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For The Northern Mariana Islands  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

NATIONAL UNION FIRE INSURANCE )  
COMPANY OF PITTSBURGH, )  
PENNSYLVANIA, )  
  
Plaintiff, )  
  
v. )  
  
BANK OF SAIPAN, )  
  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 03-0010

ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS

THIS MATTER came before the court on June 12, 2003 for hearing on defendant Bank of Saipan's Motion to Dismiss.

Attorneys Tom Clifford and John Spencer Stewart appeared on behalf of plaintiff.

Attorneys William Fitzgerald and S. Joshua Berger appeared on behalf of defendants.

Upon consideration of the written and oral arguments of counsel, defendant Bank of Saipan's Motion to Dismiss is GRANTED as set forth herein.

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**FACTS**

National Union Fire Insurance Company of Pittsburgh, Pennsylvania (hereinafter “National Union”) is a corporation duly organized and existing under the laws of the State of Pennsylvania. Complaint ¶ I. (Mar. 31, 2003). National Union is registered, authorized and engaged in the insurance and surety business, and is authorized to issue financial institution bonds in the Commonwealth of the Northern Mariana Islands (hereinafter “CNMI”). Id.

National Union, as surety, issued a Financial Institution Bond (No. BB-98-101) (hereinafter “Bond”) in the penal sum of \$1,000,000.00 against loss with defendant Bank of Saipan (hereinafter “Bank”) as the named insured. Id. at ¶ IV. The Bond was first issued on August 1, 1998, and has been extended and renewed up to and including October 31, 2002. Id.

On or about September 20, 2002, the Bank, through its Receiver, Randall T. Fennell, served upon National Union its Proof of Loss. Id. at ¶ V. The Bank contended that by virtue of alleged acts by the then President of the Bank, Tomas B. Aldan, it has suffered a net loss in the amount of \$8,674,718.66, and that National Union is obligated to the Bank in the amount of the penal sum of its Bond – \$1,000,000.00. Id.

On March 31, 2002, National Union filed this lawsuit seeking a declaration of the rights and obligations of the parties under the Bond. Id. at p. 5. National Union also requested a judgment discharging it from any obligation under the Bond, except with respect to such claims as specifically are covered under the Bond. Id.

On or about April 21, 2003, the Bank, by and through its current Receiver, Antonio S. Muna, filed a Complaint in the Superior Court of the Northern Mariana Islands in the case

1 captioned, The Bank of Saipan, Inc., by and through its Receiver Antonio S. Muna and Board of  
2 Directors v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania and Tomas B.  
3 Aldan, Civil Case No. 03-0188A (hereinafter "Superior Court suit"). Declaration of S. Joshua  
4 Berger Ex. A. (Apr. 21, 2003). The Superior Court suit alleges Breach of Contract, Breach of  
5 Covenant of Good Faith and Fair Dealing, Statutory Failure to Pay Loss, Violation of the  
6 Consumer Protection Act, and Unfair Claims Settlement Practices. Id. The Superior Court suit  
7 also alleges fraud and breach of fiduciary duty against Tomas B. Aldan. Id.

9 On April 21, 2003, the Bank filed a Motion to Dismiss this lawsuit on the grounds that  
10 the complaint fails to state a claim for which declaratory relief should be granted, it is in  
11 violation of a Superior-Court ordered stay, and is subject to the doctrine of federal abstention.  
12 National Union opposed the motion and argued that under the Declaratory Judgment Act the  
13 court has the discretion to retain jurisdiction over this suit, the suit does not violate the Superior  
14 Court order, and there is no basis for abstention.

## 16 DISCUSSION

17 The central issue before the court is whether the court should entertain National Union's  
18 claim for declaratory relief. There is no question that jurisdiction is vested in this court pursuant  
19 to 28 U.S.C. §1332, as both parties are diverse.<sup>1</sup> Notwithstanding, defendant Bank of Saipan

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23 While the Complaint seeks declaratory relief pursuant to FED. R. CIV. P. 57 and 28  
24 U.S.C. § 2201, a district court's assumption of jurisdiction over these type of actions is not  
25 automatic or obligatory. Wilton v. Seven Falls Company, 515 U.S. 277, 287 (1995).  
26 District courts possess discretion in determining whether to entertain actions under the  
Declaratory Judgment Act. Id.; Government Employees Insurance Co. v. Dizon, 133 F.3d

(continued...)

1 urged the court to abstain from exercising jurisdiction over National Union's Complaint pursuant  
2 to the doctrine of federal abstention because of the pending Superior Court suit.

3 The court begins with the basic principle that abstention is the exception and not the rule,  
4 Colorado River Water Conservation District v. United States, 424 U.S. 800, 813 (1976), and that  
5 federal courts have a "virtually unflagging obligation" to exercise jurisdiction vested in them by  
6 Congress. Id. at 817. However, this duty is not absolute. Quackenbush v. Allstate Ins. Co., 517  
7 U.S. 706, 716 (1996). Federal courts have the authority to surrender jurisdiction if exceptional  
8 circumstances exist, Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 25-  
9 26 (1983), such as when the federal proceedings would interfere with a pending state criminal  
10 proceeding. Younger v. Harris, 401 U.S. 37,41 (1971). In Younger, the Supreme Court  
11 enunciated the abstention principle, and stated that such abstention rests mainly on traditional  
12 notions of comity between the state and federal courts. Id. The Younger abstention principle has  
13 been extended to noncriminal judicial proceedings in which important state interests are  
14 involved, Moore v. Sims, 442 U.S. 415, 423 (1979); Huffman v. Pursue, Ltd., 420 U.S. 592, 604  
15 (1975), and has also been extended to declaratory judgment actions. Samuels v. Mackell, 401  
16 U.S. 66, 69-70, 62-73 (1971). Younger abstention embraces a "strong federal policy against  
17 federal court interference with pending state judicial proceedings absent extraordinary  
18 circumstances." Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 431  
19 (1982). Therefore, although a federal district court will almost always entertain disputes in  
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24 <sup>1</sup>(...continued)  
25 1220, 1223 (9<sup>th</sup> Cir. 1998) (stating same).  
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which its jurisdiction is properly invoked, the court may abstain from hearing such cases if sufficiently compelling grounds exist.

The court believes that sufficiently compelling grounds for abstention exist in this matter under Younger. A district court may properly decline to exercise jurisdiction based on Younger abstention only when each of the following three elements are met: (1) state judicial proceedings are ongoing, (2) the state judicial proceedings implicate an important state interest, and (3) the state proceedings offer the federal plaintiff an adequate opportunity to litigate constitutional issues. See Agriesti v. MGM Grand Hotels, Inc., 53 F.3d 1000, 1001 (9<sup>th</sup> Cir. 1995); Fort Belknap Indian Community v. Mazurek, 42 F.3d 428, 431 (9<sup>th</sup> Cir. 1994).

The first factor is met because there is clearly an ongoing state proceeding.

Second, that proceeding implicates important state interests in that it involves issues of CNMI banking regulations, receivership law, unfair claim settlement practices and insurer bad faith. The Bank has been and remains in receivership under the Superior Court, and that court has made the recovery of all assets, including any bond proceeds, an integral part of the Bank's court-approved rehabilitation plan.

Finally, the third Younger factor is not dispositive in this case because National Union has not alleged any federal constitutional issues in its Complaint.

Abstention is also appropriate in this matter under Brillhart v. Excess Ins. Co., 316 U.S. 491 (1942). Brillhart sets forth the primary factors for consideration when a court is faced with deciding whether to exercise its discretionary jurisdiction over a federal declaratory action. Huth v. Hartford Insurance Company of the Midwest, 298 F.3d 800, 803 (9<sup>th</sup> Cir. 2002). A district

1 court should (1) avoid needless determination of issues of state law; (2) discourage litigants from  
2 filing declaratory actions as a means of forum shopping; and (3) avoid duplicative litigation. Id.;  
3 Dizol, 133 F.3d at 1225; Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1367 (9<sup>th</sup> Cir. 1991)  
4 (citing Brillhart, 316 U.S. at 495, 497). “A district court, therefore, when deciding to exercise its  
5 jurisdiction under the Declaratory Judgments Act, must balance concerns of judicial  
6 administration, comity, and fairness to litigants.” Chamberlain, 931 F.2d at 1367. The court  
7 believes that a balance is struck in this matter in favor of abstention.

9 First, as mentioned above, the Bank has been and remains in receivership under the  
10 Superior Court, and the current lawsuit is intertwined and closely related to that local action.  
11 Furthermore, the Superior Court suit involves issues of local banking and receivership law,  
12 unfair claim settlement practices and insurer bad faith statutes, which this court will not entertain.

14 Next, the court finds that the second factor, “avoiding forum shopping,” does not favor  
15 either party. National Union favors federal resolution of its lawsuit, while the Bank favors state  
16 resolution. The fact that National Union “...won the race to the courthouse does not place it in a  
17 preferred position.” See Huth, 298 F.3d at 804 (stating that the fact that the insurer was the first-  
18 to-file by several days does not place it in a preferred position because in Wilton v. Seven Falls  
19 Co., 515 U.S. 277 (1995), the Supreme Court “...suggested that the order of filing is legally  
20 insignificant when it ruled in favor of a state action filed several weeks after a federal action.”).

22 Lastly, concerns of duplicitous litigation and judicial economy are present in this case.  
23 The issues presented in this lawsuit and the Superior Court suit, although not identical, are  
24 similar in that they involve the determination of the parties’ rights and liabilities under the Bond.  
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1 There is a chance for competing or conflicting judgments if this court were to retain jurisdiction  
2 over National Union's lawsuit. Furthermore, this court could make a finding that would have a  
3 *res judicata* effect in the Superior Court. Therefore, utilizing its discretionary powers under the  
4 Declaratory Judgment Act, and in the interest of judicial administration and comity, the court  
5 abstains from exercising jurisdiction over this matter. See Dizol, 133 F.3d at 1226 (stating that,  
6 when presented with the issue of whether to exercise jurisdiction over a declaratory action, the  
7 district court is in the best position to assess how judicial economy, comity and federalism are  
8 affected in a given case).

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10 National Union argued that no important state interest is at stake in this lawsuit because  
11 this is a case involving the rights of two private parties under a contract between them. National  
12 Union further argued that its lawsuit does not violate the Superior Court May 10, 2002 Order<sup>2</sup> in  
13 the Bank of Saipan receivership action for five reasons: (1) the Director of Banking did not have  
14 the authority to request that the Superior Court issue such an Order, (2) the lawsuit did not affect  
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20 On May 10, 2002, the Commonwealth Superior Court issued an Order entitled,  
21 "Clarification of Order Granting Petition for Appointment of Receiver," in the Bank of  
22 Saipan receivership proceedings (Civ. Action No. 02-0268-B) which stayed all actions  
23 against the Bank. The text of the Order reads, in pertinent part:

24 All legal, administrative and equitable actions against the bank including  
25 but not limited to foreclosures by prior lienholders, are hereby stayed. No  
26 person shall commence or continue any such suit or action, except under  
prior application to this court for relief from the stay, after notice to the  
Petitioner and receiver, and after hearing.

Clarification of Order Granting Petition for Appointment of Receiver ¶ 3 (May 10, 2002).

1 property or assets of the Bank, (3) National Union is not subject to the jurisdiction of the  
2 Superior Court, (4) the Bank and Receiver seek to enforce the Order only when it serves their  
3 interests and prejudices the interests of the person or entity bringing the suit, and (5) the Bank  
4 and Receiver have waived any right and are estopped from seeking the enforce any such stay.  
5 These arguments are without merit. As previously mentioned, the Bank is in receivership under  
6 the supervision and control of the Commonwealth Superior Court. That court has charged the  
7 Receiver with recovering or marshaling all of the Bank's assets from whatever source, and the  
8 bond coverage that the Bank paid for is an asset of the Bank. The Superior Court has the  
9 jurisdiction or power over the assets and administration over the receivership estate and to hear  
10 and determine all controversies or questions relating to the property in receivership, including all  
11 questions incident to the collection and distribution of assets. *See generally* 65 Am. Jur. 2d  
12 Receivers §§ 2, 118, and 130 (2001). The receivership action is so local in character that this  
13 court is mandated by the fundamental principle of comity to not interfere with that proceeding.  
14 The Superior Court is capable and equipped to make a determination as to the rights and  
15 obligations of the parties under the Bond. Because the sole basis of jurisdiction here is diversity,  
16 the federal interest in having this case litigated in federal court is minimal. Furthermore, this  
17 court will not review the Orders of the Commonwealth Superior Court. Doing so would be a  
18 waste of judicial resources and would create needless friction between the state and federal  
19 forums.  
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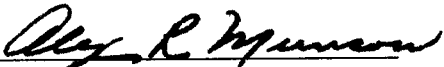
In conclusion, pursuant to Younger and Brillhart, abstention is proper in this case.<sup>3</sup>

Because this court has decided to abstain, dismissal of National Union's claims for declaratory relief is mandatory. Aiona v. Judiciary of State of Hawaii, 17 F.3d 1244, 1248 (9<sup>th</sup> Cir. 1994).

Accordingly, this matter is DISMISSED WITHOUT PREJUDICE to allow plaintiff National Union to make application to the Commonwealth Superior Court for relief from its May 10, 2002 Stay Order.

IT IS SO ORDERED.

Dated this 9<sup>th</sup> day of July, 2003.

  
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Alex R. Munson  
Chief Judge

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Because this case involves the Declaratory Judgment Act, the court declines to apply the Colorado River abstention doctrine. See Milton, 515 U.S. at 286 (holding that the district court's decision to stay declaratory judgment proceeding during parallel state court proceedings is governed by the discretionary standard of Brillhart v. Excess Ins. Co., not the "exceptional circumstances" test developed in Colorado River Water Conservation District v. United States). See also Chamberlain, 931 F.2d at 1366 (stating that the Colorado River test does not apply where the Declaratory Judgment Act, 28 U.S.C. § 2201, is involved).