UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MEMORANDUM

Case No.	CV 10-922 DSF (AJWx)	Date	8/30/10
Title	In re Toyota Motor Corp. Securities Litig.		

Present: The Honorable	DALE S. FISCHER, United States District Judge

Debra Plato	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (In Chambers) Order DENYING Without Prejudice Motion for an Order Modifying the PSLRA Discovery Stay (Docket No. 161)

Lead Plaintiff seeks an order modifying the statutory discovery stay provided by the Private Securities Litigation Reform Act ("PSLRA"). Specifically, Lead Plaintiff wishes to acquire documents produced by Toyota to Congress, various governmental agencies, and the plaintiffs in In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation, SAML 10-2151 JVS (FMOx) ("MDL") and to participate in preliminary discovery taking place in the MDL.

The PSLRA provides:

> In any private action arising under this chapter, 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.

15 U.S.C. § 78-u4(b)(3)(B).

Lead Plaintiff here argues only undue prejudice, claiming "discovery is moving apace in parallel litigation, plaintiff's pursuit of discovery will fall substantially behind governmental actions and other private litigants, and plaintiff will be unduly prejudiced by its inability to make informed decisions about litigation strategy." While the lack of discovery may impact litigation strategy, Congress certainly was aware of that possibility

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when it enacted the PSLRA. And Lead Plaintiff provides no explanation of how "falling behind" would prejudice it or the class in any way. Conceivably, "falling behind" could prejudice a plaintiff if there were a possibility that the defendant would become judgment proof or if the plaintiff would be unable to participate fully in global settlement talks. There is no evidence that either of these considerations is relevant here.

Lead Plaintiff suggests that the Court should be more willing to lift the PSLRA discovery stay because its case has merit and is not one of the "fishing expedition" securities cases that the PSLRA was meant to address. But the PSLRA does not allow the district court to lift the discovery stay based on an ad hoc assessment of the potential merit of the litigation. Instead, the statute provides that the case has sufficient merit for discovery to begin once the case has proceeded beyond the motion to dismiss stage.

While it would be wasteful to replicate here discovery that has already taken place in the MDL, mere duplication of effort is not a statutory ground for lifting the stay – undue prejudice to the party seeking to lift the stay is required. The vast majority of the prejudice caused by any duplication of effort would be borne by Toyota through having to make witnesses available for a second time, etc. But Toyota has chosen to bear this cost rather than agree to lift the stay.

The parties each cite a number of district court cases in support of their respective positions. The Court need look no further than the PSLRA itself to conclude that Lead Plaintiff's present showing is insufficient. If circumstances change significantly before the motion to dismiss is heard, Lead Plaintiff may again seek modification.

The motion is DENIED.

IT IS SO ORDERED.