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U.S. Creditors***Patrick Fitzgerald* | March 14, 2013
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A little-noticed ruling by a court in the Isle of Man involving a failed green energy company could signal that assets stashed in offshore jurisdictions may not always be out of reach of creditors.

David Doyle, the first deemster, or senior judge, on the Isle of Man, an island in the Irish Sea with a reputation as a tax haven and a safe harbor for asset protection, giving a surprising boost to the legal concept of "universalism" in resolving an asset fight between a bankrupt U.S. company and its Manx subsidiary.

"We must take a global and universalist approach," said Deemster Doyle. "We all need to see international insolvency matters in the global context in which they arise."

The case involved a company called [Waste2Energy Holdings Inc.](#), a small U.S. recycling company that in 2011 was forced into bankruptcy in Delaware by a group of disgruntled bondholders.

The bondholders were able to get the company's management ousted and a Chapter 11 trustee named to take over the business. But when the trustee tried to get his hands on the company's most valuable asset—a pending patent on a process that converts municipal waste and turns it into energy-rich fuel—he found the company's former leaders had transferred the patent to an Isle of Man registered subsidiary.

Because the Isle of Man hasn't signed on to [the United Nations](#) ' "Model Law on Cross-Border Insolvency," which has been adopted by a number of other countries, including the U.S., Great Britain and Japan, the patent was likely out of reach, according to Wayne Weitz, the court-appointed trustee in charge of recovering assets for the U.S. creditors.

"It was far from clear that it would recognize the United States proceedings or orders entered in those proceedings," said Mr. Weitz, a director at the Philadelphia-based recovery firm Gavin/Solmonese.

But that's precisely what Deemster Doyle did in electing not to exercise jurisdiction over one of the Isle of Man incorporated entities, upholding the principle of universalism in the process.

"We as a global community should approach matters as internationalists rather than in a parochial way," the judge said in his ruling last October.

The concept of universalism, according to University of Texas School of Law

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Professor Jay Westbrook, is that a single court should have control over the assets of bankrupt multinational firm.

Mr. Westbrook, one of the world's leading experts on international bankruptcy law and a longtime proponent of universalism, welcomed the decision.

"It is an excellent and forward-looking opinion pointing to universality in a jurisdiction that might have been thought a bit protective of its powers and of 'its' corporations," said Mr. Westbrook. He cautioned creditors not to "break out the champagne," however, because the opinion relies on two other cases whose status has been cast in doubt by the U.K. Supreme Court.

Like the Channel Islands of Jersey and Guernsey, the Isle of Man is self-governing British Crown dependency and is not part of the U.K. or the [European Union](#). That independence has long made the island a venue of choice for wealthy individuals to place assets beyond the reach of creditors.

The Isle of Man, however, has taken step in recent years to shed its image as an offshore tax haven by, among other efforts to improve transparency, joining the [European Union](#)'s Automatic Information Exchange. The London based advocacy group Tax Justice Network ranked the Isle of Man 36th on its most recent financial-secrecy index issued in 2011, a big improvement over its No. 24 ranking in 2009. Switzerland came in at No. 1, and the U.S. earned a No. 5 ranking, in part because of so-called onshore secrecy havens such as Delaware and Nevada.

Mr. Weitz, the Chapter 11 trustee, says the ruling sends a strong message that failed businesses owners can't depend on offshore jurisdictions to shield their assets.

"The Isle of Man is finally taking a position that says 'we're not going to allow businesses to take advantage of creditors by taking advantage of offshore jurisdictions,'" he said.

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