Business Restructuring Update

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Third Circuit Affirms Corporate Boards Control Bankruptcy Filings Despite Out-of-State Receivers

The U.S. Court of Appeals for the Third Circuit has reinforced the primacy of corporate governance under state law in mass-tort bankruptcies, holding that Whittaker Clark & Daniels Inc. properly filed for bankruptcy under New Jersey law, even in the face of a South Carolina receivership order. Critically, the court confirmed that successor liability claims arising from asbestos-talc litigation are property of the bankruptcy estate, not individual creditors, centralizing control over these claims for the benefit of all creditors. The decision clarifies the boundaries between state receivership authority, corporate board powers, and federal bankruptcy law, with particular significance for mass-tort and successor liability issues.

Background

After a $29 million asbestos verdict and the appointment of a South Carolina receiver, Whittaker's board – exercising its authority under New Jersey law – filed for Chapter 11 bankruptcy without receiver approval. The receiver and the Talc Claimants' Committee challenged the validity of the filing and the estate's ownership of successor liability claims against nondebtor entities, including Brenntag and Berkshire Hathaway affiliates.

Court's Analysis

The court held that a corporate debtor's authority to file for bankruptcy is determined by its state of incorporation – in this case, New Jersey. The South Carolina receivership order did not displace the Whittaker board's authority, as the receiver failed to seek recognition in New Jersey. Arguments based on the Full Faith and Credit Clause were rejected.

On the mass tort front, the court applied its precedent to hold that successor liability claims, such as those against Brenntag under a "product line" theory, are "general" claims belonging to the bankruptcy estate, not to individual tort claimants. These claims are based on the successor's relationship to the debtor, not on individualized injuries, so any recovery benefits all creditors. The court also clarified that the debtor's inability to assert such claims outside bankruptcy does not preclude their inclusion in the estate.

While the panel discussed the ongoing circuit split over whether bankruptcy courts should apply state or federal choice-of-law rules, this issue was not outcome-determinative in the case.

Implications

The decision underscores that corporate governance and the authority to file for bankruptcy are governed by the debtor's state of incorporation, not by out-of-state receivership orders. In mass-tort bankruptcies, successor liability claims based on the debtor-successor relationship are property of the estate, ensuring centralized and equitable treatment for all creditors. The court's discussion of choice-of-law rules highlights ongoing uncertainty and the potential for future litigation in this area.

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