

Staying the Course: What Fact-Finding a Plaintiff Can Conduct During the PSLRA Discovery Stay

The PSLRA generally pauses court-compelled discovery in securities-fraud class actions until a motion to dismiss is resolved. It does not bar independent investigation or requests for public records, and courts may allow limited requests to willing third parties. The key question is whether the plaintiff is using court authority to compel nonpublic information.

October 22, 2026 at 07:00 AM By **Michael H. Rogers** and **Stephen C. Boscolo**

Under the Private Securities Litigation Reform Act (the PSLRA)—the statute which governs securities fraud class actions—discovery is stayed prior to resolution of a motion to dismiss. In other words, until a motion to dismiss is denied, a plaintiff in a PSLRA action is forbidden from conducting “discovery” into the claims alleged in the securities fraud suit. This necessarily limits the fact-finding a plaintiff can conduct before filing a complaint.

The PSLRA discovery stay does not bar all types of fact-finding. Although many litigants have argued that the stay precludes nearly any fact-finding into non-public sources, courts have permitted plaintiffs to conduct certain types of fact-finding while under the stay, including (i) informal investigations, (ii) statutory public record requests, and (iii) discovery requests aimed at willing third parties. Analyzing these categories of fact-finding provides a simple test to determine what is “discovery” under the stay:

Is the plaintiff using the authority and processes of a court to compel information other than public records? If not, the fact-finding does not offend the PSLRA.

Generally, courts have grouped the types of fact-finding PSLRA plaintiffs undertake into one of three categories. The first is “investigation,” which does not involve judicial or legal processes. Courts universally hold that investigation is not barred by the PSLRA.

The second is “statutory,” where a plaintiff obtains information pursuant to a statute or court rule that provides access to public records. Courts typically hold that this type of fact-finding is not barred by the PSLRA, although the statutes themselves may provide an independent bar to a PSLRA plaintiff.

The final category is “discovery,” where a PSLRA plaintiff uses the authority of the court where it brought the action and the Federal Rules of Civil Procedure to create a legal right to information. While this type of fact-finding is generally subject to the discovery stay, it is not always—courts have found that certain types of court-backed information requests, particularly directed towards willing third parties, is not “discovery” for the purposes of the PSLRA.

First, investigatory fact-finding involves fact-finding without reliance on legal compulsion, such as voluntary interviews of prospective witnesses to obtain non-public information. It also includes “read[ing] newspaper accounts,” “study[ing] the records of previous judicial or administrative proceedings,” “troll[ing] the Web,” or “study[ing] corporate records of the defendant that were freely accessible online.” *Am. Bank v. City of Menasha*, 627 F.3d 261, 265 (7th Cir. 2010).

Investigation can even involve public requests by a plaintiff to a defendant for information, so long as that request is not counsel-directed. *In re Turquoise Hill Resources Ltd. Sec. Litig.*, 2021 WL 2201388, at *5 (S.D.N.Y. 2021) (finding public letter by institutional shareholder plaintiff to defendant corporation was investigation, not discovery). It is black-letter law that investigation is not discovery and is fully blessed by the PSLRA.

Indeed, as one court explained, “Neither logic, tradition, the constitution nor the PSLRA prohibit interviewing prospective witnesses.” *In re Tyco Int’l Ltd. Sec. Litig.*, 2001 WL 34075721, at *3 (D.N.H. 2001). The same holds true for other types of investigation.

Second, statutory fact-finding involves a plaintiff using a statutory right to public records, such as a FOIA request or a challenge to confidentiality. Although such requests are backed by legal authority, the legal right to the requested information derives from the statute or rule, not from a party’s status as a litigant in a PSLRA case.

The PSLRA does not bar this type of fact-finding. See *City of Menasha*, 627 F.3d at 265 (holding records request not discovery under PSLRA and collecting cases in support); *Cormier v. Burns*, 2022 WL 20655718, at *1 (Del. Ch. 2022) (motion to unseal exhibits filed on public docket not discovery). A party’s status as a PSLRA party does not defeat its right to public records, even when explicitly seeking records for use in the underlying securities action.

However, statutory fact-finding is typically limited to statutes meant to allow access to public records. For instance, courts have stayed a PSLRA plaintiff’s claims brought for the express purpose of seeking non-public records directly from a PSLRA defendant. See *In re Facebook, Inc. S’holder Derivative Priv. Litig.*, 411 F. Supp. 3d 649, 654 (N.D. Cal. 2019) (staying claims brought to obtain documents from a defendant corporation pursuant to California books-and-records request statute).

Moreover, certain statutes themselves bar PSLRA plaintiffs from bringing actions under them—although those instances are typically based on application of the statute itself, not the PSLRA. See *Beiser v. PMC-Sierra, Inc.*, 2009 WL 483321, at *2 (Del. Ch. 2009) (reasoning a PSLRA plaintiff cannot seek corporate records through a books-and-records request using 8 Del. C. §220, because that statute requires that the records were sought for a “proper purpose”).

Finally, “discovery” involves using a court’s compulsory processes under Federal Rules of Civil Procedure 26-37 and 45, including subpoenas, depositions, document requests, and requests for admission. See *In re Turquoise Hill*, 2021 WL 2201388, at *4 (noting processes described in FRCP 26-37 are discovery for purposes of the PSLRA). This type of fact-finding is largely barred by the PSLRA stay.

Despite the seemingly clear bar to such discovery, some courts have found a narrow exception: pre-motion to dismiss discovery requests aimed at a third party are not barred by the PSLRA, particularly when that third party is voluntarily collaborating with the plaintiff.

For instance, in *Takiguchi v. MRI Int’l, Inc.*, 2014 WL 3105068, at *6 (D. Nev. 2014), the plaintiff subpoenaed the SEC, which was cooperating with plaintiff in investigating the defendant, to produce documents during the pendency of a motion to dismiss. The court rejected defendants’ motion for contempt, holding that the subpoena was “permitted under the [PSLRA] because the discovery is directed towards a voluntarily collaborating third-party[.]”

Other courts have come to similar conclusions. *In re Flir Sys., Inc. Sec. Litig.*, 2000 WL 33201904, at *2 (D. Or. 2000) (voluntary deposition of third party did not violate discovery stay); see also *In re JDS Uniphase Corp. Sec. Litig.*, 238 F. Supp. 2d 1127, 1133 (N.D. Cal. 2002) (granting motion to limit confidentiality agreements of third parties because “plaintiffs are merely seeking an order that would allow former employees to speak voluntarily if they wish to do so.”).

In sum, analyzing how courts have applied the stay provides a simple test to determine what is “discovery” as contemplated by the PSLRA: Is the plaintiff compelling information other than public records using the authority and processes of a court? If yes, it is “discovery” and is barred by the PSLRA discovery stay. If not, then it does not run afoul of the PSLRA.

Michael H. Rogers *is a partner at Labaton Keller Sucharow.* **Stephen C. Boscolo** *is an associate with the firm.*

Page printed from: <https://www.law.com/newyorklawjournal/2026/10/22/staying-the-course-what-fact-finding-a-plaintiff-can-conduct-during-the-pslra-discovery-stay/>

NOT FOR REPRINT

© 2026 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).