H.R. 4115 May Encourage Cookie-Cutter Complaints In Federal Court

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In an article appearing in today's Los Angeles and San Francisco Daily Journals (subscription required), I discuss H.R. 4115, which, if passed, will overturn the Supreme Court's recent rulings in *Bell Atlantic Corporation v. Twombly* and *Ashcroft v. Iqbal*. *Twombly* and *Iqbal* held that a complaint filed in federal court could be dismissed if it does not contain sufficient factual matter to state a claim for relief that is plausible on its face.

H.R. 4115 (called "The Open Access To Courts Act of 2009"), by contrast, would prohibit a federal district judge from dismissing a complaint unless it appears

beyond doubt that plaintiff can prove no set of facts in support of their claim which would entitle plaintiff to relief.

A judge would also be prohibited from dismissing a complaint based on the determination that the factual contents of the complaint do not show their claim to be plausible or do not warrant a reasonable inference that the defendant is laible for the misconduct alleged.

The exact effect of this legislation is unclear, but, if passed, it is certain to invite the argument from plaintiff's lawyers that all they need to do to get a complaint past the pleading stage is to include as few facts as possible. Vagueness may become the order of the day, and it will certainly become more difficult to dismiss a case under Federal Rules of Civil Procedure Rule 12.

This law may mean that we will soon see complaints in federal court containing fewer and vaguer allegations. For the insurance industry, this may mean rethinking the generally accepted practice of invariably removing state court actions to federal court on diversity grounds. If a motion to dismiss is being contemplated, it may see more success as a state court demurrer.

Please feel free to contact me directly for more information.