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Supreme Court Extends *Twombly* to All Civil Cases, Clarifies Burden to Plead Facts to Survive Motion to Dismiss

In a decision issued on May 18, 2009, the United States Supreme Court clarified that all civil plaintiffs must plead facts demonstrating a plausible right to recovery or face dismissal of their actions. Less than two years ago, the Supreme Court ruled in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), that antitrust plaintiffs must plead factual allegations sufficient to show that they have a plausible right to recovery, not simply that the allegations of the complaint are consistent with a right to recovery. Under the Supreme Court's *Twombly* ruling, an antitrust plaintiff may survive a motion to dismiss only if the complaint demonstrates a "plausible entitlement to relief." Put another way, "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." This represents a shift from the previously-recognized standard, first set forth in *Conley v. Gibson*, 335 U.S. 41 (1957), that a complaint should not be dismissed unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitle him to relief."

In *Ashcroft v. Iqbal*, No. 07-1015, 2009 U.S. LEXIS 3472 (May 18, 2009), the Supreme Court makes clear that the *Twombly* plausibility standard applies to *all* civil lawsuits subject to the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure, and suggests that a court considering a motion to dismiss should assess whether the plaintiff's claim is more or less likely than other, innocuous explanations for the facts alleged in the complaint.

In *Iqbal*, the plaintiff, a "high-interest" detainee arrested on immigration violations following the September 11, 2001, terrorist attacks, alleged that then-Attorney General John Ashcroft, Director of the Federal Bureau of Investigations Robert Mueller, and other law-enforcement officials knew of and were involved with violations of his constitutional rights during his post-arrest incarceration. Petitioners Ashcroft and Mueller moved to dismiss the complaint against them. That motion was denied by the trial court. The trial court's ruling was upheld by the Second Circuit on grounds that the Supreme Court's decision in *Twombly* did not require the plaintiff to plead specific facts demonstrating the petitioners' involvement in his post-arrest treatment.

The *Twombly* decision left open two significant issues: does the new plausibility standard apply to all civil cases, and how is it to be applied? *Iqbal* addresses both of these issues.

First, the *Iqbal* decision makes clear that all civil complaints otherwise subject to Rule 8 must satisfy *Twombly*'s plausibility standard. (The standards applicable to civil complaints subject to the heightened pleading standards of Rule 9, such as fraud claims, are unchanged.) Although most lower courts to consider this issue have ruled that *Twombly* applies to all civil complaints, the clear language of *Iqbal* on this subject should eliminate the risk of a trial court erroneously applying the old *Conley* "no set of facts" standard.

Second, and more significantly, the Supreme Court in *Iqbal* strongly suggests that in determining whether a plaintiff's claims of wrongful conduct are plausible, lower courts should assess whether such conduct is more or less likely than other, non-actionable explanations. *Iqbal* suggests that trial courts are to consider "obvious alternative explanations" for the facts alleged in a complaint, and to make an independent judgment as to whether those alternative explanations are "more likely" than the alleged wrongful explanation. The Supreme Court's discussion of the trial court's responsibility to assess plausibility in *Iqbal* is

highly fact-specific, and lower courts may take into account the unique circumstances of *Iqbal* in interpreting and potentially limiting the effect of this case.

Finally, the Supreme Court in *Iqbal* appears to have issued a bright-line rule that a plaintiff's claim that is dependent upon a defendant's knowledge of certain facts may no longer summarily allege such knowledge. Instead, a fair reading of *Iqbal* requires a plaintiff to allege specific facts from which knowledge can be inferred in order to plead claims based upon such knowledge.

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