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## CIVIL PROCEDURE

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### Importance of Contextual Analysis on a Motion To Dismiss

Court of Appeals clarifies notice pleading standards

Few issues in civil procedure jurisprudence are more significant than pleading standards, which are the key that opens access to courts. *Phillips v. Allegheny County*, 515 F.3d 224, 230 (3d Cir. 2008). Last year, in *Bell Atlantic v. Twombly*, 127 S. Ct. 1955 (2007), the United States Supreme Court retired the pleading standard articulated 50 years earlier in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), “that a complaint may not be dismissed ‘unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Phillips* provides much-needed guidance on the impact of *Twombly*.

*Phillips* begins its analysis by affirming three well-settled legal principles: (1) on a 12(b)(6) motion, a court must accept as true all factual allegations in the complaint and draw all inferences from those facts in the light most favorable to the plaintiff; (2) if the complaint fails to state a claim, the District Court must offer the opportunity to amend, unless amendment would be futile; and (3) on appeal, the de novo standard of review requires the appellate court requires the appellate tribunal “to review the District Court’s order

anew and without any deference.”

The plaintiff in *Phillips*, suing under 42 U.S.C. § 1983, asserted that multiple defendants deprived her son, Mark Phillips, of his liberty interest in personal bodily integrity protected by the Due Process Clause of the Fourteenth Amendment. The complaint alleged that Allegheny County employees had released personal information about Mark Phillips to a private individual who ultimately used that information to locate Mr. Phillips and kill him. The District Court granted a motion to dismiss all defendants. The Court of Appeals reversed the dismissal as to two of the defendants and remanded with instruction to allow the plaintiff to amend as to another defendant.

In reinstating some of the claims, the *Phillips* court clarifies that, even after *Twombly*, Rule 8(a) still requires only a short and plain statement of facts and does not require “detailed factual allegations.” The adequacy of the “short plain statement” depends upon the context of the litigation, because “[c]ontext matters in notice pleading.”

*Phillips* discusses in detail the *Twombly* “plausibility” standard. After *Twombly*, a plaintiff cannot demonstrate

an entitlement to relief by offering mere labels and conclusions, and a formulaic recitation of the elements of a cause of action. The factual allegations must establish a right to relief above a speculative level. However, according to *Phillips*, the “plausibility paradigm” in *Twombly* neither demands a heightened pleading of specifics nor imposes a probability requirement. “[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.” 2008 WL 305025, at \*4 (citing *Twombly*, 127 S. Ct. at 1969).

Synthesizing all the foregoing, the *Phillips* court articulated the following rule: “[T]he notice pleading standard of Rule 8(a)(2) remains intact, and courts may generally state and apply the Rule 12(b)(6) standard, attentive to context and a showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the ... claim is and the grounds upon which it rests.” *Twombly*, 127 S.Ct. at 1964. It remains an acceptable statement of the standard, for example, that courts “accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief.” 515 F.3d at 233.

The Court’s analysis in *Phillips*, applying the difficult and complicated

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“state-created danger” doctrine, illustrates the importance of contextual analysis on a motion to dismiss. Because the state has no affirmative obligation under the Due Process Clause to protect its citizens, Mrs. Phillips would have to establish that the state acted affirmatively to create the danger to her son. She could meet this standard by showing that: “(1) the harm ultimately caused to the plaintiff was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the plaintiff’s safety; (3) there was some relationship between the state and the plaintiff; and (4) the state actor had used his authority to create an opportunity for danger that otherwise would not have existed.” (*Phillips*, 515 F.3d at 235). The state actor must take an affirmative action to create the danger — mere omissions will not create liability.

With respect to one defendant, a 9-1-1 supervisor, the plaintiff adequately alleged that the supervisor’s actions “worked to Mark Phillips’ detriment in terms of exposure to danger.” However, the complaint merely alleged that the supervisor misused his authority in various ways. The acts described in the complaint were omissions, rather than commissions. Thus, the complaint failed to state a claim against that individual.

However, although the Court of Appeals affirmed the dismissal as to the 9-1-1 supervisor, it also found that the District Court erred in not allowing plaintiff an opportunity to amend the complaint. The court reiterated that “if a complaint is vulnerable to 12(b)(6) dismissal, a district court must permit a curative amendment, unless an amendment would be inequitable or futile.” Accordingly, the Court of Appeals remanded with instructions to allow the plaintiff to amend her complaint to allege an affirmative act.

With respect to two individual 9-1-1 operator defendants, the Court of

Appeals held that the District Court erred in its analysis of several of the requirements of a state-created danger claim. The court concluded that the District Court misapplied the law in several ways, thereby committing error in granting the motion to dismiss as to these two defendants.

First, the District Court erred in holding that there was not a direct causal relationship between the affirmative acts of these defendants — the release of confidential 911 information revealing Phillips’ residence to the shooter — and the ultimate harm. The District Court held that, because the complaint did not allege the location of the shooting, it did not establish a direct causal relationship between the employees’ actions and the harm alleged. The court concluded that, unless Phillips was shot at his residence, there could be no causal relationship between the act of releasing his address and the ultimate harm. The Court of Appeals rejected this reasoning, holding that “it is reasonable to infer that [the perpetrator] could have gained relevant information at [the victim’s] house as to his whereabouts, which could have directly assisted [him] in stalking and killing.”

The Court of Appeals also found that the District Court erred in holding that the harm was not foreseeable because the perpetrator of the killing had no history of violence. The Court of Appeals explained: “We have never held that to establish foreseeability, a plaintiff must allege that the person who caused the harm had a ‘history of violence.’ Indeed, these types of cases often come from unexpected or impulsive actions which ultimately cause serious harm.” In the context of a state-created danger claim, it is sufficient to show that harm to a particular victim was foreseeable and fairly direct,

regardless of whether or not there was a history of violence.

Finally, the Court of Appeals held that, under the circumstances, the 9-1-1 operators had acted with a degree of culpability that “shocks the conscience,” a necessary element of any state-created danger claim. Because the “conscience-shocking” determination depends upon the circumstances of the case, the Court’s reasoning presents another good example of contextual analysis of a 12(b)(6) motion.

In applying the “shocks the conscience” standard, courts must consider the amount of time that state officials have to deliberate. Thus, “although intent to cause harm must be found in a ‘hyperpressurized environment,’ where officials are afforded the luxury of a greater degree of deliberation and have time to make ‘unhurried judgments,’ deliberate indifference is sufficient to support an allegation of culpability.” In *Phillips*, the individual defendants had time to consider their actions carefully. Therefore, their actions “shocked the conscience” if they rose to the level of deliberate indifference. The Court of Appeals ultimately held: “Taking the allegations as true and drawing reasonable inferences therefrom, the complaint does sufficiently allege facts that these defendants not only foresaw the danger of harm their actions presented, but were deliberately indifferent in providing . . . more confidential information.”

The *Phillips* court observed that the “issues raised by *Twombly* are not easily resolved, and likely will be a source of controversy for years to come.” *Phillips*, with its careful contextual analysis of the pleading requirements for a state-created danger claim offers valuable guidance on the application of the *Twombly* 12(b)(6) standard to litigants within the Third Circuit. ■