Pleading Standard;Notice a Difference?

Introduction

Ashcroft v. Iqbal signaled yet another wrinkle and potentially far-reaching alteration of notice pleadings.[1] The decision came two years after the Supreme Court's decision in Bell Atlantic Corporation v. Twombly which addressed notice pleading in an antitrust context.[2] These cases have been been repeatedly cited by those seeking to dramatically increase the stringency with which one must plead facts.[3] Both Iqbal and Twombly appear to revoke the Conley v. Gibson notice pleading standard.[4] The Supreme Court in Conley held "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 in support of his claim which would entitle him to relief."[5] The Iqbal court suggests that Twombly created two pleading requirements.[6] First, "the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements."[7] Second, plausible claims must be contextually analyzed utilizing judicial "experience and common sense."[8]

More specifically, the court in Iqbal, quoting Twombly, held that the plaintiff at bar had to "'nudg[e]' his claim of purposeful discrimination 'across the line from conceivable to plausible.'"[9] Initially, post-Twombly, many interpreted the court's decision to apply exclusively within the anti-trust context.[10] However, in Iqbal, the Supreme Court rejected this notion and stated its holding was not so limited.[11] The court stated unambiguously, "[o]ur decision in Twombly expounded the pleading standard for 'all civil actions,' and it applies to antitrust and discrimination suits alike."[12]

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[1] Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). Iqbal was detained post 9-11 on criminal charges. Id. at 1942. He sued claiming deprivation of constitutional rights in relation to "race, religion, and national origin." Id.

[2] Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). Twombly complained of violation of trade restriction policies resulting from improper telephone rates. Id. at 550. The Incumbent Local Exchange Carriers were accused of conspiracy and Sherman Act violations. Id. at 548-550. The United States Supreme Court dismissed the claim because it was not "plausible on its face." Id. at 570.

[3] Has the Supreme Court Limited Americans' Access to Courts?: Hearing before the S. Judiciary Comm., 111th Cong. (2009) (statement of Sen. Patrick Leahy) accessed at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.

[4] Id.

[5] Conley v. Gibson, 355 U.S. 41, 45-46 (1957) citing Leimer v. State Mutual Life Assu. Co., 108 F.2d 302 (8th Cir. 1940); Dioguardi v. Durning, 139 F.2d 774 (2d Cir. 1944); Continental Collieries v. Shober, 130 F.2d 631 (3d Cir.1942).

[6] Iqbal, 129 S. Ct at 1949 citing Twombly, 550 U.S. at 555.

[7] Id. citing Twombly, 550 U.S. at 555.

[8] Id. at 1950 citing Twombly, 550 U.S. at 556.

[9] Iqbal, 129 S. Ct. at 1950-51 quoting Twombly, 550 U.S. at 570.

[10] Id at 1953.

[11] Id.

[12] Id.

So, the question becomes…have Twombly and Iqbal neutered notice pleading standards? Are these new pleading obstacles appropriate? Will there be legislative intervention? Lawyers, judges, academicians, and legislators are all wrestling with the issue.

Notice Pleading: Definitions and Requirements

Notice pleading is defined as "a procedural system requiring that the pleader give only a short and plain statement of the claim showing that the pleader is entitled to relief, and not a complete detailing of all facts."[13] Federal Rule of Civil Procedure 8(a)(2) defines notice pleading as requiring "a short and plain statement of the claim showing that the pleader is entitled to relief."[14] According to Conley, statements must provide defendants with "fair notice" of claim grounds.[15] Notice pleading is in direct contrast to fact or code pleading which requires "that the pleader allege merely the facts of the case giving rise to the claim, not their legal conclusions necessary to sustain the claim."[16] Under Federal Rule of Civil Procedure 12(b)(6), a claim can be dismissed for "failure to state a claim upon which relief can be granted."[17]

A district court should only dismiss a complaint for failure to state a claim when it is clear that no relief could be granted under any set of facts that could be proved consistent with the complaint's challenged allegations.[18] The complaint must be liberally construed, assuming the facts alleged therein as true and drawing all reasonable inferences from those facts in the plaintiff's favor.[19] Even if a court is doubtful that the plaintiff could prove all of the allegations, dismissal is unwarranted so long as the complaint "nudge[s] the[ ] claims across the line from conceivable to plausible."[20]

The Eighth Circuit has correctly observed that summary judgment is a "drastic remedy and must be exercised with extreme care to prevent taking genuine issues of fact away from juries."[21] Although "[g]reat precision is not required of the pleadings," the complaint should state how, when, and where the cause of action occurred.[22] The Eight Circuit assumes as true all factual allegations of the complaint and draws all reasonable inferences in favor of the plaintiffs.[23] To avoid dismissal under 12(b)(6) the complaint "must contain sufficient facts, as

[13] Black's Law Dictionary, 1191 (8th ed. 2004).
[14] Fed. R. Civ. P. 8(a)(2).
[15] Conley, 355 U.S. at 47.
[16] Black's Law Dictionary, 1191 (8th ed. 2004).
[17] Fed. R. Civ. P. 12(b)(6).
[18] Goss v. City of Little Rock, 90 F.3d 306, 308 (8th Cir. 1996) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).
[19] Schaaf v. Residential Funding Corp., 517 F.3d 544, 549 (8th Cir. 2008) (citing Twombly, 550 U.S. at 554-556).
[20] Motley v. Homecomings Fin., LLC, 557 F. Supp. 2d 1005, 1007-08 (D. Minn. 2008) (Kyle, J.) (citing Twombly, 550 U.S. at 570).
[21] Wabun-Inini v. Sessions, 900 F.2d 1234, 1238 (8th Cir. 1990).
[22] Gregory v. Dillard's Inc., 494 F.3d 694, 710 (8th Cir. 2007).
[23] See Katun Corp. v. Clarke, 484 F.3d 972, 975 (8th Cir. 2007).

opposed to mere conclusions, to satisfy the legal requirements of the claims."[24] At this stage, the complaint is construed liberally in the light most favorable to the non-moving party.[25]

The standard for evaluating a motion to dismiss under Rule 12(b)(6) is set forth in Twombly.[26] "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." [27] To avoid dismissal, a complaint must include "enough facts to state a claim to relief that is plausible on its face."[28] Twombly examined the 8(a)(2) plain statement requirement and acknowledged that there was a distinct litigation preference.[29] In Justice Steven's dissent, he lamented that the Supreme Court found that Conley dismissal of pleadings was allowed "when proceeding to discovery or beyond would be futile."[30] Stevens disagreed with the majority and strongly opposed their overruling Conley.[31]

In Iqbal, a case involving alleged governmental violation of constitutional rights and discrimination, the court obviously relied heavily on the Twombly pleading rule.[32] Iqbal's claim was dismissed because it lacked specific facts of a governmental conspiracy regarding post 9-11 detentions.[33] Interestingly, in the dissent, Justices Souter, Stevens, Ginsburg, and Breyer all found that 8(a)(2) pleading standards were met.[34] The dissenters simultaneously espoused that Twombly was "misapplied."[35] The Supreme Court in Twombly stated, "we do not apply any "heightened" pleading standard."[36] The Iqbal dissent noted, "Twombly does not require a court at the motion-to-dismiss stage to consider whether the factual allegations are probably true. We made it clear, on the contrary, that a court must take the allegations as true, no matter how skeptical the court may be."[37] Therefore, a court will not dismiss presumptively true factual allegations "suggestive of illegal conduct."[38]Justice Breyer's dissent professed assurance that proper court discovery management can aid in preventing inconsequential lawsuits.[39] Breyer's dissent focused on qualified immunity and preventing unnecessary governmental employee intrusion.[40] However, proper court discovery management can prevent "unwarranted burdens."[41]

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[24] DuBois v. Ford Motor Credit Co., 276 F.3d 1019, 1022 (8th Cir.2002).
[25] Eckert v. Titan Tire Corp., 514 F.3d 801, 806 (8th Cir.2008).
[26] Twombly, 550 U.S. 544 (2007).
[27] Id. at 545.
[28] Id. at 570.
[29] Id. at 575 (Stevens, J. and Ginsberg, J., dissenting).
[30] Id. at 577 (Stevens, J. and Ginsberg, J., dissenting).
[31] Id.
[32] Iqbal, 129 S. Ct. at 1944 (2009).
[33] Id. at 1950-1953.
[34] Id. at 1955. (Souter, J., Stevens, J., Ginsberg, J., and Breyer, J. dissenting.
[35] Id.
[36] Twombly, 550 U.S. at n. 14.
[37] Iqbal at 1959 citing Twombly, 550 U.S. at 555.
[38] Id. at 1959.
[39] Id. at 1961 (Breyer, J. dissenting).
[40] Id. at 1961-62.
[41] Id. at 1961.

Judicial Decisions Since Iqbal

A majority of circuits require a "facially plausible" complaint.[42] Additionally, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[43] Rule 12(b)(6) complaint dismissal prevention does not mandate "detailed factual allegations," but "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[44] In 42 U.S.C. §1983[45] qualified immunity cases, several circuits have recently employed the Iqbal standard.[46] Insufficient complaints contain "'naked assertion[s]' devoid of 'further factual enhancement.'"[47] In Moss v. U.S. Secret Service, the Ninth Circuit carefully reviewed the Twombly and Iqbal standards and reiterated the Supreme Court's newly established judicial philosophy regarding notice pleading by saying "for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief."[48]

In employment discrimination cases, the Iqbal and Twombly requirements are juxtaposed against the Supreme Court's decision in Swierkiewicz v. Sorema, 534 U.S. 506 (2002).[49] In Swierkiewicz, the Supreme Court held that heightened factual pleadings were unnecessary

[42] See Tully v. Barada, 2010 WL 938085, *1 (7th Cir. 2010) (court held "§ 1983 claim cannot lie for a mere court summons and prosecution without probable cause.").
[43] Kuck v. Danaher, 2010 WL 1039273, *2 (2d. Cir. 2010) citing Iqbal, 129 S. Ct at 1949 (quoting Twombly, 550 U.S. at 570 (2007)). Kuck involved a §1983 claim against Connecticut state officials in regards to a firearm permit denial. Id. at *1.
[44] Sullivan v. Leor Energy, 2010 WL 909109, *2 (5th Cir. 2010) (contract violation claim relating to fraud was not particularly plead) quoting Twombly, 550 U.S. at 555 (2007) (internal citations omitted); see Iqbal, 129 S. Ct. at 1949.
[45] 42 U.S.C. §1983 states "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."
[46] See Moldonado v. Fontanes, 568 F.3d 263, 266 (5th Cir. 2009). Citing Iqbal, 127 S. Ct. at 1960 (quoting Twombly, 550 U.S. at 557). However, See Mitchell v. Federal Bureau of Prisons, 587 F.3d 415, 420 (D.C. Cir. 2009) (Iqbal held not relevant to IFP proceedings).
[47] Dahlen v. Shelter House, 2010 WL 1050411 (8th Cir. 2010) (insufficient pleading regarding taking) citing Iqbal, 129 S. Ct. at 1949 quoting Twombly, 550 U.S. at 557.
[48] Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009),.citing Twombly, 550 U.S. at 557.
[49] Fowler v. UPMC Shadyside, 578 F.3d 203, 211 (3d Cir. 2009) citing Swierkiewicz v. Sorema, 534 U.S. 506 (2002).

because details of the alleged discrimination were deemed sufficient.[50] However, in Fowler v. UPMC Shadyside, heard just days after Iqbal, the Third Circuit held that Swierkiewicz, was no longer good law.[51] Iqbal's reversal of Conley served to dismiss Swierkiewicz's employment discrimination reliance upon less-stringent pleading.[52] Similarly, the Fourth Circuit dismissed a complaint based upon the Iqbal qualified immunity standard for a mayor in Francis v. Giacomelli.[53] In Francis, the Baltimore Mayor terminated the Police Commissioner and several deputies.[54] The discrimination pleading was found to be not facially plausible.[55] The Fourth Circuit has also held in Nemet that conclusory allegations will not merit the court's "assumption of truth."[56]

Legislative Relief

Iqbal and Twombly raise many serious concerns.[57] First, judicial pleading standard determinations are inconsistent with and violate the Federal Rules of Civil Procedure. .[58] It was nice to see the academicians weigh in with an amicus brief in Iqbal.[59] Of primary concern were post-Iqbal interpretations of Federal Rule of Civil Procedure 8(a)(2) and 9.[60] While 8(a)(2) simply requires that pleadings contain a "short and plaint statement," Rule 9 governs special matter pleadings.[61] Under 9(b), "[i]n alleging fraud or mistake, a party must state with particularity the circumstances…[m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally."[62] The amicus authors correctly explain that the elimination of notice pleadings negatively affect both 8(a)(2) standards as well as 9(b) general allegations.[63] The brief discusses the 2007 Supreme Court decision in Erickson v. Pardus 8(a)(2) which found specific fact pleading unnecessary.[64] Curiously, Erickson cited Twombly for support of this

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[50] Id.
[51] Id.
[52] Id.
[53] Francis v. Giacomelli, 588 F.3d 186, 197 (4th Cir. 2009).
[54] Id. at 189.
[55] Id. at 196-197.
[56] Nemet Chevrolet, v. ConsumerAffairs.com, 591 F.3d 250, 260 (4th Cir. 2009). Nemet involved an allegation of reputation damage from online consumer complaints listed on ConsumerAffairs.com. Id. at 252. The pleadings were deemed inadequate under the Iqbal standard. Id. at 260.
[57] Has the Supreme Court Limited Americans' Access to Courts?: Hearing before the S. Judiciary Comm., 111th Cong. (2009) (statement of Sen. Patrick Leahy, Sen. Russ Feingold and Testimonyof John Payton, Stephen Burbank, and Gregory Garre) accessed at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.
[58] Id.
[59] Brief of Professors of Civil Procedure and Federal Practice as Amici Curiae in Support of Respondents, Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) (No. 07-1015).
[60] Id.
[61] Fed. R. Civ. P. 8(a)(2) and 9.
[62] Fed. R. Civ. P. 9(b).
[63] Brief of Professors.
[64] Brief of Professors citing Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007).

proposition.[65] In Erickson, the court held, "when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint."[66]
The American Association of Justice (AAJ) amicus brief noted similar concerns regarding Rule 8(a)(2) and 9. They described the Iqbal heightened pleading standard as "trap[ing] the plaintiff in a "Catch-22" that is inconsistent with venerated norms of access to courts and fundamental fairness."[67] A separate amicus brief by the Japanese American Citizens League, Pakistani American Public Affairs Committee, Sikh American Legal Defense and Education Fund, National Korean American Service and Education Consortium, and Muslim Advocates also discussed the Supreme Court's 1993 decision in Leatherman where the Supreme Court struck down the Fifth Circuit's attempt to heighten pleadings.[68] The brief noted that the, the Supreme Court has held a "judicially imposed pleading standard would encroach upon Congress' exclusive authority to do so through amendment to the Federal Rules."[69] But this is not the only problem which has been discussed by academics and government officials alike.

Another problem with Heightened notice pleading standards is that they adversely affect civil rights claims, discrimination litigation, and plaintiffs' access to courts. This position was iterated in regards to discrimination victims by John Payton, President and Director-Counsel for the NAACP Legal Defense and Education Fund.[70] In the Japanese American Citizens Society, et al. amicus brief, applicants expressed apprehension regarding more stringent pleading for governmental official imposed constitutional right denials.[71] Amicus briefs from National Civil Rights Organizations also reiterated this concern stating, "many worthy civil rights plaintiffs must rely on the discovery process to uncover concrete evidence that the defendant directed their mistreatment with an unconstitutional motive or deliberate indifference."[72] These organizations deem utilization of judicially monitored discovery preferable to the unnecessary elimination of civil rights plaintiffs pre-discovery.[73] Iqbal and Twombly risk creating an environment where a litigants' rights to have their cases tried will be denied before discovery has even commenced.[74]

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[65] Erickson v. Pardus, 551 U.S. 89, 93 (2002).
[66] Erickson v. Pardus, 551 U.S. 89, 94 citing Twombly, 550 U.S. at 555-556, (citing Swierkiewicz v. Sorema N. A., 534 U.S. 506, 508, n. 1, (2002).
[67] Brief for the American Association for Justice as Amicus Curiae Supporting Respondent, Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) (No. 07-1015).
[68] Brief of Amici Curiae Japanese American Citizens League, et al., Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) (No. 07-1015) citing Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 164 (1993).
[69] Brief of Amici Curiae Japanese American Citizens League, et al., citing Leatherman at 168.
[70] Has the Supreme Court Limited Americans' Access to Courts?: Hearing before the S. Judiciary Comm., 111th Cong. (2009) (Testimonyof John Payton) accessed at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.
[71] Id.
[72] Brief of National Civil Rights Organizations as Amici Curiae in Support of Respondents, Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) (No. 07-1015)
[73] Id.
[74] Has the Supreme Court Limited Americans' Access to Courts?: Hearing before the S. Judiciary Comm., 111th Cong. (2009) (statement of Sen. Patrick Leahy, Sen. Russ Feingold and Testimonyof John Payton, Stephen Burbank, and Gregory Garre) accessed at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.

Two bills were introduced by the legislature during 2009, which attempt to address the holdings of these cases.[75] Representative Jerrold Nadler of New York and twenty-six cosponsors introduced the Open Access to Courts Act of 2009 (H.R. 4115).[76] H.R. 4115 was introduced on November 19, 2009 and has most recently been referred to the House Judiciary Subcommittee on Courts and Competition Policy.[77] According to the text of the bill, "A court shall not dismiss a complaint … unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief."[78]

Additionally, Senator Arlen Specter of Pennsylvania introduced the Notice Pleading Restoration Act of 2009 (S. 1504).[79] Launched July 22, 2009, this bill immediately followed the May 18th Iqbal decision, and the Senate Judiciary Committee is currently reviewing the bill.[80] The bill hails a return to a short and plain statement as directed under Conley by holding:

> Except as otherwise expressly provided by an Act of Congress or by an amendment to the Federal Rules of Civil Procedure which takes effect after the date of enactment of this Act, 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).[81]

Concern regarding the impact of Iqbal and Twombly was echoed in the Senate Hearing regarding the Iqbal/Twombley decisions by Senator Patrick Leahy.[82] Senator Leahy stated, "[t]hese activist decisions do more than ignore precedent – they also pose additional burdens on litigants seeking to remedy wrongdoing. As a result of this judge-made law, litigants could be denied access to the facts necessary to prove wrongdoing."[83] He cited the National Law Journal as determining that 1600 lower Federal Court cases cited Iqbal in only four months.[84] Senator Russell Feingold's testimony at the same hearing reiterated concerns regarding heightened pleadings when he discussed how the Iqbal/Twombly decisions have "shifted the responsibility for screening frivolous claims from the discovery and summary judgment stages of litigation to the pleading stage."[85] Groups currently challenging Iqbal include the American Association for

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[75] Spangler, K. "Proposed Legislation Seeks to Overturn Supreme Court's Twombly and Iqbal Decisions." Antitrust News and Notes (Jan. 2010).
[76] H.R. 4115, 111th Cong. (2009), accessed at http://www.govtrack.us/congress/bill.xpd?bill=h111-4115.
[77] Id.
[78] Id. HR 4115, if enacted into law, would add 28 U.S.C. 2078.
[79] S. 1504, 111th Cong. (2009), accessed at http://222.govtrack.us/congress/billtext.xpd?bill=s111-1504.
[80] Id.
[81] Id.
[82] Has the Supreme Court Limited Americans' Access to Courts?: Hearing before the S. Judiciary Comm., 111th Cong. (2009) (statement of Sen. Patrick Leahy) accessed at http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.
[83] Id.
[84] Id.
[85] Id. Statement of Senator Russell Feingold.

Justice, the Legal Defense Fund and the Leadership Conference, Public Citizen, the Sierra Club, the National Employment Lawyers Association and the Committee to Support the Antitrust Laws.[86] The Alliance Defense Fund and the ACLU have likewise spoken out against Iqbal.[87]

Conclusion

Federal Rule of Civil Procedure 8(a)(2) requires only a "short and plain statement."[88] Specific facts are not required to be alleged under this standard, and quite frankly, often cannot be alleged until discovery has begun. Prior to Iqbal and Twombly, notice pleadings sufficiently prevented Federal Rule of Civil Procedure 12(b)(6) dismissal for failure to state a claim upon which relief can be granted.[89] Under the concept of separation of powers, the Supreme Court and all federal courts are bound by the Federal Rules of Civil Procedure unless such rules are deemed unconstitutional. By heightening pleading standards without legislatively altering Rule 8(a)(2), the Supreme Court has oversteped its authority?

Conley provided the correct interpretation of Federal Rule of Civil Procedure 8(a)(2). Iqbal and Twombly have imposed a requirement of specified factual pleadings, which is inconsistent with the Federal Rules. "Short and plain statements" are all that are required under 8(a)(2). These new pleading standards will wrongfully deny citizen access to courts and the purpose of discovery will be thwarted by an inability of plaintiffs to move beyond the initial pleading stages. 12(b)(6) motions for dismissal based upon failure to state a claim will overpower plaintiffs who have a legitimate complaint but require discovery to develop their case. Since 1957, Conley has allowed plaintiffs the benefits of discovery when it was impossible to state specific facts.[90] Utilization of the Conley standard should continue so that plaintiffs have a fair opportunity to prove their claims. Other devices currently exist to prevent fishing expeditions and the Conley standard has served the judicial system well for over 5 decades. If it ain't broke, no need to fix it.

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[86] Mauro, T. "Plaintiffs Groups Mount Effort to Undo Supreme Court's "Iqbal" Ruling," The National Law Journal (Sept. 21, 2009) accessed at http://www.law.com/jsp/article.jsp?id=1202433931370&thepage=2.

[87] Wasserman, H. "Iqbal/Twombly, Strange Bedfellows, and Civil Rights," PrawfsBlog (Mar. 23, 2010) accessed at http://prawfsblawg.blogs.com/prawfsblawg/2010/03/iqbaltwombly-strange-bedfellows-and-civil-rights.html.

[88] Fed. R. Civ. P. 8(a)(2).

[89] Fed. R. Civ. P. 12(b)(6). See also Conley v. Gibson, 355 U.S. 41 (1957)

[90] Conley, 355 U.S. at 47-48.