

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02635-WYD-MJW

JOSEPH M. KASHAWNY,

Plaintiffs,

v.

EXCEL ENERGY SERVICES INC., a Delaware Corporation;  
CAMILLE ABBOUD;  
JACK DYBALSKI; and,  
CARY OSWALD,

Defendants.

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**ORDER REGARDING DEFENDANTS ABBOUD, DYBALSKI AND OSWALD'S  
MOTION TO STAY DISCOVERY PENDING A RULING ON THE INDIVIDUAL  
DEFENDANTS' MOTION TO DISMISS  
(DOCKET NO. 49)**

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**Entered by Magistrate Judge Michael J. Watanabe**

This matter is before the court on the Defendants Abboud, Dybalski, and Oswald's Motion to Stay Discovery Pending a Ruling on the Individual Defendants' Motion to Dismiss (docket no. 49). The court has reviewed the subject motion (docket no. 49) and the response (docket no. 51). In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following findings of fact, conclusions of law, and order.

**FINDING OF FACT AND CONCLUSIONS OF LAW**

Defendants request that this court enter a stay pending decision by Chief Judge Daniel on Defendants Abboud, Dybalski and Oswald's Motion to Dismiss Plaintiff's Seventh Claim (docket no. 35). In support of the subject motion (docket no. 35),

Defendants, in essence, argue that a stay will serve the interests of judicial efficiency and economy.

Here, the court finds that Defendants have failed to demonstrate any real hardship or inequity if a stay is not granted. Ben Ezra, Weinstein, & Co. v. America Online Inc., 206 F.3d 980, 987 (10<sup>th</sup> Cir. 2000). In this case, discovery will need to be conducted regardless of whether Chief Judge Daniel grants or denies the Defendants Abboud, Dybalski and Oswald's Motion to Dismiss Plaintiff's Seventh Claim (docket no. 35). Accordingly, in this court's discretion and in the interest of justice pursuant to S.E.C. v. Nacchio, 2005 WL 1799372 (D. Colo. July 28, 2005), the Defendants Abboud, Dybalski and Oswald's Motion to Stay Discovery Pending a Ruling on the Individual Defendants' Motion to Dismiss (docket no. 49) should be denied.

### **ORDER**

**WHEREFORE**, based upon these findings of fact and conclusions of law, the court **ORDERS**:

1. That the Defendants Abboud, Dybalski and Oswald's Motion to Stay Discovery Pending a Ruling on the Individual Defendants' Motion to Dismiss (docket no. 49) is **DENIED**.
2. That each party shall pay their own attorney fees and costs.

Done this 19<sup>th</sup> day of August 2009.

BY THE COURT

s/ Michael J. Watanabe  
Michael J. Watanabe  
U.S. Magistrate Judge