The U.S Supreme Court's Iqbal Opinion to Get Congressional Airing

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Ashcroft v. Iqbal, 556 U.S. ___, 129 S.Ct. 1937 (2009), the 5-month-old U.S. Supreme Court decision that has made federal pleadings standards much more stringent, will get a Capitol Hill airing on Tuesday October 27, 2009. The House Judiciary Committee is scheduled to hold the first congressional hearing on the far-reaching May ruling, which raised the pleading standard for most civil complaints, making it more difficult to keep cases from being dismissed.

Iqbal was a 5 to 4 decision delivered on May 18, 2009 by Justice Kennedy held that Iqbal's complaint failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination.

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required (*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)), but the Rule does call for sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," *Id*. at 570. A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id*. at 556.

The Court held that Iqbal's pleadings did not comply with Rule 8 under *Twombly*. The Court found that several of his allegations – that petitioners agreed to subject him to harsh conditions as a matter of policy, solely on account of discriminatory factors and for no legitimate penological interest, that Ashcroft was that policy's "principal architect", and that Mueller was "instrumental" in its adoption and execution, were conclusory and not entitled to be assumed true. The Court decided that given that the September 11 attacks were perpetrated by Arab Muslims, it was not surprising that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the policy's purpose was to target neither Arabs nor Muslims. Even if the complaint's well-pleaded facts gave rise to a plausible inference that Iqbal's arrest was the result of unconstitutional discrimination, that inference alone did not entitle him to relief since his claims rested solely on their ostensible policy of holding detainees categorized as "of high interest," but the complaint does not contain facts plausibly showing that their policy was based on discriminatory factors.

The Court rejected Iqbal's arguments. First, the Court found that Iqbal's claim that *Twombly* should be limited to its antitrust context was not supported by that case or the Federal Rules. Second, the Court found that Rule 9(b), which requires particularity when pleading "fraud or mistake" but allows "other conditions of a person's mind [to] be alleged generally," did not require courts to credit a complaint's conclusory statements without reference to its factual context.

Law professor Herman Schwarzt discusses the aftermath of *Iqbal* in his article published Sept. 30th in *The Nation*:

In the few months since the decision in *Iqbal* came down, it has resulted in the dismissal of 1500 District Court and 100 appellate court cases, many if not most of which would probably have survived; more dismissal motions are pending. Complaints against drug and other companies for multi-organ failure after taking an epilepsy drug, for false marketing and for excessive lead in baby bottle coolers have all been thrown out at the pleading stage, as have many civil rights cases. *Iqbal* has also been used to dismiss a First Amendment suit by anti-Bush protesters against the Secret Service, and complaints against Coca-Cola and its Colombian subsidiaries for the murder and torture of trade unionists. In all these cases, the mental element--what defendants knew and when they knew it--is usually crucial, and without going into a defendant's files and oral questioning of knowledgeable people, that cannot be determined.

With the future of thousands of potential lawsuits at stake, many of these insurance class actions, expect a battle royale between lobbyists for the trial lawyers and the business community.