A Complaint Need Not Be Both Plausible and Persuasive.

By: Todd V. McMurtry
tmcmurtry@dbllaw.com

In the case, *Mediacom Southeast LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky,* No. 10-6117 (2012), the United States Court of Appeals for the Sixth Circuit recently issued an opinion addressing the *Iqbal* and *Twombly* plausibility standard for pleadings.[1] In this case, the City of Hopkinsville and the Kentucky League of Cities had brought suit against AT&T Kentucky seeking a declaration that AT&T Kentucky's Commonwealth-wide phone franchise did not permit it to offer a video television service through its phone lines without first seeking a cable franchise from the City.

The City settled this suit, but shortly after settlement, Mediacom Southwest LLC intervened and sought a declaration on the same issue. AT&T Kentucky moved to dismiss Mediacom's intervening complaint pursuant to Fed. R. Civ. P. 12(b)(6), arguing that its video service was governed by its phone franchise. The district court granted AT&T's motion finding that Mediacom had failed to state a claim upon which relief can be granted. *Id.* at *4.

On appeal, the Sixth Circuit discussed the *Twombly/Iqbal* standard and found that the district court had "failed to apply the appropriate standard of review for a motion to dismiss, improperly assigning the burden of proof to the non-moving party." *Id.* at *4. The Court faulted the district court for its finding that Mediacom's complaint was "unpersuasive." *Id.* at *5. It also found that the district court credited the defendant's version of the facts, which "unduly raises the pleading standard beyond the heightened level of *Iqbal* and *Twombly*, forcing the plaintiff's well-pleaded facts to be not only plausible, but also *persuasive*." *Id.* at *7 (emphasis added). The Court found this burden was not proper for a motion to dismiss. Instead, the Court found that Mediacom's complaint went beyond conclusory statements and was not speculative, thus satisfying *Twombly/Iqbal*. *Id.* at p. *5.

The judgment of the district court was reversed and the matter remanded for further hearing.

[1] *Bell Atl. v. Twombly,* 550 U.S. 544, 555 (2007), and *Ashcroft v. Iqbal,* 129 S.Ct. 1937, 1949 (2009).