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TRIAL BAR LEADS UNFOUNDED ATTACKS ON HIGH COURT'S *IQBAL* RULING

by
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Plaintiffs' lawyers and law professors have joined forces in an effort to undo the Supreme Court's recent decision in *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009), which requires complaints to set forth "a plausible claim for relief" in order to survive a motion to dismiss. The ruling directs district courts to view complaints through the lens of "common sense" and to dismiss those lawsuits where the facts as alleged "do not permit the court to infer more than the mere possibility of misconduct." *Id.*

One would not think it controversial to require plaintiffs, before subjecting defendants to the often massive burdens of the modern-day discovery process, to submit a complaint that is plausible on its face and accords with common sense. These are not insurmountable hurdles. Yet critics of *Iqbal* contend that the ruling will deny plaintiffs with meritorious claims their day in court. A spokesman for a civil rights lawyers organization recently told the *National Law Journal* that *Iqbal* is "a padlock on the courthouse door," while an attorney with a trial lawyers group charged that *Iqbal* "heralds a return to the kind of legal practice Dickens condemned in *Bleak House*."

The critics' arguments are not well founded. While some courts have relied on *Iqbal* in granting motions to dismiss, *see, e.g., Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009), many have permitted lawsuits to proceed even under *Iqbal*'s heightened standard. To take just one example, the Second Circuit recently reversed a district court for dismissing a breach of contract claim against a large insurer, holding that the plaintiff had satisfied *Iqbal*'s requirements. *See Spagnola v. Chubb Corp.*, 574 F.3d 64 (2d Cir. 2009). And in some cases where *Iqbal* is cited in the course of dismissing a lawsuit, the courts have noted that the lawsuit would have failed even under the pre-*Iqbal* standard. *See, e.g., Smith v. Duffey*, 576 F.3d 336 (7th Cir. 2009).

There are already well over 2,000 federal decisions citing *Iqbal*, and the critics' claim that the ruling will transform the landscape of American law into something resembling the nineteenth-century English system is — to put it mildly — an overstatement. *Iqbal* is a very significant decision, but it is hardly the end of the American pleading system as we know it.

Will *Iqbal* result in the dismissal of some lawsuits that would have survived under a relaxed standard? Yes — and that is exactly as it should be. The law does not confer upon plaintiffs an absolute entitlement to subject a defendant to the costs and burdens of discovery. The Supreme Court's sensible

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recognition that a district court performs a gatekeeping function, and should subject allegations to a common-sense test of plausibility, will help ensure that plaintiffs do not abuse the judicial process by conducting fishing expeditions or by filing patently meritless complaints in hopes of coercing a quick settlement.

Some critics have urged the adoption of the standard offered by Justice Souter in his dissenting opinion in *Iqbal*. Justice Souter argued that district courts should accept all allegations in the complaint as true, “no matter how skeptical the court may be.” 129 S. Ct. at 1959. He wrote that “[t]he sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff’s recent trip to Pluto, or experiences in time travel.” *Id.* But this approach sets the bar too low. Permitting plaintiffs to pursue lawsuits based on theories that are facially absurd or implausible — so long as they fall short of alleging little green men or time travel — unfairly subjects defendants to the costs of litigation and further clogs the federal courts.

A common line of attack on *Iqbal* is that there are supposedly some types of cases, such as employment discrimination and product liability claims, that often require discovery into documents and records that are outside the plaintiff’s control. But this argument misapprehends *Iqbal*’s holding: it does not require plaintiffs to *prove* their case at the motion-to-dismiss stage; rather, all the plaintiff must do is furnish “more than a sheer possibility that a defendant has acted unlawfully,” 129 S. Ct. at 1949, and it is reasonable to expect plaintiffs with meritorious claims to be able to satisfy this standard *before* deposing witnesses or rummaging through a defendant’s files. Indeed, if a plaintiff cannot even articulate a plausible claim for relief in his or her complaint, that lawsuit should not be permitted to move forward into discovery.

Another common line of attack is that *Iqbal* vests too much discretion in the district courts. But a district court is perfectly capable of “draw[ing] on its judicial experience and common sense,” 129 S. Ct. at 1950, to determine whether the complaint “contain[s] sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Id.* at 1949 (quotation omitted). Indeed, throughout the course of a lawsuit, a district court may make its own assessment of the legal and factual sufficiency of the plaintiff’s case. Recognizing the district court’s important gatekeeping role at the outset of the lawsuit is thoroughly consistent with this approach.

Iqbal is a welcome and sensible decision. It protects defendants from frivolous lawsuits and helps those plaintiffs with meritorious cases by permitting the courts to focus their attention on plausible claims, rather than having to devote judicial resources policing discovery disputes in lawsuits that should never have been allowed to proceed. Critics of *Iqbal* should consider how the lower courts are actually interpreting and applying the Supreme Court’s mandate before rushing to overturn the decision.