

Corporate & Financial Weekly Digest

Posted at 12:44 PM on August 27, 2010 by [Steven Shiffman](#)

Stay of Discovery Under PSLRA Does Not Apply During All Motions to Dismiss

Co-authored by [Jonathan Rotenberg](#)

Plaintiff brought a claim for securities fraud against a medical device corporation and certain employees, officers and board members of the corporation. Several defendants (the moving defendants) filed motions to dismiss the plaintiff's complaint on February 11, 2009. On September 4, 2009, the motions were granted in part and denied in part.

One defendant, Budimir Drakulic, was not served with the complaint until September 2, 2009. Mr. Drakulic moved to dismiss the complaint on October 8, 2009. In June 2010, while Mr. Drakulic's motion to dismiss was pending, plaintiff served him, as well as several co-defendants who had made the original motion to dismiss, with requests for production of documents and a notice of deposition. The moving defendants moved to quash the document requests and notice of deposition on the ground that automatic discovery stay provision of the Private Securities Litigation Reform Act (PSLRA) remained in effect as to all defendants while Mr. Drakulic's motion to dismiss was pending.

In support of their motion, the moving defendants argued that the PSLRA was unambiguous and that the automatic discovery stay applied "during the pendency of any motion to dismiss." The district court rejected the moving defendants' argument and denied their motion. The court reasoned that while the language of the statute appeared plain on its face, the automatic stay provision did not account for situations where there were multiple defendants making multiple motions to dismiss and was therefore ambiguous. The court pointed out that the purpose of the PSLRA's automatic stay provision is to minimize expensive discovery in frivolous securities class actions by permitting discovery only after the court had sustained the legal sufficiency of the complaint. The court noted that it had already sustained the legal sufficiency of the primary allegations in the complaint when it ruled on the motions to dismiss by the moving defendants. As a result, the purpose underlying the PSLRA's stay provision would not be undercut by permitting discovery to proceed against the moving defendants during the pendency of Mr. Drakulic's motion because that discovery would be needed regardless of the outcome of the motion. (Latham v. Stein, Nos. 6:08-2995-RBH and 6:08-3183-RBH, 2010 WL 3294722 (D.S.C. Aug. 20, 2010))