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The Most Important Supreme Court Business Decision You Haven't Heard Of

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August 3, 2009

Before *Twombly*: The *Conley v. Gibson* Standard

- **Federal Rule of Civil Procedure 8(a):**
  - "A pleading shall contain * * * (2) a short and plain statement of the claim showing that the pleader is entitled to relief."
- ***Conley v. Gibson*, 355 U.S. 41, 47 (1957)**
  - **Allegations:** African-American railroad employees sued a labor union, claiming that it refused to help them when the railroad "abolished" their jobs, but then filled the positions with white employees. The complaint alleged that the union failed to give the plaintiffs protection comparable to that given to white employees and that this violated their right under the Railway Labor Act to fair representation from their bargaining agent.

Before *Twombly*: The *Conley v. Gibson* Standard

- **Holding**: In holding that the complaint stated a claim, the Court stated:
  - "In appraising the sufficiency of the complaint we follow * * * the accepted rule that a complaint should not be dismissed for failure to state a claim ***unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief***."
  - "[T]he Federal Rules of Civil Procedure do not require a claimant to set out ***in detail*** the facts upon which he bases his claim. To the contrary, all the rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is ***and the grounds upon which it rests.*"**
  - "Such simplified ***'notice pleading'*** is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed fact and issues."

Motions to Dismiss Under *Conley v. Gibson:* A Mixed Bag

- **Many courts held that complaints that included conclusory allegations without supporting facts were subject to dismissal.**
  - "[C]ourts do not accept conclusory allegations on the legal effect of the events plaintiff has set out if these allegations do not reasonably follow from his description of what happened."
    - *Kadar Corp. v. Milbury*, 549 F.2d 230, 233, 233 (1st Cir. 1977)

Motions to Dismiss Under *Conley v. Gibson:* A Mixed Bag

- "'[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.'"
  - *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995)
- "Conclusory allegations and unwarranted deductions of fact are not admitted as true …."
  - *Associated Builders, Inc. v. Alabama Power Co.*, 505 F.2d 97, 100 (5th Cir. 1974)
- " [W]e are 'free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations.'"
  - *Farm Credit Servs. of Am. v. Am. State Bank*, 339 F.3d 764 (8th Cir. 2003)

However, many courts refused to dismiss complaints based on *Conley v. Gibson*'s "no set of facts" language and its reference to "notice pleading."

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007): The Supreme Court Retires *Conley v. Gibson*

The Allegations In *Twombly*

- Alleged Claim
  - The complaint alleged that the Regional Bell Operating Companies (RBOCs) had conspired not to compete to provide long distance and high-speed internet services outside of their traditional territories, violating the antitrust laws.
- Alleged "Facts"
  - The RBOCs had failed to offer long distance and high-speed Internet services outside their traditional territories despite legislative changes promoting such competition.
  - The RBOCs' failure to enter each other's territories was anomalous because they had failed to pursue "attractive business opportunities."
  - The CEO of one defendant had commented regarding entry into its neighboring RBOCs territory: "It might be a good way to turn a quick dollar but that doesn't make it right."
  - The RBOCs had "acted in parallel" in making it difficult for competitors to interconnect to their network.

Lower Court Decisions

- The district court held that the plaintiffs' allegations were insufficient to state a claim:
  - Allegations regarding parallel actions to discourage competition were inadequate because those actions were "fully explained by the ILEC's own interests in defending its individual territory."
  - The complaint did not "alleg[e] facts … suggesting that refraining from competing in each other's territories … was contrary to [defendants'] apparent economic interests, and consequently [does] not raise an inference that [defendants'] actions were the result of conspiracy.
- The Second Circuit reversed, relying on *Conley v. Gibson*.

The Supreme Court's Decision

- The Supreme Court held that the complaint should be dismissed under Rule 12(b)(6).
- The Court emphasized that a complaint must allege facts that demonstrate entitlement to relief.
  - "While a complaint * * * does not need detailed factual allegations, a plaintiff's obligation to prove the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."
  - "Factual allegations must be enough to raise a right to relief above a speculative level."

The Supreme Court's Decision

- Allegations of parallel conduct are insufficient to raise a § 1 claim unless the allegations are "placed in a context that raises the suggestion of a preceding agreement."
- "An allegation of parallel conduct is thus much like a naked assertion of conspiracy in a § 1 complaint: it gets the complaint close to stating a claim, but without some further factual enhancement it stops short of the line between possibility and plausibility of 'entitlement to relief.'"

The Supreme Court's Decision

- The Court noted that "proceeding to antitrust discovery can be expensive."
  - "[I]t is only by taking care to require allegations that reach the level suggesting conspiracy that we can hope to avoid the potentially enormous expense of discovery in cases with no 'reasonably founded hope that the [discovery] process will reveal relevant evidence…'"

The Supreme Court's Decision

- The Court explained that *Conley's* "no set of facts" language had too often been misconstrued.
  - "[A]fter puzzling the profession for 50 years, this famous observation has earned its retirement."
  - "The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard: once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint."

The Supreme Court's Decision

- The Court finally stated: "[W]e do not require heightened fact pleading of specifics, but only enough facts to state a claim for relief that is plausible on its face. Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed."

Questions After Twombly

- Does *Twombly's* "facial plausibility" standard apply only to § 1 conspiracy claims relying on allegations of parallel conduct?
- Does the *Twombly* standard apply outside the antitrust area?
- If the *Twombly* standard applies to non-antitrust cases, does it apply in every case, or only in particular contexts in which some factual amplification is appropriate?
- How is a court to determine whether a claim is plausible?

Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009)

- The Supreme Court makes clear that *Twombly* applies to all civil cases and provides additional guidance on assessing the sufficiency of a complaint

The Complaint

- Iqbal, a Pakistani Muslim, was arrested and detained on criminal charges following the September 11, 2001, terrorist attacks. He claimed that he was designated as a person of "high interest," and subjected to restrictive conditions of detention, because of his race, religion, or national origin, in contravention of the Fifth and First Amendment. He sued federal officials including former Attorney General Ashcroft and FBI Director Mueller.

The Complaint

- He alleged:
  - The FBI, under Mueller's direction, arrested and detained thousands of Arab Muslim men as part of its September 11th investigation.
  - Mueller and Ashcraft knew of, condoned, and agreed to subject Iqbal to harsh conditions solely for prohibited reasons and for no legitimate penological interest.
  - Ashcroft was the policy's "principal architect" and Mueller was "instrumental" in its execution.

The Second Circuit's Decision

- The district court denied defendants' motion to dismiss, citing *Conley v. Gibson.* The defendants appealed the denial of their official immunity claim under the collateral order doctrine.
- *Twombly* was decided while the appeal was pending.
- The Second Circuit affirmed, holding that plaintiffs' claims were not of the sort requiring factual amplification to render the claim plausible.

The Supreme Court's Decision

- *Twombly* applies in all civil actions.
  - "Although *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.' Fed. Rule Civ. Proc. 1. Our decision in *Twombly* expounded the pleading standard 'for all civil actions,' and it applies to antitrust and discrimination suits alike."

The Supreme Court's Decision

- *Twombly* rests on "two working principles":
  - Conclusory allegations of wrongdoing are insufficient to satisfy Rule 8.
    - "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."
  - Only a complaint that states a plausible claim for relief survives a motion to dismiss.
    - "Determining whether a complaint states a plausible claim for relief will * * * be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense."
    - "[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 "shown"—that the pleader is entitled to relief."

Evaluating Whether a Complaint States a Claim Under *Iqbal*

- Step 1: The court must first disregard all conclusory allegations.
- Step 2: The court must then examine the remaining factual assertions and evaluate whether they "show" that the plaintiff is entitled to relief – *i.e.*, whether the plaintiff has stated a claim that has "facial plausibility."

Evaluating Whether a Complaint States a Claim Under *Iqbal*

- Step 1: Disregard all conclusory allegations.
  - *Twombly*:
    - "Defendants had entered into a contract, combination or conspiracy to prevent competitive entry and had agreed not to compete with one another"
    - "Defendants' parallel course of conduct to prevent competition and inflate prices was indicative of the unlawful agreement."

Evaluating Whether a Complaint States a Claim Under *Iqbal*

- Step 1: Disregard all conclusory allegations.
  - *Iqbal:*
    - Ashcroft and Mueller "knew of, condoned, and willfully and maliciously agreed to subject [Iqbal]" 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."
    - Ashcroft was the "principal architect" of this policy; Mueller was "instrumental" in adopting and executing it.

Evaluating Whether a Complaint States a Claim Under *Iqbal*

- Step 2:
  - Identify the well-pleaded factual allegations (the "nub") of the complaint
  - Determine whether they give rise to a claim that is facially plausible.
  - *Twombly*:
    - The defendants, in parallel, failed to enter one another's territory.
    - That conduct does not plausibly suggest an illicit agreement because it was more likely explained by lawful, unchoreographed free market behavior.

Evaluating Whether a Complaint States a Claim Under *Iqbal*

- Step 2:
  - *Iqbal:*
    - The FBI, under the direction of Mueller, arrested and detained thousands of Arab Muslim men; Ashcroft and Mueller approved the policy of holding these men in highly restrictive conditions until they were cleared.
    - "On the facts respondent alleges the arrests Mueller and oversaw were likely lawful and justified by his nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts."

What kinds of allegations are conclusory?

- Antitrust
  - "The defendants unlawfully agreed to fix prices."
  - "The defendants took these actions with the intent of excluding the defendant from the market."
- Product Liability
  - "Plaintiff's ingestion of the medication caused him to suffer a heart attack."
  - "The product failed to function as warranted."

What kinds of allegations are conclusory?

- Securities Fraud
  - "The information that defendants failed to disclose was material."
  - "Defendants' false representations inflated the price of the stock."
- Consumer Fraud
  - "Defendants knew that their advertisements were false."
  - "Plaintiffs relied on the false statements in the advertisements to their detriment."

What kinds of allegations are conclusory?

- Discrimination
  - "Defendants' hiring polices were discriminatory."
  - "Defendants fired plaintiff because of her disability."
  - "Defendants knew that plaintiff was a member of a protected class."
- Bad Faith Denial of Insurance Benefits
  - **"**Defendants denied coverage without justification for the purpose of increasing their profits."
  - "Defendants knew that plaintiff was entitled to receive disability benefits but denied coverage in bad faith."

What may be well-pleaded factual allegations?

- Antitrust
  - "The defendants attended an industry conference on November 17."
  - "Defendants all raised their prices on November 18."
- Product Liability
  - "Two hours after first taking the medication, plaintiff suffered a heart attack."
  - "The label stated that the ladder could hold 250 pounds, but the ladder collapsed when plaintiff stepped on it"

What may be well-pleaded factual allegations?

- Securities Fraud
  - "The defendant announced that its income had been 20% less than previously reported."
  - "The day after defendant restated its income, the stock declined by 5%."
- Consumer Fraud
  - "Defendants' advertisements stated that daily use of its breakfast cereal would reduce cholesterol by as much as 5%."
  - "Plaintiffs read the advertisement in Good Housekeeping and purchased the cereal the following day."

What may be well-pleaded factual allegations?

- Discrimination
  - "90% of the workers laid off in December 2009 were women."
  - "Defendants asked plaintiff whether her carpal tunnel syndrome would affect her typing speed."
- Bad Faith Denial of Insurance Benefits
  - **"**Defendants had a policy of denying coverage unless there was 'objective evidence' of disability."
  - "Defendants undertook surveillance of plaintiff at his home and workplace."

Appealing to "Judicial Experience" And "Common Sense"

- Argue that plaintiffs' inferences are unjustified.
- Suggest alternative inferences from the alleged facts.
- Place the allegations in broader context.
- Discuss implications of permitting claims to proceed to discovery.

Strategic Considerations

- It may be possible to obtain a stay of discovery, "to avoid the potentially enormous expense" (*Twombly*), while the motion to dismiss is pending.
- Moving to dismiss may be unwarranted or unwise in some cases.
- When a complaint is dismissed for failure to allege sufficient facts, the plaintiff usually will be given leave to re-plead.
- Dismissal of a complaint is appealable; denial of a motion to dismiss generally is not.

Proposed Legislation To Reverse *Iqbal* and *Twombly*

- The Notice Pleading Restoration Act of 2009 (S. 1504) provides that "a Federal court shall not dismiss a complaint under rule 12(b)(6) or (e) of the Federal Rules of Civil Procedure, except under the standards set forth by the Supreme Court of the United States in *Conley v. Gibson*, 355 U.S. 41 (1957)."

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