

In the Supreme Court of the United States

KIM H. PETERSON, INDIVIDUALLY AND AS TRUSTEE OF
THE PETERSON FAMILY TRUSTS, ET AL., PETITIONERS

v.

KRISTA FREITAG, RECEIVER FOR
ANI DEVELOPMENT, LLC, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF FOR RESPONDENT
SECURITIES AND EXCHANGE COMMISSION**

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QUESTION PRESENTED

Whether a federal court overseeing an equity receivership has the power to enjoin and extinguish, without the claimants' consent, claims that non-receivership entities seek to assert against non-receivership third parties.

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No. 25-151

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 129 F.4th 599. The order of the district court overruling objections to the global settlement and bar orders (Pet. App. 36a-56a) is available at 2022 WL 22912794. The order of the district court entering the Nossaman bar order (Pet. App. 57a-63a) is available at 2022 WL 17184569. The order of the district court approving the global settlement and entering the Chicago Title bar order (Pet. App. 64a-71a) is available at 2022 WL 22912793.

JURISDICTION

The judgment of the court of appeals was entered on February 20, 2025.* Petitions for rehearing were denied on May 7, 2025 (Pet. App. 72a-73a). The petition for a writ of certiorari was filed on August 5, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Gina Champion-Cain operated a Ponzi scheme through ANI Development, LLC (ANI), a company she controlled. Pet. App. 7a. The Securities and Exchange Commission (SEC or Commission) brought a civil law-enforcement action against Champion-Cain and ANI. *Id.* at 11a-12a. The SEC alleged that, in operating the scheme, those defendants had violated the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, and the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* Pet. App. 12a.

The district court froze the assets of Champion-Cain and ANI, appointed a Receiver for ANI, and temporarily stayed all litigation against ANI. Pet. App. 7a. Consistent with the terms of her appointment, the Receiver engaged in third-party litigation to marshal assets for distribution to harmed investors. See *id.* at 8a, 12a. This litigation proceeded separately from the adjudication of the SEC's enforcement claims.

Unable to pursue claims against ANI itself, some defrauded investors instead sued third parties in California state court, alleging that those parties had aided the ANI Ponzi scheme. Pet. App. 7a. Those third parties included Chicago Title Company (Chicago Title) and attorney Marco Costales and his Nossaman law firm (collectively, Nossaman). *Ibid.*

* A corrected opinion was entered on February 24, 2025.

The district court also authorized the Receiver to bring claims against Chicago Title on ANI's behalf, and the court granted Chicago Title leave to file counter-claims against the Receiver. Pet. App. 13a-14a. Chicago Title and the Receiver reached a global settlement of their respective claims. *Id.* at 14a. In connection with the settlement, the court entered orders barring any litigation against Chicago Title and Nossaman on claims related to the ANI Ponzi scheme. *Ibid.*

Certain parties to state-court litigation against Chicago Title and Nossaman that had been extinguished by the bar orders appealed the district court's entry of those orders. Pet. App. 8a. The court of appeals affirmed. *Ibid.*

1. Through ANI, Champion-Cain purported to offer investors a platform to make short-term, high-interest loans to fund state-required escrow accounts for California liquor-license applicants. Pet. App. 9a. Champion-Cain assured investors that their money would remain safely in escrow accounts at Chicago Title. *Ibid.* She also bribed several Chicago Title employees to provide false documentation indicating to investors that their funds had been placed into escrow accounts. *Id.* at 10a. In fact, Champion-Cain directed investor funds into a single holding account at Chicago Title to which she had unlimited access. *Ibid.*

Petitioner Kim Peterson, a San Diego land developer and friend of Champion-Cain's, was an early investor in the scheme. Pet. App. 10a-11a. Peterson subsequently created several businesses through which he recruited other investors in return for additional interest payments, as well as equity and voting rights with respect to ANI. *Id.* at 11a. "To aid his recruiting efforts, Peterson retained attorney Marco Costales, a partner in the Nossaman law firm." *Ibid.* Costales falsely represented

to several potential investors that he had vetted the ANI scheme and that investors were very unlikely to lose funds. *Ibid.*

Ovation Fund Management II, LLC (Ovation), whose petition for a writ of certiorari in a related case is currently pending before this Court, see *Ovation Fund Mgmt. II, LLC v. Nossaman LLP*, No. 24-1192 (filed May 20, 2025), managed an investment fund and invested more than \$50 million of its clients' money in the ANI Ponzi scheme, resulting in losses greater than \$25 million. Pet. App. 28a-29a.

2. In 2019, the SEC brought a civil law-enforcement action against Champion-Cain and the ANI entities, alleging that the defendants had violated the securities laws. Pet. App. 11a-12a. The district court appointed the Receiver over ANI and its parent company, and the court temporarily stayed all litigation against ANI. *Id.* at 12a.

Peterson and related entities (collectively Peterson) filed suit against Chicago Title in California state court. See Pet. App. 12a. Certain investors that Peterson had recruited sued Peterson, as well as each other. *Ibid.* “In the investor suits against Chicago Title, Chicago Title counter- or cross-claimed against Peterson and Nossaman.” *Id.* at 12a-13a. “Chicago Title settled many of the claims against it, paying \$163 million to more than 300 defrauded investors.” *Id.* at 13a.

The Receiver used the “money in, money out” method to calculate investors' claims, concluding that Peterson and his funding entities were net winners who had earned more than \$12.7 million from the scheme. Pet. App. 13a. “The district court approved the Receiver's calculations.” *Ibid.* Peterson challenged that determination on appeal, but the court of appeals affirmed. See 23-55252 C.A. Doc. 73-1 (Apr. 28, 2025).

The district court permitted the Receiver to sue Chicago Title on ANI's behalf to recover amounts for which ANI would be liable to its defrauded investors. Pet. App. 13a-14a. The court also authorized Chicago Title to file counterclaims against ANI to recover the amounts Chicago Title had paid to settle investor claims. *Id.* at 14a. "The Receiver and Chicago Title ultimately reached a global settlement" that required "Chicago Title to pay an additional \$24 million to settle investors' claims." *Ibid.* The global settlement was conditioned on entry by the district court of an order barring any further litigation against Chicago Title on claims related to the ANI Ponzi scheme. *Ibid.* The global settlement also required the Receiver to support the entry of an order barring any litigation against Nossaman on claims related to the ANI Ponzi scheme if Chicago Title, Nossaman, and the Receiver were able to enter into a settlement agreement. *Id.* at 41a.

The district court approved the global settlement and entered the Chicago Title bar order over certain petitioners' objections. Pet. App. 37a.

3. Petitioners appealed, and the court of appeals affirmed. Pet. App. 1a-35a.

On appeal, petitioners argued that the district court lacked authority to enter the bar order, and that the Anti-Injunction Act (AIA), 28 U.S.C. 2283, precluded the order's entry. Pet. App. 15a, 29a-30a. They also argued that, even if the court had authority to enter the bar order, it was inequitable to do so under the circumstances. *Id.* at 16a. The court of appeals acknowledged that, although a district court has wide discretion to determine relief in an equity receivership, the district court cannot reach claims that are independent of the receivership and that do not involve assets claimed by

the receivership. *Id.* at 15a-16a (citing *Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 897 (5th Cir. 2019), cert. denied, 141 S. Ct. 950, and 141 S. Ct. 952 (2020)). But the court of appeals concluded that petitioners’ barred claims “substantially overlapped with the Receiver’s claims and that barring [petitioners’] claims was necessary to preserve the ANI receivership estate.” *Id.* at 15a.

The court of appeals also rejected petitioners’ argument that entering the Chicago Title bar order was unfair to Peterson. Pet. App. 15a. Specifically, the court found that Peterson’s claims against Chicago Title would have substantially overlapped with claims that the Receiver could have brought against Chicago Title because the two sets of claims would have sought to recover for the same losses caused by the same alleged conduct. *Id.* at 17a-18a, 30a.

The court of appeals also found that, for three reasons, barring Peterson’s claims against Chicago Title was necessary to protect the ANI receivership res. Pet. App. 21a. “First, the bar order was a necessary condition of the global settlement,” which had resulted in a \$24 million payment to the receivership res. *Ibid.* Second, in the absence of the global settlement, the Receiver would likely have been required to expend receivership resources litigating against Chicago Title, and the Receiver might “have been drawn into the investors’ state-court actions against Chicago Title, also depleting receivership resources.” *Id.* at 21a-22a. Third, without the global settlement, if Peterson had won a judgment against Chicago Title, Chicago Title could then have sought equitable indemnification from the Receiver. *Id.* at 22a. Even if such a claim had ultimately been unsuc-

cessful, the attendant litigation would have depleted receivership assets. *Id.* at 24a.

With respect to Peterson’s AIA challenge, the court of appeals agreed with the district court that the Chicago Title bar order did not violate the AIA because it was “necessary in aid” of the district court’s in rem jurisdiction over the receivership res. Pet. App. 25a (quoting 28 U.S.C. 2283).

Finally, the court of appeals held that the “district court did not abuse its discretion in deeming the global settlement and the related Chicago Title bar order to be equitable.” Pet. App. 26a. Peterson argued that the extinguishment of his pending claims was inequitable because, as a net winner in the scheme, he can neither recover from the settlement amount nor seek direct relief from Chicago Title. *Ibid.* Because the receivership estate has sufficient funds to compensate investors only for part of their net losses, Peterson’s status as a net winner rendered him ineligible to collect from the receivership. But the court of appeals explained that “Peterson’s properly-filed claim against the receivership estate was unsuccessful only because of a payment formula adopted by the Receiver that applied equally to all investors.” *Id.* at 27a. The court concluded that, in these circumstances, the district court had not abused its discretion by entering the bar order. *Ibid.*

DISCUSSION

During the district-court proceedings, the SEC took no position on either the approval of the global settlement or the propriety of the bar orders. Nor did the Commission participate in the appellate proceedings involving the Chicago Title bar order. In the court of appeals, Peterson submitted a brief on the merits, to which Chicago Title filed an answering brief. See 22-56206 C.A.

Doc. 28 (July 12, 2023); 22-56206 C.A. Doc. 40 (Oct. 10, 2023). The Receiver filed a joinder to the answering brief filed by Chicago Title. See 22-56206 C.A. Doc. 42 (Oct. 10, 2023).

The Commission likewise did not participate in a related appeal through which Ovation challenged the Nosaman bar order. See 22-56208 C.A. Docket. And the SEC filed a notice stating that the agency did not intend to participate in a third related appeal, in which Peterson challenged a district-court order that had denied Peterson's claims in the receivership and had approved the Receiver's proposed distribution plan. See 23-55252 C.A. Doc. 35 (Nov. 16, 2023).

In at least one prior case in a court of appeals, the SEC has addressed the propriety of a district court's entry of a bar order. See SEC Br., *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017) (No. 16-4013). But the position that the SEC took there was premised on the specific facts and circumstances of that case. The Commission's brief in *DeYoung* does not imply any particular view as to the propriety of the bar order entered in this case.

CONCLUSION

The Commission takes no position as to the appropriate disposition of the petition for a writ of certiorari.

Respectfully submitted.

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