

Supreme Court Holds that Rule 8 Pleading Standard Announced in *Twombly* Applies to “All Civil Actions”

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On May 18, 2009, in *Ashcroft v. Iqbal*, No. 07-1015,¹ the United States Supreme Court settled a two-year debate in holding that the pleading standard the Court announced in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), applies to “all civil actions.” *Iqbal*, slip. op. at 20. While the Supreme Court’s decision may have clarified the issue as to *when* the *Twombly* standard applies, it raised questions as to *how* courts should and will apply the standard.

In *Iqbal*, the plaintiff was a Pakistani Muslim who was arrested on criminal charges in the aftermath of the September 11, 2001 terrorist attacks, and was confined by federal officials under harsh conditions. *Iqbal* filed a civil action against numerous federal officials, including former Attorney General John Ashcroft and Robert Mueller, Director of the Federal Bureau of Investigation, under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). *Iqbal* alleged that Ashcroft was the “principal architect” of a policy designed to confine and mistreat him solely on account of his race, religion, or national origin in violation of the First and Fifth Amendments, and that Mueller was “instrumental” in adopting and executing this policy. Ashcroft and Mueller appealed the district court’s denial of their motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) on qualified immunity grounds. The Court of Appeals for the Second Circuit affirmed, concluding that *Twombly*’s “flexible ‘plausibility standard,’ which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible*,” *Iqbal*, slip. op. at 5 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157–58 (2d Cir. 2007)), did not apply to *Iqbal*’s complaint. The appellate court reasoned that the “context” in which *Iqbal*’s complaint arose—discrimination in violation of the Constitution—did not require “amplification.” On that basis, the court held that *Iqbal*’s complaint adequately alleged defendants Ashcroft’s and Mueller’s personal involvement in discriminatory decisions, which, if true, violated *Iqbal*’s constitutional rights.

In a 5-4 decision authored by Justice Kennedy, the Supreme Court reversed, holding that the *Twombly* pleading standard applied to *Iqbal*’s complaint and that, under *Twombly*, the complaint failed to plead sufficient facts to state a claim for purposeful and unlawful discrimination on account of race, religion, or national origin.

1. The opinion in *Ashcroft* is available online at <http://www.supremecourtus.gov/opinions/08pdf/07-1015.pdf>.

The Court examined the pleading standard under Federal Rule of Civil Procedure 8(a)(2) discussed in *Twombly*, and held that the *Twombly* standard governed pleadings in “all civil actions.” *Id.* at 20. Under that standard, “[t]o survive a motion to dismiss [under Rule 12(b)(6)], a complaint must ‘contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 14 (*quoting Twombly*, 550 U.S. at 570). A plaintiff satisfies this “plausibility” standard by pleading “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (*citing Twombly*, 550 U.S. at 556). The majority identified two “working principles” that underlie *Twombly*: (1) courts need not accept as true “legal conclusions” pleaded in a complaint; and (2) only a complaint that states a plausible claim for relief survives a motion to dismiss. The Court was careful to note that the *Twombly* “plausibility” standard does not require a “probability requirement,” but that “it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

Applying *Twombly* to the plaintiff’s allegations, the Court found that the complaint failed to “‘nudge[] [plaintiff’s] claims’ of invidious discrimination ‘across the line from conceivable to plausible.’” *Id.* at 16 (*quoting Twombly*, 550 U.S. at 570). The Court dismissed numerous allegations in the complaint as conclusory and not entitled to the assumption of truth, noting that they “amount to nothing more than a ‘formulaic recitation of the elements’ of a constitutional discrimination claim.” *Id.* at 17 (*quoting Twombly*, 550 U.S. at 555). The Court next considered the remaining, nonconclusory allegations in Iqbal’s complaint (of which it cited only two), and rejected their “plausibility,” finding that “[a]s between . . . ‘obvious alternative explanation[s]’ for the arrests, and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.” *Id.* at 18. Finally, the Court rejected Iqbal’s argument that Federal Rule of Civil Procedure 9(b) explicitly allowed him to plead intent “generally.” The Court noted that “generally” is a relative term, and, compared to the more exacting pleading requirements applicable to fraud under Rule 9, the term “generally” in Rule 9 “merely excuses a party from pleading discriminatory intent under an elevated pleading standard,” but “does not give [a party] license to evade the less rigid—though still operative—strictures of Rule 8.” *Id.* at 23. The majority concluded, stating: “Rule 8 does not empower [a party] to plead the bare elements of his cause of action, affix the label ‘general allegation,’ and expect his complaint to survive a motion to dismiss.” *Id.*

Importantly, neither of the dissenting opinions, which were written by Justice Souter and Justice Breyer, respectively, quarreled with the majority’s holding that *Twombly*’s pleading standard should be applied to “all civil actions,” but rather focused on *Bivens*-related issues presented to the Court, and on whether Iqbal’s complaint satisfied the *Twombly* standard. Also of interest is that *Twombly*, a 7-2 decision, was authored by Justice Souter and joined by Justice Breyer, both of whom broke with the Justices in the *Twombly* majority as to its application to the allegations at issue in *Iqbal*.

In the wake of the *Twombly* decision, which has been cited more than 13,000 times in federal court decisions alone, courts and commentators alike posited whether the Supreme Court intended the *Twombly* pleading standard to apply to pleadings in all antitrust cases (which was the context in which *Twombly* arose), let alone to pleadings in all civil actions. The Court’s decision in *Iqbal* settles that debate. However, how the courts should or will apply the *Twombly-Iqbal* standard will invariably invite new rounds of debate. For example, although both the majority and the dissent claimed that the standard does not require a “probability” analysis, the majority nevertheless engaged in, at the very least, a “more likely than not” analysis in evaluating the claims in *Iqbal*, as well as in *Twombly*. In both cases, the Court examined the respective plaintiff’s claims, considered alternative, lawful explanations for the defendants’ conduct, and determined that the plaintiff failed to state a claim upon which relief

could be granted because there were “obvious alternative explanations” for the defendants’ conduct. In seeking to apply this standard to “all civil actions,” courts surely will continue to grapple with how to determine which allegations survive the “plausibility” test without engaging in what may boil down to a “probability” analysis. What is clear, however, is that the decision will provide a new basis to argue that plaintiffs’ claims should be dismissed at the pleadings stage.

For further information on this case or its implications, please contact either of the following Morgan Lewis attorneys:

Philadelphia

Timothy D. Katsiff
Carlos S. Montoya

215.963.4857
215.963.5904

tkatsiff@morganlewis.com
cmontoya@morganlewis.com

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