

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ENVISION REALTY, LLC, et al.,)
)
 Plaintiffs)
)
 v.)
)
 JAMES S. HENDERSON, et al.,)
)
 Defendants)

Docket No. 01-179-P-H

MEMORANDUM DECISION ON DEFENDANTS’ MOTION FOR STAY

The defendants, nine individuals who are the code enforcement officer, town administrator and members of the planning board and board of selectmen of the Town of Harpswell, Maine, Amended Complaint (Docket No. 4) at 1, move “that this matter be stayed in accordance with the provisions of 24-A M.R.S.A. § 4449 and the Order of the Court in the case of *M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania v. Legion Insurance Company*,” a matter pending in the courts of Pennsylvania, Motion and Incorporated Memorandum of Law for Stay of Action (Docket No. 30) at 1. The defendants assert that Legion Insurance Company would be obliged to indemnify them “against any judgment recovered in favor of the plaintiffs” in this action “in accordance with the terms of the insurance policy issued by Legion to the Town of Harpswell.” *Id.* at 1-2.

Attached to the motion is a copy of an order dated March 28, 2002 issued by a judge of the Commonwealth Court of Pennsylvania placing Legion Insurance Company into “rehabilitation” under Pennsylvania law and enjoining “[a]ll persons, in the Commonwealth or elsewhere” from “instituting or

further prosecuting any court action . . . against Legion.” *Id.* Exh. 1 at 8 ¶ 22 (Order [dated March 28, 2002], *Koken v. Legion Ins. Co.*, Commonwealth Court of Pennsylvania, Docket No. 183 M.D. 2002) (“Order”). At my request, the parties have submitted supplemental memoranda of law discussing the possible application of the doctrine of abstention under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), to this motion.

First, it is clear that 24-A M.R.S.A. § 4449 does not require that this action be stayed. That statute provides, in relevant part:

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this State shall be stayed for 60 days from the date the insolvency is determined, and may be stayed by the Superior Court for additional time solely as is deemed necessary to permit proper defense by the association of all pending causes of action.

An “insolvent insurer” is defined for purposes of section 4449 as an insurer “[a]uthorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred” and “[d]etermined to be insolvent by a court of competent jurisdiction.” 24-A M.R.S.A. § 4435(5). In this case, the Pennsylvania court specifically held that its order “shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the Pennsylvania Property and Casualty Insurance Guaranty Act . . . or the provisions of similar acts of any other state.” Order at 11 ¶ 30. Since the defendants have not shown that Legion has been determined to be insolvent by any court, section 4449 does not authorize a stay of this action.

Next, it is basic hornbook law that the order of a state court cannot restrain this or any other federal court from proceeding. *E.g.*, *Donovan v. City of Dallas*, 377 U.S. 408, 412-13 (1964). Thus, the defendants’ contention that this action is automatically stayed by the order of the Pennsylvania court is erroneous. It is for that reason that I asked the parties to submit briefs concerning *Burford* abstention, the

basis for a stay invoked by the court in *Rewerts v. Reliance Ins. Co.*, 170 F.Supp.2d 847 (C.D. Ill. 2001), a case cited by the defendants.

The defendants contend that abstention by this court is appropriate because they “are placed in a position of not knowing to what extent they have insurance coverage” and the Pennsylvania statutory scheme invoked in the pending Pennsylvania action “is designed to protect policyholders” like them. Defendants’ Supplemental Memorandum of Law in Support Defendants’ [sic] Motion for Stay of Action (“Motion”) (Docket No. 31) at 8. They argue that further action by this court in the instant case would interfere with the Pennsylvania action and could result in “delay, misunderstanding of local law, and needless federal conflict with the state policy,” quoting *Rewerts. Id.* at 9.

Proceeding in the instant action will not deprive the defendants of any protection that may be afforded them by Pennsylvania law, nor will it require this court to interpret Pennsylvania law. The outcome of this action, which raises federal civil rights claims under 42 U.S.C. § 1983, will not pose any discernable conflict with the policy set forth in Pennsylvania’s statutes governing insurance companies, nor will this action interfere with the Pennsylvania action in any way apparent from the materials submitted by the defendants in connection with their motion. The defendants may have a claim against Legion for indemnification if this action results in a judgment against them; they have no such claim now. They cite no authority in support of their necessarily-implied assertion that they have a right to know whether insurance coverage will be available before they are obliged to defend against any particular claim against them. The existence of such a right would delay the resolution of many such claims in a manner unacceptable as a matter of public policy.

The *Burford* abstention doctrine applies where a case involves both difficult, complex questions of state law and administration of state law by a scheme of state administrative agencies. When this is the case, involvement by the federal courts may cause confusion, and disrupt the state’s efforts to establish a coherent, uniform policy to solve a complex local problem. The danger which *Burford*

abstention avoids is the prospect of a case being decided differently depending upon whether it was heard by state officials and judges or by federal judges. In such a situation, a federal court could potentially undermine the state's administrative process.

FDIC v. Sweeney, 136 F.3d 216, 219 (1st Cir. 1998). As was the case in *Sweeney*, the federal civil rights claims at issue here do not involve interference with the proceedings or orders of a state administrative agency nor do they involve a complex state administrative scheme. *Id.*

Unlike the cases cited by the defendants, the instant case does not involve the insurer that might be required to indemnify them as a party. *See University of Maryland at Baltimore v. Peat Marwick Main & Co.*, 923 F.2d 265, 271 (3d Cir. 1991) (“In our view, *Burford* abstention may be ordered in insurer insolvency cases only when one of the parties to the action in which the federal court abstains is the insolvent insurer or its receiver, trustee, officers, and the like.”) There is no danger that this court, by deciding the issues presented by the plaintiffs, will “turn[] the federal court into a forum that will effectively decide a hose of detailed state regulatory matters, to the point where the presence of the federal court, as a regulatory decision-making center, makes it significantly more difficult for the state to operate its regulatory system.” *Bath Mem. Hosp. v. Maine Health Care Fin. Comm’n*, 853 F.2d 1007, 1012 (1st Cir. 1988). There is no sense in which the proceedings in this court will be duplicative of any proceedings in the Pennsylvania rehabilitation proceeding. A decision on the merits in this action will not undercut the purposes of the rehabilitation proceeding. *See Bilden v. United Equitable Ins. Co.*, 921 F.2d 822, 826 (8th Cir. 1990).

The “ultimate question” in cases in which *Burford* abstention is sought is “whether there are exceptional circumstances in which abstention would clearly serve an important interest.” *DeMauro v. DeMauro*, 115 F.3d 94, 99 (1st Cir. 1997) (citation and internal punctuation omitted). No such interest is present here.

To the extent that the defendants' motion might be construed to seek abstention under this court's general power to stay an action for good cause shown, *see generally Marquis v. FDIC*, 965 F.2d 1148, 1154-55 (1st Cir. 1992), I conclude that no such showing has been made.

The defendants' motion for stay is **DENIED**.

Dated this 21st day of May 2002.

David M. Cohen
United States Magistrate Judge

ENVISION REALTY LLC
plaintiff

STEPHEN B. WADE
784-3200
SKELTON, TAINTOR & ABBOTT
P.O. BOX 3200
95 MAIN STREET
AUBURN, ME 04212-3200
784-3200

PETER S. BROOKS, ESQ.
SCHNADER, HARRISON, GOLDSTEIN
AND MANELLO
265 FRANKLIN STREET
BOSTON, MA 02110
(617) 946-8107

v.

JAMES S HENDERSON,
individually and as an agent
or representative of the Town
of Harpswell
defendant

MICHAEL E. SAUCIER, ESQ.
LISA FITZGIBBON BENDETSON, ESQ.
THOMPSON & BOWIE
3 CANAL PLAZA
P.O. BOX 4630
PORTLAND, ME 04112
774-2500