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The Antidote To Prolix Securities Fraud Complaints: Federal Rule of Civil Procedure 8

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The modern-day federal securities fraud complaint has become a monster. Complaints that span hundreds of pages are not uncommon, and some complaints have tipped the scales at more than 380 pages and 1,300 paragraphs.[1] The sheer enormity of the typical complaint in a major securities fraud case presents daunting challenges for courts and for defendants. Prolix pleadings blur the factual issues in dispute, complicate and expand the scope of discovery, and require defendants to expend significant resources to file a responsive pleading or motion to dismiss.

This is not the way things were meant to be or need to be. Federal Rule of Civil Procedure Rule 8(a) not only requires plaintiffs to plead a "plain"—that is, a clear and comprehensible—statement of their claim, but also one that is "short." Rule 8(e) also specifies that each averment of the complaint be "simple, concise, and direct." The antidote to prolix complaints is simple: Rule 8 should be given new bite in securities fraud lawsuits.

Breathing new life into Rule 8 does not require—and should not invite—relaxation of the heightened pleading requirements imposed by the Private Securities Litigation Reform Act of 1995 (PSLRA).[2] Quite to the contrary, enforcing Rule 8 in federal securities cases would advance the goals of the PSLRA. The PSLRA was enacted to reduce abusive and vexatious securities suits, particularly "the targeting of deep pocket defendants, including accountants, underwriters, and individuals who may be covered by insurance, without regard to their actual culpability."[3] It also was intended to reduce litigation costs.[4] Reasonable enforcement of Rule 8's brevity requirement would promote both goals.

Courts have long held that "needlessly long" pleadings, or pleadings that are "highly repetitious or confused, or consist[] of incomprehensible rambling," should be dismissed for failing to comply with Rule 8.[5] Even "in the context of a multiparty multiclaim complaint, each claim should be stated as succinctly and plainly as possible even though the entire pleading may prove to be long and complicated by virtue of the number of parties and claims."[6] Dismissal with prejudice is warranted if the plaintiff repeatedly violates the Rule.[7]

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Sound policy considerations underlay Rule 8's brevity requirement. As one court observed, "[a] complaint that is prolix and/or confusing makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation."[8] Briefing and arguing motions to dismiss can become unwieldy, as can answering such complaints. In short, "[p]rolix, confusing complaints … impose unfair burdens on litigants and judges."[9]

These policy considerations apply with special force in securities fraud cases. Recognizing the burdens that pretrial discovery proceedings impose on defendants, Congress in the PSLRA required securities fraud plaintiffs to plead particular facts evincing a strong inference that the defendant acted with scienter and (in light of the PSLRA's discovery stay) to do so without the benefit of discovery.[10] The goal of those provisions was to discourage the filing of unmeritorious lawsuits, to reduce pretrial litigation costs, and to discourage strike-suit settlements.[11]

Plaintiffs have invoked the PSLRA's heightened pleading standards as a reason justifying the filing of prolix complaints. But the PSLRA requires *particularity*, not prolixity—and the two concepts are distinct. As one court has observed with respect to Federal Rule of Civil Procedure 9(b)—which imposes a heightened pleading standard governing fraud claims—"[i]t is well settled that the particularity demands of pleading fraud under Rule 9(b) in no way negate the commands of Rule 8" that a complaint be short.[12] A complaint can specify with particularity the factual basis for the plaintiff's claims yet not stray into prolixity. Conversely, "[a] complaint can be long-winded, even prolix, without pleading with particularity. Indeed, such a garrulous style is not an uncommon mask for an absence of detail."[13] As one court has explained, "[a] heightened pleading standard is not an invitation to disregard Rule 8's requirement of simplicity, directness, and clarity."[14]

Prolix complaints in securities fraud cases perpetuate the precise burdens that Congress sought to discourage in the PSLRA. Plaintiffs with meritless claims have an incentive to bloat their complaint with voluminous allegations to convey the impression from length alone that the complaint's allegations have substance. The failure to enforce Rule 8's brevity requirement unfairly puts defendants to the burdensome and costly task of selecting "the relevant material from a mass of verbiage" with respect to Rule 12 motions or pleadings.[15] Enforcing Rule 8's brevity requirement, by contrast, would improve the quality of pleading practice by encouraging plaintiffs to emphasize the most relevant factual allegations that pretrial investigation has uncovered. The parties would more readily join issue on the most material allegations, increasing the likelihood of a correct adjudication of the complaint's legal adequacy.

In recent years, defendants have increasingly challenged federal securities fraud complaints under Rule 8. Courts that have addressed those claims have divided into two camps. In one camp, courts have held that Rule 8's brevity requirement is not an independent limit on the length of a securities fraud complaint and that Rule 8 permits the filing of a prolix complaint so long as the complaint gives the defendant fair notice of the claim asserted against it. In the other camp, courts have held that Rule 8 imposes an independent limit on the length of a complaint regardless of whether the complaint otherwise affords the defendant "fair notice" of the claims asserted against it. The latter view is more faithful to the text and purpose of Rule 8 and better effectuates the purposes of the PSLRA.

In re Williams Securities Litigation[16] exemplifies the reasoning of courts that have sustained prolix complaints under Rule 8. In upholding a complaint asserting Section 10(b) claims, the court reasoned that, even though the complaint "arguably may lack clarity in some respects due to the number of parties and the sheer volume of information," nonetheless "one can discern from the Complaint what causes of action are asserted against each Defendant and the alleged factual basis for each of these causes of action."[17] The court cited *Conley v. Gibson*[18] in support of its ruling, reading that case to stand for the proposition that "a plaintiff has complied with the federal rules 'if the defendant has fair notice of what the plaintiff's claim is and the grounds upon which it rests.'"[19]

Other courts have pursued similar reasoning, even while expressing dismay at the size of the complaints before them. In *Geinko v. Padda*,[20] for example, the court rejected the contention that a 386-page complaint ran afoul of Rule 8, reasoning that "[w]hile Plaintiffs may have attached superfluous and irrelevant matter to their Amended Complaint," the complaint was "not an unwieldy, 'puzzle-style' complaint" and "clearly delineates the charges they allege against each individual defendant."[21]

Similarly, in one of two notable rulings on this subject in *In re Parmalat Securities Litigation*,[22] the Court expressed its "substantial sympathy" with the plight of the defendants, who were faced with responding to a complaint of "368 pages and 1,249 paragraphs" and observed that the "requirement of pleading fraud with particularity does not justify a complaint longer than some of the greatest works of literature."[23] The court nonetheless declined to hold that the complaint failed to comply with Rule 8, on the ground that the complaint did not "overwhelm the defendants' ability to understand or to mount a defense."[24]

Likewise, the court in *In re Global Crossing Ltd. Securities Litigation*,[25] held that a securities fraud complaint containing 840 separate paragraphs and spanning 326 pages—which the court described as an "enormous mountain" of a pleading—complied with Rule 8.[26] According to the court, given the nature of the alleged fraud and the particularity requirement of Rule 9(b), it was understandable for plaintiffs to have "erred on the side of detail and prolixity."[27] The court added that "[a] motion to dismiss is a vehicle for testing the legal sufficiency of plaintiffs' claims, and not a device for editing their prose."[28]

By contrast, several courts have concluded that Rule 8 imposes an independent limit on the length of a complaint, even if the complaint otherwise provides "fair notice" to the defendant of the asserted claims. For example, when

the plaintiffs sought to amend their complaint with respect to certain defendants in *In re Parmalat*—extending the complaint to 389 pages and 1,323 paragraphs—the court noted that the plaintiffs' complaint was "the very antithesis of the 'short and plain statement of the claim'" required by Rule 8.[29] Despite "the fact that the PSLRA and Rule 9(b) require particularity in pleading some aspects of plaintiffs' claims," and that the case was "particularly complicated," the court stated that the pleading failed to comply with Rule 8.[30] Such a lengthy complaint, the court observed, "has delayed, and may continue to delay, resolution of the action," would "multiply the extent and cost of discovery" and would create the "potential for confusion and the difficult[y] of comprehension" of "epic" proportions if the case were ever tried to a jury.[31] The court noted pointedly that "[i]f indeed the grievous and extensive fraud alleged by the plaintiffs actually occurred, there doubtless are ways to focus more on the forest and less on every single tree."[32]

Similarly, in *In re Merrill Lynch & Co., Inc. Research Reports Securities Litigation*,[33] the court refused to allow plaintiffs to file an amended complaint (the earlier complaint had been dismissed for failure to plead loss causation and scienter with particularity) because the "proposed second consolidated amended complaint is 112 pages long, contains 424 paragraphs, and is in clear violation of Federal Rule of Civil Procedure 8(a), which mandates that pleading shall consist of a 'short and plain statement of the claim showing that the pleader is entitled to relief.'"[34] Moreover, the court connected that ruling with the purposes of the PSLRA: it observed that a "simple complaint uttered in so many pages borders very substantially on what Congress intended to eliminate under the [PSLRA's] heading of 'abusive litigation.'"[35]

In *Feeney v. Mego Mortgage Corp.*,[36] the court likewise held that a securities fraud complaint failed to comply with Rule 8's brevity requirement because "[c]ontrary to [Rule 8(a)'s] requirements, the [complaint] is replete with lengthy, argumentative assertions such as are more appropriately reserved for jury summation."[37] Similarly, in *In re Leapfrog Enterprises, Inc. Securities Litigation*,[38] the court dismissed the action for failure to comply with the PSLRA and noted that the complaint had failed to comply with Rule 8. The court "expressed concern that the manner in which the 147-page consolidated amended complaint is arranged makes it difficult, if not impossible, to evaluate the pleadings and determine whether the requirements of the [PSLRA] are met" and emphasized that "a heightened pleading standard need not translate to a lengthy complaint."[39]

Finally, in *Vtech Holdings Limited v. PricewaterhouseCoopers, LLP*,[40] a fraud case whose pleadings were governed by the particularity strictures of Rule 9(b), the court dismissed a 113-page, 179-paragraph complaint in part because it violated Rule 8. The court described the complaint as "verbose and repetitious" and that it "repeat[ed] endlessly various stock phrases that convey[ed] no new meaning."[41]

Although the body of cases addressing this subject is small, we believe courts in the second category have adopted the better reasoned view that Rule 8 imposes an independent limit on the length of a securities fraud complaint regardless of whether the complaint otherwise gives the defendant "fair notice" of the asserted claim. The text of the rule makes clear that a complaint must be *both* "short" *and* "plain."[42] To read Rule 8 as requiring only that complaints be "plain" would render Rule 8's separate command that a complaint be "short" surplusage.

Conley v. Gibson[43]—which several courts in the first camp have cited to support their conclusion that Rule 8 requires only that a complaint provide a defendant with "fair notice" of the claim—does not support a contrary conclusion. In that case, the defendants argued that the complaint contained too few facts to support the plaintiffs' discrimination claims, but the court held that the plaintiffs' allegations were not unduly conclusory.[44] The issue in *Conley* therefore was not whether the complaint was sufficiently "short" within the meaning of Rule 8—it clearly was—but whether it was sufficiently "plain" to "set forth a claim and g[ive] the [defendants] fair notice of its basis."[45] *Conley* therefore does not address, one way or the other, whether Rule 8 also imposes an independent length limitation.

Finally, reading Rule 8 as imposing an independent brevity requirement would promote the purposes of the PSLRA. Reasonable enforcement of Rule 8 would improve the quality of pleadings practice, reduce the costs of answering and filing motions to dismiss, and increase the likelihood that only meritorious complaints would survive motions to dismiss.

The era of the oversized, prolix complaint need not last forever. The perfect antidote to such complaints resides in Rule 8. Asserting Rule 8 challenges to prolix complaints should be encouraged, and by sustaining those challenges in appropriate cases courts can increase the efficiency and quality of securities litigation while remaining faithful to the text and purpose of Rule 8 and the PSLRA.

Notes

1. *See In re Parmalat Sec. Litig.*, 414 F. Supp. 2d 428, 442 (S.D.N.Y. 2006)
2. 15 U.S.C.A. § 78u-4(b)(2) (2000).
3. H.R. Conf. Rep. 104-369, at 31 (1995), *reprinted in*, 1995 U.S.C.C.A.N. 730, 730.
4. *See, e.g.*, H. Rep. No. 104-50, at 15 (1995) ("[w]hether a shareholder lawsuit is meritorious or not, the corporation sued must spend a great deal of money to defend itself.").
5. Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1217, at 247-52 (3d ed. 2004).
6. *Id.* at 246.
7. *See*, *e.g.*, *Kuehl v. FDIC*, 8 F.3d 905, 908 (1st Cir. 1993).
8. *Vicom, Inc. v. Harbridge Merch. Servs., Inc.*, 20 F.3d 771, 775-76 (7th Cir. 1994).
9. *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996).
10. *See* 15 U.S.C. § 78u-4(b)(3)(B); *see also*, *e.g.*, *Medhekar v. U.S. Dist. Court*, 99 F.3d 325, 328 (9th Cir. 1996) ("th[e] complaints in … securities actions should stand or fall based on the actual knowledge of the plaintiffs rather than information produced by the defendants after the action has been filed"); *In re Livent, Inc. Noteholders Sec. Litig.*, 151 F. Supp. 2d 371, 423 (S.D.N.Y. 2001) ("[m]anifest in the 1995 Reform Act is the mandate that courts assess the legal sufficiency of plaintiffs' securities fraud allegations according to what plaintiffs know at the time the

complaint is filed, rather than what they wish to learn through discovery").

11. *See, e.g.*, H. Rep. No. 104-50, at 17 ("[a]s the costs of discovery rise, the pressure to settle becomes enormous"); S. Rep. No. 104-98, at 14 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 693 ("[t]he cost of discovery often forces defendants to settle abusive securities class actions").
12. *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 703 (3d Cir. 1996) (Alito, J.) (quotation omitted).
13. *Southland Sec. v. Inspire Ins. Solutions, Inc.*, 365 F.3d 353, 362 (5th Cir. 2004) (quotation omitted).
14. *McHenry*, 84 F.3d at 1178.
15. *Morgens Waterfall Holdings, L.L.C. v. Donaldson, Lufkin & Jennette Sec. Corp.*, 198 F.R.D. 608, 610 (S.D.N.Y. 2001).
16. 339 F. Supp. 2d 1242 (N.D. Okla. 2003).
17. *Id.* at 1261.
18. 355 U.S. 41 (1957).
19. *In re Williams*, 339 F. Supp. 2d at 1261 (quoting *Conley*, 355 U.S. at 47); *see also In re Nat'l Century Fin. Enters., Inc., Invest. Litig.*, No. 2:03-MD-1565, 2006 WL 469468, at *10 (S.D. Ohio Feb. 27, 2006) (rejecting Rule 8 argument and citing *Conley*).
20. No. 00-C-5070, 2002 WL 276236 (N.D. Ill. Feb. 27, 2002).
21. *Id.* at *3.
22. 375 F. Supp. 2d 278 (S.D.N.Y. 2005).
23. *Id.* at 311.
24. *Id.* (internal quotation marks omitted); *see also In re Real Estate Assocs. Ltd. P'ship Litig.*, 223 F. Supp. 2d 1142, 1146 (C.D. Cal. 2002) (refusing to hold lengthy complaint violated Rule 8 because it was "not so opaque as to defy understanding").
25. 313 F. Supp. 2d 189 (S.D.N.Y. 2003).
26. *Id.* at 211, 212.
27. *Id.* at 212.
28. *Id.*
29. *In re Parmalat Sec. Litig.*, 414 F. Supp. 2d 428, 442 (S.D.N.Y. 2006).
30. *Id.*
31. *Id.*
32. *Id.*
33. 272 F. Supp. 2d 243 (S.D.N.Y. 2003).
34. *Id.* at 268.
35. *Id.*; *see also In re Merrill Lynch & Co. Inc. Research Reports Sec. Litig.*, 218 F.R.D. 76, 78 (S.D.N.Y. 2003) (dismissing 98-page, 367-paragraph complaint because it contained "prolix, discursive, redundant, argumentative, and disjointed assertions").
36. 45 F. Supp. 2d 1356 (N.D. Ga. 1999).
37. *Id.* at 1357.
38. No. C-03-05421 RMW, 2006 WL 2192116 (N.D. Cal. Aug. 1, 2006).
39. *Id.* at *1, *3.
40. No. 03-CIV-1413 (LAK), 2003 WL 21756623 (S.D.N.Y. July 30, 2003).
41. *Id.* at *1.
42. Fed. R. Civ. P. 8(a).
43. 355 U.S. 41 (1957).
44. *Id.* at 47-48.
45. *Id.* at 48.