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Re: *In re Molycorp, Inc. Shareholder Derivative Litigation*
Consolidated C.A. No. 7282-VCN
Date Submitted: February 7, 2014

Dear Counsel:

The Plaintiffs[1] in this stockholder derivative action filed on behalf of Nominal Defendant Molycorp, Inc. ("Molycorp") have moved to lift the stay entered by the Court in May 2013 (the "Stay"). The Court granted the Stay as to the claims asserted in the Verified Consolidated Amended Shareholder Derivative Complaint (the "Operative Complaint")[2] in light of a federal securities fraud class action pending in the United States District Court for the District of Colorado (the "Federal Securities Action").[3] The Defendants oppose any lifting of the Stay,

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[1] The Plaintiffs are Resource Equities, G.P. ("Resource Equities") and Ira Gaines ("Gaines"), individually and as trustee of the Paradise Wire & Cable Defined Benefit Plan Dated 11/1/84. The Court consolidated the more recent action initiated by Resource Equities with the stayed (and previously consolidated) action initiated by Gaines. Second Am. Order of Consolidation and Organization of Pls.' Counsel (Aug. 28, 2013).

[2] The Defendants under the Operative Complaint are Russell D. Ball, Charles R. Henry, Jack E. Thompson, Brian T. Dolan, Mark A. Smith, Ross R. Bhappu, Mark S. Kristoff, Alec Machiels, James S. Allen ("Allen"), John F. Ashburn ("Ashburn"), John L. Burba ("Burba"), Craig M. Cogut ("Cogut"), Pegasus Capital Advisors L.P., Resource Capital Funds, TNA Molygroup LLC, Traxys North America LLC and KMSMITH LLC (collectively, the "Defendants"). They are (or were) directors and officers of, or private equity investors in, Molycorp.

[3] The Federal Securities Action is captioned *In re Molycorp, Inc. Securities Litigation*, Civil Action No. 1:12-cv-00292-WJM-KMT. It appears to assert claims against all Defendants or their affiliates. *See* Defs.' Answering Br. in Opp'n to Pls.' Mot. to Lift the Stay and for Leave to File an Am. Compl. ("Defs.' Answering Br.") Ex. 1 (Federal Securities Action, Complaint).

After the filing of the Federal Securities Action, derivative actions were filed by Molycorp stockholders in Colorado state court, the federal court in Colorado, and this Court. The Defendants filed a so-called "one forum" motion in March 2012. The actions filed in Colorado

maintaining that the Plaintiffs have not shown the requisite good cause for the Court to do so.[4] In addition, the Plaintiffs have moved for leave to file their Second Amended Verified Consolidated Stockholders' Derivative Complaint (the "Proposed Amended Complaint"),[5] which the Defendants also oppose.

The Federal Securities Action involves eighteen claims for relief asserted against twenty-six named defendants.[6] Among other claims, the class action stockholders allege that Molycorp, its directors, and others made material misstatements to inflate artificially the price of the company's stock and that certain of these individuals and entities then illegally sold Molycorp stock on the basis of material, non-public information. The Federal Securities Action includes

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state court were stayed in favor of the actions filed in the federal court in Colorado and in Delaware. Letter from Raymond J. DiCamillo, Esquire Ex. A (Apr. 9, 2012). The derivative actions filed in the federal court in Colorado were then dismissed without prejudice in favor of the actions pending in this Court. Letter from Raymond J. DiCamillo, Esquire Exs. A, B (June 5, 2012). That dismissal was reversed and remanded for further consideration of an issue that has since been briefed but on which the federal court in Colorado had not yet ruled, as of the date of oral argument on the Plaintiffs' motion. Defs.' Answering Br. 5 n.3.

[4] The Court may lift the Stay upon a showing of good cause by any party or on its own initiative. Order (May 15, 2013).

[5] Pls.' Mot. to Lift the Stay and for Leave to File an Am. Compl. ("Pls.' Mot.") Ex. A (Proposed Amended Complaint). The Proposed Amended Complaint asserts claims against all Defendants except Allen, Ashburn, Burba, and Cogut.

[6] A motion to dismiss the Federal Securities Action was pending at the time of oral argument on this motion. Pls.' Reply in Further Supp. of their Mot. to Lift the Stay and for Leave to File an Am. Compl. ("Pls.' Reply") 4.

claims for violations of the Securities Exchange Act of 1934 and of the Securities Act of 1933.[7]

In granting the Stay, the Court concluded that, even though the allegations in the Operative Complaint did not overlap entirely with those of the Federal Securities Action, there were sufficient practical considerations that discouraged the simultaneous prosecution of both actions. In particular, the Court noted that both actions implicated a substantially similar scheme of securities fraud, and that the derivative indemnification claims asserted in the Operative Complaint depended on a predicate finding of liability against Molycorp in the Federal Securities Action.[8]

I. BACKGROUND[9]

Molycorp is a Delaware corporation that mines rare earth elements used in various industrial products. Its headquarters are in Colorado, and its primary asset is a mining and manufacturing facility in Mountain Pass, California. Certain

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[7] *See generally* Federal Securities Action Complaint ¶¶ 173-302.
[8] Tr. of Oral Arg. Defs.' Mots. to Stay 38-41.
[9] The Court draws the facts from the well-pled allegations of the relevant complaints, which are presumed to be true. *See Malpiede v. Townson*, 780 A.2d 1075, 1082 (Del. 2001).

private equity investors founded Molycorp, and the company then went public in 2010. The Plaintiffs generally contend that after its initial public offering, Molycorp struggled financially because the company underestimated the significant costs necessary to modernize and expand its Mountain Pass facility.[10]

During this time, according to the Plaintiffs, the Defendants dominated and controlled the Molycorp board of directors. Certain Defendants, but not Molycorp, participated in two expedited stock offerings in which they (or their affiliates) sold substantial numbers of Molycorp shares in February 2011 and June 2011. Molycorp was precluded from issuing stock even though it had a pressing need for cash. As a result, the Plaintiffs allege, Molycorp had to raise capital at inferior rates through a preferred stock offering concurrent with the February 2011 offering[11] and a convertible note private placement alongside the June 2011 offering.[12]

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[10] *See, e.g.*, Operative Compl. ¶ 149; Proposed Am. Compl. ¶¶ 63-64.
[11] *See* Operative Compl. ¶¶ 75, 90, 131.
[12] *See id.* ¶¶ 103, 131; Proposed Am. Compl. ¶ 92.

A. *The Operative Complaint*

The allegations of the Operative Complaint center on the February 2011 and June 2011 offerings. In the Operative Complaint, the Plaintiffs allege four causes of action: (i) a breach of fiduciary duty claim against certain Molycorp directors and officers primarily seeking damages for permitting these expedited stock offerings without allowing Molycorp to participate, for purported material misstatements, and for indemnification for any liability Molycorp may have in the Federal Securities Action;[13] (ii) a *Brophy*[14] breach of fiduciary duty claim against certain Molycorp directors, officers, and private equity investors for misusing material, non-public information while selling Molycorp stock;[15] (iii) an unjust enrichment claim in parallel with the *Brophy* claim;[16] and (iv) an aiding and abetting claim against the company's private equity investors.[17] The overlap between the Operative Complaint and the Federal Securities Action is evident:

[13] *See* Operative Compl. ¶¶ 211-18.
[14] *Brophy v. Cities Serv. Co.*, 70 A.2d 5 (Del. Ch. 1949); *see also Kahn v. Kolberg Kravis Roberts & Co., L.P.*, 23 A.3d 831, 840 (Del. 2011) ("*Brophy* [is] focused on the public policy of preventing unjust enrichment based on the misuse of confidential corporate information.").
[15] *See* Operative Compl. ¶¶ 219-26.
[16] *See id.* ¶¶ 227-35.
[17] *See id.* ¶¶ 236-39.

both actions implicate whether there were material misstatements and improper trading in Molycorp stock by certain Defendants. Accordingly, the Stay was appropriate.

B. *The Proposed Amended Complaint*

The Proposed Amended Complaint, by contrast, focuses exclusively on the Molycorp board's decisions surrounding the June 2011 offering. The Plaintiffs primarily allege that Molycorp directors breached their fiduciary duties by permitting the company's private equity investors, who exercised their contractual rights to require the company to initiate the June 2011 offering, to sell their Molycorp stock and receive approximately $575 million in gross proceeds while preventing the company from participating and raising much-needed capital.[18] In addition, the Molycorp board purportedly decided not to exercise its own contractual rights under the governing Registration Rights Agreement to delay the June 2011 offering for up to 90 days, during which time the company could have made its own secondary stock offering.[19] According to the Plaintiffs, a majority of

[18] *See* Proposed Am. Compl. ¶¶ 83, 89-91, 118-22.
[19] *See id.* ¶¶ 10, 57-59, 88.

Molycorp's directors were not independent and disinterested when making this decision because of alleged conflicts of interest due to their material relationships with the private equity investors.[20] Therefore, the Plaintiffs' argument goes, the Molycorp board must establish that the June 2011 offering was entirely fair.[21]

In the Proposed Amended Complaint, the Plaintiffs allege three causes of action: (i) a breach of fiduciary duty claim against the Molycorp board for its decisions regarding the June 2011 offering;[22] (ii) breach of fiduciary duty and aiding and abetting claims against Molycorp's private equity investors;[23] and (iii) unjust enrichment and disgorgement claims against the Defendants who sold stock in the June 2011 offering.[24] Because the Plaintiffs no longer seek to prosecute claims for material misstatements, for indemnification, or for trading on material, non-public information under *Brophy*, the potential overlap between the Proposed Amended Complaint and the Federal Securities Action is not readily apparent.

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[20] *See id.* ¶¶ 108-17.
[21] *See id.* ¶¶ 120-21.
[22] *See id.* ¶¶ 118-22.
[23] *See id.* ¶¶ 123-28.
[24] *See id.* ¶¶ 129-33.

II. ANALYSIS

A. *Motion for Leave to File an Amended Complaint*

Under Court of Chancery Rule 15(a), the Court should freely grant leave to amend a pleading "when justice so requires," provided that there is no "bad faith, undue delay, dilatory motive, undue prejudice or futility of amendment."[25] The Defendants mainly contend that they would be unfairly prejudiced if the Court grants leave to amend and then finds it appropriate to lift the Stay on the basis of the Proposed Amended Complaint.[26] But, according to the Plaintiffs, there is no reason for the Court to deny leave to amend not only because this action is still in its early stages, but also because the theories of liability under the Proposed Amended Complaint do not overlap with those of the Federal Securities Action, thereby eliminating the risk of prejudice that the Defendants could face from

[25] *TVI Corp. v. Gallagher*, 2013 WL 5809271, at *21 (Del. Ch. Oct. 28, 2013) (citation omitted) (permitting the plaintiffs to amend their pleading to assert an additional cause of action after briefing and oral argument on the defendants' motions to dismiss because the Court concluded there would be no undue prejudice or other reason to deny the motion to amend since the plaintiffs acted promptly to correct their inadvertent "carelessness in filing the wrong version" of their complaint).
[26] Defs.' Answering Br. 17-19.

mounting duplicative defenses or being subject to inconsistent judgments.[27] Moreover, in addition to eliminating certain claims against all Defendants, the Plaintiffs propose to eliminate all claims presently asserted against Molycorp officers.

The Court concludes that the Plaintiffs should be given leave to amend their pleading. The possible burden of defending against the Federal Securities Action and the Proposed Amended Complaint does not appear to be of the variety of prejudice that would cause the Court to withhold what should otherwise be freely granted.[28] Rather, the potential prejudice identified by the Defendants speaks to whether the Court should lift the Stay.

B. *Motion to Lift the Stay*

The Plaintiffs assert there is good cause for the Court to lift the Stay for two related reasons. First, in June 2013, the staff of the Securities and Exchange Commission (the "SEC") determined, after an investigation of Molycorp, that it

[27] Pls.' Mot. 9-12.

[28] *See, e.g.*, *FS Parallel Fund L.P. v. Ergen*, 2004 WL 3048751, at *2 n.6 (Del. Ch. Nov. 3, 2004) ("It would be highly prejudicial to the defendants to allow plaintiffs to create additional causes of action roughly two years after filing the first complaint."), *aff'd on other grounds*, 879 A.2d 602 (Del. 2005) (TABLE).

would not recommend formal action against the company for potential securities laws violations.[29] This development likely contributed to the second reason: the Proposed Amended Complaint, in which the Plaintiffs eliminated the material misstatements, indemnification, and *Brophy* allegations and related claims.[30] In light of these developments, the Plaintiffs argue, there is good cause to lift the Stay because the absence of material overlap in claims or theories of liability between the Proposed Amended Complaint and the pending Federal Securities Action means that there are few, if any, practical considerations that discourage prosecuting both actions simultaneously.[31]

The Defendants, in opposition, contend that it is inappropriate for the Plaintiffs to claim good cause through what they criticize as "manipulating the allegations of their case" by "dropping claims which never should have been brought."[32] They emphasize that some practical considerations that initially motivated the Stay—especially the potential for duplicative discovery regarding

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[29] Pls.' Mot. 2.
[30] *Id.* 2-3.
[31] Pls.' Reply 4-6; Pls.' Mot. 8-9.
[32] Defs.' Answering Br. 10, 15.

many of "the same facts and circumstances" implicated by the Federal Securities Action—still exist, regardless of whether the Proposed Amended Complaint no longer includes indemnification or *Brophy* claims.[33] In sum, the Defendants maintain that "there remains substantial overlap in the underlying facts, the relevant parties and legal issues" for the Court to reaffirm the Stay.[34]

The Court may, in the interests of comity and judicial efficiency, stay an action before it in favor of another with an identity of parties and issues pending in another forum.[35] There is no right to a stay of litigation in Delaware, even where the lawsuit pending elsewhere was initiated first.[36] In considering whether to grant a stay, the Court should exercise its discretion rationally.[37] As appropriate, the Court should give due weight to "practical considerations" that could cause

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[33] *Id.* 9-12.
[34] *Id.* 11.
[35] *See Joseph v. Shell Oil Co.*, 498 A.2d 1117, 1123 (Del. Ch. 1985); *see generally McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970) ("[A] stay may be warranted . . . by facts and circumstances sufficient to move the discretion of the Court; . . . such discretion should be exercised freely in favor of the stay when there is a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues.").
[36] *See Adirondack GP, Inc. v. Am. Power Corp.*, 1996 WL 684376, at *6 (Del. Ch. Nov. 13, 1996).
[37] *See Brenner v. Albrecht*, 2012 WL 252286, at *4 (Del. Ch. Jan. 27, 2012).

proceeding with litigation in this forum before resolution of another action to be "unduly complicated, inefficient, and unnecessary."[38]

It may be appropriate for the Court to lift a stay when "the circumstances that justified the entry of the stay . . . no longer obtain."[39] This may arise if there "will no longer be a prior action which should take precedence over the Delaware action."[40] Framed slightly differently, good cause to lift the Stay here may exist if the present circumstances are those that would not support the Court's entering of a stay of the Proposed Amended Complaint.

This Court has long recognized Delaware's strong interest in promptly, uniformly, and authoritatively deciding corporate governance disputes of Delaware corporations arising, pursuant to the internal affairs doctrine,[41] under Delaware

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[38] *Brudno v. Wise*, 2003 WL 1874750, at *4 (Del. Ch. Apr. 1, 2003).
[39] *Edonis Corp. v. Trane Co.*, 2002 WL 462271, at *1 (Del. Ch. Mar. 19, 2002) (lifting a stay granted in favor of an action pending in a Texas state court because the Texas court determined it lacked personal jurisdiction over the plaintiffs in the action before this Court and, moreover, because the Texas court stayed the related action).
[40] *Botney v. Teledyne, Inc.*, 1982 WL 17821, at *1 (Del. Ch. Jan. 18, 1982) (lifting a stay, conditioned on the denial of a motion for reargument in a federal court of appeals affirming the trial court's dismissing the action with prejudice, because, at that time, the related federal action would reach a final determination and thus no longer be pending).
[41] *See McDermott Inc. v. Lewis*, 531 A.2d 206, 215 (Del. 1987).

law.[42] Depending on the circumstances, this interest, particularly when there are breach of fiduciary duty claims, can be so compelling that it may "outweigh the policy underlying the doctrine of comity"[43] in the Court's determination of whether a stay of a Delaware action in favor of litigation elsewhere is appropriate.[44] That is, the Court may rationally conclude that this interest militates against a stay of an important Delaware corporate law claim even where, for example, the complaint

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[42] *See, e.g.*, *Ryan v. Gifford*, 918 A.2d 341, 349-50 (Del. Ch. 2007) (declining to grant a stay of an action in this Court in favor of a federal action in California because "Delaware has an overwhelming interest in resolving questions of first impression under Delaware law" involving allegations of backdating option grants); *see generally Martinez v. E.I. DuPont de Nemours & Co., Inc.*, 86 A.3d 1102, 1109 (Del. 2014) (extending the import of this principle from "the corporate law context" to *forum non conveniens* jurisprudence).

[43] *See Ryan*, 918 A.2d at 349 (declining to grant a stay under *McWane* or on *forum non conveniens* grounds); *see also AT&T Corp. v. Prime Security Distribs., Inc.*, 1996 WL 633300, at *4 (Del. Ch. Oct. 24, 1996) (granting a stay in favor of an action pending in a Massachusetts state court because the statutory request for a receiver of a Delaware corporation by creditors "involves no corporate governance question because [the corporation] is now dissolved and has no ongoing business").

[44] *See Carvel v. Andreas Hldgs. Corp.*, 698 A.2d 375, 378-79 (Del. Ch. 1995) (explaining that Delaware public policy supporting prompt resolution of actions pursuant to 8 *Del. C.* § 225—including "determining expeditiously who are a Delaware corporation's *de jure* managers" and "promot[ing] uniformity of construction of Delaware law in this important area"—has frequently been found to "predominate and override the policies underlying *McWane*"); *see also Oralco, Inc. v. Bradley*, 1992 WL 332106, at *2-4 (Del. Ch. Nov. 4, 1992) (denying the defendant's motion to stay a later-filed Section 225 proceeding in light of an earlier federal action, even where the "pivotal issue" in both actions "may be the same," because of this Court's ability to render a prompt decision in a summary proceeding involving title to corporate office and because litigation in Delaware would not "offend notions of comity or the orderly and efficient administration of justice").

filed in Delaware asserting breaches of fiduciary duty includes several allegations duplicative of a complaint pending elsewhere asserting federal securities law violations.[45]

That well-recognized interest, however, may not support the simultaneous prosecution of a federal securities law class action against the corporation and a later-filed derivative action seeking indemnification for the corporation's liability from the directors. This Court frequently stays such derivative claims in favor of the actions in which the corporation's primary liability will be adjudicated.[46] In doing so, this Court has recognized that a corporation may be unfairly prejudiced if forced to adopt conflicting litigation strategies in related actions where it is

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[45] *See La. State Empls. Ret. Sys. v. Citrix Sys., Inc.*, 2001 WL 32638, at *3 (Del. Ch. Jan. 5, 2001) (denying a motion to stay a claim regarding the propriety of conduct by directors of a Delaware corporation during an annual stockholder meeting, even though the complaint in a related federal action contained many, if not all, of the same contentions, because of Delaware's "paramount interest in the prompt resolution of a dispute that impacts the governance of a Delaware corporation").

[46] *See, e.g.*, *South v. Baker*, 62 A.3d 1, 24 n.10 (Del. Ch. 2010) (noting recent cases in which this Court stayed derivative actions seeking indemnification for a corporation's possible liability in a related federal securities law or regulatory enforcement action until resolution of the related action).

simultaneously a defendant and a plaintiff.[47] But, a derivative action that seeks distinct damages for alleged breaches of fiduciary duty, rather than indemnification for possible securities laws violations, does not implicate the same practical considerations in the Court's calculus of whether to grant a stay. In those circumstances, the Court may rationally conclude that a stay is not warranted if the potential overlap between the actions is not prejudicial.[48]

This is one of those circumstances. Although they partially overlap with those of the Federal Securities Action, the allegations at the heart of the Proposed Amended Complaint—that purportedly interested and not independent Molycorp directors decided not to have the corporation delay or participate in the June 2011

[47] *See Brenner*, 2012 WL 252286, at *4-6 (identifying an "unduly complicated, inefficient, and unnecessary" litigation conflict in which the corporation and directors were defending against allegations that the directors had knowledge of purported improprieties while at the same time the corporation, through stockholder a derivative action, alleged that the same directors had knowledge of the improprieties); *Brudno*, 2003 WL 1874750, at *4 (granting the defendants' motion for a stay after concluding, from a plain reading of the relevant complaints, that the action filed in Delaware seeking indemnification "largely turns on the outcome" of whether the corporation would suffer damages in a federal securities law action or in an inquiry by a federal regulatory agency).

[48] *See In re China Agritech, Inc. S'holder Deriv. Litig.*, 2013 WL 2181514, at *26-27 (Del. Ch. May 21, 2013) (declining to stay a Delaware derivative action in favor of a federal securities action because the complaint filed in this Court was "not primarily an indemnification-oriented action" but rather one that, among other claims, challenged the entire fairness of a conflicted transaction and charged the directors with failing to monitor the company's accounting practices).

offering, but, instead, to permit just the company's private equity investors to sell stock—implicate an evolving and important question of Delaware corporate law regarding the fairness of business decisions made by conflicted boards, especially where at least half the directors involved may be dual fiduciaries with conflicting beneficiaries.[49] This Delaware corporate law claim is not raised in the Federal Securities Action, which alleges violations of the federal securities laws only. Nor does this theory appear to have been raised in any of the derivative actions currently stayed in favor of this action.

The need for expeditious treatment of the Proposed Amended Complaint is not as persuasive as it may be in a summary proceeding under 8 *Del. C.* § 225[50] or

[49] *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 46-47 (Del. Ch. 2013) ("If the interests of the beneficiaries to whom the dual fiduciary owes duties are aligned, then there is no conflict. But if the interests of the beneficiaries diverge, the fiduciary faces an inherent conflict of interest.") (citation omitted); *Carsanaro v. Bloodhound Techs., Inc.*, 65 A.3d 618, 638 (Del. Ch. 2013) (concluding that the plaintiffs' allegations stated a claim for breach of fiduciary duty where at least half of the board was alleged to have not been independent and disinterested in setting the terms for several rounds of preferred stock financing because it was reasonably conceivable that most of the purportedly conflicted directors were also fiduciaries for affiliated funds that participated in the financing); *see also Weinberger v. UOP, Inc.*, 457 A.2d 701, 710 (Del. 1983) ("There is no 'safe harbor' for such divided loyalties in Delaware.").

[50] *See Carvel*, 698 A.2d at 378-79.

in other contexts,[51] but the Court nonetheless concludes that an efficient resolution of the Plaintiffs' claims is appropriate.

> An answer regarding the legality of these practices pursuant to Delaware law plainly will affect not only the parties to this action, but also parties in other civil and criminal proceedings where Delaware law controls or applies. By directly stating the fiduciary principles applicable in this context, Delaware courts may remove doubt regarding Delaware law and avoid inconsistencies that might arise in the event other state or federal courts, in applying Delaware law, reach differing conclusions.[52]

Balancing all these factors,[53] the Court concludes that Delaware's interest in having the Court decide this action promptly, uniformly, and authoritatively would

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[51] *See Citrix Sys.*, 2001 WL 32638, at *3 (noting that the time-sensitive nature of the challenge to the stockholder approval of an amendment to the company's employee stock option plan helped "counsel[]" the Court that "a prompt decision" in the matter was necessary).

[52] *Ryan*, 918 A.2d at 350.

[53] What, in part, has also contributed to the Court's conclusion is a statement by the Plaintiffs' counsel at oral argument that the Plaintiffs will not seek to amend their pleadings again to replead the claims of the Operative Complaint if the Federal Securities Action survives the pending motion to dismiss. Tr. of Oral Arg. Pls.' Mot. to Lift the Stay and for Leave to File an Am. Compl. 13 ("We're not going to do what defendants say they fear we're going to do; come in and say, oh, well, the [Federal Securities Action] complaint got upheld, now we're going to change it back to the other theory that we find very, very difficult and not pursue the case we put forward which we find much more straightforward."). Given the Court's reliance on this statement, a subsequent request by the Plaintiffs for leave to amend their pleading in this way may unduly prejudice the Defendants.

counsel against granting a stay of the Proposed Amended Complaint. On these facts, the Court further concludes that there is good cause to lift the Stay.[54]

Molycorp's directors owe fiduciary duties to the corporation.[55] Its directors and private equity investors are also subject to the federal securities laws.[56] Liability under the Proposed Amended Complaint is separate from, and not contingent on, a finding of liability in the Federal Securities Action, and lifting the Stay would offend neither comity nor the efficient administration of justice. As the circumstances here demonstrate, it is conceivable that the directors and stockholders of a corporation may be defendants in two simultaneous lawsuits with closely related factual underpinnings but where neither the claims nor the theories

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[54] The Court's finding of good cause to lift the Stay does not turn on the decision of the SEC staff not to recommend formal action against Molycorp after its investigation. That development, in isolation, likely would not demonstrate good cause.

[55] *See Malone v. Brincat*, 722 A.2d 5, 10 (Del. 1998) ("The directors of Delaware corporations stand in a fiduciary relationship not only to the stockholders but also to the corporations upon whose boards they serve.").

[56] *See generally Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 195 (1976) ("The Securities Act of 1933 was designed to provide investors with full disclosure of material information concerning public offerings of securities in commerce, to protect investors against fraud and, through the imposition of specified civil liabilities, to promote ethical standards of honesty and fair dealing. The [Securities Exchange Act of] 1934 . . . was intended principally to protect investors against manipulation of stock prices through regulation of transactions upon securities exchanges and in over-the-counter markets, and to impose regular reporting requirements on companies whose stock is listed on national securities exchanges.")

of liability overlap. Defending these two actions at the same time cannot be said to be unfairly prejudicial; to a certain extent, it may be an inherent risk of being a director of a publicly traded Delaware corporation.

III. CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion to Lift the Stay and for Leave to File an Amended Complaint is granted. The Plaintiffs shall serve the Proposed Amended Complaint within ten days. The remaining Defendants shall then respond to it in the time and manner contemplated by the Court of Chancery Rules.[57]

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

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[57] Separately, the Court acknowledges that it may be appropriate, if the need arises, to consider coordinating discovery in this action and in the Federal Securities Action. *See China Agritech*, 2013 WL 2181514, at *27 ("In lieu of a stay, the better course is to require coordinated discovery on overlapping issues.").