TO: Summer Pre-Trial Litigation Class  
FROM: Sidney Kwestel  
DATE: May 20, 2015  

You will need the following texts for the summer Pre-Trial Litigation course:  

Federal Rules of Civil Procedure  
Federal Rules of Evidence  
New York CPLR  

Attached is your first written assignment. It is due on Wednesday, May 27, 2015. You may discuss the assignment with anyone (lawyers, professors, etc.) other than another student who is taking the course or who took it. Except for permitted outside discussion, the memo you submit must be your own product.  

Your memo must be specific and should indicate precisely what you would do. For example, do not say that “we should commence an action” without specifying exactly each step you would take to commence it and how you would do it. Suppose I asked you: how would one travel from the law school to 50th St and Second Avenue in New York? An answer that says “take the train” is not sufficient. Your memo must explain each step. At minimum, you would have to say take the number X bus (note the schedule) in front of the law school to the LIRR train station, then take the LIRR train (note the schedule) to Penn Station, the last stop, and then take the subway, either the E train to 53rd and Seventh Ave. or the F train to Sixth Avenue and 53rd. After you get off the subway, walk to 57th and Seventh Avenue (ask directions).
We just received a frantic telephone call from our client, Coal Corp., (a Colorado corporation) with its principal place of business in Minnesota. In December, 2012 Coal entered into a written contract with Mining, Inc. (a Montana corporation with its principal place of business in Montana) and Irving Cooper (a private entrepreneur who resides in New Jersey) pursuant to which Mining and Mr. Cooper agreed to manufacture and deliver to Coal a large quantity of electronic mining equipment which Coal needed in its plant in Minnesota. Joseph Moran (who resides in Butte, Montana) executed a written guarantee in which he guaranteed the due and prompt performance by Mining and Cooper under the contract. Moran sent the guarantee to Mining and Mining delivered the guarantee to Coal at the time the contract was executed. Mining and Cooper manufactured the equipment in Montana and delivered the equipment to Coal in Minnesota. Mining and Cooper, however, have failed to perform several of their material obligations under the contract. As a result of their breach Coal has sustained, in its estimation, more than $1,000,000 in damages.

Mining and Coal negotiated the contract in Manhattan. The contract which Mining and Coal executed at Kennedy Airport provides that any action for breach must be commenced within two years from the date of the breach. Cooper executed the contract the same day in New Jersey and sent it to Coal in Minnesota. The guarantee has a similar clause requiring that an action on the guarantee be brought within two years from the date of any breach of the contract. According to the preliminary information we received, the initial breach of contract occurred May 20, 2013.

Moran claims that John Rich (who now resides in St. Paul but was an officer of Buffalo Trust Co., in Buffalo New York at the time it, Buffalo Trust, lent Mining Inc. $500,000 in early 2012) together with Cooper and Coal fraudulently induced him into signing the guarantee and defrauded him into purchasing certain assets from Mining.

1. Must Coal Corp commence an action promptly? If so, explain why?
2. Assuming that Coal Corp was required to commence an action promptly, please advise me in a memorandum of the actual steps you would take to accomplish that goal and why. The memorandum should cover both federal and state courts and should indicate in which court you would commence the action and why. You should also state whether you considered but rejected commencing the action in any other jurisdictions other than the one you chose and if so, please explain why you rejected commencing the action in those jurisdictions. In addition, please set forth and explain any weaknesses that exist in the positions that you have taken.
3. For this question only, assume that we represented Moran and not plaintiff and that Coal Corp. had commenced actions in New York and Minnesota, could Moran’s claims be asserted in those actions? Please explain your answer fully in your memorandum.

Please include the relevant law that supports the positions that you have taken and the explanations you have given. Be prepared to defend your positions orally.