

Supreme Court to Decide Whether the Automatic Stay of Discovery In Securities Act Claims Applies In State Court

Article By:

Daniel D. Edelman

Three years ago, the United States Supreme Court confirmed in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061 (2018) that claims brought under the Securities Act of 1933 (the “Securities Act”) are subject to “concurrent jurisdiction,” meaning they can be asserted either in federal or state court and that a state court action cannot be removed to federal court. On the last day of this past term, the Supreme Court announced that it has now accepted certiorari in *Pivotal Software, Inc. v. Tran* in which it will address the follow-up question of whether the automatic stay of discovery in Securities Act cases applies when those cases are filed in state court.

The Private Securities Law Reform Act (the “PSLRA”), which amended the Securities Act (as well as the Securities Exchange Act of 1934), contains some provisions that apply just when Securities Act claims are filed in federal court and some that also apply when the claims are filed in state court. An important provision of the PSLRA is Section 77z-1(b)(1), which provides in pertinent part that “[i]n any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss.” Various state courts, especially in New York and California (where Securities Act claims are often filed), have divided over the question of whether PSLRA Section 77z-1(b)(1) applies to state court-filed claims. This issue has become more pronounced since the Supreme Court’s decision in *Cyan*, which resulted in more Securities Act filings in state courts.

In *Pivotal*, investor plaintiffs brought securities actions in both California state and federal courts relating to representations made in connection with an initial public offering. At first, the state court plaintiffs voluntarily stayed their action while a motion to dismiss was pending in federal court, where that action was stayed pursuant to the PSLRA stay. After the federal court case was dismissed, the state court allowed discovery to proceed even though the defendants also moved to dismiss the state court action. Defendants also sought a stay of discovery, arguing that the plain meaning of the statute dictates that the stay applies “in any private action” wherever filed. The California state court, however, denied defendants’ motion, concluding that the PSLRA’s automatic stay was a “procedural” provision that did not explicitly direct stays in state court. The California appellate courts denied requests to review this decision.

Defendants petitioned the United States Supreme Court to take the case on grounds that state trial courts are sharply divided on the question of whether the PSLRA’s automatic stay applies to

Securities Act claims filed in state court. The petition also underscored that the issue “consistently evades appellate review” because state appellate courts refuse to review the trial court determinations and the issue does not arise in federal actions. Although the state court plaintiffs decided, after the certiorari petition was filed, voluntarily to stay discovery pending the state court motion to dismiss, the United State Supreme Court nonetheless decided to grant the petition and will issue a decision later in the 2021/2022 term.

The Supreme Court’s decision will likely have a significant impact on Securities Act claims in state court.

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