

CLIENT ALERT

Supreme Court to Decide Whether the PSLRA's Discovery Stay Applies to State Court Actions

JULY 7, 2021

On July 2, 2021, the Supreme Court granted certiorari in *Pivotal Software, Inc. v. Tran* to determine whether the discovery stay in the Private Securities Litigation Reform Act ("PSLRA") applies to private actions under the Securities Act of 1933 in state court, as well as to actions in federal court.^[1]

The discovery stay provision at issue, Section 77z-1(b)(1), provides:

In any private action arising under [the Securities Act of 1933], all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.^[2]

State courts throughout the nation, and even within the same state, are divided on whether the PSLRA's discovery stay applies to them. For example, courts in California, New York, and Connecticut have concluded that the discovery stay is applicable in state court,^[3] while other courts have held that the discovery stay does not apply to state actions.^[4] State courts applying the stay have focused on the provision's text, "in *any* private action,"^[5] while courts denying the stay have held that it is a procedural rule that does not apply in state court.^[6]

The issue has become particularly relevant after the Supreme Court's decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*,^[7] which held that state courts have concurrent jurisdiction over Securities Act claims, and that such actions cannot be removed to federal court. In the years immediately following *Cyan*, plaintiffs frequently brought Securities Act claims in state court,^[8] and argued that the PSLRA's discovery stay is inapplicable to such actions. This is what occurred in *Pivotal*.

In *Pivotal*, plaintiffs brought Securities Act claims in California state court, and sought discovery prior to defendants' demurrers (California's motion to dismiss), arguing that the PSLRA's discovery stay does not apply in state court. Defendants sought a stay, which the trial court summarily denied. The California Court of Appeals and California Supreme Court also summarily denied review. Therefore, defendants petitioned the Supreme Court, which granted certiorari.

The Supreme Court will hear the case in its next term. Winston & Strawn will continue to monitor the case and other developments in the law.

^[1] Docket No. 20-1541.

^[2] 15 U.S.C. § 77z-1(b)(1).

^[3] See, e.g., *In re Everquote, Inc. Sec. Litig.*, 106 N.Y.S.3d 828, 837 (Sup. Ct. 2019); *In re Greensky, Inc. Sec. Litig.*, No. 655626/2018, 2019 WL 6310525, at *2 (N.Y. Sup. Ct. Nov. 25, 2019); *City of Livonia Retiree Health and Disability Benefits Plan v. Pitney Bowes Inc.*, No. X08 FST CV 18 6038160 S, 2019 WL 2293924, *4 (Conn. Super. May 15, 2019); *In re Pronai Therapeutics, Inc. S'holder Litig.*, No. 16CIV02473 (Cal. Super. Ct. Mar. 14, 2018).

^[4] See, e.g., *Matter of PPDAL Grp. Sec. Litig.*, 116 N.Y.S.3d 865 (N.Y. Sup. Ct. 2019); *In re Dentsply Sirona, Inc.*, No. 155393/2018, 2019 WL 3526142, at *6 (N.Y. Sup. Ct. Aug. 2, 2019); *Switzer v. WR. Hambrecht & Co.*, Nos. CGC-18-564904, CGC-18-565324, 2018 WL 4704776, at *1 (Cal. Super. Ct. Sept. 19, 2018).

^[5] *Everquote*, 106 N.Y.S.3d at 837 (granting stay of discovery because the text and purpose of the PSLRA support a conclusion that the PSLRA's automatic stay applies in state courts); *City of Livonia*, 2019 WL 2293924, at *4 (Section 77z-1(b)(1) "is not ambiguous" and "its plain meaning compels the conclusions that the statute . . . applies to actions commenced in state court").

^[6] *Switzer*, 2018 WL 4704776, at *1 (the "provision for a discovery stay is of a procedural nature, and therefore only applies to actions filed in federal court, not state court").

^[7] 138 S. Ct. 1061 (2018).

^[8] Cornerstone Research, Securities Class Action Filings 2019 Year in Review (2020), available at: <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2019-Year-in-Review>. The filing of state court Securities Act claims peaked in 2019 but ebbed to some extent in 2020. See Cornerstone Research, Securities Class Action Filings 2020 Year in Review (2020), p. 4, available at: <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Filings-2020-Year-in-Review>.

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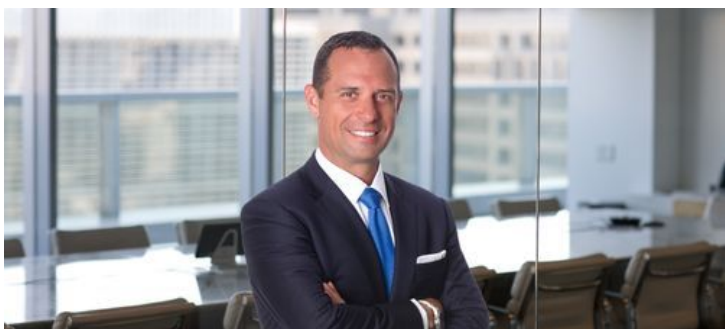
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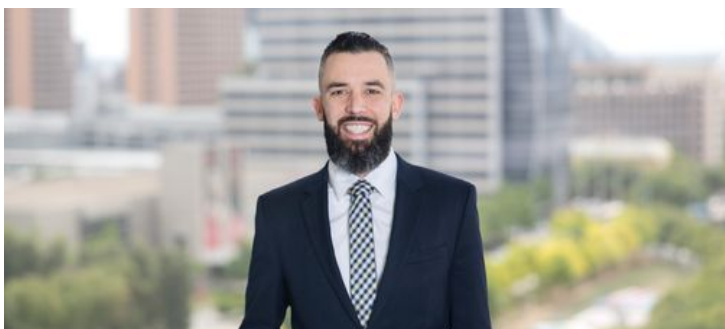
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