



Supreme Court Grants Review of Scope of PSLRA Stay

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On July 2, 2021, the Supreme Court granted the petition for writ of *certiorari* in *Pivotal Software v. Tran*, a case with significant implications for litigation brought under the Securities Act of 1933. The issue in *Pivotal Software* is whether the provision in the Private Securities Litigation Reform Act of 1995 (PSLRA), which requires that “in any private action arising under” the Securities Act, “all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss,”¹ applies to Securities Act cases brought in state court, and not just those in federal court.

This issue has taken on greater significance since the Supreme Court’s decision in *Cyan, Inc. v. Beaver County Employees Retirement Fund*,² which held that plaintiffs may bring Securities Act claims in either state or federal court. Since *Cyan*, many plaintiffs have brought claims in state courts, and state courts have been deeply divided on whether the automatic discovery stay applies to the actions pending before them. For example, several California and New York trial courts have concluded that the discovery stay is a procedural rule that does not apply in state courts. Others have determined that application of the stay would undermine the decision in *Cyan* recognizing state court jurisdiction over Securities Act claims, or that a conclusion that the stay applies in state court would conflict with a separate provision of the Securities Litigation Uniform Standards Act of 1998 (SLUSA), which allows a court in certain actions to stay discovery “in any private action in State court.”³ These courts have permitted costly discovery to proceed before ruling on the defendants’ challenge to the adequacy of the pleadings. Other courts, including those in California, Connecticut and New York, have concluded that the plain language of the discovery stay — applying to “any private action” arising out the Securities Act, requires them to enforce the stay, and that enforcement of the stay is consistent with the goal of the PSLRA to curb abusive and costly litigation.

¹ 15 U.S.C. § 77z-1(b)(1).

² 138 S. Ct. 1061 (2018).

³ 15 U.S.C. § 77z-1(b)(4).

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In *Pivotal Software*, the California Superior Court denied the defendants' motion to stay discovery, including releasing the defendants from obligations to respond to broad document requests while their challenge to the pleadings was pending. The California appellate courts summarily denied review. Therefore, the petition for *certiorari* urged the Court to resolve the dispute among state courts, observing that absent Supreme

Court review, the split among state trial courts is unlikely to be resolved. The petition explained, "in the more than 25 years since the Reform Act was enacted, not a single state appellate court has considered whether the statute's discovery stay applies in state court. It is time for this Court to step in."

This case will be argued in the Court's 2021-22 term.

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