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Good News for Defendants as Supreme Court Clarifies Motion to Dismiss Pleading Standards

On May 18, 2009, the Supreme Court in [Ashcroft v. Iqbal](#) further clarified the standard to be used by federal courts to decide Rule 12(b)(6) motions to dismiss. *Iqbal* is helpful to defendants for at least two reasons. First, the 5-4 decision confirms and further explains the stricter pleading standard set out two years ago by the Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Second, it holds that this more stringent standard applies to all civil actions, not only those arising in antitrust.

Two years ago, the Supreme Court in *Twombly* effectively overruled the earlier, less stringent standard for pleading, which prevented dismissal of a complaint “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”¹ *Twombly* established that, in order to survive a motion to dismiss, a plaintiff’s complaint must “state a claim to relief that is plausible on its face.” *Id.* at 570. (For an in-depth description of *Twombly*, please click [here](#).) In *Iqbal*, the Court further discussed what makes a claim “plausible” and therefore able to survive a motion to dismiss.

The Court in *Iqbal* stressed that Rule 8, which governs pleading, “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Slip. op. at 14. It added that “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* On the contrary, to make a claim plausible, a pleader must not merely allege, but must *show* that he is entitled to relief. See *id.* at 15. As the Court explained, “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.* (citing FED. R. CIV. P. 8(a)(2)).

Iqbal was a discrimination suit brought by a detainee who was designated a person “of high interest” after the September 11 attacks. *Iqbal*, a Pakistani Muslim, claimed that FBI officials focused on him simply because of his race, religion, or national origin; he also contended that Attorney General John Ashcroft and FBI Director Robert Mueller were aware of the discriminatory policy and condoned it. The Court determined that *Iqbal*’s complaint did not “contain facts plausibly showing that petitioners [Ashcroft and Mueller] purposefully adopted a policy of classifying post-September-11 detainees as ‘of high interest’ because of their race, religion, or national origin.” *Id.* at 18.

As the Court addressed *Iqbal*’s claims, it explained that *Twombly* set out a two-pronged approach for courts to follow when analyzing motions to dismiss. *Id.* at 15. Step one is to “identify the allegations in the complaint that are not entitled to the assumption of truth.” *Id.* at 16. At this stage of the analysis, the court should throw out any and all bare assertions or conclusory allegations. Step two is to “consider the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.” *Id.* at 17. This step involves considering “more likely explanations” for the allegations. *Id.* For example, the Court reasoned that because the September 11 attacks were perpetrated by Arab Muslims, “[i]t should come as no surprise 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 purpose of the policy was to target neither Arabs nor Muslims.” *Id.* at 18. The Court found that discrimination was not a plausible conclusion when considered in light of this “obvious alternative explanation.” *Id.* (citing *Twombly*, 550 U.S. at 567).

¹ *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

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The Court also clarified that *Twombly* applies to all civil actions, despite Iqbal's argument that it did not apply to his discrimination suit. Previously, there had been some confusion as to whether the standard articulated in *Twombly*, which was an antitrust case, was limited to the area of antitrust. Now, however, there is no question that *Twombly* applies to all civil actions.

In dissent, Justice Souter (who authored *Twombly*) disagreed with the majority's application of *Twombly* and their designation of some allegations as conclusory rather than factual in determining whether the allegations met *Twombly*'s plausibility standard.



If you have any questions regarding this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Thomas M. Byrne	404.853.8026	tom.byrne@sutherland.com
Carla Wong McMillian	404.853.8120	carla.mcmillian@sutherland.com
Rocco E. Testani	404.853.8390	rocco.testani@sutherland.com
Jessica S. Wang	404.853.8226	jessica.wang@sutherland.com