

## Corporate & Financial Weekly Digest

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### **Delaware Follows "Reasonable Conceivability" Standard for Motions to Dismiss**

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The Delaware Supreme Court recently held that a “reasonable conceivability” rather than a “plausibility” standard governs motions to dismiss in state court proceedings. The Court held that notwithstanding the (federal) “plausibility” standard adopted by the U.S. Supreme Court in two recent decisions, the governing pleading standard in Delaware to survive a motion to dismiss, “reasonable conceivability,” was a “minimal” one. The Delaware Supreme Court explained that the federal “plausibility” standard “invites judges to determine whether a complaint states a plausible claim for relief and draw on . . . judicial experience and common sense” whereas, under the less stringent “reasonable conceivability” standard, a complaint cannot be dismissed unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances. The Delaware Supreme Court re-emphasized that until it decides otherwise, or a change is duly effected through the Civil Rules process, the governing pleading standard in Delaware to survive a motion to dismiss will remain the “reasonable conceivability” standard.

*Cambium Ltd. v. Trilantic Capital Partners*, No. 363, 2011 (Del. Supr. Jan. 20, 2011).

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