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ENVIRONMENTAL JUSTICE CLASS ACTION RISES ABOVE THE RUBBISH: THE THIRD CIRCUIT REVIVES COMMON-LAW NUISANCE REMEDIES IN *BAPTISTE V. BETHLEHEM LANDFILL CO.*

I. Nuisance Law and the Protection of Environmental Rights: An Introduction

Since the late 1980s, American society has become increasingly aware of a grievous environmental issue in the United States: the disproportionate allocation of environmental burdens to racial and ethnic minority populations.[1] Studies demonstrate that irrespective of class, race is the best predictor of exposure to air pollution, location of landfills, and siting of hazardous waste facilities.[2] The environmental justice movement of the 1980s was founded on the premise that environmentally unjust socio-economic policies have a devastating impact on health, safety, and overall quality of life in low-income, minority communities.[3] Racial minorities are more likely to be surrounded by high concentrations of environmentally-burdensome facilities, resulting in increased exposure to toxic pollutants and noxious odors.[4] These offensive odors often decrease

1. *See* Kathy Seward Northern, *Battery and Beyond: A Tort Law Response to Environmental Racism*, 21 Wm. & Mary Envtl. L. & Pol'y Rev. 485, 491 (1997) (noting unequal distribution of environmental hazards on minority populations). The 1980s ushered in widespread acknowledgement that populations with higher poverty levels and political powerlessness face increased environmental hazards. *See id.* at 497-99 (describing emerging national awareness of disproportionate environmental burdens on minority communities).

2. *Id.* at 485 (providing connection between race and increased environmental harms). When studies control for socio-economic factors, evidence indicates that disproportionate allocation of environmental harm is most significant in communities of color. *Id.* at 493 n.35 (emphasizing level of exposure to environmental hazards is primarily dependent on race). Discriminatory siting measures, disparate enforcement of environmental regulations, and unequal political power are the strongest contributing factors to environmental injustice. R. Shea Diaz, *Getting to the Root of Environmental Injustice: Evaluating Claims, Causes, and Solutions*, 29 Geo. Envtl. L. Rev. 767, 784 (2017) (listing probable causes of environmental injustice).

3. *See* Northern, *supra* note 1, at 496-97 (describing widespread negative effects of racial minorities' historical proximity to environmental burdens). Exposure to environmental harms is commonly associated with residence in minority communities, and poses an additional burden on populations suffering from inordinate public health concerns. *See id.* at 503-05 (noting exacerbating impact of siting waste facilities in already burdened communities). Poor and minority populations suffer from higher cancer, asthma, and mortality rates. Diaz, *supra* note 2, at 768 (comparing health risks of racial minorities and affluent white populations).

4. Northern, *supra* note 1, at 494 (describing central tenet of environmental racism). Environmental racism is defined as "racial discrimination in environmen-

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property value and limit the use and enjoyment of public facilities and private land.[5]

Environmental justice plaintiffs experience limited success under constitutional law and other traditional legal theories due to the difficulties of establishing proof of discriminatory intent.[6] In contrast, common-law tort doctrines recognize an individual's right — regardless of race or socioeconomic status — to use, possess, and enjoy their property without unreasonable interference.[7] Public and private nuisance actions present a practical mechanism to secure an individual or group's property rights against unreasonable interference by pollution, noxious odors, and other environmental hazards.[8] Due to nuisance law's lack of cohesive guidelines and bright-line rules, however, courts have struggled to analyze nuisance claims properly and interpret legal precedent consistently.[9]

In *Baptiste v. Bethlehem Landfill Co.*,[10] the United States Court of Appeals for the Third Circuit explores the viability of public and private nuisance actions as remedies for large-scale industrial hazards.[11] After analyzing the proper interpretation of Pennsylvania law and noting *Baptiste*'s salient impact on minority communities, the Third Circuit permitted two environmental justice plaintiffs to bring nuisance claims against a landfill on behalf of an

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tal policymaking and the unequal enforcement of environmental laws and regulations." *Id.* at 516 (defining environmental racism). The environmental justice and environmental racism movements are synonymous. Sam Porter, *Do the Rules of Private Nuisance Breach the Principles of Environmental Justice?*, 21 ENVTL. L. REV. 21, 22-23 (2019) (discussing environmental justice movement's origins).

5. *See* Northern, *supra* note 1, at 496-97 (noting environmentally burdensome enterprises' negative impact on nearby residents' property rights).

6. Mandy Garrells, *Raising Environmental Justice Claims Through the Law of Public Nuisance*, 20 VILL. ENVTL. L.J. 163, 163 (2009) (stating historical limitations of raising environmental justice claims under constitutional law). Establishing the constitutional element of "disparate treatment" requires proof of discriminatory intent or motive on the basis of race, sex, national origin, or disability. *Id.* (noting limited scope of constitutional law claims).

7. Northern, *supra* note 1, at 491-92 (recognizing potential of tort law claims to remedy environmental injustices).

8. *See* Garrells, *supra* note 6 (noting nuisance law's prospect for raising environmental justice claims). Before the creation of modern environmental regulatory regimes in the 1970s, nuisance law was the primary means of protecting landowners' and occupiers' private rights to the environment. Karol Boudreaux & Bruce Yandle, *Public Bads and Public Nuisance: Common Law Remedies for Environmental Decline*, 14 FORDHAM ENVTL. L.J. 55, 56, 63 (2002) (examining nuisance law's historical role in shielding private rights from interfering environmental burdens).

9. For a discussion of the perplexities of nuisance law, see *infra* notes 40-46 and accompanying text.

10. 965 F.3d 214, 217 (3d Cir. 2020) (introducing subject case of this Note).

11. For a discussion of the Third Circuit's legal analysis in *Baptiste*, see *infra* notes 91-145 and accompanying text.

entire community.[12] The Third Circuit's holding provides Pennsylvania courts with comprehensive guidance for navigating environmental nuisance claims, specifically in the context of large class action lawsuits.[13]

This Note examines the significance of the Third Circuit's conclusion in *Baptiste* in facilitating relief for future environmental justice litigants under evolving theories of public and private nuisance.[14] Part II of this Note sets out the facts and procedural history underlying *Baptiste*.[15] A discussion of background information relevant to the legal dispute at issue follows in Part III.[16] Part IV provides a step-by-step analysis of the Third Circuit's rationale in reaching its holding.[17] Part V offers a critical analysis of the Third Circuit's opinion.[18] Lastly, Part VI discusses the potential impact of the Third Circuit's holding, especially with regard to the emergence of nuisance law as a remedial mechanism for environmental justice.[19]

II. PENNSYLVANIA LANDFILL CAUSES LEGAL STINK: THE FACTS OF *BAPTISTE*

The Bethlehem Landfill Company (Bethlehem) owns and operates a 224-acre municipal solid waste disposal facility and landfill in Lower Saucon Township, Pennsylvania (the Township).[20] The Solid Waste Management Act (SWMA) regulates Pennsylvania landfill operations and permits Bethlehem to accept up to 1,375 tons of

12. *See Baptiste*, 965 F.3d at 217 (addressing primary issue in *Baptiste*). For a discussion of the Third Circuit's legal analysis in *Baptiste*, see *infra* notes 91-145 and accompanying text.

13. For a discussion of the Third Circuit's legal analysis in *Baptiste*, see *infra* notes 91-145 and accompanying text.

14. For a discussion of *Baptiste*'s impact on future environmental justice claims, see *infra* notes 161-81 and accompanying text.

15. For a discussion of *Baptiste*'s factual foundation and procedural history, see *infra* notes 20-39 and accompanying text.

16. For a discussion of the legal background underpinning *Baptiste*, see *infra* notes 40-90 and accompanying text.

17. For a discussion of the Third Circuit's legal analysis in *Baptiste*, see *infra* notes 91-60 and accompanying text.

18. For a critical analysis of the Third Circuit's reasoning in *Baptiste*, see *infra* notes 146-60 and accompanying text.

19. For a discussion of the potential impact of *Baptiste*, see *infra* notes 161-81 and accompanying text.

20. Complaint ¶ 6, Baptiste v. Bethlehem Landfill Co., 365 F. Supp. 3d 544 (E.D. Pa. 2019) (No. 5:18-cv-02691) (referencing landfill's location and general business activities). The landfill has been in operation since the 1950s. Reply Brief for Defendant at 3, Baptiste v. Bethlehem Landfill Co., 965 F.3d 214 (3d Cir. 2020) (No. 19-1692) (recounting landfill's history).

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waste daily.[21] During the decomposition process, the waste releases odorous gas, leachate, and other byproducts.[22] For years, the landfill's neighboring residents have complained adamantly to the Township and the Pennsylvania Department of Environmental Protection (PADEP) about the noxious odors emanating continuously from the landfill.[23] The influx of complaints prompted authorities to issue numerous citations to Bethlehem when the malodorous emissions persisted.[24]

In 2018, brothers Robin and Dexter Baptiste (the Baptistes) filed suit against Bethlehem in the United States District Court for the Eastern District of Pennsylvania for public nuisance, private nuisance, and negligence.[25] The Baptistes, homeowners in Freemansburg, Pennsylvania, resided in an "environmental justice area."[26] They brought their action on behalf of approximately 8,500 homeowners and renters residing within a two-and-one-half-mile radius of the landfill.[27] The complaint alleged that Bethlehem operated

21. *See Baptiste*, 965 F.3d at 217-18 (stating SWMA governs Pennsylvania landfill operations). The SWMA grants the Pennsylvania Department of Environmental Protection (PADEP) authority to implement and enforce the SWMA's provisions. *See id.* at 217 (describing SWMA's means of enforcement). *See generally* 35 P.S. § 6018.104 (1989) (enumerating PADEP's powers under SWMA). For further discussion of the SMWA, see *infra* notes 51-56 and accompanying text.

22. *Baptiste*, 965 F.3d at 218 (citing Complaint, *supra* note 20, at ¶ 8) (noting landfill produces pollutants and odorous gases). "Leachate is water that has been contaminated by soluble and often harmful residues or chemicals from the solid waste through which it passes." *Id.* at n.2 (defining leachate).

23. *See* Complaint, *supra* note 20, at ¶¶ 13-15 (discussing documented history of outrage concerning landfill's emissions).

24. *See id.* ¶ 16 (noting authorities fined Bethlehem for failing to control and prevent nuisances). On April 16, 2012, the Township issued Bethlehem an Order of Compliance with $45,243.51 in fines. *Id.* (providing example of Bethlehem's fines). Bethlehem received citations including failure to implement a gas control and monitoring plan; failure to cover trash piles to prevent vermin, blowing litter, and other nuisances from escaping; and failure to implement a "Nuisance Minimization and Control Plan[.]" *See id.* (listing Bethlehem's citations).

25. *See* Baptiste v. Bethlehem Landfill Co., 365 F. Supp. 3d 544, 547 (E.D. Pa. 2019) (citing Complaint, *supra* note 20, at ¶ 1) (listing Baptistes' causes of action), *rev'd*, 965 F.3d 214 (3d Cir. 2020). This Note's primary focus is the Baptistes' public and private nuisance claims. For further discussion of the Third Circuit's ruling on the Baptistes' negligence claim, see *infra* note 39 and accompanying text.

26. *Baptiste*, 965 F.3d at 227 n.9 (noting plaintiffs' residence in low-income minority community). PADEP uses "environmental justice area" to identify residential areas in which twenty percent or more of residents are below the poverty line and thirty percent or more are racial minorities. *Id.* (noting *Baptiste*'s environmental justice implications).

27. Complaint, *supra* note 20, at ¶¶ 35-36 (describing putative class). Only 1.6 miles separate the Baptistes' residence from the landfill. *Baptiste*, 365 F. Supp. 3d at 550 (providing Baptistes' direct distance from defendant). The putative class members resided within a general area of nearly twenty square miles. Reply Brief for Defendant, *supra* note 20 (defining scope of putative class).

its landfill negligently, in violation of SWMA guidelines and industry standards.[28] Specifically, the Baptistes alleged Bethlehem did not construct, install, or maintain adequate technology to control landfill emissions properly.[29] Consequently, pollutants, air contaminants, and noxious odors emanating from the landfill physically invaded and materially injured surrounding properties.[30] Moreover, the Baptistes argued the emissions reduced the plaintiffs' and class members' property values and impacted substantially their ability to use and enjoy their homes.[31] The Baptistes then sought injunctive relief and claimed over five million dollars in property damages.[32] Bethlehem filed a motion to dismiss in response, arguing the Baptistes failed to state a private claim due to the size of the putative class and the plaintiffs' lack of proximity to the source of the nuisance.[33] Bethlehem proposed that the plaintiffs alleged a mass nuisance instead of an ordinary public or private nuisance.[34]

The United States District Court for the Eastern District of Pennsylvania held that the Baptistes failed to state a claim for public

28. Complaint, *supra* note 20, at ¶¶ 55-66 (describing negligence claim). The Baptistes alleged Bethlehem breached its duty under the SWMA to implement a plan "[p]rovid[ing] for the orderly extension of municipal waste management systems . . . in a manner which will not create . . . public nuisances." *Baptiste*, 365 F. Supp. 3d at 551 (quoting 35 P.S. § 6018.201 (1980)) (providing SWMA's relevant language). For further discussion of the SMWA, see *infra* notes 51-56 and accompanying text.

29. Complaint, *supra* note 20, at ¶¶ 17-18 (noting landfill's inadequate emission controls).

30. *Id.* ¶ 1 (describing nuisance claims).

31. *Id.* ¶ 23 (alleging landfill interfered with class members' private property rights). According to the plaintiffs' complaint, the odors prevented class members from using swimming pools, yards, porches, and other outside areas of their properties. *Id.* ¶ 21 (stating odors prevented residents from spending time outdoors). Additionally, the stench rendered class members unable to walk their dogs or host guests due to embarrassment, and it prevented children from playing outside. *Id.* (providing examples of inability to use and enjoy property). The class members alleged the stench was sometimes so pungent that it permeated the walls of their homes, forcing them to shut all windows and doors, essentially trapping them indoors. *Id.* ¶ 22 (noting odor's pervasiveness).

32. *Id.* ¶ 26 (providing plaintiffs' proposed property damages). The plaintiffs sought compensatory, injunctive, and punitive relief. *Id.* at 11 (stating plaintiffs' prayer for relief).

33. *See* Reply Brief for Defendant, *supr*a note 20, at 6-7 (claiming too many people complaining of same injury and residing too far from nuisance lose right to bring private action).

34. *Baptiste*, 965 F.3d at 220 (defining mass nuisance). Bethlehem classified a mass nuisance as "a large-scale industrial nuisance that is too large and widespread to be actionable by private persons." Bethlehem claimed that only the state has the power to remedy mass nuisances. *Id.* (explaining Bethlehem's mass nuisance argument).

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and private nuisance.[35] When the Baptistes appealed the decision to the Third Circuit, they argued the district court misconstrued foundational nuisance principles and imposed nonexistent restrictions under Pennsylvania common law.[36] On appeal, the Third Circuit granted leave to six organizations to appear as *amici*.[37] The Third Circuit ultimately reversed and remanded the district court's decision, ruling that the plaintiffs succeeded in stating claims for public and private nuisance.[38] The Third Circuit left the determination of the plaintiffs' negligence claim to the district court on remand.[39]

III. A BACKGROUND OF NUISANCE LAW, THE "LEGAL GARBAGE CAN"

The Restatement (Second) of Torts (Restatement) describes a nuisance as unreasonable or unlawful conduct that interferes with another's public right or private interest in the use or enjoyment of property.[40] Common-law nuisance doctrines are regarded as noto-

35. *See* Baptiste v. Bethlehem Landfill Co., 365 F. Supp. 3d 544, 552 (E.D. Pa. 2019) (granting defendant's motion to dismiss). The district court held that the plaintiffs "have alleged a public nuisance but have not shown how they or the members of the proposed class have suffered special harm that would allow them to pursue a private cause of action for this public nuisance." *Id.* at 549 (holding plaintiffs failed to prove special harm).

36. *Baptiste*, 965 F.3d at 219-20 (describing plaintiffs' argument on appeal).

37. *See id.* at 219 (acknowledging intervention by *amici*). The Public Interest Law Center and Philly Thrive, two non-profit organizations, appeared in support of the Baptistes to illuminate the disproportionate impact of pollution on low-income, minority communities. *Id.* (explaining organizations' interest in appearing as *amici*). The United States Chamber of Commerce, Pennsylvania Chamber of Business Industry, Pennsylvania Farm Bureau, and National Waste & Recycling Association appeared as *amici* in support of Bethlehem. *Id.* (listing *amici* in support of defendant). These parties claimed the district court's decision preserves the business community's ability to coordinate directly with regulatory agencies instead of having to fend off private lawsuits. *Id.* (providing business community's support for district court's decision).

38. *Id.* at 217 (reversing and remanding district court's decision).

39. *Id.* at 229 (remanding negligence claim to district court to determine whether plaintiffs pleaded physical property damage sufficiently). The Third Circuit held that Bethlehem owes an undisputed common-law duty to the plaintiffs; it delegated the issue of whether the Baptistes pleaded sufficiently a cognizable injury to assert an independent negligence claim to the district court on remand. *Id.* at 228 (discussing plaintiffs' negligence claim).

40. *See* RESTATEMENT (SECOND) OF TORTS § 822 cmt. a (1979) (defining conduct constituting nuisance). Not every intentional and significant invasion of a private property interest is actionable due to the inevitability of clashing individual interests in modern organized society, especially in populous communities. *Id.* at cmt. g (assessing actionability of intentional invasions).

riously muddled and difficult to navigate.[41] Even esteemed legal scholars struggle with the perplexities of nuisance law, christening it an "impenetrable jungle" and a "legal garbage can" full of vagueness and uncertainty.[42] In the absence of bright-line rules and limitations, courts also struggle to analyze claims brought under nuisance law.[43] Pennsylvania courts adhere to the Restatement to guide their decisions on nuisance claims.[44] Pennsylvania law specifically recognizes two types of nuisance actions pursuant to the Restatement — public nuisance and private nuisance actions — but fails to provide explicit guidelines regarding the analysis of nuisance claims.[45] This lack of clarity has a determinative effect on Pennsylvania courts' rulings by promoting discrepancies in nuisance analysis and inconsistent application of Pennsylvania case law.[46]

A. Public Nuisance

The Restatement defines a public nuisance as "an unreasonable interference with a right common to the general public."[47] An event or action may constitute a public nuisance if it interferes sig-

41. *See Baptiste*, 965 F.3d at 219 (emphasizing nuisance law's lack of clear principles). "Failure to recognize that private nuisance has reference to the interest invaded and not to the type of conduct that subjects the actor to liability has led to confusion." RESTATEMENT (SECOND) OF TORTS § 822 cmt. b (1979) (discussing one source of confusion surrounding nuisance doctrines).

42. *Baptiste*, 965 F.3d at 219 (quoting W. KEETON ET AL., PROSSER AND KEETON ON LAW OF TORTS 616 (5th ed. 1984)) (providing scholarly expression demonstrating nuisance law's complexity); *id.* (quoting William L. Prosser, *Nuisance Without Fault*, 20 TEX. L. REV. 399, 410 (1942)) (emphasizing widespread confusion regarding nuisance theories).

43. *See id.* (noting courts' difficulty in applying nuisance doctrines). Despite a significant change in the interpretation of public nuisance's special injury rule from the "difference-in-degree" to the "difference-in-kind" standard, "courts continue to dogmatically hold onto the modern special injury standard for fear of multiplicity of suits rather than untying the legal knot that frustrates the principles of public nuisance law." Garrells, *supra* note 6 at 164 (examining obscure evolution of public nuisance theory).

44. *See* Machipongo Land & Coal Co. v. Pennsylvania, 799 A.2d 751, 773 (Pa. 2002) (noting Restatement's authority on Pennsylvania nuisance law).

45. *See Baptiste*, 965 F.3d at 220 (citing Prosser, *Nuisance Without Fault*, *supra* note 42, at 411) (stating nuisance refers only to public and private invasions).

46. *Compare Baptiste*, 965 F.3d at 227 (holding Pennsylvania law does not support size and proximity limitations in nuisance actions), *with Baptiste*, 365 F. Supp. 3d at 550-51 (holding Pennsylvania law supports size and proximity limitations in nuisance actions).

47. RESTATEMENT (SECOND) OF TORTS § 821B(1)(a) (1979) (defining public nuisance). Prosser refers to public nuisance as "a species of catch-all low-grade criminal offense . . . which may include anything from the blocking of a highway to a gaming-house or indecent exposure." William L. Prosser, *Private Action for Public Nuisance*, 52 VA. L. REV. 997, 999 (1966) (providing examples of public nuisance).

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nificantly with the public health, safety, peace, comfort, or convenience.[48] In accordance with the Pennsylvania Constitution, state courts recognize access to clean public water and fresh air as public rights.[49] According to the Restatement, public officials have the authority to determine remedies for invasions of common public rights.[50]

1. Solid Waste Management Act

The Pennsylvania legislature enacted the SWMA in 1980 to protect Pennsylvania residents from dangers associated with the processing, treatment, storage, and disposal of waste.[51] To implement and enforce the SWMA's provisions, the PADEP administers the State's Solid Waste Management Program and inspects waste management facilities, which subsequently diminishes public nuisances.[52] Among the SWMA's provisions is the obligation that Pennsylvania landfills implement a plan "to minimize and control public nuisances from odors."[53] The SWMA explicitly states that any violation of its rules and regulations shall constitute a public

48. RESTATEMENT (SECOND) OF TORTS § 821B(2) (1979) (describing characteristics of public nuisance). Conduct may also constitute an unreasonable interference when proscribed by a statute, ordinance, or administrative regulation. *Id.* § 821B(2)(b) (presenting public nuisance framework).

49. *See, e.g.*, Machipongo Land & Coal Co. v. Pennsylvania, 799 A.2d 751, 773 (Pa. 2002) (acknowledging public right to unpolluted public water); Phila. Elec. Co. v. Hercules, Inc., 762 F.2d 303, 316 (3d Cir. 1985) (acknowledging public right to pure water). The Pennsylvania Constitution guarantees citizens "a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment." PA. CONST. art. I, § 27 (listing common rights to public natural resources). The Third Circuit held that a plaintiff's remedy lies "in the hands of the state" when a public right is infringed upon. *See Phila. Elec.*, 762 F.2d at 315 (noting states are responsible for overseeing infringement of common public rights).

50. RESTATEMENT (SECOND) OF TORTS § 821C cmt. b (1979) (stating relief for invasions of common public rights lies in public officials' hands).

51. Baptiste v. Bethlehem Landfill Co., 965 F.3d 214, 217 (3d Cir. 2020) (quoting 35 P.S. §§ 6018.102(4)-(5) (1980)) (providing legislative intent in enacting SWMA). The SWMA was enacted four years after Congress passed the Resource Conservation and Recovery Act (RCRA), which "encourages states to develop comprehensive plans to manage nonhazardous industrial solid waste and municipal solid waste, sets criteria for municipal solid waste landfills and other solid waste disposal facilities, and prohibits the open dumping of solid waste." *EPA History: Resource Conservation and Recovery Act*, U.S. ENVTL. PROT. AGENCY (June 8, 2020), https://www.epa.gov/history/epa-history-resource-conservation-and-recovery-act (describing RCRA and its objectives).

52. Baptiste v. Bethlehem Landfill Co., 365 F. Supp. 3d 544, 549 (E.D. Pa. 2019) (providing PADEP's role under SWMA). *See generally* 35 P.S. § 6018.104 (1980) (amended 1989) (enumerating PADEP's powers under SWMA).

53. *Baptiste*, 965 F.3d at 217 (quoting 25 PA. CODE § 273.218(b)(1) (2000)) (discussing specific SWMA provisions).

nuisance.[54] In 1993, a Pennsylvania Superior Court held that plaintiffs are not authorized to bring private causes of action under the SWMA.[55] The SWMA, however, includes a savings clause permitting private causes of action under the common law or in equity.[56]

2. Injury of a Greater Magnitude and Different Kind

A private cause of action for a public nuisance is viable when a public nuisance interferes with an individual's personal rights.[57] These personal rights include the right to use and enjoy private land.[58] Under the Restatement's guidance, Pennsylvania courts require that the infringement of a plaintiff's personal rights causes "significant harm" for a public nuisance claim to be actionable.[59] Significant harm is defined as "particular harm, of a kind different from that suffered by other members of the public[,]" those of whom are exercising the same public right.[60] Courts applying Pennsylvania case law interpret the significant harm requirement to mean that a plaintiff must have suffered a harm of a greater magnitude and different kind than the general public.[61]

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54. *Id.* (noting SWMA's public nuisance provision). The SWMA provides, "Any violation of any provision of this act, any rule or regulation of the department, or any term or condition of any permit, shall constitute a public nuisance." 35 P.S. § 6018.601 (quoting relevant statutory language).

55. *Baptiste*, 965 F.3d at 217 (quoting Centolanza v. Lehigh Valley Dairies, Inc., 635 A.2d 143, 149 (Pa. Super. 1993), *aff'd*, 658 A.2d 336 (Pa. 1995)) (holding private parties can only intervene under SWMA in PADEP actions).

56. *Id.* at 218 (explaining SWMA's express carve-out for common-law actions).

57. *See* Phila. Elec. Co. v. Hercules, Inc., 762 F.2d 303, 315 (3d Cir. 1985) (holding public nuisance's interference with personal rights creates private cause of action).

58. *Id.* (noting invasions of interests that constitute private nuisances).

59. RESTATEMENT (SECOND) OF TORTS § 821F (1979) (stating actionability of private claim for public nuisance depends on significant harm). Pennsylvania case law also refers to the significant harm requirement as special injury, special harm, and harm over and above that of the general public. *See* Plaintiffs' Reply Brief at 17 n.4, Baptiste v. Bethlehem Landfill Co., 965 F.3d 214 (3d Cir. 2020) (No. 19-1692) (noting alternative references to concept of significant harm).

60. RESTATEMENT (SECOND) OF TORTS § 821F cmt. c (1979) (defining significant harm in public nuisance context). For harm to be significant, it must be "of importance, involving more than slight inconvenience or petty annoyance" and constitute a "real and appreciable invasion of the plaintiff's interests . . . ." *Id.* (elaborating further on concept of significant harm).

61. *See, e.g.*, Allegheny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 446 (3d Cir. 2000) (holding plaintiff must suffer harm of greater magnitude and different kind than general public); *Phila. Elec.*, 762 F.2d at 316 (holding harm must be of greater magnitude and different kind than general public); Pa. Soc'y for the Prevention of Cruelty to Animals v. Bravo Enters., Inc., 237 A.2d 342, 348 (Pa. 1968) [hereinafter *PSPCA v. Bravo Enters., Inc.*] (holding plaintiff must be specifically injured over and above general public).

In *Pennsylvania Society for the Prevention of Cruelty to Animals v. Bravo Enterprises, Inc.*,[62] the Pennsylvania Supreme Court dismissed an animal rights nonprofit's public nuisance claim for lack of significant harm.[63] The Court determined animal cruelty violations did not injure the plaintiff's personal rights to a greater degree than the general public.[64] The Third Circuit later denied a utility company's public nuisance claim to recover costs for pollution cleanup on similar grounds in *Philadelphia Electric Co. v. Hercules*.[65] Despite acknowledging that the plaintiff's pecuniary damages differed from the harm experienced by the general public, the court found no indication that the Delaware River's pollution directly injured the company.[66] In *Allegheny General Hospital v. Philip Morris, Inc.*,[67] the Third Circuit relied on the rationale in *PSPCA* and *Philadelphia Electric* to dismiss a hospital's public nuisance claim against tobacco companies.[68] The court held that the hospital did not suffer different and greater injury than the general public because it was one of many public parties harmed by an alleged conspiracy to mislead the public about smoking risks.[69]

3. Limitations on Significant Harm

Pennsylvania law does not traditionally impose a limit on the number of people a private nuisance may impact.[70] In 1993, however, the United States District Court for the Eastern District of Pennsylvania considered whether a large putative class banned plaintiffs' recovery on a public nuisance action in *In re One Meridian*

62. 237 A.2d at 362 (dismissing public nuisance claim concerning bullfighting festival).

63. *Id.* (holding plaintiff lacked standing to bring public nuisance claim).

64. *Id.* (finding plaintiff lacked greater injury to property rights than general public to prevent animal cruelty violations).

65. 762 F.2d at 316 (rejecting plaintiff's public nuisance claim based on failure to demonstrate harm different in kind from general public).

66. *Id.* (holding relevant public right interfered with right to pure water and plaintiff failed to allege direct harm by polluted water). The Third Circuit noted, however, that the plaintiff may have asserted a claim for public nuisance if it were a riparian landowner. *Id.* (noting polluted waters cause specific harm by interfering with plaintiff's land or operations).

67. 228 F.3d 429, 446 (3d Cir. 2000) (dismissing hospital's public nuisance claim against tobacco companies due to lack of greater and different injury).

68. *Id.* (holding hospital's unreimbursed healthcare costs for nonpaying patients did not constitute harm of greater magnitude and different kind).

69. *Id.* (noting public officials were best suited to remedy source of conspiracy).

70. *See, e.g.*, Edmunds v. Duff, 124 A. 489, 492 (Pa. 1924) (refusing to limit number of plaintiffs bringing industrial nuisance claim).

Plaza Fire Litigation.[71] When a fire engulfed a Philadelphia office building, local businesses brought a public nuisance class action based on denied access to land and pecuniary loss.[72] The district court claimed that allowing too many plaintiffs in the putative class would serve to generalize the harm suffered.[73] The district court determined the only plaintiffs who suffered specific harm were those businesses that could demonstrate loss of profits and lack of access to private property resulting from the street closure.[74]

B. Private Nuisance

A private nuisance concerns the invasion of an individual's interest in the private use and enjoyment of land.[75] The critical difference between public and private nuisance actions is not the number of people harmed, but the nature of the harm or interest invaded.[76] A public nuisance requires interference with common rights to the general public, whereas a private nuisance requires interference with personal rights.[77]

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71. 820 F. Supp. 1460, 1481 (E.D. Pa. 1993) (asserting no other Pennsylvania court explicitly considered threshold for special harm), *rev'd sub nom.* Fed. Ins. Co. v. Richard I. Rubin & Co., 12 F.3d 1270 (3d Cir. 1993).

72. *Id.* at 1471 (noting fire allegedly interfered with common public right to use public streets safely). The plaintiffs alleged the specific harm suffered included (1) deprivation of their right to reasonable, safe, and convenient access to their businesses; (2) loss of profits; and (3) interference with use and enjoyment of real property. *Id.* (describing plaintiffs' public nuisance claim). The specific harm was supposedly greater than and different from the general public's injuries because the greater community was not denied reasonable and safe access to their business premises and did not suffer pecuniary loss from customers' deprivation of access. *See id.* at 1480 (summarizing plaintiffs' arguments for special harm).

73. *Id.* at 1481-82 (stating harm suffered is not special for undeterminably large number of plaintiffs).

74. *Id.* at 1482 (defining putative class by nature and degree of harm suffered). The *One Meridian* court claimed "[a]ll other plaintiffs were not uniquely affected by the closure of the streets, and inclusion of these parties would increase the number of plaintiffs so as to generalize the harm." *Id.* (denying relief to plaintiffs not significantly harmed).

75. RESTATEMENT (SECOND) OF TORTS § 822 (1979) (defining private nuisance). The invasion must be "(a) intentional and unreasonable, or (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities." *Id.* (providing relevant statutory language).

76. *See* 58 Am. Jur. 2d *Nuisances* §§ 24, 32 (2020) (distinguishing between public and private nuisance claims).

77. *Id.* (differentiating between nature of interest invaded in public and private nuisance law). Public nuisance law concerns the interference with a public right, often related to health and safety, while private nuisance law concerns an individual's private right to the use and enjoyment of their land. *Id.* (distinguishing between public and private rights).

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According to the Third Circuit in *Philadelphia Electric*, private nuisance law's historical role is to resolve conflicts between neighboring, contemporaneous land uses efficiently.[78] In *Gavigan v. Atlantic. Refining Co.*,[79] the Pennsylvania Supreme Court noted that the proximity of a plaintiff's property to the source of a nuisance is relevant, but not determinative, to nuisance analysis.[80] In *Leety v. Keystone Sanitary Landfill*,[81] a Pennsylvania Court of Common Pleas held that the neighboring requirement was meritless and rejected its application to a nuisance action brought against a landfill.[82] The court held no legal requirement exists that a putative class member must own or possess a neighboring property to the source of the nuisance.[83]

C. Overlapping Nuisances

A long line of Pennsylvania case precedent demonstrates that courts traditionally permit overlapping causes of nuisance actions.[84] In *PSPCA*, the Pennsylvania Supreme Court held that it is possible for a nuisance to be both public and private in character.[85] In *Phillips v. Donaldson*,[86] the Pennsylvania Supreme Court reiterated this theory when it ruled on a nuisance suit against a public garage in a residential area.[87] The court stated that the main difference between a public nuisance and a private nuisance "does not depend upon the nature of the thing done, but upon the question whether it affects the general public or merely some private individual or

78. Phila. Elec. Co. v. Hercules, Inc., 762 F.2d 303, 314 (3d Cir. 1985) (providing nuisance law's traditional role).

79. 40 A. 834, 835 (Pa. 1898) (holding oil refinery's maintenance in residential area did not constitute nuisance).

80. *Id.* (considering plaintiff's proximity to nuisance source).

81. No. 2018 CV 1159, slip op. at 6 (Pa. Com. Pl. Jan. 24, 2019) (holding proximity to landfill did not bar plaintiffs alleging landfill odors constituted nuisance).

82. *Id.* (declining to apply neighboring requirement when nuisance affects greater community).

83. *Id.* (concluding neighboring requirement lacks legal basis).

84. *See* Baptiste v. Bethlehem Landfill Co., 965 F.3d 214, 223 (3d Cir. 2020) (providing Pennsylvania precedent allowing overlapping nuisance claims); *see also Nuisances*, *supra* note 76, § 25 (defining simultaneously public and private nuisance as mixed).

85. PSPCA v. Bravo Enters., Inc., 237 A.2d 342, 348 (Pa. 1968) (permitting mixed nuisance claims).

86. 112 A. 236, 238 (Pa. 1920) (holding noisy public garage constitutes nuisance if located in residential district, but not in commercial district).

87. *Id.* (noting public nuisance is common to all members of public, whereas private nuisance affects individuals).

individuals."[88] In *Youst v. Keck's Food Serv.*,[89] the Pennsylvania Superior Court also found that when a private or public nuisance is so widespread that it affects both public and private rights, it may be actionable as both a public and private nuisance or either.[90]

IV. THIRD CIRCUIT DUMPS RANCID REASONING ON APPEAL: THE COURT'S ANALYSIS

On appeal, the Third Circuit exercised plenary review in considering whether the Baptistes were entitled to relief on their nuisance and negligence claims.[91] The Third Circuit found the district court misapplied basic nuisance principles under Pennsylvania law and noted two prominent missteps in the district court's analysis.[92] First, the lower court misinterpreted the putative class as an extension of the general public.[93] Second, it relied on *One Meridian* erroneously by imposing a numerical limitation on the putative class.[94] Based on the lower court's unfounded rationale for dismissal, the Third Circuit ultimately revived the Baptistes' class action for public and private nuisance.[95]

A. Analysis of Public Nuisance Claim

Commencing its discussion of the Baptistes' nuisance claims, the Third Circuit chose to address the claims together in order to avoid analytical overlap.[96] The court situated *Baptiste* against the disorderly backdrop of common-law nuisance doctrine and asserted the need to "begin with the basics."[97] The Third Circuit insisted

88. *Id.* (distinguishing between public and private nuisance).

89. 94 A.3d 1057, 1074 (Pa. Super. Ct. 2014) (holding landowners channeling stormwater runoff to other residents liable for resulting injuries).

90. *Id.* at 1071 (stating widespread nuisance may be actionable as either public nuisance, private nuisance, or both).

91. *See* Baptiste v. Bethlehem Landfill Co., 965 F.3d 214, 219 (3d Cir. 2020) (stating standard of review for district court's dismissal of complaint).

92. *Id.* at 222 (noting two significant errors in district court's reasoning).

93. *Id.* (stating district court erred by conflating putative class with greater public).

94. *See id.* (citing *One Meridian*, 820 F. Supp. 1460, 1482 (E.D. Pa. 1993)) (clarifying *One Meridian* speculated large number of plaintiffs may generalize harm but did not restrict class size).

95. *See id.* at 229 (reversing and remanding district court's ruling).

96. *See Baptiste*, 965 F.3d at 219 (presenting decision to combine nuisance claims analysis).

97. *See id.* at 220 (acknowledging need to clarify basic tenets of common-law nuisance). Noting even the most renowned legal scholars struggle to find their footing in nuisance law, the Third Circuit stated, "[It] is a notoriously perplexing and unruly doctrine, seeming to defy all efforts to draw bright lines around it." *Id.* at 219 (emphasizing lack of clear nuisance law principles).

the success of the Baptistes' nuisance claims depended solely on the theories of public and private nuisance.[98] In analyzing the public nuisance claim, the Third Circuit discussed whether (1) Bethlehem's conduct constituted an unreasonable interference with a public right; (2) the plaintiffs' injury was of a greater magnitude and different kind; and (3) the size of the putative class generalized the harm suffered.[99]

1. Unreasonable Interference with a Public Right

First, the Third Circuit examined whether the alleged nuisance unreasonably interfered with a common public right.[100] In considering whether Bethlehem's malodorous emissions satisfied this requirement, the court relied on two exemplary cases identifying the common public right to clean water.[101] Relying on this precedent, the Third Circuit determined that Bethlehem's alleged noncompliance with SWMA requirements bred discomfort and inconvenience that unreasonably interfered with the public right to clean air.[102] Thus, the court concluded the landfill's continuous emission of offensive odors constituted a public nuisance.[103]

2. Specialized vs. Generalized Harm

Next, the Third Circuit addressed the Baptistes' private claim for public nuisance.[104] Relying on *Philadelphia Electric* and *Allegheny General Hospital*, the Third Circuit maintained that the plaintiffs' recovery hinged on whether the landfill emissions caused the class members to suffer harm of a greater magnitude and different kind than that of the general public.[105] The court distinguished the plaintiffs' possessory rights to use and enjoy their private property

98. *See id.* at 220 (clarifying nuisance is interpreted properly as either public or private invasions of property rights).

99. *See id.* at 220-22 (analyzing plaintiffs' public nuisance claim).

100. *See id.* at 220 (defining public nuisance).

101. *See Baptiste*, 965 F.3d at 220 (citing Machipongo Land & Coal Co. v. Pennsylvania, 799 A.2d 751, 773 (recognizing public right to unpolluted water in reversal of lower-court takings decision); *id.* (citing Phila. Elec. Co. v. Hercules, Inc., 762 F.2d 303, 315 (3d Cir. 1985)) (acknowledging public right to pure water).

102. *See id.* (citing *Machipongo*, 799 A.2d at 773) (noting significant interference with public comfort or convenience may constitute unreasonable interference with public right).

103. *See id.* (determining plaintiffs indisputably alleged existence of public nuisance).

104. *See id.* (framing issue as whether plaintiffs properly pleaded private claim for public nuisance).

105. *See id.* at 221 (quoting Allegheny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 446 (3d Cir. 2000)) (noting specific injury requires harm over and above that experienced by general public); Phila. Elec. Co. v. Hercules, Inc., 762 F.2d

from the general public's non-possessory right to clean public air.[106] Comparing the facts of *Philadelphia Electric* to *Baptiste*, the Third Circuit held that the Baptistes' alleged personal rights to "use and enjoy their home and obtain the full value of their property" were qualitatively different and quantitatively larger than the common public right to clean air.[107] Although polluted air in public spaces harmed the general community, the court reasoned that the Baptistes' complaint adequately identified private property damages unique to homeowners and renters.[108]

The Third Circuit dismissed the district court's reasoning behind its denial of the Baptistes' public nuisance action, finding the plaintiffs properly stated a private claim for public nuisance.[109] It held that the lower court's initial analytical mistake was comparing the Baptistes' injuries with their similarly-situated class members instead of the community at large.[110] Furthermore, the Third Circuit took issue with the district court grounding its dismissal of the public nuisance claim on an isolated statement from *One Meridian* with no basis in Pennsylvania law.[111] The Third Circuit found the district court misinterpreted *One Meridian*'s reasoning as justification for imposing a numerical limit on the class when, in reality, the *One*

303, 316 (3d Cir. 1985) (supporting use of greater magnitude and different kind standard).

106. *Baptiste*, 965 F.3d at 221 (classifying interference with plaintiffs' private property rights as significant harm).

107. *Id.* (deeming plaintiffs' alleged injuries sufficiently "specific" to qualify as redressable private claims for public nuisance).

108. *Id.* (concluding plaintiffs' injuries concerned private property damages not endured by greater public). The Third Circuit asserted residents' inability to use and enjoy their swimming pools, porches, and yards was an example of a special injury. *See id.* (stating plaintiffs successfully alleged particular damage).

109. *See id.* at 221-22 (distinguishing *Baptiste* from *One Meridian*).

110. *Id.* at 222 (addressing district court's erroneous equation of putative class with greater public). The Third Circuit noted the Baptistes "have asserted their claims specifically on behalf of a class of homeowner-occupants and renters, not the community at large." *Id.* (specifying putative class). The Third Circuit claimed the district court should have compared the harm suffered by homeowners and renters with the harm suffered by non-residents, including visitors and commuters. *Id.* (stating appropriate comparison demonstrates invasions of plaintiffs' private property rights in addition to right to clean air).

111. *See Baptiste*, 965 F.3d at 221 (stating district court misinterpreted Pennsylvania law by dismissing plaintiff's public nuisance claim). The district court relied on the following sentence from *One Meridian*: "Where there are a large number of plaintiffs, the harm those plaintiffs suffered is not special." *Id.* (quoting In re One Meridian Plaza Fire Litigation, 820 F. Supp. 1460, 1481 (E.D. Pa. 1993)) (emphasizing generalized harm theory lacked basis in Pennsylvania authority). The district court erroneously speculated that allowing too many plaintiffs alleging property damages into a class would generalize the harm. Baptiste v. Bethlehem Landfill Co., 365 F. Supp. 3d 544, 550 (E.D. Pa. 2019) (holding plaintiffs failed to prove special harm because odors affected thousands of households).

Meridian court defined the class by the nature and degree of harm suffered.[112] The Third Circuit concluded its public nuisance analysis by reiterating that no Pennsylvania court, neither before nor after *One Meridian*, has imposed a numerical limitation on a large number of plaintiffs suffering the same injury.[113]

B. Analysis of Private Nuisance Claim

Shifting its focus to an analysis of the Baptistes' private nuisance claim, the Third Circuit noted the district court's flawed reasoning in dismissing the claim.[114] The Third Circuit highlighted the lower court's critical error as improperly distinguishing between public and private nuisance claims.[115] Moreover, the Third Circuit acknowledged that the district court incorrectly imposed a neighboring requirement on a private nuisance, which is nonexistent under Pennsylvania law.[116] Turning to relevant policy considerations, the Third Circuit finally concluded that the Baptistes also stated a claim for private nuisance.[117]

1. Differentiating Between Types of Nuisance

The Third Circuit neglected to adopt the district court's inaccurate rationale, based on its interpretation of *Phillips*, that a public nuisance infringing upon the rights of a whole community cannot simultaneously constitute a private nuisance.[118] Insisting public and private nuisance are two separate and distinct theories of liability, the Third Circuit emphasized that a widespread nuisance may

112. *Baptiste*, 965 F.3d at 222 (providing *One Meridian*'s reasoning did not support claim that large number of plaintiffs suffering same injury cannot prove special harm). The *One Meridian* court instead defined the putative class by reasonably certain pecuniary loss and substantial lack of access. *See One Meridian*, 820 F. Supp. at 1482 (characterizing class based on nature and degree of injury).

113. *Baptiste*, 965 F.3d at 222 (emphasizing lack of Pennsylvania authority supporting district court's dismissal of public nuisance claim).

114. *Id.* at 223 (noting district court adopted similarly flawed logic to guide analysis of both public and private nuisance claims).

115. *Id.* (stating district court misinterpreted essential difference between public and private nuisance).

116. *See id.* (finding Pennsylvania law does not support applying neighboring requirement in private nuisance context).

117. *See id.* at 223-24 (holding plaintiffs indisputably stated claim for private nuisance).

118. *See Baptiste*, 965 F.3d at 223 (attributing district court's reliance on interpretation of *Phillips* to legal error). The district court relied on *Phillips* to dismiss the Baptistes' private nuisance claim, reasoning that "the outmigration of odors was a public nuisance insofar as it affected the 'whole community' rather than only 'some particular person.'" *Id.* (quoting Phillips v. Donaldson, 112 A. 236, 238 (Pa. 1920)) (describing district court's faulty reasoning).

be actionable as both a public and private nuisance.[119] The Third Circuit, therefore, interpreted the Pennsylvania Supreme Court's classification of nuisance in *Phillips* as turning on whether the nuisance affects the general public or private individuals.[120] Moreover, relying on the Pennsylvania Supreme Court's reasoning in *Youst*, the court rectified the district court's interpretation of overlapping nuisance actions.[121] The Third Circuit reiterated that when a public or private nuisance is so widespread it infringes on both public and private rights, the nuisance can sustain a claim for either or both types of actions.[122] The landfill's noxious emissions in *Baptiste*, the Third Circuit noted, supplied the basis for both a private nuisance claim and the specific harm required to sustain a private claim for public nuisance.[123]

2. Neighboring Requirement

Addressing an additional error the lower court implemented, the Third Circuit questioned the district court's reliance on the neighboring requirement in dismissing the Baptistes' private nuisance claim.[124] In doing so, the court clarified that Pennsylvania law does not support rejecting a private nuisance action on the basis that the affected property was too far from the nuisance source.[125] The Third Circuit dismissed Bethlehem's argument that *Gavigan*, a decision from over a century ago, supports the applica-

119. *See id.* (stating causes of action for public and private nuisance are not mutually exclusive).

120. *See Phillips*, 112 A. at 238 (reiterating critical difference between public and private nuisance is nature of right affected, not number of people harmed).

121. *See Baptiste*, 965 F.3d at 223 (citing Youst v. Keck's Food Serv., 94 A.3d 1057, 1071 (2014)) (providing correct interpretation of simultaneous public and private nuisances); *see also* PSPCA v. Bravo Enters., Inc., 237 A.2d 342, 348 (Pa. 1968) (holding widespread nuisance may be actionable as both public and private actions).

122. *Baptiste*, 965 F.3d at 223 (discussing potential overlap between causes of action). The Third Circuit also cited the Pennsylvania Superior Court's unpublished opinion in *Umphred v. VP Auto Sales & Salvage, Inc.* for illustrative purposes on this point. *See id.* (citing Umphred v. VP Auto Sales & Salvage, Inc., No. 1372, 2015 WL 6965725, at *12 (Pa. Super Ct. June 24, 2015) (affirming judgment that noise pollution from scrap metal recycling interfered with public and private rights and was actionable as public and private nuisance).

123. *Id.* (holding landfill emissions supported claims for both types of nuisance).

124. *Id.* at 223-24 (denouncing neighboring requirement).

125. *Id.* (finding Pennsylvania law does not support factoring proximity into nuisance analysis). The district court incorrectly reasoned that private nuisance claims should be used solely to resolve conflicts between proximate or adjoining neighbors. *See id.* (noting district court dismissed plaintiffs' claim because it was not neighboring property).

tion of the neighboring requirement in the context of private nuisance claims.[126] The Third Circuit specified that the Pennsylvania Supreme Court's holding in *Gavigan* does not support the district court's decision to predicate its dismissal of the private nuisance claim on the plaintiffs' proximity to the landfill.[127] In support of this finding, the Third Circuit noted the last reported case to cite *Gavigan* recognized the existence of a private nuisance even though the plaintiffs' property was located one-and-one-half miles from the source.[128]

3. Mass Nuisance Theory

The Third Circuit concluded its nuisance analysis by dismissing Bethlehem's arguments under its mass nuisance theory.[129] Bethlehem insisted the Pennsylvania Supreme Court upheld this theory over a century ago in *Gavigan*, citing several Pennsylvania cases allegedly supporting its claim.[130] The Third Circuit, however, determined none of the cited cases bolstered Bethlehem's argument, noting several even undermined its reasoning.[131] The court further acknowledged that neither party cited to a Pennsylvania Supreme Court decision directly addressing a limit on the number of plain-

126. *See id.* (holding *Gavigan* does not support claim that class members' residences and landfill must be neighboring properties).

127. *See Baptiste*, 965 F.3d at 223-24 (citing Gavigan v. Atlantic. Refining. Co., 40 A. 834, 835 (Pa. 1898)) (claiming *Gavigan* noted property's proximity to nuisance source but did not prevent more distant property from bringing same claim).

128. *Id.* at 224 (citing Noerr v. Lewistown Smelting, 60 Pa. D. & C.2d 406, 408, 414 (Pa. Com. Pl. 1973)) (holding manufacturing plants' emissions constituted private nuisance).

129. *See id.* at 224-27 (addressing Bethlehem's mass nuisance theory). The Third Circuit stated that although Bethlehem argued in support of limiting the number of plaintiffs able to bring a private claim for a widespread nuisance, it did not identify a precise number. *Id.* at 224 (noting defendant argued number of aggrieved persons becomes indeterminate when nuisance affects entire neighborhood of any size). Bethlehem insisted the plaintiffs rely on PADEP or other public officials for relief. *Id.* (alleging plaintiffs' inability to bring private claim).

130. *Id.* at 224 (noting Bethlehem cited Pennsylvania Supreme Court decisions supposedly endorsing mass nuisance theory). Bethlehem erroneously cited *Edmunds v. Duff* for the first time on oral argument as an additional Pennsylvania Supreme Court case that supported its mass nuisance theory. *See id.* (citing Edmunds v. Duff, 124 A. 489, 492 (Pa. 1924)) (holding individual residents retained right to protection against business or industry's interference with private property rights, even if injury affected neighborhood).

131. *See id.* at 224-25 (stating Bethlehem failed to cite case restricting number of plaintiffs who can recover for property rights invasion). The Third Circuit pointed to *Brunner v. Schaffer* as a case Bethlehem cited that undercut its argument. *See* Brunner v. Schaffer, 1 Pa. D. 646, 649 (Pa. Com. Pl. 1892) (rejecting private nuisance claim for foul odors because plaintiff failed to distinguish special injury to property from general discomfort).

tiffs able to recover on a nuisance theory.[132] In predicting how the Pennsylvania Supreme Court would rule on the issue, the Third Circuit was unconvinced it would adopt Bethlehem's mass nuisance theory.[133] To reinforce its position, the Third Circuit exemplified *Leety* as a case nearly identical to *Baptiste*, in which a Pennsylvania court allowed a nuisance class action with a similar number of plaintiffs.[134] Additionally, the Third Circuit found no indication that Pennsylvania courts gave persuasive value to out-of-state cases advocating for the application of mass nuisance theory.[135]

4. Policy Discussion

The Third Circuit then initiated its discussion of the defendant's proposed policy considerations, claiming "[a]ll that Bethlehem is left with are policy arguments."[136] The court examined Bethlehem's claim that the ability to remedy large-scale industrial nuisances should be left to democratically-accountable public officials instead of thousands of private individuals, which may deny communities of critical public utilities services.[137] The court also noted Bethlehem's *amici* warned against allowing piecemeal litigation to degrade landfill operations already subject to strict regulatory scrutiny.[138]

The Third Circuit then considered the Baptistes' contention that limiting the ability to bring private causes of action would erode citizens' longstanding legal right to protect property interests

132. *Baptiste*, 965 F.3d at 225 (noting absence of controlling decision by Pennsylvania Supreme Court). The Third Circuit stated that without such a decision, "[A] federal court applying that state's substantive law must predict how Pennsylvania's highest court would decide this case." *Id.* (providing standard of determination).

133. *See id.* at 225 (stating Pennsylvania case law and controlling nuisance principles support rejecting mass nuisance theory).

134. *See id.* (noting multiple Pennsylvania courts allowed large numbers of plaintiffs to bring widespread industrial nuisance claims); *see, e.g.*, Diehl v. CSX Transp. Inc., 349 F. Supp. 3d 487, 494-95, 507-08 (W.D. Pa. 2018) (granting private nuisance claim brought by approximately one thousand residents); Maroz v. Arcelormittal Monessen LLC, 2015 U.S. Dist. LEXIS 140660 at 9 (W.D. Pa. Oct. 15, 2015) (granting private nuisance claim brought by unspecified number of residents); Leety v. Keystone Sanitary Landfill, No. 2018 CV 1159, slip op. at 6 (Pa. Com. Pl. Jan. 24, 2019) (allowing thousands of individuals residing within two-and-one-half miles of landfill to bring private nuisance action).

135. *See Baptiste*, 965 F.3d at 226 (finding no cases from other jurisdictions gained momentum in Pennsylvania courts).

136. *See id.* (commencing policy discussion).

137. *Id.* (weighing Bethlehem's policy arguments).

138. *Id.* (noting defendant's *amici* claimed piecemeal litigation would promote inconsistent application of regulatory regime).

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from industrial nuisances.[139] Noting the Baptistes' observation that the Pennsylvania legislature expressly reserved the right to bring private actions under the SWMA, the court emphasized that the SWMA's purpose is to provide "additional and cumulative remedies."[140] The Third Circuit subsequently reviewed the *amici*'s arguments concerning the case's pertinent environmental justice implications.[141] The Third Circuit recognized Freemansburg, Pennsylvania's classification as an environmental justice area.[142] The Third Circuit cited various statistics and empirical research demonstrating environmental pollution's disparate impact on minority and low-income communities.[143] After discussing the central policy considerations at issue, the court ultimately grounded its decision in Pennsylvania authority, stating that "[n]otwithstanding these important policy concerns, we remain tethered to what Pennsylvania law requires."[144] The Third Circuit concluded its nuisance analysis by noting that "adopt[ing] Bethlehem's novel position would produce the anomalous result of penalizing small polluters while exempting larger polluters from the same liability."[145]

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139. *Id.* (examining importance of private right to bring nuisance actions).

140. *Baptiste*, 965 F.3d at 226 (quoting 35 P.S. § 6018.607 (1980)) (indicating SMWA's legislative intent supported plaintiffs' claim that savings clause explicitly preserves right to bring private causes of action). For further discussion of the SMWA's legislative intent and savings clause, see *supra* notes 51-56 and accompanying text.

141. *See id.* (noting decision's impact on minority communities). The Baptistes' *amici* stressed that "this private right is of greater importance to historically underrepresented communities whose interests are not always fully addressed by public agencies or through the political process." *Id.* (emphasizing need to uphold private right). Earlier in its opinion, the Third Circuit described the concept of environmental justice as "embod[ying] the principles that communities and populations should not be disproportionately exposed to adverse environmental impacts." *Id.* at 219 n.3 (quoting *Office of Environmental Justice*, PA. DEP'T. OF ENVTL. PROT., https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/default.aspx (last visited Oct. 18, 2020)) (defining environmental justice).

142. For further discussion of PADEP's classification of environmental justice areas, see *supra* note 26 and accompanying text.

143. *See Baptiste*, 965 F.3d at 226-27 (referencing secondary sources to support claim that landfills disproportionately harm minority populations). The Third Circuit acknowledged environmental laws are underenforced in minority communities with higher concentrations of waste disposal facilities. *Id.* at 226 (noting public officials' failure to remedy nuisances from landfills and similar facilities).

144. *Id.* at 227 (basing decision on correct application of longstanding principles supported by Pennsylvania law).

145. *Id.* (noting mass nuisance theory promotes asymmetrical liability for large- and small-scale polluters).

V. THIRD CIRCUIT EFFECTIVELY TIDIES CLUTTERED PENNSYLVANIA PRECEDENT: A CRITICAL ANALYSIS

In reaching a conclusion on *Baptiste*, the Third Circuit presented an analysis of the Baptistes' nuisance actions that interpreted Pennsylvania case law thoroughly and accurately.[146] By reversing the district court's decision, the Third Circuit highlighted the lower court's missteps in dismissing the Baptistes' public and private nuisance claims and reinstated controlling legal principles.[147] The Third Circuit closely examined the district court's faulty reasoning in imposing limitations on the size of the putative class and its proximity to the landfill, providing a clear explanation as to why Pennsylvania authority did not support the lower court's conclusions.[148]

The Third Circuit crafted its decision on the assumption that future cases were at stake.[149] *Baptiste*'s holding displays an acute awareness of the court's role as a rule-making institution, given that its precedential decision will have an impact on the determination of future cases.[150] Although the Third Circuit addressed the consequences of the landfill's noxious odors on its neighboring residents at length, the court decided not to approach the case from an overtly policy-driven perspective.[151] Instead, it fortified the weight and potential impact of its decision by resting its conclusion on a detailed analysis and accurate application of Pennsylvania common-law precedent.[152] By choosing to root its decision in Pennsylvania

146. For a discussion of the Third Circuit's findings regarding the district court's misapplication of nuisance law principles, see *supra* notes 92-94 and accompanying text.

147. For a discussion of the Third Circuit's proper analysis of Pennsylvania case law governing public nuisance claims, see *supra* notes 103-13 and accompanying text. For a discussion of the Third Circuit's proper analysis of Pennsylvania case law governing private nuisance claims, see *supra* notes 114-28 and accompanying text.

148. For a discussion of the district court's incorrect limitation of class size, see *supra* notes 111-13 and accompanying text. For a discussion of the district court's improper imposition of a neighboring requirement, see *supra* notes 124-128 and accompanying text.

149. *See generally* Walter V. Schaefer, *Precedent and Policy*, 34 U. CHI. L. REV. 3, 4 (1966) (discussing importance of deciding cases so they will count for future purposes).

150. *See generally id.* (stating courts should consider future impact of case when making decisions).

151. For a discussion of the Third Circuit's examination of *Baptiste*'s policy implications, see *supra* notes 136-45 and accompanying text.

152. For a discussion of the Third Circuit's decision to ground *Baptiste*'s holding in Pennsylvania case law instead of public policy, see *supra* note 144 and accompanying text.

state law instead of public policy, the Third Circuit constructed clear nuisance guidelines for other courts.[153]

The Third Circuit's broad framing of *Baptiste*'s relevant environmental justice concerns allows for widespread application of the court's decision.[154] The generalized and informative scope of the court's policy discussion increases the likelihood that its reasoning will be relevant to cases concerning other environmental issues that disproportionately affect low-income and minority populations.[155] The scope of the Third Circuit's decision is enlarged further by its refusal to establish a test, or implement narrow guidelines, for the future determination of nuisance claims.[156] By incorporating the policy discussion into its general analysis of the plaintiffs' nuisance claims instead of treating it as a separate prong of analysis, the court's decision allows for flexibility in *Baptiste*'s application to other cases.[157]

A possible downside of the Third Circuit's decision not to incorporate the balancing of policy interests as a concrete analytical step, however, is that other courts following its guidance may forego a discussion of policy altogether.[158] If courts fail to consider the disproportionately negative effects of environmental burdens on marginalized populations, this may impact minority groups adversely and prevent communities of color from seeking relief for environmental harms.[159] By implementing a more holistic, analytical approach that weighs competing policy interests, the Third Circuit could have ensured that other courts incorporate a policy

153. For a discussion of the Third Circuit's decision to ground *Baptiste*'s holding in Pennsylvania case law instead of public policy, see *supra* note 144 and accompanying text.

154. For a discussion of the Third Circuit's consideration of *Baptiste*'s critical environmental justice implications, see *supra* notes 141-43 and accompanying text.

155. For a discussion of additional environmental issues affecting low-income, minority populations, see *supra* note 3 and accompanying text.

156. For a discussion of the Third Circuit's decision to ground *Baptiste*'s holding in Pennsylvania case law instead of public policy, see *supra* note 144 and accompanying text.

157. For an overview of the structure of the Third Circuit's private nuisance analysis, see *supra* notes 114-17 and accompanying text.

158. For a discussion of the Third Circuit's decision to ground *Baptiste*'s holding in Pennsylvania case law instead of public policy, see *supra* note 144 and accompanying text.

159. For a discussion of how the district court's holding in *Baptiste* would prevent minority populations from bringing nuisance claims, see *supra* note 139 and accompanying text.

discussion, while also maintaining the relevance and versatility of *Baptiste*'s holding.[160]

VI. THE LINGERING IMPACT OF *BAPTISTE*: WILL ENVIRONMENTAL NUISANCE SUITS BE WELCOMED INTO COURTS OR HEAPED IN THE TRASH?

The Third Circuit provides a timely demonstration of how an abstract concept like common-law nuisance can be manipulated into a coherent framework for assessing social institutions.[161] As the Third Circuit recognized in its policy-oriented discussion of *Baptiste*'s environmental justice implications, the stakes of its decision were high.[162] Allowing the district court's erroneous reasoning to stand would strip primarily low-income and minority communities of their private right to bring public and private nuisance claims for overwhelming environmental hazards.[163] Furthermore, the district court's ruling immunized bad environmental actors from liability for public nuisances if they ensured an environmental burden's widespread impact.[164] The Third Circuit's decision provides much-needed direction to Pennsylvania courts attempting to make sense of nuisance law.[165] *Baptiste*'s ruling supports deference to the appropriate application of principles including specific harm and overlapping nuisances, and cautions courts against improperly limiting nuisance claims on the basis of proximity or class size.[166]

By overruling the district court's decision, the Third Circuit's holding preserves a critical instrumentality for environmental injustice victims to seek redress for infringements on their personal

160. For a discussion of the relevance and versatility of the Third Circuit's holding in *Baptiste*, see *supra* notes 154-57 and accompanying text.

161. For a discussion of nuisance law's abstract nature, see *supra* notes 41-46 and accompanying text.

162. For a discussion of the Third Circuit's consideration of *Baptiste*'s critical environmental justice implications, see *supra* notes 141-43 and accompanying text.

163. For a discussion of how the district court's holding in *Baptiste* would prevent minority populations from bringing nuisance claims, see *supra* note 139 and accompanying text.

164. For a discussion of how the district court's holding in *Baptiste* would exempt large-scale polluters from liability, see *supra* note 145 and accompanying text.

165. For a discussion of the perplexities of nuisance law, see *supra* notes 41-46 and accompanying text.

166. For a discussion of the district court's incorrect limitation of class size, see *supra* notes 111-13 and accompanying text. For a discussion of the district court's improper imposition of a neighboring requirement, see *supra* notes 124-28 and accompanying text.

rights by large-scale industrial nuisances.[167] This decision revives civil litigation, including class action nuisance suits, as a strategic means of protecting private rights.[168] Currently, environmental regulations are underenforced profoundly by public agencies and officials, and constitutional claims for environmental racism are wildly unsuccessful.[169] *Baptiste* restores agency to individuals and communities who, unlike many public agencies, are acutely aware of the environmental burdens impacting their populations and more incentivized to take action against industrial facilities' harmful conduct.[170]

It is important to note that *Baptiste* not only represents a substantial victory for environmental justice plaintiffs, but has considerable implications for environmental sustainability.[171] In the face of mounting concerns related to climate change and air pollution, this decision prioritizes adherence to environmental regulations and statutory guidelines.[172] By allowing large groups of plaintiffs to sue for widespread nuisances, *Baptiste* has the impetus to pressure industrial actors to operate more responsibly and reduce environmental hazards to avoid litigation and potential damages.[173]

The broad scope of the Third Circuit's holding also has the potential to add momentum to pressing environmental justice issues.[174] Such concerns include the siting of hazardous waste facilities and other undesirable land uses that cause nuisances and environmental health risks in poor and minority communities.[175]

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167. *See* Emilee Larkin, *Smelly Pennsylvania Landfill Must Face Class Suit*, COURTHOUSE NEWS SERV. (July 13, 2020), https://www.courthousenews.com/smelly-pennsylvania-landfill-must-face-class-suit/ (noting plaintiffs' counsel stated Third Circuit's holding reaffirms civil litigation as tool for protection of property rights against corporate polluters).

168. For a discussion of nuisance law as a means of protecting environmental rights, see *supra* note 8 and accompanying text.

169. For a discussion of environmental justice plaintiffs' difficulties in bringing environmental justice claims, see *supra* note 8 and accompanying text.

170. For a discussion of public officials' underenforcement of environmental laws in low-income, minority communities, see *supra* note 143 and accompanying text.

171. For further discussion of nuisance law as a means of protecting environmental rights, see *supra* note 8 and accompanying text.

172. For further discussion of the SWMA and its relevant guidelines, see *supra* notes 51-56 and accompanying text.

173. For further discussion of nuisance law as a means of protecting environmental rights, see *supra* note 8 and accompanying text.

174. For a discussion of additional environmental issues affecting low-income, minority populations, see *supra* note 3 and accompanying text.

175. For a discussion of additional environmental issues affecting low-income, minority populations, see *supra* note 3 and accompanying text. The Third Circuit's holding in *Baptiste* may also affect other urgent legal issues in which class

The strategic use of common-law nuisance doctrines may provide a non-traditional yet effective approach to large-scale litigation in these areas by alleviating environmental burdens on communities of color.[176] By establishing a clear framework for analysis of class-action nuisance claims, *Baptiste* can serve as precedent for courts in Pennsylvania and other jurisdictions that are ruling on these timely environmental law issues.[177]

The Third Circuit's decision in *Baptiste* — crafted in such a way as to "count for the future" — is a beacon of hope for low-income and minority communities suffering beneath towering smoke stacks and invisible clouds of noxious gases.[178] It serves as a reminder that common-law nuisance is not a legal relic of limited use, but rather a cogent means of combatting widespread industrial nuisances and pollution.[179] In the wake of *Baptiste*, class action nuisance claims have been reframed as a vital basis of relief for injuries caused by the unreasonable infringement of private rights.[180] This decision serves to restore power to individual persons so they may harness the utility of common-law nuisance doctrines when pursuing just and effective remedies to increase their overall quality of life.[181]

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action suits may be especially impactful, including toxic tort liability, gun control, and COVID-19 litigation. *See* Ketajh Brown, *Toxic Tort Monitor: The Rising Trend of Public Nuisance in Large Scale Litigation*, HUSCH BLACKWELL (Oct. 29, 2019), https://www.tmtindustryinsider.com/2019/10/toxic-tort-monitor-the-rising-trend-of-public-nuisance-in-large-scale-litigation/ (framing nuisance law as potential source of redress for large-scale health problems); Joseph J. Orzano & Jasmine Stanzick, *Potential Liability for Businesses Under the Public Nuisance Doctrine*, SEYFARTH SHAW (May 8, 2020), https://www.seyfarth.com/news-insights/potential-liability-for-businesses-under-the-public-nuisance-doctrine.html (discussing possibility of nuisance suits against businesses for COVID-19 exposure).

176. For further discussion of the negative health risks associated with residence in communities with high concentrations of hazardous waste facilities, see *supra* notes 3-4 and accompanying text.

177. For a discussion of the Third Circuit's analysis of Pennsylvania case law governing public nuisance claims, see *supra* notes 103-113 and accompanying text. For a discussion of the Third Circuit's analysis of Pennsylvania case law governing private nuisance claims, see *supra* notes 114-28 and accompanying text.

178. *See* Schaefer, *supra* note 149 (discussing importance of deciding cases so they will count for future purposes).

179. For further discussion of nuisance law as a means of protecting environmental rights, see *supra* note 8 and accompanying text.

180. For further discussion of nuisance law as a means of protecting environmental rights, see *supra* note 8 and accompanying text.

181. For further discussion of nuisance law as a means of protecting environmental rights, see *supra* note 8 and accompanying text.

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