BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 03-191
	)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
	)	
Respondents.	)	

to: Mr. Mark La Rose
La Rose & Bosco
200 N. La Salle Street, #2810
Chicago, IL 60601

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution
Control Board
100 W. Randolph Street
Chicago IL 60601

Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford IL 61105-1389

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 18, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing, Complainant's Motion for Leave to File Reply *instanter*, and Reply to Community Landfill Company's Response, a copy of which is attached and herewith served upon you.

Respectfully Submitted,
PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General of the
State of Illinois

BY: _____

CHRISTOPHER GRANT
Assistant Attorneys General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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vs.	)	PCB No. 03-191
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	)	
Respondents.	)	

COMPLAINANT'S MOTION FOR LEAVE TO FILE REPLY *INSTANTER* AND REPLY TO RESPONDENT COMMUNITY LANDFILL COMPANY'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves the Board to accept its Reply to Respondent COMMUNITY LANDFILL COMPANY'S Response ("CLC Response") to its Motion for Summary Judgement *instanter*. In support thereof, Complainant states as follows:

I. MOTION FOR LEAVE TO FILE REPLY *INSTANTER*

The Board's procedural rules do not provide the right to file a Reply except by Motion, and for the purpose of preventing material prejudice. Respondent CLC has confused the issue of the relief sought by Complainant in its Motion for Summary Judgment ("Complainant's Motion"). Complaint believes that this misrepresentation could result in material prejudice and therefore requests that the Board grant it leave to file its

Reply.

II. REPLY

COMPLAINANT HAS NOT REQUESTED PENALTIES OR FINES IN ITS MOTION FOR SUMMARY JUDGEMENT

1. In this case, Complainant is seeking both affirmative relief and the assessment of civil penalties against the Respondents. However, in its Motion for Summary Judgment, Complainant only seeks the following:

1. A finding that the Respondents have violated 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712;

2. A finding that the Respondents' violations were wilful, knowing, and/or repeated;

3. Ordering the Respondents to cease and desist from transporting and depositing any additional material at the Landfill until they are in full compliance with their Permits, and the Board's financial assurance regulations;

4. Requiring the Respondents to immediately provide financial assurance as required by the Act, Part 811, Subpart G of the Board solid waste regulations, and the Respondents' permits;

5. Requiring the Respondents to update the closure/postclosure costs in accordance with Permits No. 2000-155-LFM, 2000-156-LFM and modifications thereto;

6. Ordering the Respondents to initiate closure of parcels A & B of the Landfill; and

7. Setting a date for hearing on the issue of civil penalty.

Complainant's Motion, pp. 15-16

2. Respondent CLC makes two points in its Response. First, it absurdly claims that Illinois EPA has recognized the Frontier Bonds as acceptable financial assurance. However, CLC's main argument relates only to the issue of the appropriate civil penalty, and an 'unjust' recovery by Complainant.

3. On May 27, 2005, Illinois EPA made a demand on Frontier Insurance Company in Rehabilitation, the successor entity to Frontier Insurance Company. The New York State Superintendent of Insurance assumed control of Frontier Insurance Company on August 25, 2001 through the filing of a rehabilitation proceeding. *See*: *Mountain Funding, Inc. v. Frontier Insurance Co.* 329 F. Supp.2d 994 (Attached hereto as Exhibit 1]. Illinois EPA is listed as obligee on the various Frontier Bonds and Riders submitted by the Respondents during 2000. The expiration dates listed on the Bonds ranged from May to July, 2005. See: *Complainant's Motion*, Exhibit C. Illinois EPA's Bond claim is based on the Respondents' failures to comply with closure and post-closure requirements contained in their Permits, as well as their failure to provide substitute financial assurance. *See: CLC Response*, Exhibit N.

4. CLC describes its attempts to obtain the release of 'collateral' from Frontier Insurance Company, and Illinois EPA's refusal to provide Frontier with a waiver so that the unspecified 'collateral' could be returned to CLC. First, Illinois EPA has

no knowledge of the nature or amount of 'collateral' provided by CLC to Frontier. Prior to Frontier's request that Illinois EPA waive its right to recovery on the Frontier Bonds, the Agency had no knowledge that any 'collateral' had been supplied, or that CLC and Frontier had agreed between themselves that CLC was not required to make payments on the bonds. Also, the bonds by their own terms were to last for five years, with Illinois EPA as beneficiary. The Respondents never substituted financial assurance once the Frontier Bonds were deemed noncompliant, and continued to operate the Landfill. Illinois EPA was certainly not required to accommodate the financial interests of the Respondents by prematurely waiving its rights under these bonds.

5. Whether or not Illinois EPA has exercised its right to make a claim under the Frontier Bonds is irrelevant to the relief sought in Complainant's Motion. Moreover, at this point, Illinois EPA has no assurance that any recovery will be forthcoming.

6. Respondent can not seriously make the claim that the Frontier Bonds meet the requirements of Subpart G of the Board's waste regulations. That issue was settled, once and for all by the Appellate Court in *Community Landfill Company and the City of Morris v. Pollution Control Board* [*Complainant's Motion*, Exhibit F]. Illinois EPA has not changed its position-the bonds do not meet the requirements of Subpart G, and are noncompliant.

Complainant's Motion, Brian White Affidavit, Exhibit G, par. 11. No substitute financial assurance has ever been provided. *Complainant's Motion*, Exhibit G, par. 12.

7. In the event that Illinois EPA is able to recover any funds from Frontier Insurance Company in Rehabilitation, this fact could only be material, if at all, to the issue of civil penalty. For example, if Frontier performs closure requirements at the Morris Community Landfill, or if it provides funds sufficient to cover third-party costs, this fact may affect the Board's evaluation of the gravity of the violations.

8. However payment or performance by Frontier (if any is obtained), does not relate to the relief sought by Complainant in its Motion for Summary Judgment. If, as asserted by Complainant, the Respondents have conducted landfill operations without meeting the Subpart G financial assurance requirements, they have violated 415 ILCS 5/21(d)(2) (2004), and 35 Ill. Adm. Code 811.700(f). That they have knowingly continued operations since the Frontier Bonds were found noncompliant, and that over three years have passed without alternate financial assurance being provided, shows wilful and continued violation. Under these circumstances, Complainant is entitled to an order requiring the Respondents to stop illegal operation, and thereby cease and desist from additional violations. The Respondents must also provide new, compliant financial assurance.

9. As described in the *Mountain Funding* case [Exhibit 1, p. 3], Illinois EPA's prosecution of its claim against Frontier Insurance Company in Rehabilitation will be a tedious process. As of the date of this Reply, Frontier's rehabilitator has not even completed 'step one' by providing Illinois EPA with a Notice of Determination. Because dumping continues at the Morris Community Landfill, without compliant financial assurance, it is imperative that the Board take immediate action.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant its Motion for Summary Judgment against the Respondents, COMMUNITY LANDFILL COMPANY and the CITY OF MORRIS, and issue an order:

1. Finding that the Respondents have violated 415 ILCS 5/21(d)(2) (2002), and 35 Ill. Adm. Code Sections 811.700(f) and 811.712;

2. A finding that the Respondents' violations were wilful, knowing, and/or repeated;

3. Ordering the Respondents to cease and desist from transporting and depositing any additional material at the Landfill until they are in full compliance with their Permits, and the Board's financial assurance regulations;

4. Requiring the Respondents to immediately provide financial assurance as required by the Act, Part 811, Subpart G of the Board solid waste regulations, and the Respondents'

permits;

5. Requiring the Respondents to update the closure/postclosure costs in accordance with the Subpart G regulations, Permits No. 2000-155-LFM, 2000-156-LFM, and modifications thereto;

6. Ordering the Respondents to initiate closure of parcels A & B of the Landfill; and

7. Setting a date for hearing on the issue of civil penalty.

Respectfully Submitted,

BY: _____

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329 F.Supp.2d 994

(Cite as: 329 F.Supp.2d 994)

H

Motions, Pleadings and Filings

United States District Court,
N.D. Illinois,
Eastern Division.
MOUNTAIN FUNDING, INC., Plaintiff,
v.
FRONTIER INSURANCE CO., Defendant.
No. 01 C 2785.

Aug. 9, 2004.

Background: State-court action was brought against insurer alleging failure to pay on surety bond. Insurer removed action, which was then transferred. The District Court, 2003 WL 21518556, Guzman, J., denied insurer's motion for stay in favor of out-of-state insurance rehabilitation proceeding. Subsequently, insurer renewed motion.

Holding: The Court, Denlow, United States Magistrate Judge, held that *Burford* abstention was appropriate given nature of rehabilitation proceeding, which was shown to be in special relationship of concentrated review to surety bond claim.
Motion granted.

West Headnotes

[1] Federal Courts ⚿65
170Bk65 Most Cited Cases
Abstention principles can be raised and revisited at any time during a proceeding.

[2] Federal Courts ⚿43
170Bk43 Most Cited Cases
Under *Burford* abstention doctrine, federal court should abstain from deciding: (1) difficult questions of state law bearing on policy problems of substantial public import whose importance transcends result in present case, and (2) cases where review would be disruptive of state efforts to establish coherent policy with respect to matter of substantial public concern.

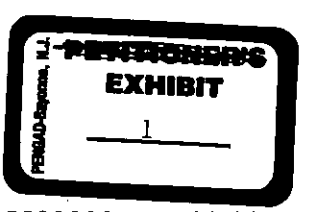
[3] Federal Courts ⚿47.1
170Bk47.1 Most Cited Cases
Illinois district court would abstain under *Burford* from deciding action against insurer alleging failure to pay on surety bond, in favor of New York state insurance rehabilitation proceeding adjudicating claims against insurer; rehabilitation proceeding was important state effort of great public concern, and further, rehabilitation proceeding was in special relationship of concentrated review to surety bond claim, since its purpose was to facilitate judicial review of all of insurer's many claimants, to expedite resolution of
such claims, to prevent unnecessary expenditure of assets, and to provide fair, equitable and unified procedure for all claimants.

[4] Federal Courts ⚿43
170Bk43 Most Cited Cases
Case may be appropriate for *Burford* abstention, to avoid disrupting state efforts at establishing coherent public policy, only if state offers some forum in which claims may be litigated, and only if forum stands in special relationship of technical oversight or concentrated review to evaluation of those claims.
***995** Howard L. Teplinsky, Seidler & McErlean, Chicago, IL, Counsel for Plaintiff.

Cornelius F. Riordan, Michael Palermo, Jr., Riordan, Donnelly, Lipinsky & McKee, Ltd., Chicago, IL, Counsel for Defendant.

MEMORANDUM OPINION AND ORDER

DENLOW, United States Magistrate Judge.



329 F.Supp.2d 994

This case comes before this Court on a motion by Frontier Insurance Co. ("Frontier" or "Defendant") to stay this proceeding in favor of a New York state court insurance rehabilitation proceeding that is adjudicating all claims--including a claim from Mountain Funding, Inc. ("Plaintiff")--against Defendant. *See In the Matter of the Rehabilitation of Frontier Ins. Co.*, No. 1357/03 (N.Y. Sup.Ct. order dated May 10, 2004). For the reasons set forth below, Defendant's motion to stay is granted.

I. BACKGROUND FACTS

The facts of this case have been recited in great detail in Judge Ronald A. Guzman's opinion in *Mountain Funding, Inc. v. Frontier Insurance Co.*, No. 01 C 2785, 2003 WL 21518556, 2003 U.S. Dist. LEXIS 11274 (N.D. Ill. June 30, 2003). Therefore, what follows are the facts materially pertinent to a decision on Defendant's motion to stay proceedings, which is now before the Court.

A. PROCEEDINGS BEFORE JUDGE GUZMAN

On November 29, 2000, Plaintiff filed this lawsuit in the Superior Court of New Jersey as a result of Defendant's alleged failure to pay on a surety bond issued by Defendant. Defendant then removed this case to federal district court in New Jersey. Subsequently, the case was transferred to the Northern District of Illinois and assigned to Judge Guzman.

On August 25, 2001, the Superintendent of Insurance for the State of New York filed a rehabilitation proceeding against Defendant in the Supreme Court of New York. *In the Matter of the Application of Gregory V. Serio*, No. 405090/01 (N.Y. Sup.Ct. order dated Oct. 10, 2001). The New York rehabilitation court entered an order enjoining and restraining any person from commencing or prosecuting lawsuits or proceedings against Defendant for 180 days. Pursuant to that order, Defendant moved Judge Guzman to stay these proceedings, which he did on November 13, 2001. Six months later, Judge Guzman accepted briefs and heard oral arguments on the issue of continuing the stay indefinitely, which he declined to do; on May 15, 2002, Judge Guzman lifted the Stay of Proceedings and permitted discovery to proceed.

Defendant then filed a motion to reconsider the May 15, 2002 order lifting the Stay of Proceedings. Defendant argued that the district court should abstain from this action because New York's rehabilitation court is the proper court to handle Plaintiff's underlying surety bond dispute ***996** because the court stands in a "special relationship" with the facts and issues involved in the case. However, on June 30, 2003, Judge Guzman denied the motion to reconsider. *Mountain Funding, Inc.*, No. 01 C2785, 2003 WL 21518556, *5, 2003 U.S. Dist. LEXIS 11274, at *15 (N.D. Ill. June 30, 2003) . Judge Guzman explained that abstention is the exception to the norm in federal court and that Defendant failed to establish that the New York rehabilitation court stands in a "special relationship" with the facts and issues involved in this case. *Id.*, 2003 WL 21518556, *5, 2003 U.S. Dist. LEXIS 11274, at *14. Judge Guzman further noted that "there is an absence of information concerning the nature of the [New York rehabilitation] proceedings, what types of claims are being litigated, and a schedule for the completion of rehabilitation." *Id.* The parties then consented to have this case tried before this Court pursuant to 28 U.S.C. § 636(c)(1). The case then proceeded to the verge of trial before Defendant brought this motion for a stay, claiming that the concerns raised by Judge Guzman now have been addressed and resolved by an order entered by the New York rehabilitation court.

B. NEW YORK REHABILITATION PROCEEDINGS

On May 10, 2004, the New York rehabilitation court entered a formal order approving an interim procedure for judicial review of the rehabilitation proceedings for adjudication of claims. *In the Matter of the Rehabilitation of Frontier Ins. Co.*, No. 1357/03 (N.Y. Sup.Ct. order dated May 10, 2004). The purpose of the rehabilitation proceedings is to facilitate judicial review of Frontier's claimants, to expedite the resolution of such claims, to prevent the unnecessary expenditure

329 F.Supp.2d 994

of assets, and to provide a fair, equitable, and unified procedure for all claimants of Frontier. *See* Def. Mot. to Stay, Ex. B1, at 6. "The procedure will enable the Rehabilitator to dispose of surety claims, which would not be covered by the majority of Guaranty Associations, and other claims as the Court deems appropriate ... while offering due process to all claimants who object to his recommendations." Def. Mot. to Stay, Ex. B2, at 2.

The rehabilitator will examine each claimant's claim and make a determination regarding that claim, which will act as a recommendation to the claimant. *Id.* The rehabilitator then must serve the claimant a "Notice of Determination" for each claim, which advises the claimant of the recommendation amount. *Id.* The claimant may object to the amount by serving a written objection upon the rehabilitator within sixty days. *Id.* The rehabilitator must contact the claimant and attempt to resolve any objection. *Id.* at 3. In the event the objection is not resolved, the matter is referred to a court-appointed referee who hears the claimant's objection and reports on its validity. *Id.* Upon the issuance of the referee's report, either the claimant or the rehabilitator may petition the court for an order confirming the report. *Id.* In the event that no objection is received, the rehabilitator shall make an *ex parte* motion no earlier than seventy-five days after the date of the Notice of Determination for an order approving and confirming the adjudications of the claim. *Id.*

As a result of the new information detailed in the May 10, 2004 order, Defendant filed the present Motion to Stay Proceedings under the principles of abstention, arguing that this Court now has enough information to conclude that the New York rehabilitation court is in a special relationship of technical oversight or concentrated review of Plaintiff's claims.

*997 II. LEGAL STANDARD

[1] Abstention principles can be raised and revisited at any time during a proceeding. *Prop. & Cas. Ins. Ltd. v. Cent. Nat'l Ins. Co. of Omaha,* 936 F.2d 319, 321 (7 th Cir.1991). There are three accepted abstention doctrines that can be applied depending on the underlying facts of the federal case at issue. *See Colorado River Conservation Dist. v. United States,* 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976); *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); *Burford v. Sun Oil Co.,* 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943). The principles espoused by the United States Supreme Court in *Burford v. Sun Oil* provide the analytical framework within which to decide whether abstention in favor of the state rehabilitation proceedings is appropriate in this case.

In *Burford,* the Supreme Court determined that a federal court's abstention is appropriate when judicial review in the designated state forum is "expeditious and adequate," in order to avoid review in the federal courts that could cause "delay, misunderstanding of local law and federal conflict with state policy." 319 U.S. at 327-34, 63 S.Ct. 1098 . Additionally, the Supreme Court held that federal courts could give rise to "intolerable confusion" that a specialized state forum seeks to avoid. *Id.*

[2] Subsequently, the Seventh Circuit has interpreted *Burford* to hold that abstention is appropriate in two circumstances. *Prop. & Cas. Ins. Ltd.,* 936 F.2d at 322. First, courts should abstain from deciding "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the present case." *Id.* Second, courts should abstain from deciding cases where the review would be "disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Id.*

III. DISCUSSION

[3] In this case, the Court first must determine if either of the two *Burford* circumstances are present. It is clear that there is no "difficult question of state law" present, as this case involves a surety bond dispute to which well-established legal principles apply. Consequently, the first *Burford* circumstance is not present. However, the second *Burford* circumstance is present. State insurance rehabilitation proceedings are important state efforts and are of great public concern. *See*

329 F.Supp.2d 994

generally Prop. & Cas. Ins. Ltd., 936 F.2d at 319; *Hartford Cas. Ins. Co. v. Borg-Warner Corp.*, 913 F.2d 419 (7th Cir.1990). Pursuant to the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, states have a great interest in maintaining a uniform insurance rehabilitation process and have assumed primary responsibility for regulating the insurance industry. *Hartford*, 913 F.2d at 426. As a result, the New York rehabilitation process is a "matter of substantial public concern" and therefore abstention may be appropriate in this case. *See Prop. & Cas. Ins. Ltd.*, 936 F.2d at 322.

[4] This abstention inquiry arises because federal court review may disrupt a New York State's efforts to establish a coherent public policy. Therefore, two essential elements are necessary for this Court to abstain. *Prop. & Cas. Ins. Ltd.*, 936 F.2d at 323. First, the state must offer some forum in which claims may be litigated. *Id.* Second, that forum must be "special--it must stand in a special relationship of technical oversight or concentrated review to the evaluation of those claims." *Id.* There is no dispute that New York has provided a state forum in which Plaintiff's claims may be litigated. As a ***998** result, the issue in this case is whether the New York rehabilitation proceeding has a special relationship of technical oversight or concentrated review to evaluate Plaintiff's claims.

The Seventh Circuit addressed this issue in the factually similar case, *Property & Casualty Insurance, Ltd. v. Central National Insurance Co. of Omaha*, 936 F.2d 319 (7th Cir.1991). In that case, Property & Casualty Insurance, Ltd. ("PCIL") filed a complaint against Central National Insurance Co. ("Central National") because of a contract dispute regarding a reinsurance agreement. *Id.* at 320. The parties had conducted significant amounts of discovery and had filed cross-motions for summary judgment when Nebraska's director of insurance placed Central National into rehabilitation. *Id.* The Nebraska rehabilitator petitioned the district court to either stay or dismiss the district court case, and the district court held that the principles announced in *Burford* required abstention. *Id.* PCIL appealed. *Id.* at 320, 63 S.Ct. 1098.

On appeal, the Seventh Circuit could not determine if the rehabilitator commenced the type of proceeding that warranted abstention under *Burford*. *Id.* There was no indication that the rehabilitator attempted to commence a proceeding in any special relationship of technical oversight or concentrated review to the evaluation of creditor claims against Central National. *Id.* The Seventh Circuit then investigated the possible types of rehabilitation proceedings available to Central National and found that there were three possible types of rehabilitation proceedings available, noting three examples to help determine what types of rehabilitation proceedings warranted abstention:

> [The rehabilitation of Insurer] A may involve nothing more than a change in management. The rehabilitation of Insurer B may involve nothing more than a merger with another insurer to take advantage of needed economies of scale. The rehabilitation of Insurer C may involve, by itself or in combination with some other response, a specialized claims proceeding for the purpose of centrally and uniformly resolving the claims of Central National's creditors. All of these actions are classified as 'rehabilitation proceedings,' yet not all of them involve a specialized proceeding; only the rehabilitation of Insurer C implicates *Burford*.

Id. at 320, 324, 63 S.Ct. 1098. The Seventh Circuit held that the record contained no plan of rehabilitation and that the rehabilitator openly expressed uncertainty as to how Central National's rehabilitation would progress. *Id.* at 325, 63 S.Ct. 1098. The court further noted that the rehabilitator may be gathering Central National's creditors in one forum to litigate their claims with uniformity, but there was no such evidence contained on that record. *Id.* at 326, 63 S.Ct. 1098. As a result, the Seventh Circuit remanded the case to the district court to determine if the Nebraska forum involved the type of specialized proceeding that warranted abstention. *Id.*

On June 30, 2003, Judge Guzman shared the same concerns as the Seventh Circuit when he denied Defendant's motion to reconsider the May 15, 2002 order lifting the stay of proceedings in this case. He lacked sufficient information to determine whether

the New York rehabilitation proceedings were in a special relationship of technical oversight or concentrated review that would warrant abstention under *Burford.* However, with the new information set forth in the May 10, 2004 New York Supreme Court order regarding the rehabilitation court, this Court now knows exactly what type of rehabilitation proceedings the New York court employs and is in ***999** a better position to determine if those proceedings are in a special relationship of technical oversight or concentrated review.

After a review of the New York rehabilitation proceedings, it is clear that those proceedings are identical to the rehabilitation of "Insurer C" in *Property & Casualty Insurance Ltd.* and therefore satisfies the *Burford* requirements. The New York rehabilitation proceedings clearly are in a special relationship of concentrated review of Plaintiff's surety bond claim, as their purpose is to facilitate judicial review of all of Frontier's claimants, to expedite the resolution of such claims, to prevent the unnecessary expenditure of assets, and to provide a fair, equitable and unified procedure for all claimants of Frontier. *See* Def. Mot. to Stay, Ex. B1.

It is important to note also that the New York rehabilitation court is adjudicating thousands of claims made against Defendant, many of which are similar to Plaintiff's surety bond claims alleged in this lawsuit. At the inception of the New York rehabilitation proceedings, Defendant's records showed more than 12,000 open unresolved claims, with estimated indemnity loses of more than $475 million and estimated loss adjustment expenses of more than $60 million. *See id.* Furthermore, "open surety claim counts at the inception of the proceeding were approximately 2,400 with estimated surety indemnity and loss adjustment reserves of approximately $55 million." *Id.* This detailed and uniformed proceeding is exactly what the Seventh Circuit in *Property & Casualty Insurance Ltd.* found would satisfy the *Burford* requirements.

Additionally, this case invokes important policy considerations that support abstention. As noted in *Hartford Casualty Insurance Co. v. Borg-Warner Corp.,* 913 F.2d at 426, the importance of state policies at issue go far beyond the present litigation. Mountain Funding should not be able to jump ahead of Frontier's other creditors because this litigation is outside the New York rehabilitation proceeding and must not be able to set a precedent for other claimants to do the same. Additionally, both this Court and the New York rehabilitation proceeding are faced with the same surety bond dispute. The possibility of inconsistent decisions between this Court and the New York rehabilitation proceeding could lead to confusion. Furthermore, allowing this case to proceed would lead to a system where the state of New York would not control the ultimate distribution to Frontier's creditors. *Id.* This type of federal usurpation would be inconsistent with the McCarren-Ferguson Act and general notions of comity. *Id.*

Additionally, Frontier has been defending similar litigation in the Northern District of Illinois in *Mallon v. Frontier Insurance Co.,* case number 01 C 2556. After New York's May 10, 2004 order, Frontier filed a Motion to Stay Proceedings in the *Mallon* case. On July 16, 2004, Judge Harry D. Leinenweber stayed the proceedings because the procedure outlined by the Supreme Court of New York comported with the abstention requirements as set out in *Burford v. Sun Oil Co.,* 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424 (1943), and *Property & Casualty Insurance Ltd. v. Central National Insurance Co. of Omaha,* 936 F.2d 319 (7th Cir.1991). *Mallon v. Frontier Insurance Co.,* No. 01 C 2556 (N.D. Ill. minute order dated July 16, 2004).

IV. CONCLUSION

For the above stated reasons, **Defendant's Motion to Stay Proceedings is granted.**

329 F.Supp.2d 994

Motions, Pleadings and Filings (Back to top)

• 2004 WL 2725406 (Trial Motion, Memorandum and Affidavit) Mountain Funding, Inc.'s

329 F.Supp.2d 994

Memorandum of Law in Opposition to Plaintiff's Third Motion to Stay Proceedings (Jun. 15, 2004)

• 2004 WL 2725408 (Trial Motion, Memorandum and Affidavit) Frontier Insurance Company in Rehabilitation's Reply to Mountain Funding's Opposition to Frontier's Third Motion to Stay Proceedings (Jun. 02, 2004)

• 2004 WL 2725403 (Trial Motion, Memorandum and Affidavit) Frontier Insurance Company in Rehabilitation's Response to Plaintiff's Motions in Limine (Mar. 02, 2004)

• 2004 WL 2725401 (Trial Motion, Memorandum and Affidavit) Plaintiff's Response to Defendant's Motion in Limine (Feb. 10, 2004)

• 2003 WL 23910306 (Trial Motion, Memorandum and Affidavit) Frontier Insurance Company in Rehabilitation's Trial Brief (Dec. 12, 2003)

• 2002 WL 32742601 (Trial Motion, Memorandum and Affidavit) Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment (Oct. 24, 2002)

• 2002 WL 32742609 (Trial Motion, Memorandum and Affidavit) Plaintiff Mountain Funding's Response to Frontier Insurance Company's Statement of Facts Pursuant to Local Rule 56.1(b) (Oct. 24, 2002)

• 2002 WL 32742589 (Trial Motion, Memorandum and Affidavit) Frontier Insurance Company in Rehabilitation's Reply to Mountain Funding's Response to Frontier's Motion to Reconsider (Oct. 23, 2002)

• 2002 WL 32742562 (Trial Motion, Memorandum and Affidavit) Defendant Frontier Insurance Company's Response to Plaintiff Mountain Funding's Local Rule 56.1 Statement of Material Facts as to Which There is No Genuine Issue (Oct. 02, 2002)

• 2002 WL 32742575 (Trial Motion, Memorandum and Affidavit) Frontier Insurance Company in Rehabilitation's Response to Plaintiff's Motion for Summary Judgment and Memorandum in Support Thereof (Oct. 02, 2002)

• 2002 WL 32742547 (Trial Motion, Memorandum and Affidavit) Mountain Funding, Inc.'s Memorandum of Law in Opposition to Plaintiff's Motion to Reconsider Order Lifting Stay of Proceedings (Sep. 20, 2002)

• 2002 WL 32742536 (Trial Motion, Memorandum and Affidavit) Plaintiff Mountain Funding's Motion for Summary Judgment (Sep. 11, 2002)

• 2002 WL 32742522 (Trial Motion, Memorandum and Affidavit) Mountain Funding, Inc.'s Memorandum in Support of Lifting Stay (May. 08, 2002)

• 2002 WL 32742504 (Trial Motion, Memorandum and Affidavit) Frontier Insurance Company's Memorandum of Law on the District Court's Jurisdiction Over Matters Subject to the New York Order of Rehabilitation (May. 07, 2002)

• 1:01CV02785 (Docket)
(Apr. 19, 2001)

END OF DOCUMENT

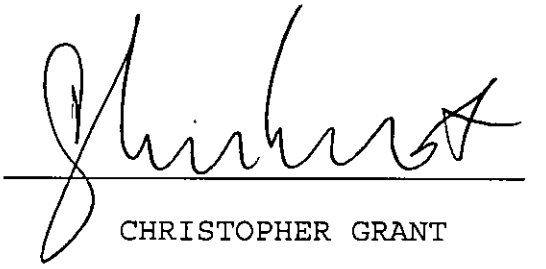
(312) 814-5388

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 03-191
	)	(Enforcement-Land)
COMMUNITY LANDFILL COMPANY, INC., an Illinois corporation, and the CITY OF MORRIS, an Illinois municipal corporation,	)	
	)	
Respondents.	)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 18th day of October, 2005, the foregoing Complainant's Motion for Leave to File Reply Instanter, and Reply to Respondent Community Landfill Company's Response, and Notice of Filing, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT