

The Burger Court Opinion Writing Database

Midlantic National Bank v. New Jersey Department of Environmental Protection

474 U.S. 494 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

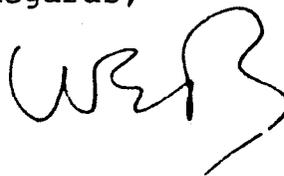
December 4, 1985

No. 84-801 - Midlantic Bank v. N.J. Department
of Environmental Protection
No. 84-805 - O'Neill v. City of New York

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

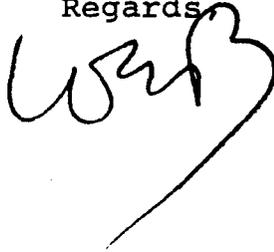
January 23, 1986

Re: No. 84-801 - Midlantic National Bank v. New Jersey
Department of Environmental Protection;
No. 84-805 - O'Neill v. New York

Dear Bill:

Having joined your original circulation of December 4,
I join your dissent.

Regards



Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 21, 1985

No. 84-801) Midatlantic Bank
) v. N.J. Dept.
) Environmental
) Protection
)
) O'Neill v. City
No. 84-805) of New York

Dear Thurgood, Harry and Lewis:

We four are in dissent in the
above. Would you be willing, Lewis, to
take it on?

Sincerely,



Justice Marshall

Justice Blackmun

Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

November 26, 1985

No. 84-801) Midlantic National Bank
) v. New Jersey Dept. of
) Environmental Protection
)
No. 84-805) O'Neill v. New York

Dear Lewis,

Please join me in your dissent in the above.

Sincerely,



Justice Powell

Copies to the Conference

12

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 30, 1985

No. 84-801) Midlantic
) National Bank
) v. New Jersey
) Department of
) Environmental
) Protection
)
) O'Neill
No. 84-805) v. New York

Dear Lewis,

I agree.

Sincerely,

Justice Powell

Copies to the Conference

82 DEC 30 11:02

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CHAMBERS OF
JUSTICE BYRON R. WHITE

Supreme Court of the United States
Washington, D. C. 20543

November 18, 1985

84-801 & 84-805 -

Midlantic National Bank v. New Jersey
Department of Environmental Protection;

O'Neill v. City of New York, et al

Dear Bill,

Please join me.

Sincerely yours,

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 17, 1986

84-801 - Midlantic National Bank v. New
Jersey Department of Environmental Protection

84-805 - O'Neill v. City of New York

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

82 10 17 1986

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 2, 1985

Re: Nos. 84-801 and 805-Midlantic Nat'l Bank v.
New Jersey Dept. of Environmental Protection and
O'Neill v. City of New York

Dear Lewis:

Please join me in your dissent.

Sincerely,



T.M.

Justice Powell

cc: The Conference



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 21, 1986

Re: Nos. 84-801 and 84-805-Midlantic v. New Jersey
and O'Neill v. New York

Dear Lewis:

Please join me.

Sincerely,

T.M.

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 29, 1985

Re: No. 84-801) Midatlantic Bank v. New Jersey
Department of Environmental Protection
No. 84-805) O'Neill v. City of New York

Dear Lewis:

Please join me in your dissent.

Sincerely,



Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

✓

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1985

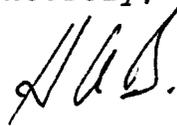
Re: No. 84-801) Midatlantic Bank v. New Jersey
Department of Environmental Protection
No. 84-805) O'Neill v. City of New York

Dear Lewis:

By separate note, I am joining your opinion.

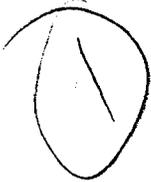
Although of no great consequence, two matters concern me: (1) I do not understand the reference to "Post, at 5" in the center of page 7. (2) In the fourth line of page 4 is a reference to 11 U.S.C. §405(c)(1)(B). I believe there is no such section. There is one in the Bankruptcy Reform Act of 1978. Bill Rehnquist had the correct reference, I think, at the top of page 4 of his proposed majority opinion as recirculated December 4.

Sincerely,



- ① Post at 8-9
- ② § 405 (c)(1)(B) of the
Bankruptcy Act of 1978

Justice Powell



RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

Supreme Court of the United States
DEC 30 1985

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1985

Re: No. 84-801) Midatlantic Bank v. New Jersey
Department of Environmental Protection
No. 84-805) O'Neill v. City of New York

Dear Lewis:

Please join me.

Sincerely,

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 21, 1985

84-801 Midatlantic Bank v. N.J. Dept.
84-805 O'Neill v. City of New York

Dear Bill:

Although my vote to affirm was quite tentative, and I find the case troubling, I will be glad to try my hand at a dissent.

Sincerely,



Justice Brennan

lfp/ss

cc: Justice Marshall
Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 19, 1985

84-801 Midlantic National Bank v. New Jersey
84-805 O'Neill v. City of New York

Dear Bill:

Bill Brennan has assigned me the task of writing a dissent in accordance with my Conference vote. In due time I will circulate one.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

11/26

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: NOV 26 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[November —, 1985]

JUSTICE POWELL, dissenting.

The Court today construes 11 U. S. C. § 554(a)¹ of the Bankruptcy Code of 1978 to permit a trustee in bankruptcy to abandon property that is burdensome or of inconsequential value to the estate without regard to "any general requirement of compliance with state regulatory laws." *Ante*, at —. The Court recognizes only a narrow restriction on this abandonment power, such as "where abandonment by the trustee might itself create a genuine emergency that the trustee would be uniquely able to guard against." *Ante*, at —. I believe, however, that the meaning of § 554 must be determined in the light of the restricted pre-1978 abandon-

¹ Section 554(a) reads:

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate."

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12/27

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

DEC 27 1985

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[December —, 1985]

JUSTICE POWELL, delivered the opinion of the Court.

These petitions for certiorari, arising out of the same bankruptcy proceeding, present the question whether 11 U. S. C. § 554(a)¹ of the Bankruptcy Code authorizes a trustee in bankruptcy to abandon property in contravention of state laws or regulations that are reasonably designed to protect the public's health or safety.

I

Quanta Resources Corporation (Quanta) was once in the business of processing waste oil at two facilities, one in Long Island City, New York, and the other in Edgewater, New

¹Title 18 U. S. C. § 554(a) reads:

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate."

John
12/27

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12/30

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT -
THE STATEMENT OF FACTS

From: **Justice Powell**

Circulated: _____

Recirculated: DEC 30 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

These petitions for certiorari, arising out of the same bankruptcy proceeding, present the question whether 11 U. S. C. § 554(a)¹ of the Bankruptcy Code authorizes a trustee in bankruptcy to abandon property in contravention of state laws or regulations that are reasonably designed to protect the public's health or safety.

I

Quanta Resources Corporation (Quanta) processed waste oil at two facilities, one in Long Island City, New York, and the other in Edgewater, New Jersey. At the Edgewater fa-

¹Section 554(a) reads:

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate."

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

January 9, 1986

84-801 and 84-805 Midlantic Bank, et seq.

Dear John:

Your letter of January 7 is helpful.

I agree that abandonment could be authorized where appropriate steps were taken with the approval of the bankruptcy court to protect the health and safety of the public.

I enclose xerox copies of pages 6, 10 and 12 of my draft of December 30 on which I have indicated changes. I believe these meet your concerns. I will, of course, consider any language changes you may suggest.

Sincerely,

Justice Stevens

lfp/ss

that the trustee of a debtor transit company could not cease its operation of a branch railway line when local law required continued operation. While the court did not forbid the trustee to abandon property (*i. e.*, to reject an unexpired lease), it conditioned his actions to ensure compliance with state law. Similarly, in *In re Lewis Jones, Inc.*, 1 B. C. D. 277 (Bkrcty Ct. ED Pa. 1974), the bankruptcy court invoked its equitable power to "safeguard the public interest" by requiring the debtor public utilities to seal underground steam lines before abandoning them.

Thus, when Congress enacted § 554, there were well-recognized restrictions on a trustee's abandonment power. In codifying the judicially-developed rule of abandonment, Congress also presumably included the established corollary that a trustee could not exercise his abandonment power in violation of certain state and federal laws. The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific. *Edmonds v. Compagnie Generale Transatlantique*, 443 U. S. 256, 266-267 (1979). The Court has followed this rule with particular care in construing the scope of bankruptcy codifications. If Congress wishes to grant the trustee an extraordinary exemption from non-bankruptcy law, "the intention would be clearly expressed, not left to be collected or inferred from disputable considerations of convenience in administering the estate of the bankrupt." *Swarts v. Hammer*, 194 U. S. 441, 444 (1904); see *Palmer v. Massachusetts*, 308 U. S. 79, 85 (1939) ("If this old and familiar power of the states [over local railroad service] was withdrawn when Congress gave district courts bankruptcy powers over railroads, we ought to find language fitting for so drastic a change").[^]

III

Neither the Court nor Congress has granted a trustee in bankruptcy powers that would lend support to a right to

Although these cases do not define for us the exact contours of the trustee's abandonment power, they do make clear that this power was subject to certain restrictions when Congress enacted § 554(a).

January 15, 1986

84-801 Midlantic Bank

Dear John:

I will be glad to make the changes suggested in your letter of January 14.

I enclose two riders: one that would replace the full paragraph on page 10; and a second that would replace the final paragraph on page 12. I have made only an occasional language change in what you suggest.

I am assuming that these changes will be satisfactory to Bill Brennan and Harry who have joined me, as I view your language as a clearer statement of what the opinion already purports to say. I appreciate your interest and assistance.

Sincerely,

Justice Stevens

lfp/ss

January 15, 1986

84-801 Midlantic

Rider A, p. 10

Even though §959(b) does not directly apply to an abandonment under §554(a) of the Bankruptcy Code - and therefore does not delimit the precise conditions on an abandonment - the section nevertheless supports our conclusion that Congress did not intend for the Bankruptcy Code to preempt all state laws that otherwise constrain the exercise of a trustee's powers.

January 15, 1986

84-801 Midlantic

Rider A, p. 12

In the light of the Bankruptcy trustee's restricted pre-1978 abandonment power and the limited scope of other Bankruptcy Code provisions, we conclude that Congress did not intend for §554(a) to preempt all state and local laws. The Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public's health and safety. Accordingly, without reaching the question whether certain state laws imposing conditions on abandonment may be so onerous as to interfere with the bankruptcy adjudication itself, we hold that a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards.¹ Accordingly, we affirm the judgment of the Court of Appeals for the Third Circuit.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

Changes as marked on
pages 1, 7, 10, and 11-12

From: Justice Powell

Circulated: _____

Recirculated: Jan. 17, 1986

LAF
12/10/85
SP

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

These petitions for certiorari, arising out of the same bank-
ruptcy proceeding, present the question whether 11 U. S. C.
§ 554(a)¹ of the Bankruptcy Code authorizes a trustee in
bankruptcy to abandon property in contravention of state
laws or regulations that are reasonably designed to protect
the public's health or safety.

¹Section 554(a) reads:

"After notice and a hearing, the trustee may abandon any property of
the estate that is burdensome to the estate or that is of inconsequential
value to the estate."

Technical amendments in the Bankruptcy Amendments and Federal
Judgeship Act of 1984 added the words "and benefit" after "value" in
§ 554(a). Pub. L. 98-353, Tit. III, § 468(a), 98 Stat. 380 (1984). *

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01/22

To: The Chief Justice
Justice Brennan ✓
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

Stylistic Changes Throughout

From: **Justice Powell**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE POWELL delivered the opinion of the Court.

These petitions for certiorari, arising out of the same bankruptcy proceeding, present the question whether § 554(a) of the Bankruptcy Code, 11 U. S. C. § 554(a),¹ authorizes a trustee in bankruptcy to abandon property in contravention of state laws or regulations that are reasonably designed to protect the public's health or safety.

¹Section 554(a) reads:

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate."

Technical amendments in the Bankruptcy Amendments and Federal Judgeship Act of 1984 added the words "and benefit" after "value" in § 554(a). Pub. L. 98-353, Tit. III, § 468(a), 98 Stat. 380.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

NOV 15 1985

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[November —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

These two petitions for certiorari, which arise out of the same bankruptcy proceeding, present the question whether a bankruptcy court may condition a trustee's abandonment of property upon compliance with state and local environmental laws. We decide that the trustee's authority to "abandon any property that is burdensome to the estate or that is of inconsequential value to the estate," 11 U. S. C. § 554(a), is not subject to any general requirement of compliance with state regulatory laws.

In October 1981, Quanta Resources Corp. (Quanta) filed a voluntary petition in bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.* The following month the action was converted to a liquidation proceeding under Chapter 7, and Thomas J. O'Neill, petitioner in No. 84-805, was thereupon appointed trustee in bankruptcy. At the time it filed the bankruptcy petition, Quanta was in

THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT

pp. 2, 4, 9, 11

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: NOV 21 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[November —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

These two petitions for certiorari, which arise out of the same bankruptcy proceeding, present the question whether a bankruptcy court may condition a trustee's abandonment of property upon compliance with state and local environmental laws. We decide that the trustee's authority to "abandon any property" that is "burdensome" to the estate or that is of "inconsequential value" to the estate, 11 U. S. C. §554(a) (1982 ed., Supp. II), is not subject to any general requirement of compliance with state regulatory laws.

In October 1981, Quanta Resources Corp. (Quanta) filed a voluntary petition in bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U. S. C. §1101 *et seq.* The following month the action was converted to a liquidation proceeding under Chapter 7, and Thomas J. O'Neill, petitioner in No. 84-805, was thereupon appointed trustee in bankruptcy. At the time it filed the bankruptcy petition, Quanta was in

COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Pg 8, 10, 13

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: DEC 4 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[December —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

These two petitions for certiorari, which arise out of the same bankruptcy proceeding, present the question whether a bankruptcy court may condition a trustee's abandonment of property upon compliance with state and local environmental laws. We decide that the trustee's authority to "abandon any property" that is "burdensome" to the estate or that is of "inconsequential value" to the estate, 11 U. S. C. § 554(a) (1982 ed., Supp. II), is not subject to any general requirement of compliance with state regulatory laws.

In October 1981, Quanta Resources Corp. (Quanta) filed a voluntary petition in bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U. S. C. § 1101 *et seq.* The following month the action was converted to a liquidation proceeding under Chapter 7, and Thomas J. O'Neill, petitioner in No. 84-805, was thereupon appointed trustee in bankruptcy. At the time it filed the bankruptcy petition, Quanta was in

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JAN 15 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801 *v.*
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805 *v.*
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE REHNQUIST, dissenting.

The Court today concludes that Congress did not intend the abandonment provision of the Bankruptcy Code, 11 U. S. C. § 554(a), to preempt "certain state and local laws." In something of a surprise ending, the Court limits the class of laws that can prevent an otherwise authorized abandonment by a trustee to those "reasonably designed to protect the public health or safety from identified hazards." While this limitation reduces somewhat the scope of my disagreement with the result reached, it renders both the *ratio decidendi* and the import of the Court's opinion quite unclear. More important, I remain unconvinced by the Court's arguments supporting state power to bar abandonment. The two principle grounds offered—that Congress codified "well-recognized restrictions of a trustee's abandonment power," and that 28 U. S. C. § 959(b) "applies" to a trustee's decision to abandon burdensome or valueless property—are particularly

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Changes pp. 1, 2, 7, 8, 10
STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

JAN 22 1986

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE REHNQUIST, dissenting.

The Court today concludes that Congress did not intend the abandonment provision of the Bankruptcy Code, 11 U. S. C. § 554(a), to preempt "certain state and local laws." In something of a surprise ending, the Court limits the class of laws that can prevent an otherwise authorized abandonment by a trustee to those "reasonably designed to protect the public health or safety from identified hazards." While this limitation reduces somewhat the scope of my disagreement with the result reached, it renders both the *ratio decidendi* and the import of the Court's opinion quite unclear. More important, I remain unconvinced by the Court's arguments supporting state power to bar abandonment. The principal and only independent grounds offered—that Congress codified "well-recognized restrictions of a trustee's abandonment power"—is particularly unpersuasive. It rests on a misreading of three pre-Code cases, the elevation

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p. 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: JAN 23 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 84-801 AND 84-805

MIDLANTIC NATIONAL BANK, PETITIONER
84-801
v.
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

THOMAS J. O'NEILL, TRUSTEE IN BANKRUPTCY OF
QUANTA RESOURCES CORPORATION, DEBTOR,
PETITIONER
84-805
v.
CITY OF NEW YORK ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[January —, 1986]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE,
JUSTICE WHITE and JUSTICE O'CONNOR join, dissenting.

The Court today concludes that Congress did not intend the abandonment provision of the Bankruptcy Code, 11 U. S. C. § 554(a), to preempt "certain state and local laws." In something of a surprise ending, the Court limits the class of laws that can prevent an otherwise authorized abandonment by a trustee to those "reasonably designed to protect the public health or safety from identified hazards." While this limitation reduces somewhat the scope of my disagreement with the result reached, it renders both the *ratio decidendi* and the import of the Court's opinion quite unclear. More important, I remain unconvinced by the Court's arguments supporting state power to bar abandonment. The principal and only independent ground offered—that Congress codified "well-recognized restrictions of a trustee's abandonment power"—is particularly unpersuasive. It

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 5, 1985

Re: 84-801 - Midlantic National Bank v.
New Jersey Department of
Environmental Protection
84-805 - O'Neill v. City of New York

Dear Bill:

When I first read your circulating draft, I was troubled by three comments: (1) the statement on page 1 that the abandonment power is "not subject to any general requirement of compliance with state regulatory laws"; (2) the conclusion in footnote 4 on page 11 that a state prohibition against the disposal of hazardous wastes is preempted by § 554(a); and (3) the "dynamite-in-the-schoolhouse" example that is used on page 14 to illustrate the scope of a possible condition on abandonments that themselves create emergencies that the trustee is uniquely able to guard against. I therefore thought that I would try to formulate some suggested editorial changes that would clarify the scope of the holding, or perhaps identify the contours of the dynamite exception, but further study of the case has undermined my confidence in my Conference vote.

As the case comes to us, it appears to involve nothing more than a fight over dollars. The clean-up has been completed, the abandonment did not cause any harm to the environment, and the remaining dispute merely concerns the allocation of costs among creditors. In this context, it surely seems appropriate to hold that federal law should provide a sure and simple answer to the abandonment question.

But the case presented to the bankruptcy judge at the time the initial abandonment decision was made--and the case reviewed by the District Court,

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 7, 1986

Re: 84-801 - Midlantic National Bank v.
New Jersey Department of
Environmental Protection
84-805 - O'Neill v. City of New York

Dear Lewis:

There is some question in my mind about the exact reach of the holding in your proposed opinion. The pre-1978 abandonment cases that you discuss, and in particular the Chicago Rapid Transit case and the Lewis Jones case, suggest that there can be no abandonment without imposing appropriate conditions. Although the Ottenheimer case seems to suggest that there can be no abandonment at all when it would violate an independent safety rule, the safety rule in that case simply required the debtor "to care for or dispose of [the property] in the manner prescribed by the statute." 198 F.2d, at 290.

In this case, as you point out on page 3 and in footnote 3, no conditions were imposed. Thus, this abandonment was plainly improper. But what if the bankruptcy judge had imposed conditions that required the trustee to maintain the guard service and make enough temporary repairs to forestall any imminent danger of a serious tragedy? The last paragraph of your opinion seems to state that such an abandonment would also be impermissible.

§ 959

I found that I could not subscribe to Bill Rehnquist's proposed disposition because it seemed to authorize the trustee to abandon without any constraint whatsoever imposed by State law. You have convinced me that that position is untenable. I am inclined to believe that the opposite extreme would be equally unsatisfactory. Specifically, I could not subscribe to a holding that the State could veto any abandonment, no matter how many safety precautions

were taken and no matter how much money the estate had spent in an effort to rectify the problem. At some point it will become necessary to close the estate and at that time there may be no alternative to an abandonment that violates State law.¹ *at.*

Thus, I wonder if it might be wise to narrow our holding by stating explicitly (1) that it was error to authorize the abandonment without imposing ~~any~~ safety conditions and (2) that we are not holding that there are no circumstances that could ever justify an abandonment that may violate State law-- there may be cases in which an estate could not otherwise be closed.

Respectfully,



Justice Powell

¹The underlying dispute, of course, is how to finance the cleanup costs that must be incurred as a consequence of the debtor's pre-bankruptcy conduct. That dispute will be affected by both State and Federal rules of law that have not been brought to our attention in this proceeding, and we obviously cannot say very much about it. (My very tentative assumption is that those costs can properly be assessed against the unencumbered assets of the estate, but probably not against secured creditors.) In any event, it seems to me that it may have been error for the Bankruptcy Court to approve the abandonment without first deciding, at least in a general way, how the cleanup costs were to be allocated.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 14, 1986

Re: 84-801 - Midlantic National Bank v.
New Jersey Department of
Environmental Protection
84-805 - O'Neill v. City of New York

Dear Lewis:

As always, I am grateful for your willingness to try to accommodate my concerns. I think your proposed change on page 6 is fine but I am still somewhat troubled both by the reliance on § 959(b) and by the breadth of the concluding paragraph in the opinion.

With respect to § 959(b), I wonder if instead of squarely holding that the section applies to abandonment--a holding which I really think is quite doubtful--would it not be sufficient merely to rely on it as additional evidence that Congress did not intend the Bankruptcy Code to preempt all state laws. It seems to me that this point could be made by eliminating the paragraph that now appears on page 10 and simply adding at the end of the preceding paragraph the substance of the sentence that you have proposed as an additional insert. In other words, perhaps the run-over paragraph that ends with the sentence reading something like this: "Even though § 959(b) does not directly apply to an abandonment under § 554(a) of the Bankruptcy Code--and therefore does not delimit the precise conditions on an abandonment--the section nevertheless supports our conclusion that Congress did not intend the Bankruptcy Code to preempt all state laws that otherwise constrain the exercise of a trustee's powers." (Perhaps in the first line of page 10, instead of merely noting that § 959(b) commands "the debtor in possession" to comply with state law, it might be appropriate to insert the word "trustee" because that word does appear in § 959(b)).

could end?

OK

OK

OK

Would you also consider a revision of the final paragraph in the opinion to read this way:

"In the light of the restricted pre-1978 abandonment power of the Bankruptcy trustee and in the context of the limited scope of other Bankruptcy Code provisions, we conclude that the trustee's general duty to comply with state law, including State environmental laws, is applicable in the abandonment context. Congress did not intend § 554(a) as a total preemption of all conflicting state and local laws. The Bankruptcy Court does not have the power to authorize an abandonment without ² making any effort to formulate conditions that will adequately protect the public's health and safety. Accordingly, without reaching the question whether state laws imposing conditions on abandonment that may be so onerous as to interfere with the Bankruptcy adjudication itself, we hold that a trustee may not abandon property in contravention of a state statute or regulation that is reasonably designed to protect the public health or safety from identified hazards.^{11/} Accordingly, we affirm the judgment of the Court of Appeals for the Third Circuit." } 076

⁰⁷⁶
11/"This exception to the abandonment power vested in the trustee by § 554 is a narrow one. It does not encompass a speculative or indeterminate future violation of such laws that may stem from abandonment. The abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm."

Respectfully,

Justice Powell



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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Supreme Court of the United States
Washington, D. C. 20543

January 17, 1986

Re: 84-801 - Midlantic National Bank v.
New Jersey Department of
Environmental Protection
84-805 - O'Neill v. City of New York

Dear Lewis:

Please join me.

Respectfully,

Justice Powell

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 15, 1985

No. 84-801 Midlantic National Bank v. N. J.
Department of Environmental Protection
No. 84-805 O'Neill v. City of New York

Dear Bill,

Please join me.

Sincerely,

Justice Rehnquist

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 15, 1986

No. 84-801 Midlantic National Bank v. New Jersey
Department of Environmental Protection
No. 84-805 O'Neill v. City of New York

Dear Bill,

Please join me in your dissent.

Sincerely,



Justice Rehnquist

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