

*Ashcroft v. Iqbal***Judicial Pain Relief for Defendants***by Christopher Tomlin*

Defendants received a much-needed dose of judicial pain relief earlier this year when the United States Supreme Court issued its decision in *Ashcroft v. Iqbal*,¹ which reaffirmed and amplified its landmark 2007 decision in *Bell Atlantic Corp. v. Twombly*.²

In *Iqbal*, a Pakistani terrorism suspect alleged he was subjected to unconstitutional treatment while in pretrial detention. He sued former Attorney General John Ashcroft and former FBI Director Robert Mueller for allegedly adopting a policy that purposefully discriminated against him. The Supreme Court reversed the Second Circuit's denial of the defendant's motion to dismiss, reasoning that *Iqbal's* claim, though possible, was not plausible.

Together, *Iqbal* and *Twombly* have substantially revamped the pleading standards under Federal Rule of Civil Procedure 8(a), making it significantly easier for defendants to avoid the time and costs of discovery in meritless cases by filing pre-answer motions to dismiss. This article discusses some of the key points in the *Iqbal* decision, as well as its implications for the defense bar.

TWOMBLY AND THE REJECTION OF THE "NO SET OF FACTS" TEST

Federal Rule of Civil Procedure 8(a) requires a complaint to contain "short and plain statement" regarding the claim for relief. Prior to *Twombly*, "the accepted rule [was]

that a complaint should not be dismissed for failure to state a claim 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."³ As defense attorneys know, this inflexible standard made early dismissal

ulative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).⁵

In short, under *Twombly*, plaintiffs must "nudge their claims across the lines from conceivable to plausible."⁶

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unlikely, even where the complaint contained few factual allegations.

In *Twombly*, which involved an alleged antitrust conspiracy, the Court rejected the "no set of facts" test, stating that the 50-year-old pleading standard had "earned its retirement."⁴ In its place, the *Twombly* Court articulated the new pleading standard as follows:

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. ...Factual allegations must be enough to raise a right to relief above the spec-

IQBAL'S CLARIFICATION AND REINFORCEMENT OF THE TWOMBLY STANDARD

Revolutionary though *Twombly* was, it left certain questions unanswered. For example, did the *Twombly* standard apply only in the context of antitrust cases, or was it broadly applicable in all civil litigation? And what exactly does "plausibility" mean? The Court, in *Iqbal*, endeavored to answer some of these questions.

As a preliminary matter, the Court rejected the argument that *Twombly* applied only in antitrust litigation, explaining that the decision was merely a general application of Rule 8(a).⁷ Thus, under *Iqbal*, the *Twombly* standard governs pleadings in all varieties of civil cases.

Moreover, the *Iqbal* Court explained “two working principles” deriving from *Twombly*, which district courts should consider when analyzing a motion to dismiss. First, a court is not obligated to accept as true “threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.”⁸ Second, a court deciding a motion to dismiss must “draw on its experience and common sense” when determining whether a claim for relief is “plausible.”⁹

The Court also outlined the approach a district court should take when analyzing a motion to dismiss:

[A] court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.¹⁰

For the purposes of deciding a motion to dismiss, “plausibility” requires “the plaintiff [to] plead *factual content* that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”¹¹ While this does not inject a “probability requirement” into the pleadings, it demands “more than a *sheer possibility* that a defendant has acted unlawfully.”¹² Thus, a complaint will not pass muster if it “pleads facts that are ‘merely consistent with’ a defendant’s liability,”¹³ particularly where there are “more likely explanations” for the harm complained of than unlawful conduct by the defendant.¹⁴

Applying this standard, the *Iqbal* Court ruled that the plaintiff’s complaint failed to state a claim because, although the defendants’ alleged conduct was consistent

with purposeful discrimination, it was more likely explained by an innocent motivation, namely security concerns stemming from the terrorist attacks of Sept. 11, 2001. Consequently, the plaintiff’s claim of discrimination was implausible, and was properly dismissed.

IMPLICATIONS OF *IQBAL*

Given the broad applicability of *Iqbal* and *Twombly* to all civil cases, defense attorneys should closely examine each and every complaint to determine whether a pre-answer motion to dismiss is feasible. This requires an analysis of whether each element of each cause of action is supported by plausible factual allegations. Attorneys should pay particular attention to knowledge and intent elements, which often are the subject of only insufficient conclusory allegations.

Furthermore, defense attorneys should strongly consider whether removal is available in cases brought in state court. The New Jersey Rules of Court have not been interpreted to require the factual precision that is necessary in light of *Iqbal*. Yet, upon removal, the Federal Rules of Civil Procedure apply to state court pleadings,¹⁵ leaving them particularly vulnerable to a motion to dismiss.

In sum, *Iqbal* enables defendants to avoid the time and expense associated with prolonged, spurious litigation. As a result, defense attorneys should make it a part of their routine to review new complaints immediately upon receipt to determine at the outset whether the plaintiff has pleaded a sufficient set of facts to support the essential elements of his or her legal theory. In those cases where factual allegations are lacking, attorneys should strongly consider moving to dismiss some or all claims to eliminate, or at least narrow the scope of, the litigation at an early juncture. ■

ENDNOTES

1. 129 S. Ct. 1937 (2009).
2. 550 U.S. 544 (2007).

3. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) (emphasis added).
4. 550 U.S. at 563.
5. 550 U.S. at 570.
6. *Id.*
7. *Iqbal*, 129 S. Ct. at 1953.
8. *Id.* at 1940 (citations omitted).
9. *Id.*
10. *Id.* at 1950.
11. *Id.* at 1949.
12. *Id.*
13. *Id.*
14. *Id.* at 1950.
15. Fed. R. Civ. P. 81(c)(1).

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