

**SUPREME COURT TOUGHENS AND BROADENS APPLICATION
OF HEIGHTENED PLEADINGS STANDARDS**

The Supreme Court today handed down a decision in *Ashcroft v. Iqbal*, No. 07-1015, that will make it harder for numerous civil plaintiffs to escape dismissal of claims brought in federal court. Although the facts in *Iqbal* concern racial and religious discrimination claims by a post-September 11th Muslim detainee, *Iqbal* should not be overlooked in business litigation. This is because *Iqbal* expressly applies to the pleading of each element, including knowledge and intent, of every claim in federal court.

Iqbal arose out of the arrest and detention of Javaid Iqbal, a Muslim Pakistani, in the wake of September 11th. Mr. Iqbal filed suit in New York federal district court alleging that federal officials, including former Attorney General John Ashcroft and FBI Director Robert Mueller, adopted certain policies that unconstitutionally discriminated against him while he was in a special maximum security housing unit. Ashcroft and Mueller moved to dismiss for failure to state a claim. In particular, they argued that Mr. Iqbal's complaint did not sufficiently allege that they had a discriminatory purpose in adopting the policies at issue. The district court denied their motion. While appeal to the Second Circuit Court of Appeals was pending, the Supreme Court decided *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), which held that, at least in the context of an antitrust suit, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Id.* The Second Circuit held that *Twombly* did not apply to Iqbal's discrimination claims and affirmed the lower court's decision.

The Supreme Court reversed. In reaching this result, Justice Kennedy's majority opinion contains four broadly significant holdings.

First, the heightened pleading standards of *Twombly* apply in all federal civil actions. The Court specifically rejected the argument that "*Twombly* should be limited to pleadings made in the context of an antitrust dispute." It explained: "Though *Twombly* determined the sufficiency of a complaint sounding in antitrust, the decision was based on our interpretation and application of Rule 8. That Rule in turn governs the pleading standard 'in all civil actions and proceedings in the United States district courts.'"

Second, the heightened pleading standards of *Iqbal/Twombly* apply to allegations of all elements of a claim, including knowledge and intent. This holding expressly applies even when Rule 9(b) is inapplicable because the plaintiff has not alleged fraud. Thus, in securities cases, for example, *Iqbal/Twombly* requires the pleading of factual content that make allegations such as causation, falsity, and negligence plausible, even when fraud is not alleged.

Third, the *Iqbal/Twombly* standard specifically requires plaintiffs to “plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” The Court explained that this standard rests on two important principles. The first is that conclusory allegations do not count for purposes of determining whether each element of a cause of action is well pled. And the second is that *Iqbal/Twombly* “requires the reviewing court to draw on its judicial experience and common sense” in deciding whether an alleged element is plausible and not merely possible. In particular, the complaint’s allegations are not plausible when there are “more likely explanations” that are consistent with innocent conduct.

Fourth, plaintiffs cannot evade *Iqbal/Twombly*’s heightened pleading standards through promises that discovery will be limited. “Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” As a result, “the question presented by a motion to dismiss a complaint for insufficient pleadings does not turn on the controls placed upon the discovery process.”

In sum, *Iqbal* marks a significant advance for civil defendants seeking to dismiss complaints filed in federal court no matter what the type of claim. Not only does *Iqbal* clarify that *Twombly* applies to all elements in all federal civil suits, it adds a distinctly pro-defendant gloss on the *Twombly* standard.

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