



## Class Action Legal Update re: *Ashcroft v. Iqbal*

### Supreme Court Issues New Pronouncement on Standard for Rule 12(b)(6) Motion to Dismiss

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) or the equivalent state court rule is often a defendant's first line of defense in a putative class action or other complex litigation. On May 18, 2009, the Supreme Court issued an important new opinion instructing district courts on the applicable standard for adjudicating a Rule 12(b)(6) motion to dismiss. This decision will be helpful to defendants in arguing for closer scrutiny of allegations by district courts and in seeking stays of discovery pending a ruling on a motion to dismiss.

*Ashcroft v. Iqbal*, No. 07-1015, slip op. (U.S. May 18, 2009) is a suit filed by a citizen of Pakistan who was arrested on immigration charges after the September 11 attacks and confined in a maximum security facility. The plaintiff alleged that former Attorney General John Ashcroft and former FBI Director Robert Mueller adopted an unconstitutional policy that subjected him to unduly harsh conditions of confinement as a result of his race, religion, or national origin. The district court denied a motion to dismiss filed by Ashcroft and Mueller, finding the allegations sufficient to state a claim, and the Second Circuit affirmed. The Supreme Court reversed, finding the allegations insufficient.

The Supreme Court's opinion in *Ashcroft* refined and amplified the new pleading standard the Court adopted in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). The Court clarified that its decision in *Twombly* was applicable to "all civil actions," not merely antitrust cases. *Ashcroft*, slip op. at 20. The Court explained that a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 14. This "plausibility standard" requires "more than a sheer possibility that a defendant has acted unlawfully," and it is insufficient for a complaint to plead "facts that are 'merely consistent with' a defendant's liability . . . ." *Id.* The Court articulated two principles that district courts should apply. First, legal conclusions should not be accepted as true. A district court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.* at 14-15. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Second, with respect to the complaint's "well-pleaded factual allegations," the district court should "determine whether they plausibly give rise to an entitlement to relief." *Id.* at 15. The Court also rejected the plaintiff's argument that the allegations of discriminatory intent were sufficient because Rule 9(b) allows intent to be alleged "generally." The Court explained that allegations of intent must still satisfy the plausibility standard adopted in *Twombly*, although they need not meet the particularity standard of Rule 9(b). *Id.* at 22-23.

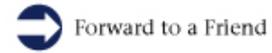
In *Ashcroft*, the plaintiff alleged that Ashcroft and Mueller "'knew of, condoned, and willfully and maliciously agreed to subject [him]' to harsh conditions of confinement 'as a matter of policy, solely on account of [his] religion, race, and/or national origin and for no legitimate penological interest.'" *Id.* at 16. The complaint alleged that Ashcroft personally was the "principal architect" of this policy and that Mueller was "instrumental" in adopting and executing the policy. *Id.* at 16-17. The Court held that these allegations were mere "bare assertions" that were "conclusory and not entitled to be assumed true." *Id.* at 17. The Court also held that the allegations did not plausibly establish purposeful discrimination on the basis of race, religion or national origin because a legitimate policy of detaining suspected terrorists after September 11 would produce a disparate impact on Arab Muslims. *Id.* at 17-18.

*Ashcroft* may also increase the willingness of district courts to stay discovery pending a motion to dismiss. In *Twombly*, the Court made several statements suggesting that motions to dismiss should be decided prior to the commencement of discovery, particularly in class actions and other complex litigation. The Court reaffirmed this in *Ashcroft*, stating that Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions" (*id.* at 14), and that "[b]ecause respondent's complaint is deficient under Rule 8, he is not entitled to discovery, cabined or otherwise." *Id.* at 22. The Court rejected the notion,

suggested by the Second Circuit, that a district court could allow a borderline deficient pleading to survive a motion to dismiss and then carefully manage discovery to avoid an undue burden on the defendants. *Id.* at 20-22.

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