Client Alert

pillsbury

Litigation

May 19, 2009

# Supreme Court Toughens Federal Pleading Standards

by Frederick A. Brodie and Shawn P. Thomas

## Ashcroft v. Iqbal *expands the* Twombley *"facial plausibility" pleading requirement to all civil suits.*

Will a "bare-bones" complaint survive a motion to dismiss in federal court? It's less likely after the Supreme Court's decision in *Ashcroft v. Iqbal*, No. 07-1015 (U.S. May 18, 2009). To withstand dismissal, all federal civil complaints now must contain "sufficient factual matter" to give the claim "facial plausibility" and "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.,* slip op. at 14. The Court's ruling in *Iqbal* also places on plaintiffs the burden of showing that their complaints are adequate, rather than requiring the defendant to prove the pleading's inadequacy.

Javaid Iqbal, a Pakistani Muslim, was rounded up in immigration sweeps immediately after the September 11, 2001, terrorist attacks. After pleading guilty to criminal charges, serving time and ultimately being returned to Pakistan, Iqbal brought a civil suit over his treatment while confined. Iqbal alleged that his First and Fifth Amendment rights were violated by U.S. Attorney General John Ashcroft and FBI Director Robert Mueller, among others. To succeed on his claims against Ashcroft and Mueller, Iqbal was required to prove that those two individuals acted with discriminatory purpose. Iqbal contended that Ashcroft and Mueller condoned the harsh treatment he received during his detention and deliberately discriminated against him based on his religion and national origin. But, in support of that claim, all Iqbal cited was the detention and investigation of Muslim and Arab men immediately after September 11, 2001.

### "Threadbare," Conclusory Claims Inadequate

Ashcroft and Mueller moved to dismiss. The District Court denied the motion, holding that the complaint was sufficient at least to survive a challenge based on the pleadings alone. On appeal, the Second Circuit affirmed. The Supreme Court, however, reversed the ruling in a 5-4 decision written by Justice Anthony M. Kennedy.

Ratcheting up the pleading burdens on all civil plaintiffs in federal court, the majority broadly applied to all federal civil cases the rule announced in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), an antitrust case. *Twombly* required a plaintiff to plead *facts*, as opposed to conclusions of *law*, sufficient to state a plausible claim for relief. The Court also clarified that perfunctory, boilerplate pleadings should not survive

under the Federal Rules: "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, slip op. at 14.

## Demise of the "No Set of Facts" Standard

*Iqbal* marks another long step away from the "no set of facts" standard that applied to federal complaints before *Twombly.* Rule 8 of the Federal Rules of Civil Procedure requires that a complaint contain "a short and plain statement" showing that the pleader is entitled to relief. The pre-*Twombly* test, as propounded in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), allowed courts to dismiss a complaint for failure to state a claim only if "it appear[ed] beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Under this "no set of facts" standard, a complaint effectively could survive a motion to dismiss so long as it contained a bare recitation of the claim's legal elements.

The Supreme Court began its rejection of that test in *Twombly*. There, the Court held that a pleading offering only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. In *Iqbal*, the Court now expands the reach of *Twombly*, holding that all federal civil complaints must contain "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, slip op. at 14. Rather than merely showing a *conceivable* right to relief, the plaintiff now must show a *plausible*, fact-based right to the relief sought.

Discovery – even limited discovery – will not be available unless this pleading standard is met: Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, slip op. at 14.

## Two-Step Analysis Required

After *Iqbal*, a motion to dismiss for failure to state a claim will require a two-part analysis:

- *First*, the court must separate the factual and legal elements of a claim. The court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions – even when those conclusions masquerade as factual allegations. *Id.*

- *Second*, the court must determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." *Id.* at 15. This means the complaint must do more than allege the plaintiff's entitlement to relief – it must "show" that entitlement with facts. "Where 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.'" *Id.*

Determining whether a plaintiff has stated a "plausible" claim will be "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* In Iqbal's case, the complaint fell short because Iqbal relied on conclusory statements that Ashcroft and Mueller acted with the intent to discriminate, rather than providing any facts that would tend to establish that discriminatory state of mind. While Iqbal alleged that he was detained under restrictive conditions because he was an Arab Muslim, the Supreme Court concluded that ethnic or religious discrimination was not a "plausible" explanation, particularly when law enforcement officers were acting to maintain security "in the aftermath of a devastating terrorist attack." *Id.* at 18-19.

## *Iqbal* Changes the Rules

*Iqbal* thus finally lays to rest the old *Conley* approach, and does so for all civil cases in the federal courts. It places squarely on the plaintiff's shoulders the burden of constructing a plausible pleading. No longer must defendants show that "no set of facts" could establish their liability on the claims alleged, and complaints can be dismissed even if they contain all the requisite legal elements. The critical question will be whether the complaint pleads *facts* that, if accepted as true, plausibly give rise to an entitlement to relief. Plaintiffs' factual allegations must be sufficient to "nudge [the] claims … across the line from conceivable to plausible." *Iqbal*, slip op. at 16 (quoting *Twombly*).

Pre-complaint fact investigation now will be more crucial than ever, with the results of that investigation effectively required to be set forth in the filed pleading. Plaintiffs will benefit from explaining, in the complaint itself, how the facts alleged indeed make plausible the claims ultimately asserted.

---

For further information, please contact:

Kenneth W. Taber (bio)
**New York**
212-858-1813
kenneth.taber@pillsburylaw.com

Frederick A. Brodie (bio)
**New York**
212-858-1628
fab@pillsburylaw.com

Kirke M. Hasson (bio)
**San Francisco**
415-983-1077
kirke.hasson@pillsburylaw.com

Shawn P. Thomas*
**New York**
212-858-1414
shawn.thomas@pillsburylaw.com

*awaiting bar admission