



Product Liability Law & Strategy Features Brian Fields on Plausibility Standard Post-Twombly

June 2, 2009

Lathrop Gage attorney Brian Fields (Business Litigation - Kansas City) is a featured author in the June 2009 issue of *Product Liability Law & Strategy*, with an in-depth look at the May 2007 U.S. Supreme Court decision in *Bell Atlantic Corp. v. Twombly*, which significantly changed the accepted standard for a motion to dismiss from “no set of facts” to enough “plausible” facts. The publication is part of the Law Journal Newsletter family, a division of Incisive Media.

"Now, to survive a motion to dismiss for failure to state a claim, a complaint must allege 'enough facts to state a claim to relief that is plausible on its face,'" writes Mr. Fields, who has specialized in complex commercial litigation and products liability cases since 1996. "The allegations have to nudge the 'claims across the line from *conceivable* to plausible,' or else face dismissal under the new plausibility standard. This is a higher standard than the 'no set of facts' standard. Exactly how much higher is difficult to know or predict with certainty. (...) Not only does *Twombly's* plausibility standard apply in federal court, it likely applies in state courts that also use the 'no set of facts' standard, now abrogated by the Supreme Court. Product liability cases that have been filed in federal and state courts since *Twombly* are being reviewed under this new pleading standard. The impact of *Twombly* likely is as significant as the Supreme Court's major decisions on the standards for summary judgment (*Celotex Corp. v. Catrett*, 106 S.Ct. 2548 (1986)), and the admissibility of expert testimony (*Daubert v. Merrell Dow Pharm., Inc.*, 113 S.Ct. 2786 (1993))."

Mr. Fields is part of a national trial counsel team for a leading appliance manufacturer and has represented several other manufacturers on a national, regional and local basis. He has coordinated the defense of cases nationwide and supervised those cases through pre-suit investigation, discovery, trial, mediation, arbitration, dismissal or favorable settlement. He has represented clients in dozens of federal and state courts throughout the country and has successfully arbitrated numerous cases through arbitration forums. [Read the article here.](#)

About Lathrop Gage:

A leading Midwest full-service law firm, Lathrop Gage LLP has almost 300 attorneys in 11 offices nationwide – from Los Angeles to New York. In 2009, *Chambers USA* ranked Lathrop Gage's corporate, environmental, intellectual property, litigation, real estate and labor and employment teams among the best



in the Midwest. For more information, visit www.lathropgage.com.