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IQBAL DECISION HAVING SIGNIFICANT IMPACT ON PLEADING STANDARDS IN FEDERAL COURTS

In *Bell Atlantic v. Twombly*[1], an antitrust decision issued in 2007, the Supreme Court articulated the "plausibility" standard – *i.e.*, that in order to withstand dismissal at the pleadings stage, a complaint must state a plausible basis for relief. On May 18, 2009, the Supreme Court decided *Ashcroft v. Iqbal*[2] and confirmed that the "plausibility" standard applies to all forms of civil actions filed in federal courts.[3] Federal district courts have begun to invoke and rely upon the *Iqbal* decision with speed and consistency. In the three months since *Iqbal* was decided, citations to the Supreme Court's ruling have appeared in over 1200 decisions, in courts from every federal circuit in the nation. Of those 1200-plus decisions, federal courts from the following jurisdictions had the highest number of *Iqbal* citations: New York (180), California (168), and Illinois (78). The United States Supreme Court has cited to *Iqbal* in five separate decisions.

Iqbal's "Two Pronged" Approach to Considering a Motion to Dismiss

Although Federal Rule of Civil Procedure 8(a)(2) requires only a "short and plain statement of the claim showing the pleader is entitled to relief", the Supreme Court held in *Twombly*, as reiterated by *Iqbal*, that this Rule requires more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" or "'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly* 550 U.S. at 557). *Twombly* established a two-pronged approach to assist courts in reaching the plausibility determination. First, the court must accept plaintiff's factual, non-conclusory allegations as true and draw all reasonable inferences in the plaintiff's favor. *Id.* ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice"). Second, the court must assess whether the complaint states a plausible, and not merely possible, claim for relief. Determining whether a complaint states a plausible claim for relief is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950.

In *Iqbal*, a Pakistani pretrial detainee brought a complaint against former U.S. attorney General John Ashcroft and former FBI Director Robert Mueller claiming a purposeful

[1] 550 U.S. 544 (2007).
[2] 129 S. Ct. 1937 (2009).
[3] The *Iqbal* decision was the subject of a prior Milbank Client Alert titled "Supreme Court Amplifies the *Twombly* Pleading Standard" (May 26, 2009).

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and unlawful discrimination in violation of his constitutional rights. The Supreme Court reversed the Second Circuit's denial of the defendants' motion to dismiss, holding that under the standard set forth in *Twombly*, the plaintiff had failed to adequately plead facts supporting his discrimination claim.

The Supreme Court held that Iqbal failed both prongs of the *Twombly* plausibility test and consequently had not "'nudged [his] claims' of invidious discrimination 'across the line from conceivable to plausible'". *Id.* at 1951 (citing *Twombly*, 550 U.S. at 570). First, Iqbal's assertions of discrimination were found to be conclusory and therefore undeserving of the court's assumption of truth. *Id.* at 1951 (Iqbal's assertions dubbed "formulaic recitation of the elements of a constitutional discrimination claim"). Second, the Supreme Court held that the facts alleged by Iqbal to support his claim for discrimination contained only a possible, but not *plausible*, entitlement to relief. Although Iqbal's factual allegations of discrimination were consistent with a finding of purposeful misconduct, the less incriminating "more likely explanations" for defendants' conduct precluded Iqbal's claim. *Id.* at 1951-52 ("As between that 'obvious alternative explanation' for the arrests [citation omitted], and the purposeful, invidious discrimination respondent asks us to infer, discrimination is not a plausible conclusion.").

The District Courts Have Been Applying Iqbal Broadly

Although *Iqbal* involved a foreign pretrial detainee's constitutional rights, federal courts, including those in New York, California, and the District of Columbia, have applied *Iqbal*'s augmented pleading standard to a vast array of commercial litigation cases. Just focusing for purposes of this Client Alert on the federal courts in New York, California, and the District of Columbia, *Iqbal*'s heightened pleading standard has been applied in consideration of the dismissal of claims premised on the following commercial causes of action:

- Securities laws violations (*see e.g.*, *Sedona v. Ladenburg Thalmann & Co., Inc.*, No. 03 Civ. 3120, 2009 WL 1492196 (S.D.N.Y. May 27, 2009) (market manipulation, securities fraud, common law fraud, deceit); *Rubin v. MF Global, Ltd.*, No. 08 Civ. 2233, 2009 WL 2058590 (S.D.N.Y. July 16, 2009) (disclosure violations); *South Cherry St., LLC v. Hennessee Group LLC*, No. 07-3658-cv, 2009 WL 2032133 (2d Cir. July 14, 2009) (securities fraud)).

- Various business torts (*see e.g.*, *Wood v. Aegis Wholesale Corp.*, No. 1:09-CV-536, 2009 WL 1948844 (E.D. Cal. July 6, 2009) (action in accounting); *Hafiz v. Greenpoint Mortgage Funding, Inc.*, No. C 09-01729, 2009 WL 2137393 (N.D. Cal. July 16, 2009) (unfair business practices, unjust enrichment); *Sedona v. Ladenburg Thalmann & Co., Inc.*, No. 03 Civ. 3120, 2009 WL 1492196 (S.D.N.Y. May 27, 2009) (tortious interference with business relations, breach of contract)).

- Violations of credit and lending laws (*see e.g.*, *Palmer v. GMAC Comm. Mortgage*, C.A. No. 08-1853, 2009 WL 1803252 (D.D.C. June 25, 2009) (Home Ownership and Equity Protection Act, District of Columbia Home Loan Protection Act); *Hafiz v. Greenpoint Mortgage Funding, Inc.*, No. C 09- 01729, 2009 WL 2137393 (N.D. Cal., July 16, 2009) (Real Estate Settlement Procedures Act, Equal Credit Opportunity Act, Fair Housing Act); *Willey v. J.P. Morgan Chase, N.A.*, No. 09 Civ. 1397, 2009 WL 1938987 (S.D.N.Y. July 7, 2009) (Fair Credit Reporting Act)).

- Intellectual property rights violations (*see e.g.*, *DO Denim, LLC. v. Fried Denim, Inc.*, No. 08 Civ. 10947, 2009 WL 1731103 (S.D.N.Y. June 17, 2009) (Lanham Act trade dress infringement and dilution)).

- Antitrust violations (*see e.g.*, *TYR Sport, Inc. v. Warnaco Swimwear, Inc.*, No. SACV08-00529, 2009 WL 1769444 (C.D. Cal. May 27, 2009) (discussing *Iqbal* pleading standard, but ultimately denying motion to dismiss antitrust claim)).

Conclusion

Iqbal's application to a broad array of civil actions, notably commercial litigation cases, will continue to be a source of strength for defendants seeking to ward off strike suits at an early stage. *Iqbal*'s popularity is not unchallenged, however. Criticism of the decision has appeared in the media,[4] and legislation was recently introduced by Senator Arlen Specter (D-Pa) urging Congress to direct federal courts to revert to the pre-*Twombly* and *Iqbal* pleading standards.[5] If considered by Congress, this bill will undoubtedly yield volatile and heated debates between defendants' and plaintiffs' constituent groups, and the outcome of the debate will impact the future of pleading standards throughout the federal courts.

[4] Adam Liptak, "9/11 Case Could Bring Broad Shift on Civil Suits." (N.Y. Times, July 21. 2009).
[5] 2009 Cong. U.S. § 1504 (July 22, 2009).

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