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With the Johnson Decision, The Supreme Court Says "Notice Pleading" Is Back And Here to Stay

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In *Johnson v. City of Shelby*, police officers for the city of Shelby (the "City"), brought suit against the City for violation of their Fourteenth Amendment due process rights. Specifically, they alleged that their employment was terminated "not for deficient performance, but because they brought to light criminal activities of one of the alderman." The lower court dismissed the action, stating that while plaintiffs alleged substantive facts that defendants violated their due process rights, they failed to cite the applicable statute in their complaint (i.e., 42 U.S.C. 1983). The Fifth Circuit affirmed, finding that failure to include the relevant statute was "fatally defective" to the complaint. The Supreme Court reversed.

The Supreme Court began its analysis by distinguishing *Bell Atlantic Corporation v.Twombly* and *Ashcroft v. Iqbal* from the present matter. According to the Court, neither *Twombly* nor *Iqbal* were on point because "they concern[ed] the *factual* allegations a complaint must contain to survive a motion to dismiss." The present matter concerned the legal theory upon which the complaint was based. To avoid a motion to dismiss, a plaintiff need only "plead facts sufficient to show that her claim has substantive plausibility." Based on this, the Court found that the complaint was not deficient because of the plaintiffs "simply, concisely, and directly stated events that, they alleged, entitled them to damages from the City. Having informed the city of the factual basis for their complaint, they were required to do no more to stave off threshold dismissal for want of an adequate statement of their claim."

Before this decision came down, many believed that *Twombly* and *Iqbal* had done away with "notice pleading." However, the *Johnson* decision proves otherwise. By stating that *Twombly* and *Iqbal* only mandate that pleadings allege facts sufficient to show that the claim has "substantive plausibility," the Court asserts that plaintiffs are required to do no more than making "a short and plain statement of the claim showing that the pleader is entitled to relief." They are not required to state the legal theory upon which their request for relief is based. With this holding, it is likely that the strict standard used to analyze complaints following *Twombly* and *Iqbal* will be relaxed. Courts will look to see that sufficient facts for a claim are alleged, not if those facts match the specific legal theory proposed if any is proposed at all. This may open the door for increased amounts of litigation and be beneficial to plaintiffs by providing them with "extra room" to adjust their legal theory as necessary to counter the defendant's arguments.

If you or your institution has any questions or concerns regarding related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

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