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NOTE

ABANDONMENT OF HAZARDOUS WASTE SITES IN THE COURSE OF BANKRUPTCY PROCEEDINGS

Bankruptcy-Abandonment-Toxic Waste—Abandonment does not excuse state environmental law violators from paying cleanup costs. *Midlantic National Bank v. New Jersey Department of Environmental Protection*.

INTRODUCTION

*Midlantic National Bank v. New Jersey Department of Environmental Protection*¹ addresses the conflict between creditor interests and state interests when a corporation violates state pollution laws prior to declaring bankruptcy. The creditor interest is protected by Section 554(a) of the Bankruptcy Code which provides for abandonment of the bankrupt corporation's financially burdensome property.²

When the financial burden stems from the cost of cleaning up sites polluted by the bankrupt's activities, creditor protection is plainly inconsistent with the state's interest in imposing financial responsibility on those creditors.

FACTS

Quanta Resources Corporation (Quanta) processed oil at Long Island City, New York, and at Edgewater, New Jersey.³ In June 1981, Midlantic National Bank lent Quanta \$600,000, with Quanta's inventory, some equipment, and accounts receivable as collateral.⁴ During that month, Quanta violated a specific prohibition in its New Jersey operating permit by accepting oil contaminated with polychlorinated biphenyl (PCB), a highly toxic carcinogen.⁵ In response to that violation, the New Jersey Department of Environmental Protection (NJDEP) ordered Quanta to

1. In the Matter of Quanta Resources Corp., 55 Bankr. 696, 739 F.2d 912 (3d Cir. 1984), cert. granted sub nom. O'Neill v. New York, 106 S.Ct. 755, reh'g denied, 106 S.Ct. 1482 (1986); In re Quanta Resources Corp., 739 F.2d 927 (3d Cir. 1984), cert. granted sub nom. Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Protection, 106 S. Ct. 755, reh'g denied, 106 S. Ct. 1482 (1986).

2. Bankruptcy Reform Act of 1978, 11 U.S.C. § 554(a) (1982). See *infra* note 10 and accompanying text.

3. *Midlantic*, 106 S.Ct. at 757 (1986).

4. *Id.*

5. *Id.* The court did not specify exactly what state law(s) were violated in either the New York or New Jersey cases.

cease operating the New Jersey site and to clean it up. Before concluding negotiations on the cleanup of the New Jersey site, Quanta filed a petition for reorganization under Chapter 11 of the Bankruptcy Code of 1978.⁶ The next day, the NJDEP once more ordered Quanta to clean up the New Jersey site.⁷ A month later, Quanta converted the reorganization action into a liquidation proceeding under Chapter 7 of the Bankruptcy Code. Accordingly, a trustee was appointed.⁸

Soon after Quanta filed for bankruptcy, an investigation of the New York site revealed additional PCB-contaminated oil. Quanta's trustee unsuccessfully tried to sell that site.⁹ When those efforts failed, the trustee decided to abandon the site under Section 554(a) of the Bankruptcy Code, because the estimated cost of cleaning up this site exceeded the property's value. Section 554(a) provides: "After notice and a hearing, the trustee may abandon any property of the estate that is [financially] burdensome to the estate or that is of inconsequential value to the estate."¹⁰

After the abandonment, the city and state of New York (New York) partially decontaminated the site for \$2.5 million.¹¹ New York also provided security to keep the public out of the site and set up a fire-suppression system.¹²

New York, as a creditor, sued Quanta in Bankruptcy Court for the District of New Jersey to recover its cleanup and security expenses. The bankruptcy court approved of Quanta's abandonment and disallowed New York's expenses.¹³ New York then appealed to the U.S. District Court for the District of New Jersey.¹⁴ The District Court also approved Quanta's abandonment.

Shortly after the District Court rendered its decision, Quanta's trustee

6. Bankruptcy Act of 1978, 11 U.S.C. §§ 1101-74 (1982). When a corporation is near insolvency or is bankrupt, it "reorganizes" into a new corporation. A business plan is made whereby the new corporation buys the old corporation's foreclosed mortgages. See e.g. *People ex rel. Barrett v. Halsted St. State Bank*, 295 Ill. App. 193, 14 N.E.2d 872, 877 (1938); *De Blois v. Comm'r of Internal Revenue*, 36 F.2d 11, 12-13 (1st Cir. 1929); *Symmes v. Union Trust Co. of New York*, 60 F. 830, 870 (9th Cir. 1894).

7. *Midlantic*, 106 S.Ct. at 757.

8. *Id.* at 757-58. When a corporation distributes its assets to its creditors in the form of cash, it liquidates its assets. *Wilson v. Supreme Court in and for Santa Clara County*, 2 Cal. 2d 632, 43 P.2d 286, 288 (1935). A trustee is a disinterested person who must fulfill certain statutory duties regarding the bankrupt's estate. See Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 701, 704, 1302, 1146, and 1106 (1981).

9. *Midlantic*, 106 S.Ct. at 758.

10. Bankruptcy Reform Act of 1978, 11 U.S.C. § 554(a). A trustee may abandon property in a bankruptcy proceeding when the property reduces the value of available assets. Those assets will be distributed to the debtor's creditors. The goal is to repay the creditors the highest possible percentage of the debts owed to them.

11. *Midlantic*, 106 S.Ct. at 758.

12. *Id.*

13. *Id.*

14. *Id.* A direct appeal to the U.S. Court of Appeals from the bankruptcy court occurs when both parties consent to it. Bankruptcy Reform Act of 1978, 11 U.S.C. App. Bankruptcy Rule 8006 (1982).

gave notice of his intention to abandon the New Jersey site as well.¹⁵ In response to Quanta's announcement of intent to abandon the New Jersey site, the NJDEP requested the New Jersey Bankruptcy Court to grant an injunction requiring Quanta to clean up the site. The court denied the request.¹⁶

The New York and New Jersey cases were joined at the appellate level. The Court of Appeals for the Third Circuit reversed the lower courts' decisions and found that Congress intended that abandonment contain an implicit public policy limitation.¹⁷ On certiorari, the Supreme Court affirmed the Court of Appeals. The Supreme Court held that Quanta could not abandon the New York and New Jersey sites.¹⁸ The Court further held that a trustee in bankruptcy can abandon property under Section 554(a) of the Code only if the abandonment does not conflict with state statutes or regulations reasonably written to protect the public health or safety from identified harms.¹⁹

BACKGROUND OF THE BANKRUPTCY CODE

Bankruptcy law is federal law. The United States Constitution grants Congress the power to establish "uniform laws on the subject of Bankruptcies throughout the United States."²⁰ Under this power, Congress has consistently enacted legislation for the primary purpose of giving bankrupts an opportunity to "start afresh."²¹ Bankruptcy proceedings ordinarily serve a secondary purpose as well: to protect the interests of the bankrupt's creditors. Once liquidation proceedings begin, the bankrupt's nonexempt property is collected and sold.²² The trustee in bankruptcy distributes the cash from the sales to the creditors according to a priority system.²³

Before the enactment of the present Code,²⁴ Bankruptcy Rule 608 allowed abandonment of property only with the court's approval.²⁵ Case law also recognized the propriety of abandonment of the bankrupt's prop-

15. *Midlantic*, 106 S.Ct. at 758.

16. *Id.*

17. *Id.* at 759.

18. *Id.* at 762-63.

19. *Id.* at 762. The Court does not elaborate on what it means by "identified" harms.

20. U.S. CONST. art. I, § 8, cl. 4.

21. *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 514 (1938).

22. Exempt property is property which the bankrupt can keep for his own. *See* Bankruptcy Reform Act of 1978, 11 U.S.C. § 522 for types of exemptions.

23. Bankruptcy Reform Act of 1978, 11 U.S.C. § 507. There are seven priorities. They are divided into administrative expenses and various unsecured claims.

24. The concept of abandonment was originally judge-made. *Ottenheimer v. Whitaker*, 198 F.2d 289, 290 (4th Cir. 1952). In 1978, Congress repealed the 1898 act and created the Bankruptcy Reform Act, along with the current code. Pub. L. No. 95-598, § 401(a), 92 Stat. 2682 (1978).

25. Bankruptcy Reform Act of 1978, 11 U.S.C. App. Bankruptcy Rule 608 (1982) [originally adopted in 1973].

erty under certain circumstances.²⁶ The current Code is the first to permit abandonment without prior judicial approval under most circumstances. Judicial involvement in abandonment is required only when a dispute arises over a proposed abandonment. When such a dispute arises, a hearing is required. Absent a dispute, a proposed abandonment can be carried out automatically without a hearing.²⁷

THE COURT'S CONSTRUCTION OF SECTION 554(a)

In *Midlantic*, the Supreme Court was required to determine whether Congress intended Section 554(a) to limit a trustee's power to abandon financially burdensome property. The particular question was whether abandonment could be permitted when it might compromise state environmental laws. The Court also had an opportunity to answer the question of whether some state laws which limit abandonment beyond Section 554(a)'s "financially burdensome" limitation are so "onerous" as to interfere with bankruptcy proceedings.²⁸ The Court, however, refused to reach that question.²⁹

To decide the question of whether abandonment can compromise state law, the Court announced an operating premise: when Congress incorporates a judge-made rule into legislation, the new legislation retains all of the judge-made rule's characteristics.³⁰ If Congress wishes to change those characteristics, it must do so explicitly.³¹ Since prior case law recognized limitations on the trustee's power to abandon, the Court found those limitations implicit in the abandonment power recognized in Section 554(a) because the law did not explicitly provide otherwise.³²

The Court further supported its conclusion that Section 554(a) implicitly limits the trustee's abandonment power by resorting to explicit language in Section 362(a) of the Code and Section 959(b) of the Judiciary Act. With respect to the former, the Court reasoned that Section 362(a) of the Code expressly excepts "nonmonetary" judgments from its general prohibition against creditors' suits against the bankrupt once bankruptcy has been declared.³³ Since judgments which concern environmental protec-

26. See e.g. *In re Lewis Jones, Inc.*, 1 BANKR. CT. DEC. (CCR) 277 (Bankr. E.D. Pa. Nov. 7, 1974); *Ottenheimer*, 198 F.2d 289; *In re Chicago Rapid Transit*, 129 F.2d 1 (7th Cir. 1942). The Bankruptcy Reform Act of 1978 codified prior case law. *Midlantic*, 106 S. Ct. at 759.

27. Bankruptcy Reform Act of 1978, 11 U.S.C. App. Bankruptcy Rule 6007 (Supp. I 1982).

28. *Midlantic*, 106 S. Ct. at 762.

29. *Id.*

30. *Id.* at 759-60.

31. *Id.* at 760.

32. *Id.*

33. Bankruptcy Reform Act of 1978, 11 U.S.C. § 362(a)(5) (1982). The exception to the automatic stay provision reads in pertinent part:

(b) The filing of a petition [for a stay] . . . , does not operate as a stay— . . .

(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power . . .

tion, safety, or state police power regulations are "nonmonetary," the Court concluded that the stay provisions prevent trustees in bankruptcy from using bankruptcy to avoid compliance with state laws.³⁴ With respect to the Judiciary Act's Section 959(b), the Court found explicit direction in the requirement that the trustee "manage and operate the property . . . according to the requirements of the valid laws of the State."³⁵

The Court also supported its holding that Section 554(a) limits the trustee's abandonment power by relying on case law. First, the Court described case law that developed prior to the codification of the abandonment provision and how those cases support a public interest limitation on abandonment.³⁶ Second, the Court discussed *Ohio v. Kovacs*,³⁷ a case decided after the codification of abandonment. The Court cited *Kovacs* for the proposition that persons in possession of property, including bankruptcy trustees, who violate state environmental laws must comply with those laws.³⁸

ANALYSIS OF THE COURT'S REASONING

Although the Court's analysis is strengthened by its use of pre-Code case law, the analysis suffers from several shortcomings. First, the Court should have distinguished *Kovacs* from *Midlantic*, because *Kovacs* interprets a different provision of the Code than does *Midlantic*. *Kovacs* also illustrates an instance when the Court found that creditor interests outweigh public interests but that instance does not directly apply to *Midlantic*. The Court has yet to clarify when other such instances of creditor prevalence may occur. Second, the Court did not take into account the plain meaning of Section 554(a) or possible alternate interpretations of its legislative history. Further, the Court's reading of Section 554(a) ignored another provision in the Code which expressly provides for limited abandonment in the context of railroad abandonments. Third, the Court's analysis of the stay and Judiciary Act provisions was not convincing.

34. *Midlantic*, 106 S. Ct. at 760-62. The legislative history explicitly mentions environmental protection, safety, or similar police or regulatory laws as circumstances under which a stay is not granted. H.R. REP. NO. 595, 95th Cong., 1st Sess. 342-43 (1977); S. REP. NO. 989, 95th Cong., 2nd Sess. 51-52 (1978); 1978 U.S. CODE CONG. & AD. NEWS 5838, 6299.

35. Judiciary and Judicial Procedure Act of 1948, § 959(b), 28 U.S.C. §§ 951-63 (1982) [hereinafter the Judiciary Act]. Section 959(b) reads in pertinent part:

Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

36. *Midlantic*, 106 S. Ct. at 759.

37. 469 U.S. 274 (1985).

38. *Midlantic*, 106 S. Ct. at 760.

Federal Case Law

The Court's reliance on doctrines developed in federal case law incorporated in Section 554(a) supports a finding of a public interest limitation on abandonment. The Court cites *Ottenheimer v. Whitaker*,³⁹ *In re Chicago Rapid Transit Co.*,⁴⁰ and *In re Lewis Jones, Inc.*⁴¹ as examples of judge-made abandonment that involved limitations which Congress incorporated into Section 554.⁴²

In *Ottenheimer v. Whitaker*, the Fourth Circuit Court of Appeals held that the trustee in bankruptcy of a barge company could not abandon barges.⁴³ The plaintiff had petitioned the District Court of Maryland to allow him to abandon floating barges anchored in a harbor.⁴⁴ The district court denied the petition because the abandoned barges would sink and obstruct a navigable channel, in violation of a federal statute.⁴⁵ The court of appeals affirmed the lower court's decision by balancing the duty imposed by Congress in the public interest, the federal navigation statute in that case, against the judge-made rule of abandonment.⁴⁶ The court of appeals found that the public interest expressed in legislation prevailed over judge-made abandonment.

In *In re Chicago Rapid Transit Co.*, the Supreme Court held that the trustee in bankruptcy of a transit company could abandon a branch railway line only if such an abandonment complied with local law.⁴⁷ The municipal ordinance in that case required the lessee to permanently operate the line once it was built.⁴⁸ The Court reasoned that the state's power to regulate utilities outweighed federal common law abandonment powers because Congress had not explicitly said otherwise.⁴⁹

In the last case, *In re Lewis Jones, Inc.*, the bankruptcy court held that the trustee in bankruptcy had to seal underground steam pipes, vents, and manholes before abandonment.⁵⁰ Without sealing, this pipe system could cause gas and water leaks, rat and mosquito infestations, and hazards for both motorists and pedestrians.⁵¹ Although no state or federal law required

39. 198 F.2d 289 (4th Cir. 1952).

40. 129 F.2d 1 (7th Cir. 1942).

41. 1 BANKR. CT. DEC. (CRR) 277 (Bankr. E.D. Pa. Nov. 7, 1974).

42. *Midlantic*, 106 S.Ct. at 759.

43. *Ottenheimer*, 198 F.2d at 290.

44. *Id.* at 289-90.

45. *Id.* at 290.

46. *Id.* Federal statutes replace federal common law when the two conflict. *City of Milwaukee v. Illinois and Mich.*, 451 U.S. 304, 315 (1981).

47. *In re Chicago Rapid Transit Co.*, 129 F.2d 1, 5 (7th Cir. 1942).

48. *Id.* at 3.

49. *Id.* at 5.

50. *In re Lewis Jones, Inc.*, 1 BANKR. CT. DEC. (CRR) 277 (Bankr. E.D. Pa. Nov. 7, 1974).

51. *Id.* at 278-79.

sealing the steam lines, the court invoked its power of equity to protect the public from possible harm.⁵²

The state environmental statutes in *Midlantic* impose a duty in the public's interest not to pollute in much the same way as the federal navigation statute in *Ottenheimer* imposes a duty not to block navigable passages so as to protect a public interest. The federal Bankruptcy Code in *Midlantic* permits abandonment just as the common law in *Ottenheimer* permitted it. Thus, *Ottenheimer* is analagous to *Midlantic*. The Court uses the *Ottenheimer* analogy to support limiting abandonment to situations where the public's interest would not be harmed by it.

In both *In re Chicago Rapid Transit* and *Midlantic*, the states are exercising their police powers. That police power encompasses the regulation of utilities such as the transit system in *In re Chicago Rapid Transit*.⁵³ The police power also includes the promotion and preservation of the public's health and safety.⁵⁴ In *Midlantic*, New York and New Jersey used their police powers in legislating their environmental laws. The underlying purpose behind state police powers is to serve the public interest. Public interest, therefore, becomes the primary factor in refusing to allow trustees to abandon property in both *In re Chicago Rapid Transit* and *Midlantic*.

By passing an environmental law like the one involved in *Midlantic*, a state legislature expresses a public interest in environmental protection. On the other hand, when no law exists which expressly provides for particular environmental protection, as in *In re Lewis Jones*, an inference may be drawn that the public interest in protecting that particular evil is not yet a high priority. Nonetheless, *In re Lewis Jones* treated the non-legislated public interest in the abandoned steam lines as if it were as important as a legislated public interest. In that case, the bankruptcy court's own concern with the public's health and safety defined the public interest. This demonstrates the importance of public interest considerations, whether they are legislated or not. *Midlantic* itself is evidence of the judicial trend to recognize public interest limitations on trustees' powers.

Ohio v. Kovacs: A Need for Clarification of the Public Interest Limitation

The Court also cites its recent decision, *Ohio v. Kovacs*, for the proposition that a trustee must comply with state environmental law.⁵⁵ How-

52. *Id.* at 280.

53. See *York Water Co. v. York*, 250 Pa. 115, 95 A. 396 (1915).

54. See *Philadelphia Nat. Bank v. United States*, 666 F.2d 834 (3d Cir. 1981).

55. 105 S.Ct. 707, 711-12 (1985).

ever, the Court's reliance on this case is not well-founded. In *Kovacs*, Ohio sued Kovacs for violating state environmental laws. Kovacs operated a hazardous waste disposal site which caused fish to die, created a nuisance, and polluted public waters.⁵⁶ Kovacs had previously agreed to clean up the site under a stipulation and judgment. He filed for bankruptcy instead of cleaning up the site as stipulated and ordered.⁵⁷

The Court held that Kovacs' obligation, as a debtor, to pay for the cleanup costs of a hazardous waste disposal site is a debt subject to discharge under the Bankruptcy Code.⁵⁸ In dicta, the Court stated that anyone in possession of a contaminated site must comply with the state's environmental laws.⁵⁹ Further, the Court said that Kovacs could be prosecuted for those state violations.⁶⁰ Although *Kovacs* does not deal with abandonment, the Court said that the state need not pay for the cleanup expenses caused by violations of state environmental laws.⁶¹

The *Kovacs* Court identified only one instance where the creditors' interest prevailed over the public interest.⁶² That instance involved the debtor's ability to claim clean up costs as dischargeable debts. To fully support its conclusion is *Midlantic*, the Court must articulate other circumstances that justify the conclusion that creditor interests outweigh the public interest. The Court in *Midlantic* recognized that some state laws imposing conditions on abandonment are so "onerous" as to interfere with bankruptcy proceedings but refused to speculate about them.⁶³ The Court appears to be signalling that it will favor the creditor interests if state law is too "onerous." But, if the state law is not very "onerous," it will favor the public interest. Surely, the states, debtors, and creditors need better guidance. To clarify, when the creditor or public interest should dominate, the Court should have first decided whether an "onerous" standard applies to creditor/public interest conflicts. Then it should have defined the standard of onerousness that results in subordinating public interests to creditor interests.

56. *Id.* at 707.

57. *Id.*

58. *Id.* at 710. Under certain circumstances, claims against the debtor are not allowed and therefore are discharged. See Bankruptcy Reform Act of 1978, 11 U.S.C. § 502.

59. *Kovacs*, 469 U.S. 274, 285 (1985).

60. *Id.* at 284.

61. If Quanta had heeded *Kovacs*, it could have avoided the cleanup costs from the New York and New Jersey sites. Had Quanta begun cleanup procedures prior to bankruptcy or finalized its cleanup negotiations prior to bankruptcy, under *Kovacs*, the obligation to clean up would have been discharged. Quanta's creditors, therefore, would not have lost any additional money because of Quanta's bankruptcy and environmental law violations.

62. Because Kovacs' debt was discharged, his estate did not have to pay the debt. Not having to pay the debt, the estate had additional funds with which to pay Kovacs' creditors. Thus, the Court favored the creditors' interests.

63. *Midlantic*, 106 S. Ct. at 762.

A Plain Reading of Section 554(a)

Although the Court's analysis of the pre-Code case law supports its finding a public interest limitation on abandonment, the Bankruptcy Code's language and legislative history do not necessary do. Section 554(a) is silent about limitations on the trustee's power to abandon based on public interest protections. The only express condition placed upon abandonment is that the property be "burdensome to the estate" or of "inconsequential value."

Section 554(a)'s legislative history is not a helpful guide to its interpretation. The legislative history of Section 554(a) neither supports nor denies a limited abandonment theory.⁶⁴ Further, when Congress wishes to protect the public interest over the interest of creditors, it has done so explicitly. For example, railroads may be abandoned only when consistent with the public interest.⁶⁵ Congress' silence on a public interest limitation in Section 554(a) is significant in light of its express recognition of limited abandonment in the railroad provision. That silence may be interpreted as a purposeful exclusion of limitations on abandonment.⁶⁶

The Automatic Stay Provision

The Court's use of the automatic stay provision⁶⁷ and the Judiciary Act provision⁶⁸ as evidence that environmental concerns command special consideration in the Code is not convincing. The stay provision exception allows the government to enforce "nonmonetary" judgments when environmental litigation takes place.⁶⁹

The exception for nonmonetary judgments is consistent with the legislative purpose of preserving the bankrupt's assets for creditors, because nonmonetary judgments do not directly tap the bankrupt's financial resources. On the other hand, to limit abandonment is inconsistent with the Code. Limiting abandonment would drain the bankrupt's available assets because of both the costs of maintenance of a nonprofitable site

64. H.R. REP. NO. 595, 95th Cong. 1st Sess. 377 (1977); S. REP. NO. 989, 95th Cong. 2nd Sess. 92 (1978).

65. Bankruptcy Reform Act of 1978, 11 U.S.C. § 1170(a) addresses limited abandonment; however it applies only to railroads. It reads in pertinent part:

§ 1170 Abandonment of railroad line. (a) The court, after notice and a hearing, may authorize the abandonment of a railroad line if such abandonment is—(1)(A) in the best interest of the estate; or (B) essential to the formulation of a plan; and (2) consistent with the public interest.

66. *Midlantic*, 106 S. Ct. at 766 (Rehnquist, J. joined by Burger, C.J., White, and O'Connor, J.J., dissenting). The Supreme Court must read statutes as a whole and not construe statutory phrases in isolation. *U.S. v. Morton*, 467 U.S. 822, 828 (Ct. Cl. 1984).

67. Bankruptcy Reform Act of 1978, 11 U.S.C. § 362(a)(5).

68. Judiciary Act, 28 U.S.C. § 959(b).

69. H. R. REP and S. REP., *supra* note 34.

and the costs of cleanup. Therefore, allowing limitless abandonment of financially burdensome property would better further a major goal of bankruptcy by aiding creditors in receiving all that the bankrupt owes them.

The Judiciary Act Provision

The Court's reliance on the Judiciary Act provision is also misplaced. The Judiciary Act provides that trustees "manage and operate estates" according to state law.⁷⁰ When a trustee abandons a site in a liquidation proceeding, the site ceases to operate. In that situation, the trustee cannot "manage" or "operate" the site, because there is nothing to manage or operate.⁷¹ If there is nothing to manage or operate in an abandonment situation, the question of whether or not a state law applies to that management and operation of the site is moot.

CONCLUSION

The Court in *Midlantic* held that abandonment could be denied when the public's health and safety interests are affected in a sufficiently adverse manner. The Court based its holding on its interpretation of Section 554(a)'s language, the automatic stay provision, the Judiciary Act provision, and on previous federal case law. Although the Court's use of federal case law supports a theory of a limited abandonment power, the Court must clarify what standards will be used in deciding when state environmental laws are too "onerous" to allow public interests to prevail in abandonment situations. Additionally, the statutory language of Section 554(a) and its legislative history do not necessarily support the Court's holding. Furthermore, the connections the Court makes between the automatic stay provision, the Judiciary provision, and Section 554(a) are poor and therefore provide unconvincing support for the proposition that Congress intended to incorporate public interest limitations on the trustee's power to abandon financially burdensome property.

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70. Judiciary Act, 28 U.S.C. §959(b). *In re Adelphi Hosp. Corp.* held that in a liquidation proceeding, a trustee is not a manager of an institution. 579 F.2d 726, 729 (2d Cir. 1978).

71. *Midlantic*, 106 S. Ct. at 766 (Rehnquist, J., dissenting).