    
  (a) Claim for Relief. A pleading that states a claim for relief must contain:  
  (2) a short and plain statement of the claim showing that the pleader is entitled to relief…
* Can you resolve that in the pleading period?
* yes, through a motion for a more definite statement or, if the plaintiff has amended the complaint in response and it still has a problem, a motion to dismiss

3) evidentiary support for factual allegations

How is this enforced?

Sanction under R 11 if you fail to have the adequate evidentiary support (will likely find this out only during discovery)

And summary judgment for the defendant if, after discovery, no reasonable jury could find for the plaintiff on the basis of the relevant evidence the parties have

**Problem – can’t find use R 11 and summary judgment (generally) until after discovery**

**the problem of frivolous actions is not set up by the federal rules to be dealt with during the pleading period**

* **Rule 11 is meant to discourage frivolous pleading by sanctioning it if it occurs – after the costs of discovery have been borne by the D**
* **there is no rule to screen out a frivolous pleading during the pleading period**

**------------------------------------------------------**

* **Sierocinski Case**
  + **Blasting cap exploded while S was crimping it**
  + **Manufactured by DuPont**
* **Suit original brought where? Eastern District of Pa**
* **Opinion you read is written by 3rd Circuit**
* **What law is he suing under – Pa state law**
* **How did S get into fed ct? – diversity (will discuss later)**
* Who is appellant? (loser below - Sierocinski)
* Appellee is DuPont
* **Q what are decisions that are being appealed?**
* **The striking of the allegation of negligence in the complaint and the dismissal of the action for failure to state a claim**

**Notice that the defendant first asked for a motion for a more definite statement under R 12(e), but DuPont was dissatisfied with the amended complaint too**

12(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

* Action was dismissed either for failing to state a claim (it no longer had an allegation of negligence, since that was struck for failing to satisfy 8(a)(2)) – now probably a court would simply dismiss for failing to satisfy 8(a)(2), without using the device of striking the allegation

**3d Cir reverses and remands**

* **What is problem D had with complaint?**

Appellee, admitting that a manufacturer is liable for injuries to a person from the use of a defectively manufactured article, argues that it is not put on notice by the complaint as to whether it must meet a claim of warranty, of misrepresentation, of the use of improper ingredients, or of faulty inspection.

* + **part of problem is S is giving several theories – e.g. negligence and breach of warranty**
  + not allowed previously, it is allowed under Fed Rs (will discuss later)

other problem –

* Insufficient specificity concerning negligence
* use of improper ingredients, faulty inspection, faulty manufacture?
* 3d Circuit’s response?
* But there is a specific averment of negligent manufacture and distribution of the cap in such a fashion as to make it explode when crimped. A plaintiff need not plead evidence.
* **Is it true that DuPont is looking for evidence?**
* **What would satisfy DuPont?**
* **Greater specificity about the negligence**
* aspect of the cap that led it to explode when crimped
* how defendant was careless
* what would it look like to offer evidence? – talk about witnesses’ testimony, documents etc.
* 3rd Cir’s real point should be – D is looking for particularity and don’t need particularity under 8(a)(2)
* See Form 11, which simply says that defendant negligently drove
* **do subsequent events in the case show this opinion is wrong? What happened?**
  + remand, at trial the P wins
  + D makes motion for directed verdict and judgment notwithstanding the verdict, it is denied
  + on appeal, 3d Cir reverses - directs district court to give judgment to the D
  + what does that mean?
  + 3rd circuit thought that on the basis of evidence provided at trial no reasonable jury could have found D was negligent
    - * **shows that the 3d circuit was wrong the 1st time around?**
  + No – a pleading that satisfies 8(a)(2) can fail to have evidence in its favor

BUT doesn’t that show that R 8(a)(2) is bad – let the case go forward when it shouldn’t?

Two responses –

1. even if it should not have gone forward that is not solved by pleading standards under 8(a)(2) but by Rule 11
2. if is not clear that the complaint actually violated R 11
   1. Arguably it did – the cap blew up – that is enough to suggest that the might be evidence of negligence in discovery (even though it did not in fact) – we will discuss this further in connection with Rule 11

Another puzzle – why didn’t the D use summary j? could have avoided trial

* **LOOK at Sierocinski’s complaint**
* **What are paragraphs 1-3 for?**
* **Allegations of jurisdiction**
* Does he state more than he needs to?
  + what affirmative defenses are anticipated?
  + contributory negligence

Why do people put so much in pleadings that they don’t have to?

* + trying to butter up judge
  + trying to intimidate opposition to encourage settlement
* 2) what is the danger of doing so?
  + plead why they cannot recover
  + will plead an affirmative defense
* Conley v Gibson case
* two points, one about failure to state a claim and one about level of specificity under 8(a)(2)
* odd language “complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”
* Sounds like it is about the evidence the plaintiff has, but we know that whether the P states a claim is not about evidence
* Green: it is about reading ambiguous language in a complaint
* read generously so that it will state a claim

in addition Conley emphasizes that 8(a)(2) requires only notice pleading:

“The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination, and that its dismissal is therefore proper. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.”

* **Twombly**
* **Facts?**
* antitrust action under Sherman Act requires an *agreement* in restraint of trade
* Ps suing as class against baby bells
* baby bells allegedly had an agreement in restraint of trade
  + inflated charges for non-baby bells for access to local network
    - engaged in parallel conduct to inhibit growth of non-baby-bell competitors
  + agreement by baby bells not to compete against one another
* cause of action is federal – that is now the reason that the Ps can sue in federal court
* compare Sierocinski, where the cause of action was under state law and the source of jurisdiction in federal court was diversity – will discuss this much more later)
* federal antitrust is one of the rare cases in which there is exclusive federal subject matter jurisdiction – in other words the federal cause of action MUST be brought in federal court
* usually it is the case that the federal action only MAY be brought in federal court – it can also be brought in state court