



You're on Notice: *Twiqbal* Not The Pleading Standard in Minnesota

By Steve Kerbaugh

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The Minnesota Supreme Court recently decided an important issue affecting the opportunity for plaintiffs to have their claims heard in court. The question before the Supreme Court was: does a claim need to be *plausible* to survive a motion to dismiss? In *Walsh v. U.S. Bank, N.A.*, No. A13-0742, ___ N.W.2d __, 2014 WL 3844201 (Minn. Aug. 6, 2014) the court declined to adopt the plausibility requirement used in federal courts. Instead, the court reaffirmed the traditional, and relatively relaxed, notice-pleading standard, requiring only that a plaintiff plead enough in a complaint to put the defendant on notice of the asserted claims.

Walsh has practical implications. It affects access to justice by making litigation more accessible to unsophisticated plaintiffs. It provides guidance to plaintiffs and their counsel while they determine whether to assert a claim and the level of detail necessary to support it. It provides guidance to defendants and their counsel in assessing the potential success of a motion to dismiss. *Walsh* is thus an important decision for practitioners to reference at the outset of any state-court litigation.

A Rift Develops

Although there are exceptions, the Minnesota Rules of Civil Procedure typically track their federal counterparts. This is the case with regard to the rules governing the level of pleading detail required to state a cause of action. Both the Minnesota and federal rules require "a short and plain statement of the claim showing that the pleader is entitled to relief...." Fed. R. Civ. P. 8(a) (1); Minn. R. Civ. P. 8.01. Prior to 2007, federal and state courts construed these rules as setting forth a notice-pleading standard.

In 2007, the United States Supreme Court adopted a stricter, plausibility standard for federal pleadings in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The court reaffirmed and clarified that standard two years later in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Practitioners sometimes informally refer to the plausibility standard as *Twiqbal*.

Twiqbal provides that to survive a motion to dismiss, a complaint must contain enough facts to state a claim that is facially plausible. In other words, a complaint must allege facts with enough specificity to raise a right to relief above the level of speculation. Complaints that offer "labels and conclusions" or a "formulaic recitation of the elements" do not meet this standard. Rather, for a claim to have facial plausibility under *Twiqbal*, a plaintiff must plead enough factual content to allow the court to draw a reasonable inference that a defendant is liable.

The *Twiqbal* decisions were not without controversy. Concerns about departing from well-established precedent abounded. Also, the

adoption of a heightened pleading standard had the potential to invite increased motion practice and impede judicial economy. Some states were unwilling to follow the lead of the Supreme Court in adopting a heightened pleading standard. The question remained: would Minnesota?

Uncertainty in Minnesota

The applicability of *Twiqbal* in Minnesota was the subject of some confusion, which was fueled by seemingly inconsistent pronouncements from the Minnesota Supreme Court. On one hand, the court favorably cited *Twombly* in two cases. On the other hand, the court also continued to stress that Minnesota is a notice-pleading state that "does not require absolute specificity in pleading, but rather requires only information sufficient to fairly notify the opposing party of the claim against it." *Hansen v. Robert Half, Int'l, Inc.*, 813 N.W.2d 906, 917-18 (Minn. 2012). This ambiguity provided litigators with leeway to argue that one standard or the other applied, depending on which side they represented.

The Minnesota Supreme Court Rejects the Plausibility Standard

In *Walsh*, the Minnesota Supreme Court resolved the debate by "declin[ing] to engraft the plausibility standard from *Twombly* and *Iqbal* onto our traditional interpretation of Minn. R. Civ. P. 8.01." *Walsh*, 2014 WL 3844201, at *4.

The court's analysis was three-pronged. First, it looked at the plain language of Rule 8.01 and early cases interpreting it, concluding that both counseled against adopting the plausibility standard. Second, it discussed the purpose/history of Rule 8.01 - i.e., to permit non-technical, broad-brush pleadings. Finally, it examined the contextual backdrop of Rule 8.01, determining that the interplay between that rule and other rules of civil procedure cuts against the plausibility standard.

In light of *Walsh*, plaintiffs in Minnesota state-court actions must plead enough to provide defendants with notice of the claims being asserted against them. But plaintiffs need not plead facts necessary to raise those claims to the level of plausibility. "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Id.* at *4.

