BANKRUPTCY LAW NEWSLETTER

Published by Federal Bar Association
Western District of Michigan Chapter

VOLUME 7, NO. 2 November, 1994

Dan Cassamatta (1996)	616-456-2002	Tom Sarb (1995)	616-459-8311
John Grant (1997)	616-774-0641	Bob Sawdey (1996)	616-774-8121
Tim Hillegonds (1995)	616-459-6121	Tom Schouten (1997)	616-538-6380
Jeff Hughes (1996)	616-336-6000	Peter Teholiz, Editor (1995)	517-886-7176
Pat Mears (1995)	616-776-7550	Janet Thomas (1996)	616-726-4823
Hal Nelson (1997)	616-459-9487	Rob Wardrop (1997)	616-459-1225
Steven Rayman, Chair-elect (1995)	616-345-5156	Bob Wright, Chair (1995)	616-454-8656
Brett Rodgers (1997)	616-732-9000		

ANATOMY OF A SUCCESSFUL SALE OF CONTAMINATED PROPERTY IN BANKRUPTCY

By: Joseph E. Quandt[1]

The issue of contaminated property is one which frequently arises in the administration of Bankruptcy Estates and confounds many professionals in the Bankruptcy arena. How to prevent acquiring it, how to address compliance issues, and how to dispose of it are the questions to which most practitioners need answers.

This article will deal with the latter of these questions. Although this article specifically addresses the sale of such a property from the Chapter 7 Trustee's perspective, the elements of the practical aspects of how to execute such a transfer may be applied to facilitate any sale.

Contaminated property frequently finds itself in a bankruptcy forum because of the poor environmental compliance practices of the debtor which frequently precede the debtor's petition. Many petitions are filed by debtors who find themselves looking at enormous cleanup costs and/or civil fines for the contamination of property. Whether a Chapter 7 Trustee has an auditing procedure or not, the Trustee will frequently discover via Michigan Department of Natural Resources, or United States Environmental Protection Agency, communication that they are the proud owners of a site of contamination. However, more frequently the Trustee discovers that a parcel is contaminated through a due diligence search by a potential purchaser of the property. Due diligence environmental audits are now required if a party wishes to assert an "innocent party" defense to contamination.[2] It is at this point that the willingness of a willing buyer and seller are tested.

---

[1] *Joseph Quandt is an associate attorney with Smith, Johnson & Brandt, Attorneys, P.C., in Traverse City, Michigan. Mr. Quandt's practice focuses on environmental law and bankruptcy litigation having represented debtors, creditors and Trustees. Before joining Smith, Johnson & Brandt, Mr. Quandt worked for the Compliance and Enforcement Section of the Environmental Response Division with the Michigan Department of Natural Resources.*

[2] *See section 12(a) of the Michigan Environmental Response Act (MERA) 1982 P.A. 307 as amended, or the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 42 USC 9601 et. seq.*