

The **FACT** of the **Matter**

Twombly and a Battle Over Pleading

What is a well-pled case?

That is the difficult question taken up by the U.S. Supreme Court in the past Term in the case of *Bell Atlantic v. Twombly*. There, the Court came to a striking conclusion, one that may have far-reaching implications.

The legal question was straightforward: How specific must a plaintiff's recitation of the facts be to overcome a motion for summary judgment? Since the imposition of the Federal Rules of Civil Procedure, we thought the answer was "Not too specific." After all, the pleading is the first step, before discovery and the possibility of developing facts fully.

But in that antitrust case brought by consumers alleging anticompetitive business practices, the Court said otherwise. In siding with the nation's largest local phone companies, Justice David Souter wrote in his opinion that those consumers had not "nudged their claims across the line from conceivable to plausible."

In light of *Twombly*, how much more nudging will Arizona plaintiffs have to perform? Should *Twombly* be construed as an antitrust case, or instead as authority over many forms of litigation?

In the pages to follow, three Arizona lawyers take up those questions. **Rick Halloran** details the case and states that the opinion is a good one. **Brian Pollock** agrees, and he suggests that Arizona courts should follow *Twombly's* lead. That leaves it to **Mark Samson** to urge Arizona courts to isolate *Twombly* in the antitrust realm, and to see the Supreme Court opinion as an attack on those litigants—most often plaintiffs—who lack easy access to the facts.

Let us know your thoughts. Write a letter to arizona.attorney@azbar.org.



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