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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**
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10 **ALLSTATE LIFE INSURANCE**
11 **COMPANY, an Illinois Life Insurance**
12 **Company,**

13 **Plaintiff,**

14 **vs.**

15 **ROBERT W. BAIRD & CO., INC., a**
16 **Wisconsin corporation, et al.,**

17 **Defendants.**

18 **RONALD COVIN, BARNARD**
19 **PATTERSON, ALLEN PATZKE and**
20 **WALTER KRAUSE individually, on**
21 **behalf of themselves and all others**
22 **similarly situated,**

23 **Plaintiffs,**

24 **vs.**

25 **ROBERT W. BAIRD & CO., Inc., a**
26 **Wisconsin corporation, et al.,**

27 **Defendants.**
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No. CV-09-8162-PHX-GMS
No. CV-09-8174-PHX-GMS
(Consolidated)

ORDER

1 Pending before this Court is Prescott Valley’s Motion For Order Implementing the
2 PSLRA’s Stay Provisions While The Town’s Motion To Dismiss Is Pending (Doc. 354). For
3 the reasons stated below the motion is granted.

4 On May 25, 2011, Prescott Valley filed its second motion to dismiss (Doc. 350), in this
5 matter. The PSLRA specifies that:

6 In any private action arising under [the relevant provision of the PSLRA] all
7 discovery and other proceedings shall be stayed during the pendency of any
8 motion to dismiss, unless the court finds upon the motion of any party that
particularized discovery is necessary to preserve evidence or the prevent undue
prejudice to that party.

9 15 U.S.C. § 78u-4(b)(3)(B) (2009). The language of the statute seems to give the Court little
10 discretion, “all discovery . . . shall be stayed during the pendency of any motion to dismiss.”
11 *See also, SG Cowen Sec. Corp. v. U.S. Dist. Court*, 189 F.3d 909, 911 (9th Cir. 1999). The two
12 exceptions provided by the statute are if “particularized discovery is necessary to preserve
13 evidence,” or “to prevent undue prejudice to” a moving party.

14 Although Plaintiffs did file a tardy response to Defendant’s motion (Doc. 380), the
15 response did not request “particularized discovery to preserve evidence,” nor did it set forth with
16 any great particularity any undue prejudice that it would suffer in light of such a stay. It did
17 suggest some collateral authority reasonably suggesting that the “abusive invocation of the
18 PSLRA’s stay provision through serial motions to dismiss” might result in undue prejudice to
19 the parties where the motion is frivolous and advanced solely to delay the proceedings. See,
20 e.g., *In re Salomon Analyst Litig.*, 373 F. Supp. 2d 252, 254-55 (S.D.N.Y. 2005).

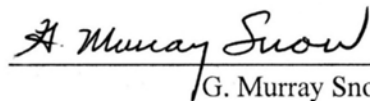
21 Plaintiffs correctly point out that an initial and lengthy stay pursuant to Defendant’s
22 initial motion to dismiss has already occurred in this action. Nevertheless, without more
23 thoroughly reviewing Defendant’s motion, this Court cannot determine that it is frivolous or that
24 it is “advanced solely to delay the proceedings,” nor does Plaintiffs’ response establish as much
25 to the satisfaction of the Court. Defendant has set forth a sufficient basis on which the Court
26 might conclude that Defendant could not have brought this motion absent some initial
27 discovery. Therefore, because it cannot conclude at this juncture that the motion is frivolous,
28 the Court will stay all further discovery and other proceedings in this matter, until the Court
rules on Prescott Valley’s second Motion to Dismiss (Doc. 350).

1 The parties are further advised that to the extent the deadlines set forth in the Case
2 Management Order (Doc. 257), have already passed, *e.g.* Deadline for Joining Parties,
3 Amending Pleadings and Filing Supplemental Pleadings, Deadline to file Class Certification
4 Motions, and Deadline for Non-Party at Fault designations, the Court intends to apply and
5 enforce those deadlines, and rule on those motions after the stay is lifted. The Court is aware
6 that there are pending requests to extend those deadlines as it pertains to the deadline for
7 amending pleadings. In considering any such requests after the stay is lifted, the Court will
8 apply the standards set forth in *Johnson v. Mammoth Recreations Inc.*, 975 F.2d 604 (9th Cir.
9 1992), to the deadlines currently set forth in the Case Management Order. Therefore,

10 **IT IS HEREBY ORDERED** granting the Motion to Stay (Doc. 354) and staying all
11 further discovery and proceedings in this case, until the Court rules on Defendant Prescott
12 Valley's pending Motion to Dismiss (Doc. 350).

13 **IT IS FURTHER ORDERED** vacating the Status Conference currently set for August
14 12, 2011.

15 DATED this 26th day of July, 2011.

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19 G. Murray Snow
20 United States District Judge
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