



But something much deeper and broader was going on in the decision, something that may unsettle how civil litigation is conducted in the United States. Justice Ruth Bader Ginsburg, who dissented from the decision, told a group of federal judges last month that the ruling was both important and dangerous. “In my view,” Justice Ginsburg said, “the court’s majority messed up the federal rules” governing civil litigation.

For more than half a century, it has been clear that all a plaintiff had to do to start a lawsuit was to file what the rules call “a short and plain statement of the claim” in a document called a complaint. Having filed such a bare-bones complaint, plaintiffs were entitled to force defendants to open their files and submit to questioning under oath.

This approach, particularly when coupled with the American requirement that each side pay its own lawyers no matter who wins, gave plaintiffs settlement leverage. Just by filing a lawsuit, a plaintiff could subject a defendant to great cost and inconvenience in the pre-trial fact-finding process called discovery.

Mark Herrmann, a corporate defense lawyer with Jones Day in Chicago, said the Iqbal decision will allow for the dismissal of cases that would otherwise have subjected defendants to millions of dollars in discovery costs. On the other hand, information about wrongdoing is often secret. Plaintiffs claiming they were the victims of employment discrimination, a defective product, an antitrust conspiracy or a policy of harsh treatment in detention may not know exactly who harmed them and how before filing suit. But plaintiffs can learn valuable information during discovery.

The Iqbal decision now requires plaintiffs to come forward with concrete facts at the outset, and it instructs lower court judges to dismiss lawsuits that strike them as implausible.

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