[Alerts and Updates]

U.S. Supreme Court Settles Twombly Debate

May 21, 2009

On May 18, 2009, in *Ashcroft v. Iqbal*,[1] the U.S. Supreme Court confirmed that the heightened pleading standard first announced in *Bell Atlantic Corp. v. Twombly*[2] broadly applies beyond a narrow category of cases, bringing further clarity to pleading requirements under Rule 8 of the Federal Rules of Civil Procedure. Debate generated by the 2007 decision in *Twombly*, as illustrated by its divergent application in various appeals court decisions, should now be resolved.

Two years ago, the Supreme Court announced that a complaint must allege "enough facts to state a claim to relief that is plausible on its face."[3] *Twombly* was an antitrust action brought under Section 1 of the Sherman Act, which prohibits anticompetitive conspiracies. A significant element of a Section 1 violation is the existence of an agreement to restrain trade. In *Twombly*, the Supreme Court found that the complaint did not allege sufficient facts to suggest "the agreement necessary to make out a §1 claim" and that the complaint "stop[ped] short of the line between possibility and plausibility of 'entitlement to relief.'"[4]

Prior to the Supreme Court's May 2007 opinion, a complaint would not be dismissed for failure to state a claim "unless it appear[ed] beyond doubt that the plaintiff [could] prove no set of facts in support of his claim which would entitle him to relief."[5] *Twombly* established a heightened standard for pleading under Rule 8, but disagreement has persisted as to whether it applied beyond antitrust or an otherwise narrow category of cases.

In its May 18, 2009 decision in *Ashcroft v. Iqbal*, the Supreme Court has dispelled any uncertainty. *Iqbal* was a *Bivens* action brought by a Pakistani Muslim man detained after the events of September 11, 2001.[6] Iqbal alleged that, while in federal custody, he was mistreated pursuant to a policy that subjected him to harsh confinement conditions "solely on account of the prohibited factors and for no legitimate penological interest" and in violation of constitutional protections. Iqbal alleged that former U.S. Attorney General John Ashcroft was the "principal architect of this invidious policy," and that FBI Director Robert Mueller "was 'instrumental' in adopting and executing" the policy.[7]

Ashcroft and Mueller sought dismissal of Iqbal's complaint, contending that the allegations were insufficient to state a claim against them. The district court denied the defendants' motion to dismiss before *Twombly* was decided; the Second Circuit Court of Appeals affirmed, and the Supreme Court granted certiorari. Iqbal argued, in pertinent part, that the *Twombly* standard applied only to antitrust cases. The Court rejected that argument, holding in no uncertain terms that: "[o]ur decision in *Twombly* expounded the pleading standard for '*all civil actions*.'"[8]

The Court's opinion in *Iqbal* is likely to silence debate among the courts about the proper scope of *Twombly*'s application. Thus, to survive a motion to dismiss, a civil complaint must allege "factual content [that] allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[9] In this regard, "[t]hreadbare recitals of a cause of action's elements, supported by mere conclusory statements, do not suffice" and "more than a sheer possibility that a defendant has acted unlawfully" must be pled.[10] While legal allegations may provide the framework of the complaint, "they *must* be supported by factual allegations."[11] Finally, the complaint must also state a plausible claim for relief.[12]

As highlighted by Justice Souter's dissent, some uncertainty remains regarding when an allegation is "conclusory" under *Twombly*. However, it is now settled that *Twombly* is the yardstick by which all – not just some – complaints will be measured by the federal courts under Rule 8 of the Federal Rules of Civil Procedure.

For Further Information

If you have any questions regarding this Alert or would like more information, please contact any member of the Trial Practice Group or the attorney in the firm with whom you are regularly in contact.

Notes

1. *Ashcroft v. Iqbal*, 2009 U.S. LEXIS 3472 (U.S. May 18, 2009).
2. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).
3. *Id*. at 570.
4. *Id*. at 557.
5. *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957).
6. *See Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).
7. *Iqbal* at *33 (internal quotes omitted).
8. *Id*. at *39 (internal citations omitted and emphasis added).
9. *Id*. at *29.
10. *Id*.
11. *Id*. at *31 (emphasis added).
12. *Id*. at *30.