

Legal Updates & News

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***Bell Atlantic Corp v. Twombly*: The Supreme Court Raises Pleading Standards for Allegations of Antitrust Conspiracies**

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The Supreme Court issued a noteworthy decision today that raises the pleading standards for plaintiffs alleging conspiracies in violation of Section 1 of the Sherman Act. The case, *Bell Atlantic Corp. v. Twombly*, is important for businesses because it limits plaintiffs' ability to bring speculative antitrust claims that lead to expensive discovery and set in motion the heavy machinery of antitrust litigation. Plaintiffs must now allege facts to support a "plausible" showing that the challenged conduct is the product of conspiracy rather than independent decision-making; allegations of parallel conduct that are "consistent with" a conspiracy, coupled with a conclusory assertion that a conspiracy existed, are insufficient.

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Background

The case involved allegations that the Baby Bells that emerged from the breakup of AT&T (known as ILECs, or incumbent local exchange carriers) had conspired in two respects: first, to deny competitors access to their regional telecommunications networks, and second, to refrain from competing with one another in their respective markets. As evidence of the conspiracy, plaintiffs alleged that the ILECs had thwarted the efforts of CLECs (competitive local exchange carriers) to access their networks, and that each had declined to compete outside of their own home regions. The Supreme Court reasoned that although the defendants' conduct was parallel, it was consistent with independent decision-making, as each had an interest in avoiding competition from either the CLECs or their fellow ILECs. Accordingly, the Supreme Court, reversing the Second Circuit, held that the district court properly dismissed the complaint.

Key Implications

The key implications of *Twombly* are:

- **Pleading Standard:** *Twombly* reaffirms that plaintiffs' antitrust claims must be plausible and that allegations giving rise only to the possibility of a violation are insufficient. Because the *Twombly* plaintiffs' allegations of parallel conduct by the telephone companies were not enough to "nudge[] their claims across the line from conceivable to plausible," the Supreme Court held that the district court properly dismissed their claims.
- **Sufficiency of Allegations:** *Twombly* holds that a plaintiff's complaint must contain "enough factual matter" to suggest there was an agreement among the defendants to restrain trade. An allegation that the defendants engaged in parallel business behavior, and that this behavior was the product of conspiracy, is not enough. Instead, a plaintiff must allege facts that suggest the defendants' behavior is the product of "a meeting of the minds;" if the facts suggest that the behavior "could just as well be independent action," the complaint must be dismissed. The Court found that the allegations in *Twombly* – which "mentioned no specific time, place, or person involved in the alleged conspiracies" – did not "invest[] either the action or inaction alleged with a plausible suggestion of conspiracy."
- **Sufficiency of Complaints Generally:** The Court expressly rejected a literal reading of its language in *Conley v. Gibson* that a complaint should be allowed to proceed "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.” The Court said that this language “has been questioned, criticized and explained away long enough,” and has now “earned its retirement.” To avoid dismissal, a plaintiff must allege sufficient facts to support the allegations in the complaint and state a plausible claim.

The *Twombly* decision underscores that adherence to these principles is particularly important in antitrust cases because of the “enormous expense of discovery,” and the prospect that such costs will lead defendants to settle even “anemic cases” in which the defendants would likely prevail and to refrain from engaging in pro-competitive business activities that may be mischaracterized as anticompetitive. Although the Court denied that it had singled out antitrust cases for heightened pleading standards, the decision plainly instructs the lower courts stringently to apply the standards articulated in *Twombly* in future antitrust cases.