CLIENT ALERTS & INSIGHTS

Third Circuit Decision Reshapes Creditor Standing in Successor Liability Disputes

AUGUST 11, 2026

Authors: Michael J. Barrie, Kevin M. Capuzzi, Juan Martinez

Featured Practices: Restructuring & Bankruptcy

Key Takeaways

- The Third Circuit recently held that when determining whether a successor liability claim belongs to a bankruptcy estate, the key question is whether the claim seeks to remedy harm suffered by all creditors collectively or a unique injury suffered by a specific creditor. The fact that creditors may be permitted to bring the claim outside of bankruptcy is not, by itself, determinative.
- This decision provides important clarity in an area that has long created tension between state law creditor remedies and bankruptcy law. Courts will look beyond procedural standing and focus on who ultimately benefits from any recovery.
- Creditors considering successor liability litigation should evaluate early whether their claims are truly individualized. If the alleged injury is shared across the creditor body, the claim may ultimately be swept into a bankruptcy estate if the debtor later files for bankruptcy.

Introduction

In a recent Third Circuit opinion, the Court clarified the standard for determining whether successor liability claims are property of the estate such that, upon the filing of a bankruptcy petition, creditors may be divested of their standing to pursue such claims.

Successor liability claims refer to those causes of action that can be asserted against a successor corporation at common law. They are an exception to the general rule of corporate successor nonliability, *i.e.*, a company that acquires the assets of another does not generally acquire the debts and liabilities of the predecessor. The purpose of such claims is to prevent corporations from evading creditor remedies by diverting assets that would have otherwise been available to creditors of the transferor company.

Successor liability claims present a particular challenge in the bankruptcy context. In *In re Whittaker Clark & Daniels*, the Third Circuit clarified that while a creditor may be able to assert a successor liability claim outside of bankruptcy as a "nominal plaintiff," the substantive claim still belongs to the corporation, unless the creditor can assert an individualized theory of liability. Absent such a theory, once the entity enters bankruptcy, the successor liability claim may be pulled into the bankruptcy estate and prevent the creditor from pursuing the claim any further.

Background

In *Whittaker Clark & Daniels*, the Third Circuit examined Product-Line Claims-a specific subset of successor liability claims for injuries caused by defects of a product line-that impose strict liability on a corporation that acquires the manufacturer's assets and undertakes essentially the same operation and production practices.

Whittaker, Clark & Daniels, Inc. and three of its affiliates were in the business of processing, manufacturing, distributing, and storing various industrial chemicals, including asbestos-laden talc. In 2004, Whittaker and its affiliates sold substantially all of their operating assets to certain subsidiaries of Brenntag North America and received approximately $200 million in cash consideration. In an effort to limit their exposure, Brenntag expressly contracted to exclude all pre-sale asbestos and environmental liabilities from the transaction and Whittaker continued to exist as a shell company holding limited assets to satisfy any pending and future asbestos tort claims.

In advance of the bankruptcy cases, Whittaker was engaged in litigation with approximately 2,700 plaintiffs asserting asbestos-related claims as a result of the debtor's talc products. In 2023, a plaintiff in South Carolina was awarded a $29 million judgment against Whittaker which led the company and three of its affiliates to file a chapter 11 petition in the Bankruptcy Court for the District of New Jersey.

The debtor possessed few assets to fund an exit from bankruptcy as its prospective fraudulent transfer claims related to the 2004 transaction were time-barred. Instead, the debtor relied primarily on its successor liability claims against Brenntag. The debtor negotiated a settlement with Brenntag whereby Brenntag would pay approximately $535 million in exchange for a release of all successor liability claims. However, certain talc plaintiffs represented by the Committee of Unsecured Creditors had already asserted successor liability claims against Brenntag before the debtor filed its petition and sought to pursue their claims individually. The debtor therefore needed to resolve the competing successor liability claims and commenced an adversary proceeding seeking a declaratory judgment that all such claims were property of the bankruptcy estate. The debtor also sought to enjoin the talc plaintiffs from individually pursuing any successor liability claims. The bankruptcy court found in favor of the debtor and determined that the claims belonged to the debtor's estate. The Committee then appealed directly to the Third Circuit.

Successor Liability Claims-Property of the Estate?

Under Section 541 of the Bankruptcy Code, the filing of a bankruptcy petition creates an estate comprised of all legal or equitable interests of the debtor in property. While federal law determines whether property is brought into a bankruptcy estate, state law defines a debtor corporation's property interests.

While causes of action may constitute property of the estate, derivative actions, such as successor liability claims, create complex issues because while the creditor is usually only a "nominal" plaintiff, the substantive claim belongs to the corporation. Therefore, bankruptcy courts have to scrutinize these claims and ensure that they are not misappropriated from the debtor's estate.

The Court, citing *Caplin v. Marine Midland Grace Tr. Co. of N.Y.*, noted three relevant factors when determining whether causes of action are property of the estate under Section 541: (1) whether the claim existed at the time the debtor corporation filed its bankruptcy petition; (2) whether the claim sought recovery on account of a direct injury to certain creditors or to all creditors; and (3) whether the debtor corporation could have asserted those claims before its bankruptcy case began. Typically, the parties do not dispute the first prong, so the Court's analysis focuses on the latter two.

While this general framework appears straightforward, it proves unworkable with respect to successor liability claims. On one hand, successor liability claims are derivative in nature-they are based on injury to the debtor's estate which creates a secondary harm to all creditors. Therefore, the company is the one that suffers the direct harm and should assert such claims. But, practically speaking, debtor corporations generally are unable, or unwilling, to assert successor liability claims outside of bankruptcy because doing so may expose their principals to personal liability. State law therefore nominally vests successor liability claims with creditors to ensure they can be asserted.

As such, successor liability claims present a contradiction. The derivative-injury aspect favors concluding the claims at issue were property of the estate, whereas the debtor corporation's inability to assert the claims outside of bankruptcy supports the conclusion that they belonged to the individual creditors.

Citing *In re Emoral, Inc.* and *In re Armetale, Inc.*, the Third Circuit held that the Debtor's inability to assert the successor liability claims outside of bankruptcy is not dispositive. Rather, the Court focused on whether the claims were derivative in nature, i.e., whether the creditors could demonstrate that the cause of action vindicated a harm unique to them, rather than a general injury suffered by the debtor that created a secondary harm to all creditors.

The question of whether successor liability claims are property of the estate turns on the theory of liability rather than the underlying nature of the injury. In other words, if the theory of liability is based on facts generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors, then the claim is property of the estate. It is only when the creditor suffers a direct, particular injury that can be directly traced to the defendant's conduct that such claim would belong to the creditor and not the debtor's estate.

With regard to Product-Line claims, the theory of liability focuses on the successor's acquisition and continuation of the same manufacturing operations and practices such that the debtor's creditors have no remedy because the debtor's assets have been diverted to the purchaser. Here, the Court noted that while the asbestos injuries may be "unique" to the individual creditors, the theory of Brenntag's liability was not. Rather, Brenntag's liability centered around its status as successor to the debtors' manufacturing operations. The Court compared Product-Line claims to fraudulent transfer claims in that they both (1) would apply in the absence of reasonably equivalent value for a transfer or sale; and (2) serve to ensure that the debtor does not engage in transactions that diminish the pool of assets available to creditors. Both theories therefore assert derivative injuries to the entire creditor pool as a result of prepetition diversion of the debtor's assets.

Based on this reasoning, the Third Circuit affirmed the bankruptcy court's judgment in favor of the debtor.

Practical Implications

The decision in *Whittaker Clark & Daniels* signals an important distinction in evaluating whether a creditor has standing to bring a claim or whether such claims are property of the estate. While courts will consider whether the claim could have been asserted by the debtor prior to bankruptcy, such determination will not be dispositive. Much more conclusive will be whether the claim is derivative in nature such that a recovery will serve to increase the pool of assets available to all creditors. In this respect, the Third Circuit focused on a forward-looking approach, with an eye toward recovery. Indeed, the Court noted that to hold otherwise would subvert the goals of Congress in enacting the Bankruptcy Code.

Whittaker Clark & Daniels also serves as a caution to creditors seeking to pursue successor liability claims. Outside of bankruptcy, a creditor may be able to assert successor liability claims under state law that authorizes them to proceed as nominal plaintiffs. But state law will not preclude a subsequent, post-bankruptcy finding that such claims are property of the estate, thereby nullifying the creditor's pre-bankruptcy efforts.

Benesch stands ready to help clients navigate complex restructuring and insolvency matters. Our Restructuring & Bankruptcy team works closely with companies, creditors, lenders and investors to identify strategic solutions for the best possible outcome both in and out of court.