

# FIFTH CIRCUIT UPDATE

DAVID S. COALE

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“The 5th U.S. Circuit Court of Appeals is widely viewed as one of the nation's most conservative federal appellate courts . . . ”

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# PLEADINGS

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*Flagg v. Stryker Corp.*,  
(April 26, 2016, unpublished)

“Perhaps after discovery Flagg will not prevail, but at a pre-discovery stage of this case, in an area of law where **defendants are likely to exclusively possess the information** relevant to making more detailed factual allegations, we cannot say that he is merely on a fishing expedition.”



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*Wallace v. Tesoro Corp.*,  
796 F.3d 468 (5th Cir. 2015)

“[A]n employee who is providing information about potential fraud . . . **might not know** who is making the false representations or what that person is obtaining by the fraud; indeed, that may be the point of the investigation.”



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*Bell Atlantic Corp. v. Twombly*,  
127 S. Ct. 1955 (2007) (Stevens, J., dissenting)

“**[T]he proof is largely in the hands of the alleged conspirators** . . . It is therefore more, not less, important in antitrust cases to resist the urge to engage in armchair economics at the pleading stage.”



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