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Family Feuds and Circuit Splits: A Clash Between Corporate Cousins Causes the Eleventh Circuit to Revisit the “Long-Lost” *Burford* Abstention Doctrine

William Wheeler*

“The law hath not been dead, though it hath slept.” — William Shakespeare¹

I. INTRODUCTION

Corporate litigation is often a highly complex process. The rules and regulations surrounding shareholder demands, derivative lawsuits, review committees, and corporate dissolution create a convoluted procedural web that can be exceedingly difficult to untangle. Due to this complexity, federal court is an attractive choice for many civil litigants; federal forums have predictable and established rules of procedure and federal judges tend to have more time to give each case individualized consideration. These factors can accelerate and smooth the litigation process. However, throughout the last two decades, litigants in corporate dissolution actions have had no choice but to seek relief in state courts, as there were no federal forums available for petitioners seeking corporate dissolution.²

*I would like to extend a special thank you to Professor Oren Griffin for graciously sharing his guidance, expertise, and wisdom with me throughout my law school journey. Another special thank you to Professor Cathren Page, who helped me discover the fun and joy in legal writing. And finally, thank you to my loving and supportive parents, Bill and Ellen Wheeler.

1. WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* act 2, sc. 2, l. 117.

2. See *Friedman v. Revenue Mgmt., Inc.*, 38 F.3d 668, 671 (2d Cir. 1994). In *Friedman*, the United States Court of Appeals for the Second Circuit held that petitioners seeking corporate dissolution must file in state courts regardless if jurisdiction for federal

Recently, the United States Court of Appeals for the Eleventh Circuit's decision in *Deal v. Tugalo Gas Co., Inc.*³ opened the doors of federal courthouses in Georgia, Alabama, and Florida to petitioners seeking corporate dissolution. *Deal's* holding rejects the traditional application of the "Burford abstention" doctrine⁴ and creates a circuit split with the United States Courts of Appeal for the Second and Sixth Circuits.

II. FACTUAL BACKGROUND

Tugalo Gas Company (Tugalo) is a small, family-owned corporation in Toccoa, Georgia.⁵ Tugalo is a closely-held corporation; excluding the shares in the corporate treasury, there are 471 outstanding shares held by six people, most of whom are related.⁶ The familial parties in *Deal* were ensnared in a legal dispute over corporate finances for nearly nine years before the matter reached the Eleventh Circuit.⁷ In 2012, the Appellant/Plaintiff, William Deal, made a shareholder demand to the Tugalo Board of Directors, pursuant to Georgia law,⁸ through his limited liability company, EGD Holdings (EGD).⁹ In his shareholder demand, Deal alleged that the Appellee/Defendant, Gilmer, was impermissibly using corporate resources in three distinct ways: (1) by having Tugalo employees complete work on Gilmer's private property

court was otherwise proper. *Id.* This case and its holding is discussed in further detail later in this Article.

3. 991 F.3d 1313 (11th Cir. 2021) (hereinafter *Deal II*).

4. In *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 361 (1989) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 814 (1976)). The court in *New Orleans Pub. Serv., Inc.* stated:

Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

5. *Deal v. Tugalo Gas Co., Inc.*, No. 2:17-CV-209-RWS, 2018 U.S. Dist. LEXIS 151697, at *2-3 (N.D. Ga. 2018) (hereinafter *Deal I*).

6. *Id.* Defendant Thomas Gilmer is the President and Chairman of the Board of Directors of Tugalo. Gilmer is also the majority shareholder of Tugalo Gas Company, Inc., with 208 shares. Gilmer's cousin, William Deal, is the Plaintiff. Deal and his brother, Robert Deal, are the second-largest shareholders, owning 109.75 shares each. The remaining 40.5 shares outstanding are owned by other family members. *Id.*

7. *Deal II*, 991 F.3d at 1318.

8. O.C.G.A. § 14-2-742(2) (1988).

9. *Deal I*, 2018 U.S. Dist. LEXIS at *3.

for Gilmer's private benefit; (2) by using company money to pay for Gilmer's personal bills and expenses; and (3) by personally receiving payments from property leasing agreements between Gilmer and Tugalo.¹⁰

After making the shareholder demand, Deal, again through EGD, filed a civil action in the United States District Court for the Northern District of Georgia against Gilmer, which raised claims that his cousin had breached his fiduciary duties as Tugalo's President and majority shareholder.¹¹ The trial court found that Deal's civil action failed to allege a special injury, and thus granted Defendant Gilmer's motion to dismiss.¹²

Deal, determined to prevail over his cousin in a court of law, made a second shareholder demand in March of 2017, raising the same allegations as the 2012 demand letter, but with additional assertions of misconduct committed by other members of Tugalo's Board of Directors.¹³ The Tugalo Board of Directors created a Demand Review Committee (DRC) to conduct an internal investigation into Deal's allegations.¹⁴ The DRC reviewed the matter and determined that "a shareholder derivative action was not in Tugalo's best interest."¹⁵

Following the DRC's decision to take no further action regarding Deal's claims, Deal filed suit again in the Northern District of Georgia.¹⁶ Deal raised the same issues about Gilmer's alleged corporate waste and added claims that the appended defendants—Sarah Gilmer Payne, Etheldra Gilmer, Bruce Stancil, Jr., Ray Crenshaw, and Lewis Smith—all either assisted with or acquiesced in Gilmer's improper use of corporate finances.¹⁷ In his action, Deal asserted a laundry list of claims, alleging a wide range of misconduct including multiple breaches of fiduciary duties, fraud, and conspiracy.¹⁸

10. *Id.*

11. *Id.*

12. *Id.* at *3–4.

13. *Id.* at *4.

14. *Id.*

15. *Deal II*, 991 F.3d at 1318.

16. *Id.*

17. *Deal I*, 2018 U.S. Dist. LEXIS at *4–5.

18. *Id.* at *5–6. Count One alleges Thomas Gilmer breached his fiduciary duty; Count Two alleges Defendants Sarah Gilmer Payne, Etheldra Gilmer, Bruce Stancil, Jr., Ray Crenshaw, and Lewis Smith breached their fiduciary duties and aided and abetted Thomas Gilmer's breach of his fiduciary duty; Count III alleges all Defendants committed fraud; Count IV alleges all Defendants conspired to defraud, oppress, freeze out, and retaliate against Plaintiff; Count V seeks judicial dissolution of the company; Count VI alleges Thomas Gilmer's conduct amounts to abuse of control; Count VII alleges all

Upon notice of Deal's lawsuit, the Tugalo Board of Directors appointed a Litigation Review Committee (LRC) to "investigate, review, and analyze" the claims Deal raised in his Complaint.¹⁹ Tugalo's LRC came to the same conclusion as the DRC in the preceding action and informed the Tugalo Board of Directors that a derivative shareholder action was against the "best interest" of Tugalo.²⁰

Upon the recommendation of the LRC, the defendants filed a motion to dismiss Deal's Complaint, alleging: (1) that Deal's claims were barred by various statutes of limitations; (2) that a direct shareholder action was not appropriate for Deal's derivative claims;²¹ and (3) that Deal's allegations did not comport with Federal Rules of Civil Procedure, Rule 9(b).²²

Regarding the statute of limitations issue raised by defendants, the district court held that "dismissal is only appropriate on a statute of limitations defense if it is 'apparent from the face of the complaint' that the claim is time-barred."²³ The district court held that the statute of limitations defense was not apparent *prima facie* and denied the defendants' motion to dismiss based on this defense.²⁴

The defendants moved to dismiss Count VII, which asserted that all defendants were liable for "wrongful distributions."²⁵ Under Georgia law, any "[D]irector who votes for or assents to a distribution made in violation of [the law] . . . is personally liable to the corporation for the amount of the distribution that exceeds what could have been

Defendants are liable for wrongful distributions; Count VIII asserts a claim for accounting based on the Directors' breach of their fiduciary duties; Count IX is brought on behalf of the Company and seeks to enjoin any unlawful conveyance, assignment, or transfer of corporate assets or other unlawful transactions; Count X asks the Court to set aside the allegedly unlawful payments; Count XI alleges all Defendants engaged in wrongful conversion of Company assets; Count XII seeks appointment of an auditor to account for funds supposedly distributed for the benefit of Defendants; Count XIII seeks a declaratory judgment declaring the Stancil stock transfer invalid because it violated Company bylaws; Count XIV alleges all Defendants were unjustly enriched by funds they have wrongfully received; Count XV alleges Defendant Stancil must return any payment he received for his shares; and Counts XVI and XVII seek punitive damages and attorneys' fees.

19. *Id.* at *7.

20. *Id.*

21. *Id.* The "derivative" claims in this action were Counts I, II, VI, VII, IX, X, XI, XIII, XIV, XV, XVI, and XVII. *Id.* at *11.

22. *Id.*; see FED. R. CIV. P. 9(b).

23. *Id.* at *9 (quoting *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004)).

24. *Deal I*, 2018 U.S. Dist. LEXIS at *9.

25. *Id.* at *9-11.

distributed without [committing a statutory violation].”²⁶ The district court found that the actions described in Deal’s allegations did not rise to the level of “unlawful distributions,” as the Tugalo Board of Directors did not vote for, nor assent to, the transferring of money to shareholders.²⁷ Thus, the court granted defendants’ motion to dismiss Count VII partially.²⁸ Due to tolling issues, the court denied dismissal of the specific allegation of wrongful distribution pertinent to defendant, Bruce Stancil, Jr.²⁹

The defendants moved for dismissal of every Count except Counts III, IV, V, VIII, XII,³⁰ asserting that these allegations raised by Deal in the Counts were derivative, and therefore, improper in a direct action and should instead be pursued in a derivative suit.³¹

The district court found that Deal failed to demonstrate any substantial reason the general rule regarding derivative actions should not apply to his claims.³² Furthermore, Deal failed to establish that he had suffered a “specific injury,” because, if his allegations were proven to be true, the damages Deal suffered were proportional to the damages suffered by the other shareholder defendants; any harm that Deal suffered was neither personal nor unique.³³ Consequently, the defendants’ motions to dismiss the derivative claims were granted.³⁴

The defendants alleged that Count III, Deal’s claim of fraud, failed to comport with the Federal Rules of Civil Procedure and should be dismissed.³⁵ The district court held that Deal’s seventy-five-page Complaint, and the attached documents, met the heightened pleading standard set forth by Rule 9(b) and that dismissal was improper for Count III.³⁶

26. *Id.*; see O.C.G.A. § 14-2-832 (1989).

27. *Deal I*, 2018 U.S. Dist. LEXIS at *10; see O.C.G.A. § 14-2-140(6) (2020).

28. *Deal I*, 2018 U.S. Dist. LEXIS at *10–11.

29. *Id.*

30. *Id.* at *11. The defendants moved to dismiss all the counts except Count III, which alleged fraud (and was subject to a separate motion for dismissal); Count IV, which alleged conspiracy to commit fraud; Count V, which sought judicial dissolution of Tugalo; Count VIII, which sought an accounting based on breach of fiduciary duties; and Count XII which sought a court appointed auditor. *Id.*

31. *Id.*

32. *Id.* at *13–14.

33. *Id.*

34. *Id.* at *14. Count VII was not denied because of a statute of limitations defense, but due to the allegations being improper for direct action. *Id.* at *26.

35. *Id.* at *15.

36. *Id.*

The district court declined to issue a decision for the remaining equitable counts in Deal's Complaint: the judicial dissolution, an accounting based on the alleged fiduciary improprieties, and Deal's allegations of the improper disbursement of benefits.³⁷ It abstained from adjudicating these equitable claims under the *Burford* abstention doctrine and ruled in favor of Tugalo on all remaining counts.³⁸ This decision prompted Deal to file an appeal to the Eleventh Circuit.³⁹

Although the *Burford* abstention doctrine affords federal courts the ability to decline adjudicating certain cases, even if subject matter jurisdiction is satisfied, the Eleventh Circuit held that the district court's decision to abstain under the *Burford* abstention doctrine was improper, and that the district court should have adjudicated the case.⁴⁰

III. LEGAL BACKGROUND

A. Shareholder Petitions in Georgia

1. Shareholder Demands

Long before Deal's suit reached the Eleventh Circuit, it started as a shareholder demand.⁴¹ Under O.C.G.A. § 14-2-742, before a shareholder can file a derivative suit, they must first make a written demand on the corporation "to take suitable action."⁴² After receiving the written demand, a corporation can choose to either pursue or decline litigation.⁴³ If the shareholder chooses to file a derivative suit after the corporation declines litigation, the corporation may move to dismiss the suit following good faith investigation by a special committee of independent directors.⁴⁴

During the district court proceedings, the defendants successfully moved for dismissal of over half of Deal's claims, as the court found the claims to be derivative.⁴⁵

37. *Id.* at *26–27.

38. *Id.* at *15–16.

39. *Deal II*, 991 F.3d at 1317.

40. *Id.* at 1326–27.

41. *Deal I*, 2018 U.S. Dist. LEXIS at *3.

42. O.C.G.A. § 14-2-742 (1988).

43. *Id.*

44. O.C.G.A. § 14-2-744(a) (1988).

45. *Deal I*, 2018 U.S. Dist. LEXIS at *16.

2. Derivative Suits

In Georgia, generally, claims regarding the misappropriation of corporate assets and breaches of fiduciary duty must be handled via shareholder derivative suits.⁴⁶ Derivative suits are required for such claims to prevent a deluge of lawsuits filed by shareholders, to protect corporate shareholders, and to properly compensate injured shareholders.⁴⁷ The decision of whether a claim is direct as opposed to derivative is made by the court, which will look to “what the pleader alleged.”⁴⁸

Georgia courts recognize two exceptions to the general rule. First, courts can allow a shareholder to pursue claims of breached fiduciary duty and misappropriation of corporate assets through direct actions if the shareholder has suffered a special injury, and, second, when the circumstances demonstrate the reasons for the general rule do not apply.⁴⁹ Because Deal failed to either establish that he suffered a special injury or demonstrate any reasons that the general rule should not apply, the district court granted the defendants’ motion for dismissal of the derivative claims.⁵⁰

3. Heightened Pleading Standard

Although the district court dismissed over half of the counts in Deal’s action, Count III survived a separate motion to dismiss.⁵¹ Count III alleged that the defendants were engaged in fraudulent activity regarding Tugalo’s finances.⁵² The Federal Rules of Civil Procedure require a heightened pleading standard for claims involving fraud.⁵³ Under Rule 9(b), claims of fraud must be stated with particularity.⁵⁴ This can be satisfied if the pleading explicitly states which statements or omissions were made, how they were made, who made them, when they were made, the content and context of the statements or omissions,

46. *Phoenix Airline Servs. v. Metro Airlines*, 260 Ga. 584, 585, 397 S.E.2d 699, 701 (1990); *see Thomas v. Dickson*, 250 Ga. 772, 774, 301 S.E.2d 49, 50–51 (1983); *see also* O.C.G.A. § 14-2-831 (2016).

47. *Thomas*, 250 Ga. at 773–74, 301 S.E.2d at 51.

48. *Phoenix Airline Servs., Inc.*, 260 Ga. at 585, 397 S.E.2d at 701.

49. *Barnett v. Fullard*, 306 Ga. App. 148, 152, 701 S.E.2d 608, 612 (2010).

50. *Deal I*, 2018 U.S. Dist. LEXIS at *13–14.

51. *Id.* at *15.

52. *Id.* at *14–15.

53. FED. R. CIV. P. 9(b).

54. *Id.*

and the “benefit the defendant gained as a consequence of the fraud.”⁵⁵ The district court found that Deal satisfied this heightened pleading standard, as his Amended Complaint described in thorough detail a variety of factual allegations of fraud committed by the defendants, complete with satisfactory documentary evidence.⁵⁶

More than half of Deal’s allegations were dismissed by the district court as being either derivative claims or barred by a statute of limitations.⁵⁷ Although there were still nonderivative claims that survived the defendants’ motions for dismissal, Deal did not get a ruling from the district court on these equitable claims,⁵⁸ due to the application of the *Burford* abstention doctrine.⁵⁹

B. Burford Abstentions

1. The Emergence of the *Burford* Abstention Doctrine

The district court’s decision to abstain from adjudicating Deal’s equitable claims arises from the “long-lost ‘*Burford* abstention’ doctrine.”⁶⁰ The doctrine’s nomenclature originates from the 1943 Supreme Court of the United States decision in *Burford v. Sun Oil Co.*⁶¹ The seventy-eight-year-old case involved a dispute between a Plaintiff oil corporation, Sun Oil, and the Texas Railroad Commission.⁶² The railroad commission had permitted a small oil company, Burford, to drill four wells on an East Texas oil field. Sun Oil sought to enjoin the smaller company from executing the drilling permits. Sun Oil filed a lawsuit in federal district court based on diversity of citizenship of parties.⁶³ Sun Oil further contended that the Railroad Commission’s

55. *Deal I*, 2018 U.S. Dist. Lexis at *15 (quoting *In re Theragenics Corp. Sec. Litig.*, 105 F.Supp.2d 1342, 1347 (2000)); see *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1371 (11th Cir. 1997).

56. *Deal I*, 2018 U.S. Dist. LEXIS at *15.

57. *Id.* at *9, *26–27.

58. *Deal II*, 991 F.3d at 1318. The equitable claims were Count V, which sought judicial dissolution of Tugalo; Count VII, which sought a judicial accounting; and Count XII, which sought a court appointed auditor. *Id.* at 1326.

59. *Id.* at 1318.

60. *Id.* Judge Newsom described *Burford* abstention as a “long-lost (or nearly lost)” doctrine, as the doctrine stems from a 1943 case, and has rarely been invoked in the Eleventh Circuit. *Id.*

61. 319 U.S. 315 (1943) (hereinafter *Burford I*).

62. *Id.* at 316–17.

63. *Id.* at 317; see U.S. CONST. art. III, § 2, cl. 1. This clause authorizes federal courts to hear cases “between citizens of different states”.

order violated the Due Process Clause of the Fourteenth Amendment.⁶⁴ Based on proper satisfaction of subject matter jurisdiction, the lawsuit seemed appropriate for a federal forum. However, the district court declined to adjudicate the case, and instead dismissed the Complaint, finding that Sun Oil's lawsuit interfered with a complex state-level regulatory scheme involving oil, and must be tried by a state court.⁶⁵

On appeal, the United States Court of Appeals for the Fifth Circuit reversed the district court's decision, holding that "when a federal court has jurisdiction of a controversy on the ground of diversity of citizenship, it has the power to decide all issues arising therein under the laws of any state in accordance with the statutes and decisions of that state."⁶⁶ On appeal, the Supreme Court disagreed with the Fifth Circuit, reversing its decision, and affirming the district court's initial decision to abstain from adjudicating the matter.⁶⁷

Recognizing that the regulation and intrastate interest of oil wells were convoluted matters requiring the specialized knowledge and expertise of Texas state courts and legislature, the Supreme Court held that the district court's abstention from adjudicating this claim, in favor of adjudication by a state court, was appropriate and necessary.⁶⁸

Accordingly, the Court held that federal courts may abstain from adjudicating certain cases, using their "sound discretion" to "refuse to enforce or protect legal rights" if the enforcement or protection would be "prejudicial to the public interest."⁶⁹ According to the Supreme Court, these abstentions should be made with respect to the "rightful independence of state governments in carrying out their domestic policy."⁷⁰

Essentially, the decision in *Burford* gave the federal judiciary a wide berth of discretion in choosing when to abstain from cases inherently rife with state issues. In addition to proposing that such discretion is permissible, the *Burford* Court insisted that federal courts must abstain

64. *Burford I*, 319 U.S. at 331; *Osborn v. Bank of the United States*, 22 U.S. 738, 832 (1824).

We think . . . that when a question to which the judicial power of the Union is extended by the constitution, forms [a federal] ingredient of the original cause, it is in the power of Congress to give the [lower federal courts] jurisdiction of that cause, although other questions of fact or of law may be involved in it.

65. *Burford I*, 319 U.S. at 328.

66. *Sun Oil Co. v. Burford*, 130 F.2d 10, 13–14 (1942) (hereinafter *Burford II*).

67. *Burford I*, 319 U.S. at 334.

68. *Id.* at 316–17.

69. *Id.* at 317–18.

70. *Id.*

from these cases to respect the sovereignty of states.⁷¹ The Court rationalized that the doctrine of abstention furthers the “harmonious relation between state and federal authority without the need of rigorous congressional restriction[s]”⁷²

The sobriquet of the *Burford* abstention doctrine stems from *Burford v. Sun Oil*, but the legal theory of the doctrine, as applied in *Burford*, was established by an earlier Supreme Court case, *Pennsylvania v. Williams*.⁷³ *Williams* was the first time the Supreme Court issued an opinion on whether a federal court should abstain from adjudicating a claim when it would interfere with state governance.⁷⁴ The *Williams* Court held that it was appropriate practice for federal courts to abstain from hearing issues in favor of state courts when adjudication would cause an unnecessary interference with state policy.⁷⁵

The *Burford* decision had immediate and sweeping ramifications; as Justice Frankfurter stated in the dissent, the decision essentially requires “that the enforcement of state rights created by state legislation and affecting state policy is limited to the state courts,” which is contrary to the powers granted to the federal judiciary by Congress.⁷⁶ Following the decision, petitioners seeking corporate dissolution were restricted to state-level forums, despite the constitutional provisions granting federal courts general jurisdiction for claims involving complete diversity of parties or claims arising under a federal question.⁷⁷

2. Narrowing the Scope of the *Burford* Abstention Doctrine

The scope of the *Burford* abstention doctrine was curtailed by the Supreme Court in *New Orleans Public Service, Inc. v. Council of City of New Orleans*.⁷⁸ The Plaintiff, New Orleans Public Service, Inc. (NOPSI), a utility company that provided electricity for residents in New Orleans, entered a contract with Middle South Energy, Inc. (MSE), to help finance the construction of two nuclear reactors in exchange for rights to sell the reactors’ electrical output. Consumer demand for the electricity fell short of the projections, and NOPSI quickly realized that

71. *Id.* at 333–34.

72. *Id.* at 332 (quoting *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 501 (1941)).

73. 294 U.S. 176 (1935).

74. *Id.* at 185 (involving the dissolution of a corporation, like in *Deal*).

75. *Id.*

76. *Burford I*, 319 U.S. at 345–46 (Frankfurter, J., dissenting).

77. U.S. CONST. art. III, § 2, cl. 1.

78. 491 U.S. 350, 350 (1989).

the cost of the project was far greater than any returns from the sale of the electricity generated.⁷⁹

In an effort to offset these guaranteed losses, NOPSI sought relief from the New Orleans City Council (Council), which had absolute regulatory authority over the acceptable rates charged by utility companies and requested permission to raise the billable rates for NOPSI's electrical output.⁸⁰ The Council denied NOPSI's request to raise the rates, which prompted NOPSI to file a lawsuit against the Council in the United States District Court for the Eastern District of Louisiana, demanding injunctive and declaratory relief.⁸¹

The district court abstained from adjudication, citing the *Burford* abstention doctrine, and the Fifth Circuit upheld the district court's decision.⁸² However, the Supreme Court overturned the rulings, and held that the district court erred by abstaining from adjudication, as exercising judgment would not have interfered with state policy.⁸³

In *New Orleans Public Service, Inc.*, the Supreme Court identified the "metes and bounds" of the *Burford* abstention doctrinal application regarding "the proceedings or orders of state administrative agencies," holding that abstention is compulsory only:

[W]hen there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case . . . at bar . . . or where the exercise of federal review of the question in [the] case [or] in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.⁸⁴

The *New Orleans Public Service, Inc.*, holding narrowed the requirements for when a federal court must abstain from adjudication, but it did little to determine the extent of discretion the federal courts wield when abstention is not mandatory.

Eleven years later, an Eleventh Circuit opinion clarified exactly when a federal court can pass on adjudicating a case that is otherwise within the jurisdiction of the federal court. In *Siegel v. LePore*,⁸⁵ the Eleventh Circuit held that the opinion of *New Orleans Public Service, Inc.*, established that the enumerated conditions making abstention

79. *Id.* at 352–53.

80. *Id.* at 353–54.

81. *Id.* at 354.

82. *Id.* at 355–56.

83. *Id.* at 353.

84. *Id.* at 361.

85. 234 F.3d 1163 (11th Cir. 2000).

compulsory are the only appropriate conditions for abstention, and that abstention from adjudication, when jurisdiction is otherwise proper, outside “metes and bounds” defined in *New Orleans Public Service, Inc.*, is wholly inappropriate.⁸⁶

3. Differing Opinions on the *Burford* Abstention Doctrine

Although the *New Orleans Public Service, Inc.*, decision, which was affirmed in *Siegel*,⁸⁷ established clearly defined parameters for when a federal court can and cannot abstain from adjudicating a case where jurisdiction is otherwise proper, other federal circuits have declined to follow the *New Orleans Public Service, Inc.*, interpretation of the *Burford* abstention doctrine.

The first case which saw a federal court reject the *New Orleans Public Service, Inc.*, interpretation of abstention application arose in the United States Court of Appeals for the Second Circuit. In *Friedman v. Revenue Management of New York, Inc.*, the Second Circuit held that a district court’s abstention from adjudicating a case involving the dissolution of a New York corporation was proper, and that the court’s application of the *Burford* abstention doctrine justified the lower court’s abstention.⁸⁸ It held that adjudication by the district court would constitute “needless interference” with New York state policy, holding that, due to the “comprehensive regulation of corporate governance” by the state, the lower court was well within its discretion to remand the case.⁸⁹ The *Friedman* decision made clear that, within the jurisdiction of the Second Circuit, cases involving corporate dissolution must be adjudicated by the state courts.

Nearly a decade later, the reasoning in *Friedman* was adopted by the Sixth Circuit in *Caudill v. Eubanks Farms, Inc.*⁹⁰ In *Caudill*, the plaintiffs argued that the district court erred in the application of the *Burford* abstention doctrine, as the abstention doctrine should only be invoked when the facts of the case involve a specific state-level administrative proceeding that requires a “specialized judicial review.”⁹¹ The Sixth Circuit relied on the *Friedman* decision in rejecting the Plaintiff’s argument, concluding that “[the state] has a strong

86. *Id.* at 1173.

87. *Id.*

88. 38 F.3d 668, 671 (2d Cir. 1994).

89. *Id.*

90. 301 F.3d 658 (6th Cir. 2002).

91. *Id.* at 661 (citing *New Orleans Public Service, Inc.*, 491 U.S. at 361).

interest in the creation and dissolution of its corporations and in the . . . interpretation of the statutory scheme regarding its corporations.”⁹²

IV. COURT’S RATIONALE

The Second and Sixth Circuits share the opinion that federal courts should, or at least may, abstain from adjudicating cases involving the dissolution of state corporations. The cross-circuit unity was disrupted by the Eleventh Circuit’s ruling in *Deal II*, which presented a conflicting decision on the matter for the first time, setting up a circuit split.

In the majority opinion, Judge Newsom derided Deal’s action as a “kitchen-sink appeal stem[ming] from a district court’s rejection of a kitchen-sink lawsuit.”⁹³ The Eleventh Circuit affirmed the district court’s disposal of all derivative claims; however, the district court’s decision to abstain from adjudicating the three equitable claims—the corporate dissolution, the accounting, and the appointment of an auditor—was overturned, and remanded back to the district court.⁹⁴

Additionally, the Eleventh Circuit affirmed that the district court’s dismissal of the claims regarding the unauthorized distributions was appropriate.⁹⁵ However, it held that Deal’s equitable claims requesting judicial dissolution, an accounting, and the appointment of an auditor were justiciable by the district court, and that the *Burford* abstention doctrine was inapplicable as to these counts.⁹⁶ The court concluded that there was “no ongoing state administrative proceeding . . . [nor] any preexisting action by a Georgia state court or executive official to dissolve Tugalo,” that could justify the district court’s abstention.⁹⁷ Instead, it identified that the only question pertinent to the abstention of adjudicating the equitable claims was “whether a federal court has the authority to dissolve a state-chartered corporation.”⁹⁸

Furthermore, the Eleventh Circuit held that federal courts have an obligation to adjudicate cases when jurisdiction is proper, and the *Burford* abstention doctrine is only applicable in extremely specific circumstances, as delineated in *New Orleans Public Service, Inc.*⁹⁹ The

92. *Id.* at 665 (quoting *Friedman*, 38 F.3d at 671).

93. *Deal II*, 991 F.3d at 1317.

94. *Id.* at 1318.

95. *Id.* at 1326.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* (citing *Siegel*, 234 F.3d at 1173); see *Colorado River Water Conservation Dist.*, 424 U.S. at 800.

court identified interference with ongoing state administrative proceedings or pending state court actions as the “key ingredients” of deciding whether or not abstention is appropriate, ultimately holding that abstention without these key ingredients conflicts with the Supreme Court holding in *New Orleans Public Service, Inc.*¹⁰⁰

The *Deal II* decision is the first time a United States Court of Appeals has issued such a holding in regards to the *Burford* abstention doctrine, which is in direct conflict with the Second and Sixth Circuit holdings in *Caudill* and *Friedman*.¹⁰¹ It is evident that the Eleventh Circuit believes that *Burford*, consistent with numerous subsequent Supreme Court rulings, does not allow federal courts unlimited discretion to abstain from adjudicating claims, but rather permits abstentions only when adjudication would complicate active state proceedings or state court actions.

The Eleventh Circuit’s holding in *Deal II* supports the tightening of *Burford* abstentions in accord with *New Orleans Public Service, Inc.*, and *Siegel*. The court explicitly states that the district court’s abstention from adjudicating the equitable claims was inappropriate.¹⁰² *Deal II* is the third time a federal appellate court has weighed in on this matter, and the decision creates a split with rulings from the Second and Sixth Circuits.

V. IMPLICATIONS

The holding in *Deal v. Tugalo Gas Co.* may seem inconsequential at first glance, but the ramifications of the decision could have wide-ranging consequences. The Eleventh Circuit is the first circuit to issue such a narrow interpretation of the *Burford* abstention doctrine. The *Deal II* decision creates a split with the Second and Sixth Circuits over how the doctrine should be applied.

Deal II puts the Georgia federal district courts on notice that equitable claims and judicial dissolution claims are not subject to the *Burford* abstention doctrine; thus, adjudication by a district court is required. Furthermore, *Deal II* will provide support, as persuasive authority, for parties filing in the nine circuit courts that have not issued a ruling on whether district courts can abstain from adjudicating corporate dissolution claims.

100. *Deal II*, 991 F.3d at 1327.

101. *Id.* at 1327 n. 8 (“[T]o the extent that other courts have extended *Burford* to state-law judicial claims, we disagree.”).

102. *Id.*

As it stands now, considering *Deal II*, the Eleventh Circuit is now the sole definite federal forum for corporate dissolution claims; the Second and Sixth Circuits mandate that these matters must be heard at the state level, and the remaining nine circuits have remained silent on the issue. Petitioners can now file corporate dissolution claims in federal courts in these “silent” circuits, using *Deal II* as supportive, persuasive authority. If more circuits adopt the reasoning of the Eleventh Circuit in *Deal II*, the Supreme Court will most likely have to weigh in on this matter for conclusive judgment.¹⁰³

103. See generally STEVEN A. CHILDRESS & MARTHA S. DAVIS, 1 FEDERAL STANDARDS OF REVIEW § 6.02 (4th ed. 2021) (explaining that splits among the federal circuit courts are resolved by the Supreme Court). Circuit splits are the single most important factor considered by the Supreme Court when deciding to review cases.