

U.S. Supreme Court Uses Antitrust Case to Ease Standard for Dismissing Baseless Civil Claims

On May 21, 2007, the Supreme Court in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, sent a clear message that plaintiffs cannot survive early motions to dismiss by relying on conclusory pleadings and the hope of finding facts in discovery to support their claims. In the context of an antitrust case, the Court articulated a new interpretation of the pleading standard governing the sufficiency of a claim as set forth in Federal Rule of Civil Procedure 8(a). In so doing, the Court reversed its 1957 opinion in *Conley v. Gibson* that provided a complaint could not be dismissed for failure to state a claim unless “it appear[ed] beyond doubt that the plaintiff [could] prove no set of facts in support of his claim which would entitle him to relief,” stating that standard was “best forgotten as an incomplete, negative gloss on an accepted pleading standard.” The Court’s new formulation of the standard for surviving a motion to dismiss is that a plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.”

Although the application of the new standard announced by the Supreme Court in *Twombly* focused on the case at issue – an action brought under Section 1 of the Sherman Act – the holding regarding the new pleading standard applies to all civil litigation.¹ On the facts of the antitrust case, the Court held that a viable claim under Section 1 of the Sherman Act requires more than mere allegations of parallel conduct and the bare assertion of a conspiracy to restrain trade. Specifically, the Court ruled that (1) stating a Section 1 claim requires a complaint with enough factual matter (taken as true) to suggest an agreement to restrain trade was made, and (2) that pleading a Section 1 claim under Federal Rule of Civil Procedure 8(a)(2) requires allegations that plausibly suggest a right to relief and raise a reasonable expectation that discovery will reveal evidence supporting the asserted claim.

Case Background

In the wake of the 1984 divestiture of the American Telephone & Telegraph Company’s (AT&T) local telephone business, a system of regional service monopolies developed. Entities known as incumbent local exchange carriers (ILECs) or “Baby Bells” enjoyed

¹ Notably, only three days after the *Twombly* opinion was issued, a federal district court in Washington relied on *Twombly* in granting a motion to dismiss a complaint alleging that defendants had conspired to use hospital procedures to boycott plaintiffs. See *Perry v. Rado*, Case No. CV-07-5001-LRS (E.D. Wash., May 24, 2007).

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monopoly status over local telephone service until the passage of the Telecommunications Act of 1996, which fundamentally restructured local telephone markets and sought to facilitate competition among exchange carriers. Under this new legislative scheme, the ILECs had an obligation to share their existing networks with new competitive local exchange carriers (CLECs). This sharing obligation spawned a decade-long struggle between the ILECs and the CLECs and culminated in recent accusations of anticompetitive conduct against the ILECS. The *Twombly* litigation is an offshoot of these allegations.

The *Twombly* plaintiffs, a class of local telephone and/or high speed Internet services subscribers, alleged in 2002 that the ILECs had violated Section 1 of the Sherman Act, which prohibits contracts, combinations or conspiracies in restraint of trade or commerce. The complaint asserted that the ILECs conspired to restrain trade by engaging in parallel conduct in their respective service areas to inhibit the growth of upstart CLECs, and likewise, by agreeing to refrain from competing against one another in contiguous business markets. The only underlying facts alleged for the conspiracy, however, were those of parallel behavior on the part of the ILECs.

The United States District Court for the Southern District of New York dismissed the complaint in 2003, concluding that parallel business conduct allegations, taken alone, did not state a sufficient claim under Section 1 of the Sherman Act. The Second Circuit Court of Appeals reversed the district court ruling in 2005, holding that it had weighed the legal sufficiency of the complaint under the wrong standard and that, to dismiss at the pleading stage, a court would have to conclude that there was no set of facts that would permit a plaintiff to demonstrate that the parallelism resulted from collusion rather than coincidence.

The Supreme Court's Ruling

On May 21, 2007, the Supreme Court reversed the ruling of the Second Circuit. In a 7-2 decision, authored by Justice Souter, the Court held that stating a Section 1 claim under the Sherman Act requires more than mere allegations of parallel conduct and the bare assertion of conspiracy. The Court opined that parallel conduct and interdependence alone merely reflect the ambiguity of behavior that is "consistent with conspiracy, but just as much in line with a wide swath of rational and competitive business strategy unilaterally prompted by common perceptions of the market." Thus, the Court found that in order to survive a motion to dismiss, a Section 1 complaint must include enough factual matter to suggest that an agreement to restrain trade was made.

In reaching this conclusion, the Court expressly acknowledged the heavy costs and burdens that the discovery process can impose on parties in complex antitrust cases. The Court, therefore, was reluctant to subject parties and trial courts to the expense and time of discovery unless the plaintiff had set forth a "plausible" claim, not merely a "conceivable" claim. In addressing the question of what a plaintiff must plead in order to state a claim under the notice pleading standards of Federal Rule of Civil Procedure 8(a)(2), the Court held that a plaintiff could not rely on mere labels, conclusions or a

“formulaic recitation of the cause of action’s elements.” Instead, the Court held that the plaintiff must set forth sufficient factual allegations at the pleading stage plausibly (not just possibly) suggesting a right to relief and raising a reasonable expectation that discovery will reveal evidence supporting the asserted claim.

Conclusion and Implications

Specifically, in the antitrust context, this opinion will likely discourage baseless suits against businesses under the Sherman Act. Most significantly, the Supreme Court has sent a clear message that antitrust plaintiffs will no longer be allowed to embark on expensive and time-consuming discovery “fishing expeditions” based on nothing more than mere conclusory allegations of antitrust violations. Moreover, the rejection of Conley’s “no set of facts” language will have a profound impact on all civil litigation, as the Court has made clear that litigants cannot sustain claims by merely pleading conceivable allegations.

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