With its 7 to 2 decision in *Twombly* last term, the U.S. Supreme Court rocked the litigation world by largely supplanting 50 years of notice pleading precedent with an entirely new plausibility standard.[1] The lower courts are still trying to figure out what it all means. Given the inherent irreconcilability of the decision, it will be a very long time, if ever, before they do.

Everyone seems to understand what the Supreme Court was trying to accomplish with *Twombly*.

the challenged conduct was equally consistent with both independent and concerted action. In the words of the Court, it was "factually neutral" rather than "factually suggestive" on the question of conspiracy.[4]

What the Court did not do, however, is clearly explain what plausibility is. The numerous depictions of plausibility the Court tendered provide, at best, a wooly vision of what the Court now expects. At worst, they offer no insight at all as they seem to clash directly with the bedrock pleading principle that a complaint can not be judged on its likelihood of success. While the Court claimed that it was not imposing such a "probability" requirement, it did very little to distinguish its call for plausibility from exactly that.

The Court also claimed that it was not calling for a heightened pleading of specific facts. But, such specificity is just what the Court found lacking in the complaint. The Court grumbled that the pleadings mentioned no specific time, place, or person involved in the alleged conspiracies. Such a who/when/where pleading requirement has never been required in conspiracy cases. And for good reason. This is exactly the type of secret information that remains "largely in the hands of the alleged conspirators."