

## Case Summary

### In re Merrill Lynch & Co., Inc. Research Reports Sec. Litigation

2004 WL 305601 (S.D.N.Y Feb. 18, 2004)

#### **Party Moves to Lift Discovery Stay to Protect Deleted Data**

The plaintiff motioned the court pursuant to the Securities Exchange Act of 1934 for an order lifting the automatic stay of discovery during the pendency of a motion to dismiss. The plaintiff's essential claim was that discovery was necessary to preserve and restore emails that the defendant had deleted. The court stated, "The Private Securities Litigation Reform Act mandates that all discovery...shall be stayed during the pendency of a motion to dismiss. This provision is balanced by one imposing a contemporaneous duty on parties to preserve all relevant evidence as if they were the subject of a continuing request for production of documents."

#### **Decision**

However, the court referred to the fact that the "defendants avow that they are aware of their obligations and have taken and are continuing to take all necessary steps to preserve all potentially relevant electronic evidence." The court concluded that an order lifting the mandatory stay of discovery was not warranted because there was no "imminent risk" which established that deleted data would be overwritten and thus rendered irretrievable.

Deletion of Electronic Documents