Twombly and Iqbal at the State Level

Roger Michalski*       Abby Wood†

*Brooklyn Law School, roger.michalski@brooklaw.edu
†University of Southern California, awood@law.usc.edu

This working paper is hosted by The Berkeley Electronic Press (bepress) and may not be commercially reproduced without the permission of the copyright holder.

http://law.bepress.com/usclwps-lss/126
Copyright ©2016 by the authors.
Twombly and Iqbal at the State Level
Roger Michalski and Abby Wood

Abstract

This paper contributes to the empirical literature on pleading standards by studying the effect of Twombly and Iqbal at the state level. States account for the majority of civil litigation, yet they are understudied doctrinally and empirically. When we consider pleading at the state level, we can leverage differences across space and time in a way that is impossible with studies of federal courts. Using an array of principled empirical approaches on the best-available data, we find no evidence that raising pleading standards affected plaintiff behavior. We observe no decrease in filings and no significant change in complaint length, number of claims, or number of amended complaints. For defense strategy and judicial responses, we find no increase in motions to dismiss and no increase in the grant rate on motions to dismiss, though these findings are more tentative, given data limitations. We conduct our analysis by comparing Nebraska, a state that raised its pleading standards, with as many as twelve comparison states, none of which raised their pleading standards over the years 2006-2013.
Twombly and Iqbal at the State Level*

Roger Michalski & Abby K. Wood

Forthcoming, Journal of Empirical Legal Studies

ABSTRACT

This paper contributes to the empirical literature on pleading standards by studying the effect of Twombly and Iqbal at the state level. States account for the majority of civil litigation, yet they are understudied doctrinally and empirically. When we consider pleading at the state level, we can leverage differences across space and time in a way that is impossible with studies of federal courts. Using an array of principled empirical approaches on the best-available data, we find no evidence that raising pleading standards affected plaintiff behavior. We observe no decrease in filings and no significant change in complaint length, number of claims, or number of amended complaints. For defense strategy and judicial responses, we find no increase in motions to dismiss and no increase in the grant rate on motions to dismiss, though these findings are more tentative, given data limitations. We conduct our analysis by comparing Nebraska, a state that raised its pleading standards, with as many as twelve comparison states, none of which raised their pleading standards over the years 2006-2013.