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# Recent U. S. Supreme Court Rulings Raise Pleading Requirements in Federal Court Cases

In two recent rulings, the U. S. Supreme Court has raised the minimum pleading threshold a federal court complaint must meet to survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, i.e., when a complaint is permitted to proceed to the discovery stage. Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007); Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009).

Based on the U. S. Supreme Court's rulings in Twombly and Iqbal, employers sued in federal court may have a new and stronger position available at the outset of a lawsuit to test the legal sufficiency of alleged claims. It is now clear that the Court's rulings apply in employment cases. As such, defendant employers may have the opportunity to achieve dismissal well before committing substantial time and expense to written discovery, e-discovery, depositions, summary judgment and trial.

## Bell Atlantic Corp. v. Twombly – 2007

In Bell Atlantic Corp. v. Twombly, the U. S. Supreme Court held that, to survive a motion to dismiss, a plaintiff must set forth in the complaint enough specific facts to show that a claim presents a "plausible entitlement to relief," meaning plaintiffs must "nudg[e] their claims across the line from conceivable to plausible." 550 U.S. at 570. As stated by the Court: "Factual allegations must be enough to raise a right to relief above the speculative level." Id. at 555. Thus, a complaint will withstand a motion to dismiss only where it contains "enough facts to state a claim to relief that is plausible on its face." Id. at 570. Under this new standard, the Court made it easier to dismiss lawsuits at the pleading stage so that the *"threat of discovery expense will [not] push cost-conscious defendants to settle even anemic cases . . . ."* Id. at 559 (emphasis added).

## Ashcroft v. Iqbal – 2009

Since 2007, controversy existed among the circuits as to whether the stricter fact-based pleading standard articulated in Twombly was limited to antitrust cases. In 2009, the U. S. Supreme Court, in Ashcroft v. Iqbal, made it unequivocally clear that the Twombly pleading standard applied to "all civil actions and proceedings in the United States district courts." 129 S. Ct. at 1953. Iqbal clarified the pleading standard for all federal civil cases, including employment cases, by affirming the dismissal of a complaint alleging abuse and mistreatment of a Pakistani Muslim by federal law enforcement officials following the September 11th terrorist attacks. Respondent's race, religion and national origin discrimination claims in violation of the First and Fifth Amendments were properly dismissed because the complaint did "not contain any factual allegation sufficient to plausibly suggest petitioners' discriminatory state of mind." Id. at 1952.

The Court set forth a two-prong test to determine the adequacy of a complaint in the context of a Rule 12(b)(6) motion to dismiss:

First, as held by the U. S. Supreme Court, a trial court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1950. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Id.

Second, the Court held that "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Id. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – that the pleader is entitled to relief." Id. In other words, after taking the complaint's well-pleaded allegations as true, if a lawful alternative explanation seems "more likely" to be a cause of the alleged conduct, the claim for relief is not plausible. Id. at 1951-52.

**Prior to Twombly and Iqbal – Historically**

For fifty (50) years prior to Twombly, federal court complaints were subject to a liberal notice pleading standard permitting a claim to proceed to discovery "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). This low threshold essentially meant that complaints survived motions to dismiss as long as there was a possibility that a case was meritorious. As the Court in Twombly stated: "Conley's 'no set of facts' language has been questioned, criticized, and explained away long enough . . . after puzzling the profession for 50 years, this famous observation has earned its retirement . . . and is best forgotten." 550 U.S. at 562-563.

**Implications for Employers**

- The higher pleading standards set forth in Twombly and clarified in Iqbal apply to all civil litigation, including employment cases brought against employers.

- Preparing a complaint that will survive a Rule 12(b)(6) motion to dismiss has become a more demanding task for plaintiffs after Twombly and Iqbal. Mere conclusory statements, even in connection with employment discrimination claims, will no longer suffice without additional factual support.

- Employers who in the past had no other option than to answer generally-pleaded complaints now may seek early dismissal of such complaints, potentially avoiding the time and expense of litigating meritless cases.

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