By Steve McNeill and Andrew Ehrmann

What *Whittaker Clark & Daniels* Says About Receivership Proceedings and Authority to File

Steve McNeill
Ice Miller LLP
Wilmington, Del.

Andrew Ehrmann
Ice Miller LLP
Wilmington, Del.

Steven McNeill is a partner, and Andrew Ehrmann is an associate, in Ice Miller LLP's Bankruptcy & Restructuring Group in Wilmington, Del.

Receivership laws often grant state and federal courts overseeing receivership proceedings broad authority to control over a corporation's assets and affairs. However, much like the equitable powers of bankruptcy courts, the power conferred upon a court in a receivership proceeding is not without boundaries.

The Third Circuit Court of Appeals' recent decision in *Whittaker Clark & Daniels*[1] clarifies some of these limits and raises new questions about others. Specifically, the ruling examines a court's ability to alter the default rule that a corporation's management retains the legal authority to file a bankruptcy petition. This article analyzes the key issues in *Whittaker Clark & Daniels* to help practitioners evaluate whether seeking bankruptcy protection is appropriate after the appointment of a receiver.

The Facts

Whittaker Clark & Daniels Inc. (WCD), a Connecticut-headquartered New Jersey corporation, faced mounting mass tort liability from the sale of talc allegedly containing asbestos, leading to a long-term winding down of operations and the sale of most of its assets. Following a $29 million judgment for a talc victim in 2023, a South Carolina state court appointed a receiver vested with "the power and authority [to] fully administer all assets of WCD … and take any and all steps necessary to protect the interests of WCD whatever they may be."[2] The receivership order did not otherwise address the corporate governance or operation of WCD.

Despite the receivership order, the company's board of directors authorized a chapter 11 bankruptcy filing in New Jersey. The receiver and the Official Committee of Talc Claimants appointed in the bankruptcy case (the "Talc Committee") moved to dismiss the case for cause, arguing that WCD lacked authority to file the petition under the receivership order. The bankruptcy court denied the motion to dismiss, which the Talc Committee appealed to the Third Circuit. The Third Circuit upheld the bankruptcy court's denial for the reasons laid out below.

Initial Considerations

The analysis of what a receivership order can accomplish depends heavily on whether the receivership is proceeding under federal or state law. As a matter of federal preemption, state law generally cannot bar a corporation from utilizing the bankruptcy system entirely.[3]

A court may, however, modify which specific parties have authorization to file a petition on a corporation's behalf. Ultimately, while bankruptcy law is strictly federal, a corporation's capacity to file a bankruptcy petition is dictated by state law. Consequently, a court can vest in a receiver with the sole right to initiate a voluntary bankruptcy case on behalf of a corporation.[4] Where a receiver has been appointed, a bankruptcy court must therefore examine the receivership order to determine which party holds the legal authority to file bankruptcy.

The Substance of a Receivership Order

While several open procedural questions remain regarding how receivership orders impact a corporation's ability to file bankruptcy, courts can often avoid those murky procedural waters by simply looking at the plain language of the order itself. A receivership order can divest corporate management of its authority to file for bankruptcy in two primary ways: explicitly or implicitly.

For example, an explicit divestment occurred in the

1 The Third Circuit issued an opinion on Sept. 10, 2025. *Protopapas v. Brenntag AG* (*In re Whittaker Clark & Daniels Inc.*), 152 F.4th 432 (3d Cir. 2025). The Third Circuit issued a revised opinion that contains mostly stylistic alterations to the portions of the opinion this article will discuss. *Protopapas v. Brenntag AG* (*In re Whittaker Clark & Daniels Inc.*), 2026 U.S. App. LEXIS 11990 (3d Cir. Apr. 27, 2026). Citations, quotations and any other references contained in this article will be to the amended opinion.

2 *Whittaker Clark & Daniels*, 2026 U.S. App. LEXIS 11990, at *6.

3 *In re Stewart*, 2025 Bankr. LEXIS 521, at *7 (Bankr. N.D. Ohio March 5, 2025) ("State legislatures and state courts cannot add additional filing restrictions not found in the Bankruptcy Code.") (*citing Wis. Pub. Intervenor v. Mortier,* 501 U.S. 597, 604 (1991)); *In re Newport Offshore Ltd.*, 219 B.R. 341 (Bankr. D.R.I. 1998).

4 *Price v. Gurney*, 324 U.S. 100, 107 (1945); *Sino Clean Energy Inc. v. Seiden* (*In re Sino Clean Energy Inc.*), 901 F.3d 1139, 1142 (9th Cir. 2018) ("No matter the equitable considerations, state law dictates which persons may file a bankruptcy petition on behalf of a debtor corporation.").

U.S. Bankruptcy Court for the Eastern District of Tennessee in *Uncle Nearest Inc*.[5] In this case, the court dismissed jointly administered bankruptcy cases because management filed the petitions without the consent of a receiver appointed by a federal court. The underlying receivership order "exclusively vested … all the powers of officers, directors, members, and/or managers" in the receiver.[6]

Moreover, under the receivership order, the debtors' management's powers were subject to the receiver's supervision. Based on this explicit language, the bankruptcy court concluded that only the receiver possessed the authority to authorize a bankruptcy filing.[7]

In contrast, the receivership order in *Whittaker Clark & Daniels* did not directly address corporate governance, nor did it define the power of the receiver versus WCD's management to authorize corporate actions. The Talc Committee argued that by granting the receiver the power to administer all of WCD's assets and take any steps necessary to protect WCD's interests, the order implicitly vested the exclusive right to file bankruptcy in the receiver. The Third Circuit disagreed. It ruled that without explicit language to the contrary, the default rule under state law controls, which leaves corporate governance intact and vests a corporation's authority to file bankruptcy squarely with its management.[8] Thus, the receivership order did not, on its face, strip WCD's board of its authority to file bankruptcy.

While clear-cut cases exist where a receivership order explicitly divests a corporation's management of its authority to file for bankruptcy (like in *Uncle Nearest*) or clearly leaves it intact (like in *Whittaker Clark & Daniels*), most cases fall somewhere in between. Because receivership laws vary significantly across jurisdictions, courts cannot rely on a one-size-fits-all approach. Instead, they must carefully examine applicable state or federal receivership frameworks to determine whether a receivership order properly successfully modifies the default corporate governance rules, including bankruptcy filing authority.

Choice of Law: All Roads Lead to New Jersey

A bankruptcy court evaluating a corporation's filing authority must often navigate a complex, multi-jurisdictional choice-of-law analysis. These conflicts arise naturally in receivership matters due to competing interests of three distinct jurisdictions. First, the state of incorporation will generally have an interest in the corporate affairs of a domestic corporation, including the authority to file bankruptcy. Second, a corporation facing mass tort liability, like WCD, is vulnerable to localized receivership actions — the forum of the receivership. Third, bankruptcy forum represents a district where the corporation ultimately files, which may sit outside of its state of incorporation based on the location of its principal assets, principal place of business or pending affiliate case).[9]

This jurisdictional tension takes center stage in *Whittaker Clark & Daniels*, where Circuit Judges Ambro and Krause issued dueling concurring opinions on choice-of-law principles. Their debate underscores an ongoing circuit split regarding the applicability of the Supreme Court's landmark ruling in *Klaxon Company v. Stentor Electric Manufacturing Co*.[10] in the bankruptcy context. *Klaxon* holds that federal courts sitting in diversity must apply the choice of law rules of the forum state. Since bankruptcy law often implicates issues of state law, the extent to which *Klaxon* applies to bankruptcy proceedings remains unclear. Circuit courts throughout the country have issued varied rulings on *Klaxon*, with courts holding that (1) *Klaxon* is always applicable in bankruptcy,[11] (2) *Klaxon* is never applicable in bankruptcy proceedings and bankruptcy courts must instead apply a federal common law choice of law rule,[12] or (3) *Klaxon* applies in bankruptcy proceedings only in the absence of a compelling federal interest.[13]

The Third Circuit has not weighed in on the circuit split, leading to the concurring opinions in *Whittaker Clark & Daniels*. The discussion of *Klaxon* is resigned to the two concurring opinions, because the Talc Committee and WCD agreed that regardless of what choice-of-law rules were applied, New Jersey law applied for purposes of analyzing the receivership order and matters of WCD's corporate affairs.[14] Thus, it did not matter whether *Klaxon* required application of a New Jersey or a federal choice-of-law rule; New Jersey law would apply.

The decision in *Whittaker Clark & Daniels* illustrates how the choice-of-law analysis functions in this context. Ultimately, the internal affairs doctrine will likely moot any choice-of-law issues, bypassing the need for a complex *Klaxon* analysis concerning the corporate affairs of a debtor. Under both state and federal common law, the authority to regulate a corporation's internal affairs rests with the state of incorporation.[15] Generally, the jurisdiction that holds the authority to regulate a corporation's affairs is the state of incorporation.[16] Consequently, any choice-of-law analysis will inevitably lead to the application of the state of incorporation substantive law. It is therefore unlikely to matter whether (or how) the circuit in which the bankruptcy court sits has ruled on *Klaxon*'s applicability to bankruptcy proceedings when addressing who holds the authority to file on behalf of a corporation.

Whittaker Clark & Daniels also demonstrates the importance of determining the applicability of the appropriate state's laws. Since New Jersey law applied, the Third Circuit reasoned that the receivership order could only divest WCD's board of its authority to file for bankruptcy to the extent the order complied with

5 *In re Uncle Nearest Inc.*, 2026 Bankr. LEXIS 722 (Bankr. E.D. Tenn. Mar. 23, 2026).

6 *Id.* at *4.

7 *Id.*

8 2026 U.S. App. LEXIS 11990, at *21.

9 28 U.S.C. § 1408.

10 313 U.S. 487 (1941).

11 *In re Payless Cashways*, 203 F.3d 1081, 1084 (8th Cir. 2000).

12 *In re Lindsay*, 59 F.3d 942, 948 (9th Cir. 1995).

13 *In re Merritt Dredging Co.*, 839 F.2d 203, 205-06 (4th Cir. 1989); *In re Gaston & Snow*, 243 F.3d 599, 607 (2d Cir. 2001).

14 *Id.* at *17.

15 *Atherton v. FDIC*, 519 U.S. 213, 223-24 (1997) (quoting *Edgar v. MITE Corp.*, 157 U.S. 624, 645 (1982)); *see generally* Frederick Tung, "Before Competition: Origins of the Internal Affairs Doctrine," *Emory Law and Economics Research Paper No.* 06-04 (2006).

16 *First Nat'l City Bank v. Banco Para El Comerico Exterior De Cuba*, 462 U.S. 611, 621 (1983).

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New Jersey law.[17] In order to effectively divest WCD's board of authority to file for bankruptcy, a New Jersey court would have had to have appointed a New Jersey receiver to divest WCD's board of its authority to authorize the filing prior to the bankruptcy.[18] Thus, the application of New Jersey law was dispositive of an issue central to the motion to dismiss.

Under the Third Circuit's ruling, a state court may not alter who has authority to act on behalf of a foreign corporation.[19] Accordingly, to avoid the issues faced by the South Carolina receiver in *Whittaker Clark & Daniels*, a foreign receiver must seek appointment of a receiver in the state of incorporation to divest management of its power to authorize a bankruptcy filing. Ultimately, this may create a race to the courthouse, where a corporation's management seeks to file a bankruptcy petition before the foreign receiver is able to obtain appointment of a receiver in the state of incorporation.

Rooker-Feldman's Looming Presence

Where a bankruptcy court reviews a state court receivership order to determine whether a corporation's management retained filing authority, it must also navigate the potential constraints of *Rooker-Feldman*. Under the *Rooker-Feldman* doctrine, no federal court other than the Supreme Court may review a final order of a state court.[20] Since issuance of its opinion in *Feldman* in 1983, the Supreme Court has continuously made clear that the *Rooker-Feldman* doctrine is narrow in scope and only applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the [federal] court proceedings commenced and inviting [federal] court review and rejection of those judgments."[21]

In *Whittaker Clark & Daniels*, the Third Circuit was able to dismiss the prospect of *Rooker-Feldman* without an analysis of its application to the type of proceedings at issue. The *Rooker-Feldman* doctrine, the court reasoned, applies exclusively when a party asks a federal court to review a *final* state court judgment.[22] The Third Circuit reasoned that the South Carolina receivership order was an interlocutory order and WCD had not abandoned the litigation regarding appointment of the receiver.[23] Without a final order appointing a receiver, the Third Circuit did not need to consider *Rooker-Feldman*'s application in this context.

It remains an open question whether the *Rooker-Feldman* doctrine would apply if the underlying receivership order was final. Specifically, if a final state court receivership order regulates the internal affairs of a foreign corporation in a manner that violates of applicable state of incorporation laws, how must the bankruptcy court respond? May it disregard those effectively infirm provisions, or is it bound to honor them when determining whether the corporation had proper authority to file the petition?

Conclusion

The unique facts in *Whittaker Clark & Daniels* produced a wide-ranging opinion that highlights the complex interplay between receivership frameworks and federal bankruptcy law. Ultimately, the decision underscores why creditor-litigants must secure precise, tailored relief to ensure that a receivership order effectively blocks a corporation's future bankruptcy filing. Conversely, the case maps out the strategic pathways a corporation may exploit to challenge the validity of a receivership order and successfully seek protection under the Bankruptcy Code. **abi**

17 *Whittaker Clark & Daniels*, 2026 U.S. App. LEXIS 11990, at *18-19.

18 *Id.*

19 *Id.*

20 *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

21 *Exxon Mobil Corp.*, 544 U.S. 280, 284 (2005); *see also Verizon Md. Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 644 (2002); *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994).

22 *Whittaker Clark & Daniels*, 2026 U.S. App. LEXIS 11990, at *21, n.7.

23 *Id.*