

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

August 20, 2013

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

JAMES SWAGGERTY and THOMAS B. WELLS, derivatively on behalf of Molycorp, Inc.,

Plaintiffs–Appellants,

v.

MARK A. SMITH; JOHN L. BURBA; JOHN F. ASHBURN, JR; JAMES S. ALLEN; ROSS R. BHAPPU; BRIAN T. DOLAN; ALEC MACHIELS; MARK S. KRISTOFF; CHARLES R. HENRY; JACK E. THOMPSON; RUSSELL D. BALL; RCF MANAGEMENT, L.L.C.; PEGASUS CAPITAL ADVISORS, L.P.,

Defendants–Appellees,

-and-

MOLYCORP, INC., a Delaware corporation,

Nominal Defendant–Appellee.

Nos. 12-1248, 12-1250
(D.C. Nos. 1:12-CV-00589-WJM-KLM;
1:12-CV-00447-WJM-KLM)
(D. Colo.)

ORDER

Before **TYMKOVICH, HOLLOWAY, and HOLMES**, Circuit Judges.

The orders of the district court dismissing Appellants’ complaints are VACATED.

These matters are remanded to the district court with instructions to consider arguments

from the parties (including permitted new briefs and oral arguments) concerning the effects, if any, on this litigation of the stay granted by the Delaware Court of Chancery on May 15, 2013 in the action captioned *In re Molycorp, Inc. Shareholder Derivative Litigation*, C.A. No. 7282-VCN.

The Court will not retain jurisdiction over these matters during the pendency of the new proceedings in the district court. The mandates shall issue forthwith.

Entered for the Court.

William J. Holloway, Jr.