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Appellate Advisory: U.S. Supreme Court Addresses Pleading Standard for Federal Civil Lawsuits in Ashcroft v. Iqbal

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In its May 18, 2009 decision in *Ashcroft v. Iqbal*, the United States Supreme Court recently announced an important clarification and amplification of the standard for reviewing a plaintiff's allegations when a defendant has moved to dismiss a lawsuit for failure to state a legal claim. The decision has far-reaching implications for any plaintiff or defendant in a civil lawsuit in federal court, because it affects the degree of factual particularity that a plaintiff must allege in a complaint, as well as whether or not a defendant can dispose of a suit early in the litigation process, without engaging in costly and time-consuming document discovery and depositions.

In *Ashcroft v. Iqbal*, No. 07-1015, 556 U.S. ___ (May 18, 2009), the Supreme Court reaffirmed the standard of pleading necessary to withstand a motion to dismiss that the Court first announced in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007): "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'"[1] But the Court amplified and clarified the *Twombly* standard in four significant ways.

First, the Court emphasized that a complaint must do more than merely repeat the elements of a cause of action to survive a motion to dismiss. While courts must accept the truth of the *factual* allegations in a complaint when reviewing a complaint's adequacy, that tenet "is inapplicable to *legal* conclusions."[2] This is one of the two "working principles" underlying *Twombly*.[3] Consequently, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to state a claim.[4] Commenting on Rule 8 of the Federal Rules of Civil Procedure, which requires that a complaint contain only "a short and plain statement of the claim," the Court observed that it "marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions."[5]

Second, in discussing *Twombly's* other "working principle," that the allegations in a complaint must state a *plausible* claim for relief, the Court highlighted Rule 8's requirement of a "showing that the pleader is entitled to relief." "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not 'show[n]' — 'that the pleader is entitled to relief.'"[6] In other words, the complaint must describe a factual scenario that, assuming its truth, *shows* that the claimant has a plausible legal claim.

Third, combining the two "working principles" underlying the *Twombly* decision, the Court went on to outline a "two-pronged approach" for federal courts to follow in assessing a complaint's adequacy in the face of a motion to dismiss.[7] Initially, a court can "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of

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truth."[8] Next, after having identified the complaint's "well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."[9]

Finally, the Court made it clear that the pleading standard stated in *Twombly* (and further explained in *Iqbal*) applies generally to all civil cases in the federal district courts. While the *Twombly* decision concerned an antitrust case, it was based on the Court's interpretation and application of Rule 8 of the Federal Rules of Civil Procedure, which states the requirements for all civil pleadings in the federal courts.[10] The Court's decision in *Iqbal* therefore quells any residual doubt that the *Twombly* standard should be limited to antitrust cases only.

The differences between Justice Kennedy's majority opinion and Justice Souter's dissent[11] in their respective treatment of the specific allegations at issue in *Iqbal* illustrate some of the potential difficulties involved in applying the Court's new two-pronged approach to a motion to dismiss. Javaid Iqbal, a Muslim Pakistani, was arrested after September 11, 2001 on federal charges of fraud and conspiracy in relation to identification documents, and detained in a maximum security facility in New York.[12] After pleading guilty and being deported to Pakistan, Iqbal filed a civil complaint in federal district court against numerous federal officials, including former Attorney General John Ashcroft and former FBI director John Mueller, alleging in his complaint that while detained he was subjected to a variety of treatments and conditions that violated his constitutional rights.[13] In his complaint, Iqbal alleged that Ashcroft and Mueller "'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement 'as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.'"[14] He further alleged that "Ashcroft was the 'principal architect' of this invidious policy, and that Mueller was 'instrumental' in adopting and executing it."[15] Commenting on these allegations, Justice Kennedy described them as "bare assertions" that "amount to nothing more than a 'formulaic recitation of the elements' of a constitutional discrimination claim."[16] "As such," he concluded, "the allegations are conclusory and not entitled to be assumed true."[17] Justice Souter, the author of the *Twombly* opinion, took a very different view of these same allegations in his dissent, describing them as "factual allegations" that, if true, indicated that "Ashcroft and Mueller were, at the very least, aware of the discriminatory policy being implemented and deliberately indifferent to it."[18] Justice Souter went on to criticize the majority for the "fallacy" of "looking at the relevant assertions in isolation" from other specific allegations in the complaint that detailed "a particular, discrete, discriminatory policy."[19]

The Supreme Court's decision in *Iqbal* continues the Court's move toward requiring more factual detail in complaints in the federal courts and sets out a new two-pronged approach for evaluating the adequacy of a complaint in the face of a motion to dismiss. But as the tension between Justice Kennedy's majority opinion and Justice Souter's dissent illustrates, distinguishing between mere recitals of the elements of a cause of action that can be disregarded and legitimate factual allegations that must be taken as true may sometimes be a difficult exercise for the courts to undertake. It will be interesting to see how the federal courts apply *Iqbal* in future decisions, as well as the impact *Iqbal* may have on state courts that have previously adopted the *Twombly* standard.[20]

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Endnotes

[1] *Iqbal*, slip op. at 14 (quoting *Twombly*, 550 U.S. at 570).

[2] *Id.* (emphasis added).

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id*. at 15 (quoting Fed. R. Civ. P. 8(1)(2)).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at 20.

[11] Justice Kennedy delivered the opinion of the Court, which was joined by Chief Justice Roberts and Justices Scalia, Thomas, and Alito. Justice Souter's dissenting opinion was joined by Justices Stevens, Ginsburg and Breyer. Justice Breyer also filed a dissenting opinion.

[12] *Id.* at 1, 3.

[13] *Id.* at 3.

[14] *Id.* at 16 (quoting Iqbal's complaint).

[15] *Id.* at 16-17

[16] *Id.* at 17 (quoting *Twombly*, 550 U.S. at 555).

[17] *Id.*

[18] *Iqbal*, 556 U.S. ____, Souter, J., dissenting slip op. at 9 (May 18, 2009).

[19] *Id.* at 12.

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[20] *See, e.g., Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-56, 888 N.E.2d 879, 890 (2008) (adopting the *Twombly* standard for evaluating adequacy of a complaint in the face of a motion to dismiss).

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