



## REPORT FROM WASHINGTON

# The Heightened Pleading Standard of *Twombly* Applies to All Federal Civil Claims

May 20, 2009

TO VIEW THE DECISION  
FROM *ASHCROFT V. IQBAL*,  
PLEASE CLICK [HERE](#).

TO VIEW THE DECISION  
FROM *ATLANTIC CORP. V.*  
*TWOMBLY*, PLEASE CLICK  
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In a case that, at first blush, appeared to be focused on issues of national security, the Supreme Court issued a decision with wide-ranging impact on all civil suits. In its decision in *Ashcroft v. Iqbal*, the Court clarified the plausibility standard articulated in *Bell Atlantic Corp. v. Twombly* and expressly extended its applicability to “all civil actions and proceedings in the United States district courts.” The decision makes it clear that all federal civil cases have a heightened pleading requirement, regardless of the substantive claims at issue, and provides further authority for lower courts to consider in determining whether to dismiss federal civil claims.

### SUMMARY OF THE DECISION

In a 5-4 decision, authored by Justice Kennedy, the Supreme Court reversed the Second Circuit and held that the plaintiff’s claim for purposeful and unlawful discrimination based on his detention as a person “of high interest” by the Federal Bureau of Investigation and the Department of Justice failed to satisfy the pleading standards to survive a motion to dismiss. Two years ago, in *Twombly*, the

Court articulated a new pleading standard in the context of an antitrust conspiracy case. In *Twombly*, the Court held that, in order to properly allege an antitrust conspiracy, the plaintiff must have a plausible theory and plead facts sufficient to show that facially parallel conduct by competitors is the result of a conspiracy, as opposed to market forces that push competitors to match one another. To the extent there was any doubt that the “plausibility” standard applied beyond antitrust conspiracy cases, in *Iqbal*, the Court interpreted *Twombly* and expressly extended it all federal civil claims.

The Court stated that, when assessing the adequacy of a complaint, courts should apply the two-pronged analysis outlined in *Twombly*. First, because a court is not required to accept the veracity of legal conclusions and “threadbare recitals of the elements of a cause of action,” courts considering motions to dismiss are encouraged to identify pleadings that are merely conclusory and therefore not “entitled to the assumption of truth.” Second, where well-pleaded, non-

*"Our decision in Twombly expounded the pleading standard for 'all civil actions,' ...and it applies to antitrust and discrimination suits alike."*

*(Opinion of the Court)*

*"Because respondent's complaint is deficient under Rule 8, he is not entitled to discovery, cabined or otherwise."*

*(Opinion of the Court)*

conclusory factual allegations are found, the court should assume the truth of these statements and determine, based on context, "judicial experience and common sense," whether the facts plausibly give rise to an entitlement to relief.

The Court echoed concerns voiced in *Twombly* regarding the substantial expense and burden of discovery in federal civil cases. In *Twombly*, the Court discussed at unusual length the problems in allowing "largely groundless" claims to proceed to discovery, citing numerous decisions, commentaries, and studies that have recognized the burden imposed by the high cost of "allowing a potentially massive factual controversy to proceed." In *Iqbal*, the Court repeated the notion that courts should "not unlock the doors of discovery" to "a plaintiff armed with nothing more than conclusions." The Court cautioned lower courts not to resort to careful case management or the promise of "minimally intrusive discovery" as a way to allow plaintiffs to test the sufficiency of deficient pleadings. Instead, plaintiffs who fail to satisfy pleading standards simply are "not entitled to discovery, cabined or otherwise."

Finally, for the avoidance of doubt regarding the applicability of *Twombly* outside the antitrust context, the Court stated that its decision in "*Twombly*

expounded the pleading standard for all civil actions." The Court explained that *Twombly* interpreted and applied Rule 8, which in turn governs the pleading standard in all civil cases.

## IMPLICATIONS

Although at least some federal district and circuit courts have already been applying the *Twombly* standard outside the antitrust context, the Court's decision in *Iqbal* may prove to be one of the most significant Supreme Court decisions in many decades as it ostensibly raises the bar for any plaintiff to bring a federal civil suit. The decision provides much-needed clarification to the meaning and application of *Twombly* and is likely to provide greater consistency in pleading standards in federal courts across the country. It is a welcome relief to defendants faced with the prospect of incurring substantial discovery costs to defend claims that plainly are not plausible.

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