An Early Review of Iqbal in the Circuit Courts

By John G. McCarthy

In the first eight months after the Iqbal decision was published, some 5,200 federal court opinions cited it. The circuits are busy interpreting, refining, and applying Iqbal’s teachings to actual pleadings in a variety of matters. Several of the opinions already issued by the courts of appeals give us some early insight into how pleading law is headed and how much practical impact the Supreme Court’s ruling will have in the future.

The Supreme Court’s opinion in Ashcroft v. Iqbal was viewed by many as one of the most important rulings on civil procedure handed down by the Court in years. The treatment of that decision by the lower federal courts since its issuance on May 18, 2009, demonstrates that the application of the ruling is far-reaching. As of February 2010, more than 5,200 opinions issued by the lower federal courts have cited the Iqbal opinion. The courts of appeals cited to the Iqbal opinion in at least 242 cases during that time period. Every circuit court has issued at least one opinion that analyzes or discusses the Supreme Court’s reasoning in Iqbal. This article reviews the way many of the circuit courts have applied the Iqbal decision in the first eight months following its publication.

So far, based on decisions issued by the various courts of appeals through February 2010, it appears that the Supreme Court may not have radically altered the pleading landscape. In most circuits, the application of the pleading requirements expressed in Iqbal to specific complaints have achieved the same results as would have been reached under pre-existing case law. Although this may simply be a function of the fact that the circuit courts to date have been analyzing complaints filed prior to Iqbal, the rules and analysis used by the circuit courts will undoubtedly have an impact on the way the district courts apply the Iqbal standards. Other circuits have interpreted Iqbal in a manner that limits that application of some of its more radical requirements.

One of the most interesting—and perhaps most insightful—discussions of Iqbal in a circuit court decision was written by Judge Richard A. Posner in Cooney v. Rossiter. The decision analyzes the Supreme Court’s reasoning in Iqbal and its earlier opinion in Bell Atlantic Corp. v. Twombly. The Seventh Circuit, relying on the language in Iqbal that determination of plausibility will be a context-specific task, held that “the height of the pleading requirement is relative to circumstances.” The Cooney court held that certain circumstances require the courts to raise the bar. Thus far, the opinion explains, three circumstances require a higher pleading bar: complexity, immunity, or allegations of conspiracy. The Seventh Circuit noted that, in Twombly, the Supreme Court sought to ensure that in complex litigation the burden of discovery would not be placed on a defendant based on implausible allegations. In Iqbal, the Supreme Court was concerned that the defense of official immunity not be evaded—and the burden of trial imposed—based on implausible allegations. Finally, Judge Posner and his colleagues noted that, even prior to Iqbal, the courts had imposed a higher pleading standard with respect to conspiracy allegations. In Cooney, the Seventh Circuit held that the complaint contained only a bare conclusion that the defendants were involved in a conspiracy and thus did not satisfy the higher pleading requirement applicable in that circumstance.

One controversial aspect of the Iqbal opinion is its criticism that the complaint failed to state a claim in light of other more likely explanations for the defendants’ conduct. The Supreme Court held that Mr. Iqbal was required to plead facts from which a reasonable inference could be drawn that the defendants’ conduct was based on the unlawful explanation rather than the other likely explanations. The Eighth Circuit addressed this issue directly in Braden v. Wal-Mart Stores Inc., in which the court reversed the district court’s dismissal of the complaint. First, the Eighth Circuit’s opinion spent some time reviewing the current federal pleading standards based on Iqbal and Twombly. The court noted that a plaintiff is required to plead facts (not conclusions or formulaic recitations of the elements) and that the court is required to assume that those well-pleaded facts are true. The lower court, according to the Eighth Circuit, improperly drew inferences in favor of the defendant, ignoring a fundamental tenet of Rule 12(b)(6) practice that the Supreme Court did not change—namely, that inferences are to be drawn in favor of the nonmoving party. The Braden court next explained when a plaintiff must plead facts that rule out alternative explanations for the defendant’s conduct. The Eighth Circuit held that only “where there is a concrete, ‘obvious alternative explanation’ for the defendant’s conduct … that a plaintiff may be required to plead additional facts
tending to rule out the alternative.”

Opinions issued by many other circuit courts in which Iqbal is discussed or analyzed arrive at the same result that would have been reached under prior case law. A case in point is Sanchez v. Pereira-Castillo, which involved claims under 42 U.S.C. § 1983. The district court had dismissed the complaint prior to the Iqbal decision. The First Circuit affirmed that decision in part and vacated it in part. The court of appeals held that allegations against the administrative correctional defendants were nothing more than legal conclusions and affirmed the dismissal of these defendants. With respect to two corrections officers who were directly involved in the alleged constitutional violation, the First Circuit held that the plaintiff had met his burden of pleading sufficient facts to allow a court to draw the reasonable inference that these defendants were liable for the misconduct alleged.

Similarly, the Third Circuit’s decision in Fowler v. UPMC Shadyside is another example of a case in which the application of the Iqbal standards did not alter the result. In Fowler, the district court had dismissed the complaint. The Third Circuit reversed and held that plaintiff had adequately pleaded a claim for relief under Iqbal and Twombly by alleging “how, when and where,” the defendant had discriminated against her. The court noted that, even though the complaint “is not as rich with detail as some might prefer, it need only set forth sufficient facts to support plausible claims.”

In Al-Kidd v. Ashcroft, the Ninth Circuit analyzed Iqbal’s requirements in a case involving whether former Attorney General John Ashcroft was entitled to immunity from suit arising from the Justice Department’s use of the material witness statute in the “war on terrorism.” After the Idaho District Court denied his motion to dismiss the complaint on immunity grounds, Ashcroft filed an interlocutory appeal. The Ninth Circuit directly addressed the state of the law before and after Iqbal as it applied to the complaint being examined. The court noted that “[e]ven before the Supreme Court’s decision in Bell Atlantic v. Twombly and Ashcroft v. Iqbal, it was likely that conclusory allegations of motive, without more, would not have been enough to survive a motion to dismiss.” The Ninth Circuit held that the plaintiff had averred ample facts to make his claim against Ashcroft plausible rather than merely conceivable. The court noted (as other circuit courts have also done) that the plausibility standard is less than the standard applicable in the summary judgment context. Even though the facts alleged in the complaint would probably not defeat a motion for summary judgment, they amply satisfied Iqbal’s plausibility standard.

In Hayden v. Patterson, the Second Circuit had an opportunity to apply the Iqbal test to a case involving a challenge to New York’s felon disenfranchisement statute in the context of a Rule 12(c) motion for judgment on the pleadings. The court explained that Iqbal applied, because the same standards apply to motions under Rule 12(c) as apply to Rule 12(b)(6) motions. The Second Circuit conducted its Iqbal analysis in two parts: (1) the court eliminated conclusory allegations not entitled to the assumption of truth, and (2) the court then analyzed the remaining well-pleased facts to determine if the claim for relief is plausible. (Other circuits have also used this two-step approach.) The Second Circuit held that some of the facts pleaded were sufficient to support a plausible claim as to racially discriminatory purpose to New York constitutional provisions adopted in 1821, 1846, and 1874. The complaint failed, however, on a ground that would have doomed it prior to Iqbal—the absence of any factual allegation that the 1894 constitutional provision was motivated by a racially discriminatory purpose.

Not all circuits have applied the Iqbal ruling in a manner that appears to render the same results as would have been reached under pre-existing case law. Based on its early decisions, it appears that the Fourth Circuit has adopted a new, higher standard for all complaints. Even though he dissociated from the opinion affirming dismissal, in Nemet Chevrolet Ltd. v. ConsumerAffairs.com Inc., Chief Judge James P. Jones noted that “Twombly and Iqbal announced a new, stricter pleading standard.” The Nemet Chevrolet court affirmed dismissal of a complaint that, unlike many of the cases discussed above, contained factual allegations and not merely a conclusion or recitation of the elements of the claim for relief. In his dissent, Judge Jones wrote: “It cannot be the rule that the existence of any other plausible explanation that points away from liability bars the claim.” Another opinion by the Fourth Circuit, Francis v. Giacomelli, also involved the dismissal of a complaint under the Iqbal standard. In deciding a motion to dismiss, the court ruled that allegations by certain plaintiffs were “patently untrue” based on contradictory allegations by another plaintiff. The Fourth Circuit then held that the court at issue did not state a claim for relief.

During the upcoming months and years, the courts of appeals will continue to sculpt the Rule 12(b)(6) standards based on the Supreme Court’s guidance in Iqbal. After eight months of that process, it appears that, in most circuits the Iqbal decision will not change the result reached in most cases.

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Endnotes


3583 F.3d 967 (7th Cir. 2009).


5588 F.3d 585 (8th Cir. 2009).

6590 F.3d 31 (1st Cir. 2009).

7578 F.3d 203 (3rd Cir. 2009).

8580 F.3d 949 (9th Cir. 2009).

9594 F.3d 150 (2d Cir. 2010).

10591 F.3d 250 (4th Cir. 2009)

11588 F.3d 186 (4th Cir. 2009).