

# FIFTH CIRCUIT UPDATE

DAVID S. COALE

26<sup>th</sup> Annual Conference on State & Federal Appeals

Austin, TX

June 10, 2016

LYNN PINKER COX HURST

600Camp.com



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

LYNN PINKER COX HURST

600Camp.com

# PLEADINGS

LYNN PINKER COX HURST

600Camp.com

*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(April 26, 2016, unpublished)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.”



LYNN PINKER COX HURST

600Camp.com

*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.”



LYNN **PINKER** COX **HURST**

600Camp.com

*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.”



LYNN **PINKER** COX **HURST**

600Camp.com

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Fifth Circuit Update

Also available as part of the eCourse

[2016 Federal Appellate Law Update: Fifth Circuit Update, Federal Rules Update, and More](#)

First appeared as part of the conference materials for the  
26<sup>th</sup> Annual Conference on State and Federal Appeals session  
"Fifth Circuit Update"