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Schatzman v. Department of Health and Rehabilitative Services (In re King Memorial Hospital), 4 B.R. 704 (S.D. Fla. 1980)

Randall Marker

CASE NOTES

Bankruptcy Law—When is a Governmental Unit's Action to Enforce its Police or Regulatory Power Exempt from the Automatic Stay Provisions of Section 362?—*Schatzman v. Department of Health and Rehabilitative Services (In re King Memorial Hospital)*, 4 B.R. 704 (S.D. Fla. 1980).

Section 362 of the United States Bankruptcy Code (the Code) provides for an automatic stay of judicial, administrative, or other proceedings brought against the debtor upon the debtor's filing of a petition in bankruptcy.[1] The automatic stay is designed to provide debtor protection by giving the debtor a "breathing spell" from his creditors.[2] The provision for an automatic stay, however, is not without exceptions. Section 362(b)(4) of the Code exempts from the automatic stay an action or proceeding by a governmental unit to enforce its police or regulatory power.[3] In *Schatzman v. Department of Health and Rehabilitative Services (In re King Memorial Hospital)*,[4] the Bankruptcy Court for the Southern District of Florida held that Section 362(b)(4) of the Code did not apply to a Department of Health and Rehabilitative Services (HRS) action to forfeit the bankrupt King Memorial Hospital's exemption from certificate-of-need review.[5] In order to determine when a state action falls within the Section 362(b)(4) exception,

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1. 11 U.S.C. § 362 (Supp. III 1979) provides in part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, applicable to all entities, of—
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> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
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> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
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> (3) any act to obtain possession of property of the estate or of property from the estate . . . .

2. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 340 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6296-97.

3. 11 U.S.C. § 362(b)(4) 1979 provides in pertinent part that "[t]he filing of a petition . . . does not operate as a stay . . . of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power."

4. 4 B.R. 704 (S.D. Fla. 1980).

5. *Id.* at 708.

this note will examine the *Schatzman* decision, and other Section 362(b)(4) decisions.

On October 2, 1979, King Memorial Hospital filed a chapter 11 bankruptcy petition. A trustee was appointed by the bankruptcy court to operate the hospital during the bankruptcy administration.[6] In November 1979, HRS determined that the hospital had forfeited its exemption from certificate-of-need review to construct a 126-bed hospital.[7] HRS gave the debtor-hospital thirty days to request an administrative hearing.[8] Responding to the HRS determination of forfeiture, the trustee filed a suggestion of bankruptcy with HRS, citing entitlement to an automatic stay of HRS's action pursuant to Section 362 of the Code. HRS filed an order stating that the automatic stay provisions do not operate in an action or proceeding by a governmental unit to enforce its police or regulatory powers.[9]

The bankruptcy court in *Schatzman* determined that HRS's action was "subject to the automatic stay provision of Section 362 and [was] not the exercise of a governmental unit's police power to

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6. *Id.* at 706.

7. *Id.* at 705. FLA. STAT. § 381.493(3)(d)(1979) defines certificate of need as "a written statement issued by the department [of Health and Rehabilitative Services] evidencing community need for a new, converted, expanded, or otherwise significantly modified health care facility, health service, or hospice."

Normally, the construction of a 126-bed general hospital would require the hospital to file an application for a certificate of need. In this case, however, the hospital had established its exemption from the certificate-of-need laws pursuant to Ch. 78-194 § 1, 1978 Fla. Laws 607, which provided: "[s]ections 381.493-381.496 shall not affect any health-care facility project for which land has been acquired and preliminary construction plans have been prepared and filed with the Department of Health and Rehabilitative Services prior to July 1, 1973." Since the land was acquired for the construction of the 126-bed hospital and preliminary construction plans were filed with HRS prior to July 1, 1973, King Memorial Hospital qualified for this exemption. 4 B.R. at 706.

During the months of June, July, August, September, October, and November, HRS made several visits to the site for the proposed new King Memorial Hospital. It determined that no construction was under way. Therefore, it decided that the hospital had forfeited its exemption from certificate-of-need review and that the hospital would be required to obtain a certificate-of-need in order to receive a hospital license for its proposed 126-bed hospital. Administrative Complaint of Respondent (May 6, 1980).

Ch. 78-194 § 3, 1978 Fla. Law 608 repealed that portion of Florida Statutes 381.497 (1973) which had established the hospital's exemption from certificate-of-need review. HRS regulations 10-5.02(21) and 10-5.05(2) of the Florida Administrative Code required that an exempt project under Ch. 78-194 § 1, 1978 Fla. Laws 607 must be under physical and continuous construction pursuant to final construction plans being filed with HRS by July 1, 1979, to preserve the project's exemption. "Continuous construction is defined as activities beyond site preparation." Administrative Complaint of Respondent (May 6, 1980).

8. FLA. STAT. ch. 120 (1979) (Administrative Procedures Act).

9. 4 B.R. 704, 705-06 (S.D. Fla. 1980).

protect the public health and safety."[10] As a factor in its decision, the court pointed to HRS's delay in bringing its determination of forfeiture; HRS waited almost 4½ months after it could have originally initiated action, and forty-five days after the debtor had filed its bankruptcy petition. More important, the court found that HRS failed to demonstrate that public health and welfare was the overriding factor in HRS's determination. The court stated that HRS's witness gave no testimony that the protection of the public health or welfare was at stake. Additionally, the court found that the Health Facilities and Health Services Planning Act, under which HRS's determination was brought, was not enacted to protect the public health and welfare.[11] For the foregoing reasons, the court stayed HRS's action pursuant to Section 362 of the Code.[12]

In reaching its decision, the *Schatzman* court closely examined the legislative history of Section 362. Since the new Bankruptcy Code became effective on October 1, 1979, there is little case law construing the Section 362(b)(4) exception. Accordingly, the legislative history of the automatic stay provision and its exceptions takes on added importance.

I. Legislative History of Section 362

The statutory automatic stay is the first phase of bankruptcy relief. The automatic stay provides "the debtor a breathing spell from his creditors."[13] It allows the debtor "to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy."[14] It bars further suits and continuation of old suits, as well as any further judicial en-

10. *Id.* at 708.

11. *Id.* at 708-09. This determination by the court is debatable. Although the Health Facilities and Health Services Act appears oriented toward planning for and coordinating health care facilities, these activities are arguably done in the furtherance of the protection of the public health and welfare. Since this determination does not seem crucial to the court's decision, and because the court stated that HRS did not present any testimony that the public health or welfare was at stake, this note will adopt the court's position.

12. *Id.* at 709. The court did not reach the issue of whether HRS's action should be stayed under Section 105 of the Code, since it found the proceeding to be stayed under Section 362. Section 105 is an omnibus provision which allows a court to issue or lift a stay as it deems necessary or appropriate. The legislative history of Section 362(b)(4) indicates that it is not excepted from Section 105. H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 342-3 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6298-99. Thus, the court still may have been able to issue a discretionary stay under Section 105.

13. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 340 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6296-97.

14. *Id.* at 6297.

forcement of judgments or lien foreclosures. Even nonjudicial collection efforts are stayed under the new code.[15]

The stay also protects the creditors' interests. Rather than encouraging "a race of diligence" for the debtor's assets, the stay helps provide for their orderly liquidation. It prevents the debtor from succumbing to a creditor's pressure exerted to repay his claim "in preference to and to the detriment of other creditors."[16] The stay acts only as a procedural delay and does not affect the creditor's substantive rights.[17]

Section 362(a) defines the broad scope of the stay. It applies to all proceedings "including arbitration, license revocation, administrative, and judicial proceedings."[18] The stay applies to all kinds of bankruptcy cases, including liquidations and reorganizations.[19]

For policy and practical reasons, the Code provides several statutory exceptions to the automatic stay. In *Schatzman*, HRS relied on Section 362(b)(4) to exempt it from the automatic stay. This section provides that the filing of a bankruptcy petition does not operate as an automatic stay "of the commencement or continuation of an action or proceeding by a governmental unit to enforce [its] . . . police or regulatory power."[20]

Representative Edwards explained Congress's intent in enacting Section 362(b)(4) by stating "[t]his section is intended to be given a narrow construction in order to permit governmental units to pursue to protect the health and safety and not to apply to actions by a governmental unit to protect the pecuniary interest in property of the debtor or property of the estate."[21] A House Committee Report provides additional insight into the purpose of Section 362(b)(4). "Where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding

15. 11 U.S.C. § 362 (1979).

16. H.R. REP. No. 95-595, 95th Cong., 1st Sess. 340 (1977), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 5963, 6297.

17. H.R. REP. No. 95-595, 95th Cong., 1st Sess. 123 (1977), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 5963, 6084.

18. H.R. REP. No. 95-595, 95th Cong., 1st Sess. 340 (1977), *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 5963, 6297.

19. *Id.*

20. 11 U.S.C. § 362(b)(4) (1979).

21. 124 CONG. REC. H11089 (daily ed. Dec. 1978) (remarks of Rep. Edwards) (quoting Schatzman v. Dept. of HRS, 4 B.R. 704, 707 (1980)).

is not stayed under the automatic stay."[22]

Thus, Section 362(b)(4) was intended by Congress to prevent overuse of the automatic stay in areas of governmental action protecting the "legitimate" interests of the state.[23] In applying this exception, the courts must carefully analyze the governmental unit's action to determine if it is of the type which is exempt from the automatic stay.[24]

II. What is a Legitimate Interest of the State under Section 362(b)(4)?

The recent case of *In re Canarico Quarries, Inc.*[25] illustrates the type of proceeding by a governmental agency to enforce its regulatory powers to which Section 362(b)(4) is directed. Canarico Quarries operated a quarry which was emitting dust in violation of the state air pollution laws. In response to these violations, the Puerto Rico Environmental Quality Board (the Board) initiated enforcement proceedings against Canarico which finally ended in a cease and desist order. On August 2, 1977, the company filed a petition for reorganization under Chapter XI and received an order authorizing it to operate its business as a debtor-in-possession. Thereafter, the Board petitioned the bankruptcy court to vacate Canarico's operation and have Canarico ordered to comply with the state air pollution regulations. The bankruptcy court denied the petition, finding the stay provisions of Bankruptcy Rule 11-44(a) applicable to the Board's proceedings.[26]

On appeal, the district court granted the Board's petition and

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22. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 343 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6299.

23. The phrase "legitimate" interests of the state will be used throughout this piece to mean an action taken in the interest of the public health and welfare, as opposed to action taken to protect the pecuniary interest in property of the debtor or of the estate.

24. H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 175 (1977), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5963, 6135.

25. 466 F. Supp. 1333 (D.P.R. 1979).

26. *Id.* at 1334-35. Bankruptcy Rule 11-44(a) of the Old Bankruptcy Act provided for the automatic stay of proceedings initiated against the debtor or his property when a petition was filed under Rule 11-6 or 11-7. The purpose of the stay was "protection from interference by creditors with the property of the debtor in such a way as to hinder the proper administration of the property." 466 F. Supp. 1333, 1337.

Before the Code became effective in 1979, some courts in reaching their decision with regard to whether a state action should be stayed under Rule 11-44(a) examined what the to-be-enacted Code would do under the same situation. Thus, this court's decision under Rule 11-44(a) discussing Section 362(b)(4) provides guidance as to the scope and interpretation to be given Section 362(b)(4).

lifted the stay. The court stated that Rule 11-44(a) is designed to aid the rehabilitation of the debtor, but that this rehabilitation must be done in conformity with the laws of the jurisdiction. Since allowing Canarico to operate its business without obtaining a permit from the Environmental Quality Board would have violated state law, the stay of Rule 11-44(a) was held inapplicable to the Board's proceedings.[27]

Although *In re Canarico Quarries, Inc.* was decided shortly before the effective date of the new code, the court found support for its decision by reference to Section 362(b)(4). The court pointed out that the code reflected the congressional intent that public interest regulations outweigh the automatic stay in case of conflict. Thus, the court indicated that the result in this case would be the same under Section 362(b)(4).[28]

A more difficult case of assessing the applicability of Section 362(b)(4) to a state action arose in *In re Missouri ex rel. Runyan.*[29] The debtors, owners of public warehouses which were used to store grain, granted the Missouri Department of Agriculture (the Department) the authority, pursuant to a Missouri statute, to take control of the grain in order to distribute it equitably among its owners. Thereafter, the debtors filed for bankruptcy. The Department then petitioned for and was granted by the state court the appointment of a receiver to operate the debtor's warehouses. Three days later, the bankruptcy court appointed an interim trustee.[30]

After his appointment, the trustee filed an adversary proceeding in the bankruptcy court for leave to sell all grain free and clear of any lien. The Department then petitioned and received an order in the state court to take possession of the warehouses. The trustee then petitioned the bankruptcy court to enjoin the Department from interfering with the debtor's business. The Department responded by filing a petition with the Eighth Circuit Court of Ap-

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27. *Id.* at 1333, 1339-40.

28. *Id.* In accord with this decision is Dixon v. Grand Spaulding Dodge, Inc., No. 79 C 1416 (N.D.E.D. Ill. June 9, 1980), where the Secretary of State refused to issue the debtor corporation an automobile dealership license after it violated the Illinois Consumer Fraud and Deceptive Practices Act. The court held that the automatic stay provisions of Bankruptcy Rule 11-44(a) did not apply to the Secretary's exercise of his police powers. The court stated that the legislative history of Section 362 covered the exact regulatory activity involved in this case—that is, where a governmental unit is suing a debtor to prevent fraud, the action or proceeding is not stayed under the automatic stay. *Id.*

29. No. J-C-80-244 (E.D. Ark. Dec. 2, 1980).

30. *Id.*

peals for a writ of prohibition to be directed to the bankruptcy court. The court of appeals denied the petition without prejudice and directed a stay of all proceedings until the prohibition had been ruled upon by the district court.[31]

In an effort to sustain the prohibition, the Department claimed that the state was invoking its police powers to take exclusive possession of the grain for the benefit of its depositors pursuant to Section 362(b)(4). The district court rejected this claim finding that the Department was not "endeavoring to prevent a violation of consumer protection, environmental protection, fraud or a similar police or regulatory law involving the safety, health, morals and the general welfare of society, but on the contrary, petitioner's sole objective [was] to protect the pecuniary interests in property of purported depositors."[32] Thus, the Department's action was found not to be an exercise of the police and regulatory powers within the scope of Section 362(b)(4).[33]

The *In re Missouri* decision is consistent with the intent of Congress in enacting Section 362(b)(4). Section 362(b)(4) does not apply to a governmental unit's action taken to protect the pecuniary interest in property of the debtor, even if that action is taken in good faith.[34] Rather, according to the legislative history, the exception should only apply to actions taken in the interest of protecting the public health and welfare.[35]

Finally, the case *Sisk v. Massachusetts Department of Public Health (In re Saugus General Hospital, Inc.)*,[36] which was relied upon by the court in *Schatzman*, provides insight into what is a "legitimate" state interest. In *Sisk*, the debtor was a small, privately-owned hospital licensed by the Department of Public Health (DOH). On August 30, 1978, DOH notified the hospital to discontinue admitting patients until certain administrative deficiencies, such as an inadequate number of nurses, were corrected. The next day, a petition in bankruptcy was filed against the debtor-hospital, after which the hospital discharged its patients and shut down operations.[37]

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31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. 124 CONG. REC. H11089 (daily ed. Dec. 1978) (remarks of Rep. Edwards) (quoting Schatzman v. Dept. of HRS, 4 B.R. 704, 707 (1980)).

36. 4 Bankr. Ct. Dec. 1160 (D. Mass. 1979).

37. *Id.*

The bankruptcy court thereafter appointed a receiver and issued an injunction restraining all persons from interfering with any property in the possession of the receiver. Two days later, DOH notified the hospital that its license to operate was terminated pursuant to DOH's regulation that a hospital abandons its license by discontinuance of operations. In response, the receiver filed a complaint to determine whether the court's injunction precluded enforcement of DOH's automatic revocation of the hospital's license and whether termination of the hospital's license violated the automatic stay provision of Bankruptcy Rule 11-44(a).[38]

In upholding the stay, the *Sisk* court found that DOH's decision was not made in the exercise of its police power in furtherance of the public welfare. Rather, the license termination was an automatic revocation triggered by the discharge of the hospital's patients—a decision primarily dictated by the hospital's financial condition.[39] The court found that "[t]he administrative deficiencies previously cited by the Department, which could arguably be said to jeopardize the public health and welfare, played no part in the agency's termination of the license."[40] Also, prior to the filing of the bankruptcy petition, the DOH had not indicated an intention to revoke the hospital's license based on health reasons. In light of all of the foregoing reasons, the court held that the license revocation was not a decision "in furtherance of the public welfare."[41]

In dicta, the court in *Sisk* stated that the result in this case would be the same under Section 362(b)(4) of the new code. After examining the legislative history of the exception, the court found that notwithstanding the police power exception, the Code "still may permit the use of an injunction to restrain action by a regulatory agency."[42]

III. ANALYSIS

In examining the previously discussed cases dealing with Section 362(b)(4), it is important to note that the courts have imposed the requirement that the state action be taken in the interest of the public health and welfare in order for the exemption to the stay to apply. This requirement is derived from the legislative history of

38. *Id.* at 1160-61.
39. *Id.* at 1162-63.
40. *Id.* at 1162.
41. *Id.*
42. *Id.* at 1163 n.1.

Section 362(b)(4).[43] On its face, the statute does not appear to require that the governmental unit demonstrate its "purpose" in initiating action. The only apparent requirement is that the agency bringing the action demonstrate that it is a governmental unit, and that its action is brought to enforce its police or regulatory powers. If such a requirement had been imposed in *Schatzman*, HRS seemingly would have qualified for the exception. Likewise, a similar result would have followed in *Sisk*, and possibly in *In re Missouri*.

This latter position has recently been applied in *NLRB v. Evans Plumbing Co.*[44] In *Evans Plumbing Co.*, the NLRB petitioned for entry of judgment to enforce the Board's decision that Evans had discriminatorily discharged two employees. Evans filed for bankruptcy the day before the hearing for unfair labor practices was set. The hearing was held over Evans's objection, and the judge found that Evans had unfairly discharged two employees, and ordered them reinstated with back pay. Evans opposed the entry of judgment on the basis that the hearing should have been stayed pursuant to Section 362.[45]

The Fifth Circuit upheld the judgment finding that the Board's proceeding fell within the Section 362(b)(4) exception to the stay. The court dealt only with the issue of whether the NLRB was a governmental unit and whether it was enforcing its regulatory powers. Answering these questions in the affirmative, the court held that the NLRB proceeding qualified for the exception to the automatic stay.[46]

The same approach appears to have been taken in *In re National Hospital and Institutional Builders Co.*[47] There the bankruptcy judge held that the efforts by administrative bodies in New York City to revoke the certificate of occupancy owned by the debtor violated the automatic stay provisions of Rule 12-43 of the Rules of Bankruptcy procedure. The bankruptcy court found that the city did not have a good faith belief that the home would harm the community. To the contrary, the court felt that the state had an interest in having the home opened. On appeal, the United States District Court for the Southern District of New York re-

43. 124 CONG. REC. H11089 (daily ed. Dec. 1978) (remarks of Rep. Edwards) (quoting Schatzman v. Dept. of HRS, 4 B.R. 704, 707 (1980)).

44. No. 81-7001 (5th Cir. Mar. 13, 1981).

45. *Id.*

46. *Id.*

47. No. 80 Civ. 6073 (S.D.N.Y. Feb. 25, 1981).

versed, finding that the authority of the administrative bodies was a matter of state regulatory power, which was outside the scope of the jurisdiction of the bankruptcy court. In dicta, the district court indicated that the result would be the same under Section 362(b)(4) of the new code.[48]

The problem with the approach taken in *Evans Plumbing Co.* and *In re National Hospital and Institutional Builder Co.*, in analyzing whether a state action is exempt from an automatic stay, is that it ignores the legislative history of the exception. The purpose of initiating the action is important when deciding whether the stay should apply. The legislative history indicates that: (1) the exception is to be given a narrow construction, and (2) that the court should examine the state action carefully to determine if it falls within the exception.[49] If the analysis is only centered on whether the agency is a governmental unit and whether it is exercising its police or regulatory powers, then the exception is given a broad construction. Under this approach, if the action is taken for improper motives, the debtor may have to resort to state courts for relief. This process can be slow and expensive.[50] The automatic stay was enacted to minimize such problems. Also, if the purpose of the action is not subject to examination, the governmental unit may take action in order to protect a pecuniary interest in the debtor's property. This type of action was expressly mentioned by

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48. *Id. See* Department of Environmental Resources v. Peggs Run Coal Co., No. 1103 C.D. (Pa. Commw. Ct. Dec. 15, 1980). Peggs Run Coal Company had filed a petition in bankruptcy, and thereafter became a debtor-in-possession. Subsequently, the Department of Environmental Resources filed a complaint against Peggs Run for maintenance of a public nuisance and numerous violations of the Clean Streams Act. Peggs Run claimed that the Department's action was restrained by the automatic stay of Section 362. In determining whether the stay applied, the court phrased the question as whether the Department's complaint was a proceeding by a governmental unit enforcing its police or regulatory powers, or an action for enforcement of a money judgment by a governmental unit. Finding that the complaint was brought to enforce the Department's regulatory power, the proceeding was not stayed.

Although this case would appear to qualify for the Section 362(b)(4) exception using "an action taken in the interest of the public health and welfare" analysis, this approach did not appear to be used by the court. Rather, the court found persuasive Section 362(b)(5) of the Code which does not permit the enforcement of a money judgment in an action by a governmental unit. Since this action was not the enforcement of a money judgment, and since the court found it to be the exercise of the Department's regulatory power, the action was not stayed. The court made no explicit analysis of whether this action was taken in the interest of public health and welfare.

49. See text at notes 21, 24 *supra*.

50. This point was raised by the trustee, but rejected by the court in In re National Hospital and Institutional Builders Co., No. 80 Civ. 6073 (S.D.N.Y. Feb. 25, 1981).

the legislative history as not deserving exception.[51]

The better approach should involve analysis of the governmental unit's purpose in bringing its proceeding. This approach will provide a more careful analysis of whether the proceeding is taken in the interest of the public health and welfare. If it is, the action should be exempt from the automatic stay. If not, there would seem to be no reason not to stay the action. The debtor should not have to suffer the cost of defending a suit if, (1) the public is not going to benefit, and (2) the creditors will be harmed because cost of the suit will decrease the assets available to pay off their claims. The fear that bankruptcy would become a sanctuary for agencies trying to escape state regulatory proceedings if such an approach were followed does not seem realistic.[52] The state would still be able to enforce its "legitimate" state interests. Only those proceedings not brought in the interest of protecting the public health and welfare would be eliminated.

Accepting the proposition that the governmental unit should demonstrate that its action was taken in the interest of public health and safety, there still remains the question of what actions constitute a proceeding taken "in the interest of public health and welfare." Obviously, in a case such as *Canarico Quarries*, where the governmental unit is enforcing its state air pollution laws, the action is "legitimate." The dangers to public health and welfare if the state would allow continued violation of the air pollution laws is self-evident. The same can be said for the other actions mentioned in the House Reports as examples of governmental proceedings exempt from the automatic stay, *i.e.*, actions taken to stop fraud or to prevent violation of environmental protection, to promote consumer protection, and to enforce safety regulations. There is a strong public policy behind these actions that continued violations would result in harm to the public. A more difficult question arises in cases such as *Schatzman* and *Sisk*, where the purpose of bringing the action is unclear. In these cases the courts appeared to require that the state governmental unit affirmatively demonstrate that harm would result to the public if its action was stayed or that the public would benefit if the action was not stayed. Where a strong public policy does not underlie enforcing the ac-

51. See text at note 21, *supra*.

52. This fear was expressed by the court in In re National Hospital and Institutional Builders Co., No. 80 Civ. 6073 (S.D.N.Y. Feb. 25, 1981).

tion, as it does in the actions which were found by the House Reports to deserve exemption, the courts should not automatically infer that the governmental unit is acting in the interest of the public health and welfare unless the unit so demonstrates.

The requirement of an affirmative showing of legitimate purpose by the governmental unit bringing the action seems consistent with the legislative history of the exception. Notwithstanding the importance of allowing governmental units to enforce their regulatory powers, the debtor should not be harassed by state actions that will not benefit the public. The exception should be given a narrow construction. This position should in no way impede the state in protecting the public health and welfare interest, while at the same time allow the debtor to enjoy the benefits of the automatic stay.

IV. CONCLUSION

The *Schatzman* decision provides a reasonable approach in determining when a state action should be exempt from the automatic stay. In *Evans*, the Fifth Circuit limited its inquiry to whether the agency bringing the action was a governmental unit, and whether the action was brought to enforce the unit's police or regulatory powers. Although the *Evans* approach must initially be taken in all cases involving Section 362(b)(4), the court's inquiry should extend to the governmental unit's purpose in bringing its action. A court should not assume that a governmental unit is validly exercising its police or regulatory powers when it brings an action. Instead, the governmental unit should be required to affirmatively demonstrate that its action will in some way benefit the public. Obviously, the ease of satisfying this requirement will vary from case to case, but such a requirement should insure that the state action is taken for a "legitimate" state purpose.

When future courts are presented for the first time with the issue of whether a state action should be exempt from the automatic stay, they should follow an approach similar to that taken in the *Schatzman* and *Sisk* cases. Such an approach will help to preserve the protection provided the debtor by the automatic stay, while at the same time allow a governmental unit to pursue legitimate actions in the interest of the public health and welfare.

RANDALL MARKER