No. 25- _____

IN THE
Supreme Court of the United States

ATLAS TURNER, INC.,

Petitioner,

v.

DONNA B. WELCH, individually and as Personal Representative of the Estate of Melvin G. Welch, and PETER D. PROTOPAPAS, in his capacity as Receiver for Atlas Turner, Inc.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of South Carolina

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The U.S. Constitution imposes due-process limits on the jurisdiction of state and federal courts. Those limits differ depending on the type of jurisdiction the court seeks to exercise—either "in personam" jurisdiction over persons, or "in rem" jurisdiction over property. In the decision below, the South Carolina Supreme Court held that, where a trial court has specific personal jurisdiction over a defendant, it also has in rem jurisdiction over the defendant's property, even if that property is located beyond the territorial boundaries of South Carolina—conflating "in personam" and "in rem" jurisdiction and deepening a lower-court split.

The question presented is whether the Due Process Clause permits a court with specific personal jurisdiction over a defendant to exercise in rem jurisdiction over the defendant's out-of-territory property.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

In addition to the parties listed in the caption, the following were parties to the proceedings below: Advance Auto Parts, Inc.; American Honda Motor Co., Inc.; Atlas Asbestos Co; Bahnson, Inc.; Covil Corporation; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Ellington Insulation Company, Inc.; Fluor Constructors International f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Parts, Inc. individually and as successor-in-interest to Carquest Corporation; Goodrich Corporation f/k/a The B. F. Goodrich Company; The Goodyear Tire & Rubber Company; Graybar Electric Company, Inc.; Honeywell International, Inc. individually and as successor-in-interest to Allied Signal, Inc., as successor to Bendix Corporation; Morse Tec LLC f/k/a Borgwarner Morse Tec LLC, and successor-by-merger to Borg-Warner Corporation; Occidental Chemical Corporation as successor to Durez Corporation; O'reilly Automotive Stores, Inc.; Paramount Global f/k/a Viacomcbs Inc., f/k/a CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor-by-merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation; Pneumo Abex LLC successor-in-interest to Abex Corporation; Redco Corporation f/k/a Crane Co.; Reinz Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly owned subsidiary of Dco LLC; Rust Engineering & Construction, Inc.; Rust International Inc.; Southern Insulation, Inc.; Spirax Sarco, Inc.; Union Carbide Corporation; Westrock MWV, LLC individually and as successor-in-interest to

Westvaco; ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company.

Pursuant to this Court's Rule 29.6, counsel state that Atlas Turner, Inc., is a wholly owned subsidiary of Mazarin, Inc., a publicly traded company.

RULE 14.1(b)(iii) STATEMENT

- *Welch v. Atlas Turner, Inc.*, No. 2023-001096 (S.C.) (judgment entered May 21, 2025)
- *Welch v. 3M Co.*, No. 2023-CP-40-03834 (S.C. Ct. Common Pleas, 5th Cir.) (receivership order entered June 20, 2023)

There are no additional proceedings in any court that are directly related to this case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Atlas Turner, Inc., respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of South Carolina.

OPINIONS BELOW

The South Carolina Supreme Court's opinion affirming in part and reversing in part the order appointing the Receiver (Pet. App. 1a-29a) is published at 916 S.E.2d 320. The Order of the South Carolina Court of Common Pleas for the Fifth Judicial Circuit appointing the Receiver (Pet. App. 30a-38a) is unpublished.

JURISDICTION

The judgment of the South Carolina Supreme Court was issued on May 21, 2025. Pet. App. 1a-29a. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a). While there will be "'further proceedings in the lower state courts to come,'" the South Carolina Supreme Court's decision "'finally determined the federal issue present'" here—whether the Due Process Clause permits a South Carolina court to exercise in rem jurisdiction over Atlas Turner's out-of-state property. *Moore v. Harper*, 600 U.S. 1, 16 (2023) (quoting *Cox Broad. Corp v. Cohn*, 420 U.S. 469, 477 (1975)). This Court has jurisdiction because that "'federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings.'" *Id.*; *see also Cox Broad.*, 420 U.S. at 480 (explaining that, in *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 127 (1945), a federal issue was held reviewable despite a pending state accounting proceeding because

"[n]othing that could happen in the course of the accounting, short of settlement of the case, would foreclose or make unnecessary decision on the federal question").

CONSTITUTIONAL PROVISIONS INVOLVED

Relevant constitutional provisions are reproduced in the Appendix. Pet. App. 45a-46a.

INTRODUCTION

This Court's review is warranted to resolve an important and longstanding disagreement among lower courts regarding a court's authority to exercise direct control—*i.e.*, in rem jurisdiction—over a defendant's property located outside the court's territorial bounds. The South Carolina Supreme Court's decision that a state trial court has exclusive in rem jurisdiction over a defendant's out-of-state property just because the court found it has specific personal jurisdiction over the defendant guts deeply rooted due-process protections and sets the stage for conflict among sovereigns—both within the United States and beyond.

A South Carolina trial court with jurisdiction over all asbestos litigation in the State appointed a Receiver over petitioner Atlas Turner, Inc., a Canadian corporation headquartered in Québec that has no property in South Carolina and has never done business in the State. Like multiple other receiverships established by the same trial court over foreign (both U.S. and non-U.S.) corporations, the trial court treated Atlas Turner's contractual insurance rights in connection with this asbestos personal-injury claim as "assets" over which it could exercise in rem jurisdiction and appointed a South Carolina Receiver as an arm of the court to "marshal" those assets. Pet. App. 38a. The South Carolina Supreme Court did not find

that Atlas Turner's insurance rights were assets located in South Carolina but nevertheless upheld the trial court's extraterritorial assertion of *in rem* jurisdiction over Atlas Turner's assets because the court had found that it could exercise specific *personal* jurisdiction over Atlas Turner.

That holding deepens an existing conflict about the territorial limits on in rem jurisdiction. At least three state supreme courts have held that a court's personal jurisdiction over a defendant does not give the court authority to exercise in rem jurisdiction over the defendant's out-of-state property. In the decision below, the South Carolina Supreme Court took the opposite view, aligning itself with the Eleventh Circuit to hold that a court's specific personal jurisdiction over a defendant confers in rem jurisdiction to reach the defendant's property *wherever* that property is located.

That disagreement is ripe for this Court's resolution. This Court has long distinguished between jurisdiction over persons and jurisdiction over property. *See Shaffer v. Heitner*, 433 U.S. 186, 199 (1977). And this Court has not hesitated to grant review to reject assertions of judicial power that conflate in rem and in personam jurisdiction, *see*, *e.g.*, *Rush v. Savchuk*, 444 U.S. 320, 328 (1980), and to make clear that jurisdiction over property extends only to a court's territorial limits, *see Shaffer*, 433 U.S. at 199. This Court has not had the chance to clarify, however, that those territorial limits on in rem jurisdiction remain intact *even where a court finds that it has personal jurisdiction over the defendant*. The Court should take this opportunity to resolve the lower courts' division on this fundamental and recurring jurisdictional question.

The issue is exceptionally important, as the territorial limits on courts' in rem jurisdiction serve a critical constitutional role: ensuring that state courts do not intrude on other States' sovereign control over property within their borders—a basic prerequisite to the functioning of a federal system—or on the federal government's exclusive control over foreign affairs and foreign commerce in cases, like this one, where the in rem order extends to assets in another country. By wresting away Atlas Turner's authority over its contractual insurance rights, the receivership upheld by the South Carolina Supreme Court risks fomenting friction in the United States' diplomatic and commercial relations with Canada, an important American ally and trading partner. In fact, the prospect of international strife has already come to pass in two other cases where the same South Carolina trial court imposed similar receiverships. A Canadian court condemned an order establishing a similar receivership over a different Canadian corporation as "astonishing." And an order purporting to establish a South Carolina receivership over an English company led to dueling orders from a U.K. court and the South Carolina courts about the receivership's validity and the legitimacy of each other's decisions.

This Court should grant review to make clear that a court's jurisdiction over property *never* extends beyond the court's territorial limits—even where the court has specific personal jurisdiction over the defendant. This bright-line rule is consistent with constitutional structure as well as relevant history and tradition. And it will prevent state courts from interfering with property located in other States and from entangling themselves in matters of foreign affairs and foreign commerce entrusted by the Constitution exclusively to the federal government.

STATEMENT

1. All asbestos litigation in South Carolina is currently assigned to a single trial-court judge, the Honorable Jean H. Toal, the former Chief Justice of the South Carolina Supreme Court whom a successor handpicked to oversee the State's asbestos docket. Chief Justice Toal has made the appointment of receivers over asbestos defendants the centerpiece of her case-management strategy, deploying it time and again with respect to both South Carolina corporations and out-of-state corporations and with respect to both dissolved and active corporations. This case arises from the trial court's decision to appoint a receiver over Atlas Turner, an active corporation organized under the laws of Canada, with its principal place of business in Québec. *See* Affidavit of Richard Dufour, ¶ 4, *Welch v. 3M Co.*, No. 2022-CP-40-03834 (S.C. Ct. Common Pleas, 5th Cir. May 15, 2023). Atlas Turner has no property in South Carolina and has never done business in the State. *See id.* ¶¶ 5-9.

This asbestos personal-injury action was filed by plaintiff in South Carolina state court to recover for the death of her husband and was assigned to Judge Toal. Pet. App. 3a-4a. Atlas Turner was named as a defendant and entered an appearance objecting to personal jurisdiction. The trial court overruled that objection. Pet. App. 4a. Atlas Turner subsequently filed an answer and complied with discovery requests to the extent it could—Atlas Turner terminated its asbestos business in the mid-1980s and has no employees familiar with that long-abandoned business—and to the extent compatible with its legal obligations under the Québec Business Concerns Records Act, which limits Québec companies' ability to comply with discovery demands. *See* Pet. App. 4a-5a; Final Brief of

Appellant 2-3, *Welch v. Advance Auto Parts, Inc.*, No. 2023-001096 (S.C. Ct. App. Jan. 16, 2024). Plaintiffs moved to hold Atlas Turner in contempt and to strike its pleadings for supposedly failing to participate in discovery, and to appoint a receiver for Atlas Turner. *See* Pet. App. 5a.

The trial court granted both motions, holding Atlas Turner in contempt and striking its pleadings, and appointing a local lawyer, Peter Protopapas, as Receiver for Atlas Turner. *See* Pet. App. 5a, 30a-38a. The Receivership Order purported to grant the Receiver broad powers over Atlas Turner's contractual insurance rights, including the powers to "fully administer all insurance assets of Atlas Turner, Inc."; to "obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of Atlas"; and to "open any mail which is reasonably believed to contain information relating to insurance assets addressed to [Atlas Turner] and addressed to any business owned by" Atlas Turner. Pet. App. 36a-37a.

The Atlas Turner Receivership Order represents the *twenty-fourth* time the same South Carolina trial court has appointed Mr. Protopapas as receiver for an asbestos defendant over the past seven years. Several other receiverships also involve foreign (U.S. and non-U.S.) corporations, including receiverships over Payne & Keller Company, a dissolved Texas corporation, Cape Intermediate Holdings Limited ("Cape"), an active English corporation, and Asbestos Corporation Limited ("ACL"), an active Canadian corporation.[1]

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[1] The Cape receivership order refers to "Cape plc," but the South Carolina trial court later stated that it meant to refer to

2. Atlas Turner appealed the trial court's orders sanctioning it for contempt and appointing the Receiver. After briefing was completed, the South Carolina Court of Appeals requested certification of the appeal to the South Carolina Supreme Court, which accepted the case. Order, *Welch v. Advance Auto Parts, Inc.*, No. 2024-001180 (S.C. Aug. 20, 2024).

On May 21, 2025, the South Carolina Supreme Court issued an opinion affirming the appointment of the Receiver and upholding the Receiver's authority to exercise Atlas Turner's contractual insurance rights in connection with this case. The court held that the trial court had authority under South Carolina law to appoint the Receiver as "an officer of the court" to "marshal and collect—to receive—the assets of the corporation." Pet. App. 16a-21a. The Receiver, the court held, is "a 'hand of the court'" and "exercises power and control over the defendant's assets and property specified in the appointment order," "administer[ing] them at the court's discretion for the benefit of creditors and the debtor's estate." Pet. App. 17a.

Critically, the South Carolina Supreme Court rejected Atlas Turner's argument that the "trial court had no jurisdiction to appoint a Receiver because [Atlas Turner] neither owns nor possesses any property within the borders of South Carolina." Pet. App. 21a; *see also* Final Brief of Appellant 6, *Welch v. Advance*

Cape Intermediate Holdings Limited; Cape plc has at all relevant times been a separate entity from Cape Intermediate Holdings Limited and is incorporated under the laws of the Bailiwick of Jersey. *See* Order ¶¶ 1, 47, 64, 138-40, *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC (Ch) 2999 (Eng.), https://perma.cc/8UGC-J2Q5 ("*Cape* Order"). Atlas Turner currently shares a common corporate parent with ACL but the two companies were unrelated during the periods at issue in the personal-injury lawsuits against each of them.

Auto Parts, Inc., No. 2023-001096 (S.C. Ct. App. Jan. 16, 2024) (arguing that a receiver's jurisdiction is limited to the territorial jurisdiction of the court appointing him). Relying on precedent from this Court and other federal courts, the South Carolina Supreme Court held that, because the trial court found that it "has personal jurisdiction" over Atlas Turner, "'it is immaterial that the res is beyond the territorial jurisdiction of the court.'" Pet. App. 22a-23a (quoting *City of Jamestown v. Pa. Gas Co.*, 1 F.2d 871, 878 (2d Cir. 1924)). To support this proposition, the South Carolina Supreme Court relied on *Massie v. Watts*, 10 U.S. (6 Cranch) 148 (1810), which held that "an equity court's jurisdiction 'is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be affected by the decree.'" Pet. App. 22a (quoting *Massie*, 10 U.S. at 160); *see also* Pet. App. 22a-23a (citing *Muller v. Dows*, 94 U.S. 444, 449 (1876); *Booth v. Clark*, 58 U.S. (17 How.) 322, 332 (1854)). Based on *Massie* and other federal decisions, the court concluded that "*any* Insurance Assets owned by Atlas Turner that may cover [the decedent's] injuries are properly within the Receivership estate, meaning those Insurance Assets are within South Carolina's *exclusive* jurisdiction." Pet. App. 26a-27a (citing *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019)) (emphases added).[2]

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[2] Although the South Carolina Supreme Court upheld the Receiver's powers over Atlas Turner's contractual insurance rights for purposes of this case, it held that "equity only allows insurance policies that have the potential to cover [the decedent's] injuries to be included in this definition." Pet. App. 27a. The South Carolina Supreme Court thus appears to have vacated language in the Receivership Order that purported to grant the Receiver broader powers to control Atlas Turner's corporate affairs. Pet. App. 36a-37a.

REASONS FOR GRANTING THE PETITION

The South Carolina Supreme Court's decision deepens a split among lower courts on the due-process limits on in rem jurisdiction, is incompatible with this Court's precedent addressing the fundamental distinction between in rem and in personam jurisdiction, and raises surpassingly important federalism and foreign-relations issues. This Court should grant the petition.

The South Carolina Supreme Court exacerbated the existing division among lower courts on whether a court with personal jurisdiction over a defendant can therefore also exercise in rem jurisdiction over the defendant's property located beyond the court's territorial limits. At least three state supreme courts have held that a court cannot exercise direct control over a defendant's property located outside the court's territorial boundaries merely because the court has personal jurisdiction over the defendant. The Eleventh Circuit and the South Carolina Supreme Court have reached the opposite conclusion, relying on personal jurisdiction over the defendant to exercise in rem jurisdiction over the defendant's extraterritorial property.

In siding with the Eleventh Circuit, the South Carolina Supreme Court wrongly conflated in personam and in rem jurisdiction. This Court has long recognized the two as distinct types of jurisdiction, the former over a *person* and the latter over *property*. While this Court's approach to in personam jurisdiction has evolved over time—abandoning a focus on presence in favor of a focus on minimum contacts—it has never wavered from the rule that a court's in rem jurisdiction does not extend extraterritorially. This

case provides the Court a valuable opportunity to clarify and confirm the continuing vitality of that bedrock due-process rule.

The question presented is extremely important, as it implicates grave federalism and foreign-policy concerns. Permitting a state court with specific personal jurisdiction over a defendant to exercise in rem jurisdiction over all of the defendant's property—wherever located—would invite jurisdictional conflicts among States seeking to exert control over the same property. And, of course, exclusive jurisdiction cannot be shared. The implications of the resulting jurisdictional conflict are especially pernicious in this case because Atlas Turner is a Canadian corporation. By reaching beyond South Carolina's borders—and beyond the borders of the United States—to control the insurance rights of a Canadian company, the South Carolina trial court risks injecting discord into the United States-Canada relationship and fomenting retaliatory measures. Indeed, similar receivership orders issued by the same state trial court have already led to sharply conflicting rulings from the South Carolina courts and from Canadian and English courts regarding the receiver's supposed control over other foreign corporations.

Avoiding that type of State-fomented international strife is precisely why the Constitution bars States from interfering with foreign affairs and foreign commerce and instead reserves those matters exclusively to the federal government. The territorial limits on courts' in rem jurisdiction reinforce that critical structural constraint and should be reaffirmed by this Court.

I. THE DECISION BELOW DEEPENS A SPLIT REGARDING COURTS' IN REM JURISDICTION OVER EXTRATERRITORIAL PROPERTY.

The South Carolina Supreme Court's decision compounds an existing split regarding whether due process permits a court with personal jurisdiction over a defendant to exercise in rem jurisdiction over that defendant's out-of-territory property. This Court should resolve that disagreement.

A. Three State Supreme Courts Have Maintained The Distinction Between In Personam And In Rem Jurisdiction.

The Arizona, Montana, and Washington Supreme Courts have held that in personam jurisdiction over a defendant does not permit a court to exercise in rem jurisdiction over the defendant's property located outside the court's territory.

1. In *State v. Western Union Financial Services, Inc.*, 208 P.3d 218 (Ariz. 2009), the Arizona Supreme Court held that it could not exercise jurisdiction over Western Union money transfers sent from other States to Mexico even though Western Union was subject to personal jurisdiction in Arizona. *Id.* at 219. The State issued warrants to seize certain Western Union wire transfers involving proceeds of "human smuggling and narcotics trafficking" that often stemmed from "activities in Arizona." *Id.* The various warrants gave the State authority "to seize person-to-person wire transfers" sent "from twenty-eight states other than Arizona to twenty-six locations in" Mexico. *Id.* Western Union moved to quash one of the warrants as a violation of the Fourteenth Amendment's Due Process Clause.

Two key facts were undisputed: (1) Western Union was subject to the Arizona state court's personal jurisdiction, and (2) the warrant, which "authorize[d] seizure of specific property," was an exercise of "in rem jurisdiction." *W. Union*, 208 P.3d at 220, 222. The question was therefore whether the state court could "properly exercise in rem jurisdiction over Western Union money transfers originating in other states and directed to Sonora, Mexico." *Id.* at 221.

The court held that it could not. "[A] necessary prerequisite to in rem jurisdiction," the court explained, "is the location of the subject property within the forum state." *W. Union*, 208 P.3d at 222. Because the wire transfers from different States to a foreign country were not "'located' in Arizona," *id.* at 226, exercising in rem jurisdiction violated the Fourteenth Amendment, *id.* at 227.

The trial court's in personam jurisdiction over Western Union made no difference. The court could "issu[e] in personam orders to Western Union governing the disposition of wire transfers involving the proceeds of racketeering conducted in th[e] state." *W. Union*, 208 P.3d at 220. But the fact that "Western Union c[ould] be sued" in Arizona did not mean that the seized property was "itself located in Arizona." *Id.* at 223. And "the basic requirement" of "in rem jurisdiction," the court held, is "the presence of property in the forum state." *Id.* at 222.

2. The Montana Supreme Court similarly held that a state court cannot exercise direct control over a defendant's out-of-state property just because it has personal jurisdiction over the defendant. *Gammon v. Gammon*, 684 P.2d 1081, 1085 (Mont. 1984). In *Gammon*, an Oregon court had purported to grant a wife

title to her husband's land in Montana as part of divorce proceedings. But the Montana Supreme Court later held that the Oregon court's order was "void for want of jurisdiction" insofar as the order "attempted to directly transfer husband's Montana real property to wife." *Id.* The court contrasted the invalid direct attempt to control property with an order merely deciding the parties' respective rights to the land, only the latter of which would be permitted based on the Oregon court's personal jurisdiction over the parties. *Id.* at 1085-87.

3. The Washington Supreme Court reached the same conclusion. In *In re Marriage of Kowalewski*, 182 P.3d 959 (Wash. 2008), the court considered whether the state court could "indirectly affect title" to property located in Poland "by means of an in personam decree operating on the person over whom it has jurisdiction." *Id.* at 962. The court said yes, drawing a sharp distinction between direct and indirect assertions of authority over out-of-state property. *Id.*

The court explained: "[A] court in one state does not have power directly to affect title to real property located outside the state" because "jurisdiction in rem (directly over the thing itself) exists only in the state where the real property is located." *Kowalewski*, 182 P.3d at 962 (discussing *Brown v. Brown*, 281 P.2d 850 (Wash. 1955)). But "a decree that declares the parties' personal rights or equities" in certain property abroad "is a valid in personam decree." *Id.* at 964. The court concluded that it could "exercise its coercive powers" to enforce the personal decree and thus "accomplish indirectly what it could not do directly." *Id.* at 962.

B. Two Appellate Courts Have Upheld Assertions Of In Rem Jurisdiction Over Extraterritorial Property.

On the other hand, the Eleventh Circuit and the decision below have held that personal jurisdiction over a defendant permits the court to exercise in rem jurisdiction over the defendant's property, wherever that property is located.

1. In a decision on which the South Carolina Supreme Court relied, Pet. App. 24a, the Eleventh Circuit held that a court may appoint a receiver to "exercise authority over any assets located in foreign countries" based on the court's "*in personam* jurisdiction over" the defendants. *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1187 (11th Cir. 1991). In that case, the counterclaim-defendant ("defendant," for simplicity) had sold crude oil to a Bahamian company in violation of U.S. export regulations. *Id.* at 1183. A district court concluded that the defendant had violated the law and ordered restitution. *Id.* at 1183-84. Compounding his problems, the defendant then transferred "millions of dollars" to a Bahamian corporation he owned. *Id.* at 1184. The court subsequently appointed a receiver over the defendant's assets, including over his foreign corporation. *Id.*

On appeal, the defendant argued that the court's order was "an illegitimate expansion of *in rem* jurisdiction" because it gave "the receiver the right to immediate possession and control of [his] assets," including in the Bahamas. *Citronelle-Mobile*, 934 F.2d at 1187. The Eleventh Circuit disagreed. It held that, "when a district court has *in personam* jurisdiction over the defendant, [ ]the court may appoint a receiver to enforce a judgment" and the receiver "may exercise

authority over any assets located in foreign countries." *Id.* In the Eleventh Circuit's view, the power of the receiver over property in "another nation" was "relatively clear." *Id.*

2. In the decision below, the South Carolina Supreme Court similarly held the trial court could appoint a receiver to exercise "exclusive jurisdiction" over Atlas Turner's insurance rights located outside the State—and outside the country. Pet. App. 26a. Atlas Turner argued that the "trial court had no jurisdiction to appoint a Receiver because [Atlas Turner] neither owns nor possesses any property within the borders of South Carolina." Pet. App. 21a. But the court rejected that argument, holding, based on supposedly supportive decisions from this Court, that the trial court's finding of specific "personal jurisdiction" made the location of Atlas Turner's "Insurance Assets" "'immaterial.'" Pet. App. 22a-23a. The court therefore held that the Receiver "has the right and duty to collect and accumulate" Atlas Turner's insurance even if it is "outside the court's territorial jurisdiction." Pet. App. 22a, 27a. Those insurance assets, the court concluded, "are within South Carolina's exclusive jurisdiction." Pet. App. 26a.

As a result of this split in authority, the due-process limits on in rem jurisdiction are being applied unevenly across the country. South Carolina courts and federal courts in the Eleventh Circuit purport to have the power—even exclusive power—to act directly on and control property beyond their territorial boundaries. Accordingly, a defendant amenable to specific personal jurisdiction in South Carolina or in a federal court within the Eleventh Circuit could have its property located outside of the court's territorial jurisdiction wrested from its control by the appointment of a

receiver. By contrast, a defendant sued in Arizona, Montana, or Washington would be subject to no such threat of extraterritorial property exaction. Only this Court can ensure that defendants' property rights are subject to uniform due-process rules that do not vary based on the particular court in which suit is filed and a receiver appointed.

II. THE SOUTH CAROLINA SUPREME COURT'S DECISION IS INCOMPATIBLE WITH FUNDAMENTAL PRINCIPLES OF IN REM JURISDICTION EMBODIED IN THIS COURT'S PRECEDENTS.

The South Carolina Supreme Court's decision conflicts with this Court's precedents, which have long distinguished between in personam and in rem jurisdiction. The South Carolina Supreme Court collapsed the two, allowing the trial court to exercise in rem jurisdiction over Atlas Turner's insurance assets—wherever those assets are located—based on the trial court's finding of specific personal jurisdiction over Atlas Turner.

While this Court has consistently held that in rem jurisdiction is limited to property within a court's territorial bounds, it has never clarified how *International Shoe*'s "fair play and substantial justice" standard—developed by this Court in cases about in personam jurisdiction—should be applied in the in rem setting. This may explain the South Carolina Supreme Court's conflation of these two distinct jurisdictional doctrines. And it amplifies the need for this Court to step in, as it has done repeatedly when confronted with similarly flawed and overreaching theories of personal jurisdiction. The Court should grant review to reaffirm and clarify the territorial bounds on in rem jurisdiction.

A. Unlike In Personam Jurisdiction Over A Person, In Rem Jurisdiction Over Property Is Territorially Bounded.

From its earliest decisions on the subject, this Court has distinguished between jurisdiction over a "'person'" and jurisdiction over "'property.'" *Pennoyer v. Neff*, 95 U.S. 714, 724 (1877) (quoting *Boswell's Lessee v. Otis*, 50 U.S. (9 How.) 336, 346 (1850)).

When a court's jurisdiction "is based on its authority over the defendant's *person*, the action and judgment are denominated 'in personam,'" which is also called "personal jurisdiction." *Shaffer v. Heitner*, 433 U.S. 186, 199, 204 (1977) (emphasis added). A court exercising in personam jurisdiction "can impose a personal obligation on the defendant in favor of the plaintiff." *Id.* at 199.

Jurisdiction over property (or a *res*) is different. When a court's jurisdiction "is based on the court's power over property," then "the action is called 'in rem' or 'quasi in rem.'" *Shaffer*, 433 U.S. at 199. Rather than imposing any "personal liability on the property owner," the "effect of a judgment in such a case is limited to the property that supports jurisdiction." *Id.* In rem jurisdiction "operates directly on the property," 4A Wright & Miller, *Federal Practice and Procedure* § 1070 (4th ed. 2025), and a judgment "affects the interests of *all persons* in designated property," *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958) (emphasis added). In rem jurisdiction is necessarily "exclusive" because the nature of such jurisdiction is to "control the disposition of the property." *Pennoyer*, 95 U.S. at 722-23; *see Marshall v. Marshall*, 547 U.S. 293, 311-12 (2006) ("when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*"). Indeed, because

in rem jurisdiction binds all the world and is exclusive, it is arguably a more coercive and dramatic assertion of judicial power than in personam jurisdiction.

In rem jurisdiction is not limited to the receivership context of this case. Other examples of in rem proceedings include civil forfeitures, *e.g.*, *Republic Nat'l Bank of Miami v. United States*, 506 U.S. 80, 84 (1992); admiralty suits, *e.g.*, *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 963 (4th Cir. 1999); probate actions, *e.g.*, *Marshall*, 547 U.S. at 311; foreclosure proceedings, *Dorce v. City of N.Y.*, 2 F.4th 82, 98-99 (2d Cir. 2021); quiet-title actions, *e.g.*, *Bevilacqua v. Rodriguez*, 955 N.E.2d 884, 889 n.5 (Mass. 2011); and trademark claims related to website domain names, 15 U.S.C. § 1125(d)(2)(A).[3]

The requirements for exercising each type of jurisdiction also differ. In *Pennoyer*, this Court held that "no State can exercise direct jurisdiction and authority over *persons or property* without its territory." 95 U.S. at 722. That rule was rooted in the fact that the "several States are of equal dignity and authority," and "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory." *Id.*; *see Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025) (the Fourteenth Amendment's jurisdictional rules "emerged . . . as 'a consequence of territorial limitations on the power of the respective States'").

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[3] Quasi in rem jurisdiction, which was at issue in *Shaffer*, is also based on jurisdiction over property but affects only "the interests of *particular* persons in designated property," rather than of *all* persons. 433 U.S. at 199 & n.17 (emphasis added).

But *Pennoyer*'s reasoning did not stand the test of time as applied to personal jurisdiction. This Court came to recognize that "the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest," were "the central concern of the inquiry into personal jurisdiction." *Shaffer*, 433 U.S. at 204; *see Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945) (exercise of personal jurisdiction must adhere to "our traditional conception of fair play and substantial justice"). A court thus has in personam jurisdiction over a defendant that has purposeful "minimum contacts" with that forum, where the claim arises out of or relates to those contacts. *Int'l Shoe*, 326 U.S. at 316; *see Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021).

"No equally dramatic change has occurred in the law governing jurisdiction in rem," however. *Shaffer*, 433 U.S. at 205. A court's authority in that context remains limited to "property within its territory." *Id.* at 199. As the Court put it in *Hanson*: "The basis of" in rem jurisdiction "is the presence of the subject property within the territorial jurisdiction of the forum State." 357 U.S. at 246.

The particular type of jurisdiction a court is exercising thus determines the extent to which the court can exert direct control over property. A court acting in rem can exert control "over property within its territory." *Shaffer*, 433 U.S. at 199. A court exercising in personam jurisdiction, by contrast, cannot "operate directly upon the property," but can "indirectly act upon real estate" by its "authority over the person," which is "made effectual through the coercion of the defendant." *Fall v. Eastin*, 215 U.S. 1, 8, 10 (1909); *see Booth v. Clark*, 58 U.S. (17 How.) 322, 332-33

(1854); *Muller v. Dows*, 94 U.S. 444, 449 (1876); *Pennoyer*, 95 U.S. at 723. In other words, a court with in personam jurisdiction over a defendant can order that defendant to transfer property located outside its territory—and can hold the defendant in contempt if he fails to do so—but cannot *directly* transfer the property itself through court order or appointment of a receiver (a person who is an arm of the court and can have no power broader than the court's own power) over the out-of-territory property. *See Muller*, 94 U.S. at 449 (a court "having jurisdiction of the person" may "decree a conveyance by him of land in another State").

The South Carolina Supreme Court ignored these critical distinctions when it exercised direct control over Atlas Turner's out-of-state insurance rights.

B. The South Carolina Supreme Court Conflated In Personam And In Rem Jurisdiction.

1. The trial court's Receivership Order over Atlas Turner—which the South Carolina Supreme Court affirmed in relevant part—is a purported exercise of in rem jurisdiction over property located outside the State. Atlas Turner is a Canadian corporation that is headquartered in Québec, has never done business in South Carolina, and has no property in South Carolina. *See* Affidavit of Richard Dufour, ¶ 4, *Welch v. 3M Co.*, No. 2022-CP-40-03834 (S.C. Ct. Common Pleas, 5th Cir. May 15, 2023). And neither the trial court nor the South Carolina Supreme Court purported to find that Atlas Turner's contractual insurance rights are located in South Carolina. Yet the trial court authorized the Receiver to "fully administer" Atlas

Turner's insurance rights that pertain to plaintiff's asbestos personal-injury claims against Atlas Turner. Pet. App. 36a; *see supra* at 6.

The South Carolina Supreme Court recognized that the Receivership Order was an exercise of in rem jurisdiction. In affirming the Receiver's control over Atlas Turner's contractual insurance rights, the court relied on in rem cases, including case law "recognizing that insurance policies and proceeds may be part of a Receivership estate and placed in [a] state court's exclusive *in rem* jurisdiction." Pet. App. 26a (citing *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019)).

On that particular point, the South Carolina Supreme Court was correct. It is well established that "the appointment of a receiver is in the nature of a proceeding in rem." 12 Wright & Miller § 2985; *see*, *e.g.*, *Penn Gen. Cas. Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935); *SEC v. Peterson*, 129 F.4th 599, 608 n.11, 612 (9th Cir. 2025); *Chua v. Ekonomou*, 1 F.4th 948, 954 (11th Cir. 2021); *see also Buist v. Williams*, 62 S.E. 859, 861 (S.C. 1908) ("The administration of a receiver is a proceeding in rem, which from its nature can be undertaken and accomplished only once with respect to the same property.").

2. To justify the trial court's receivership over out-of-state property, the South Carolina Supreme Court disregarded the territorial limits on in rem jurisdiction, impermissibly collapsing in personam and in rem jurisdiction.

The South Carolina Supreme Court reasoned that the trial court's specific personal jurisdiction over a corporate person, Atlas Turner, meant that it could

appoint a receiver with authority "to collect and accumulate" that corporation's property, *wherever* that property is located. Pet. App. 23a, 27a. The court stated—and relied on cases correctly holding—that a court with in personam jurisdiction can "order a party . . . to convey and produce its property and assets, regardless of where they may be located." Pet. App. 22a (citing cases). But the trial court did not order Atlas Turner to turn over its contractual insurance rights. Instead, the court purported to exercise *direct control* over Atlas Turner's out-of-state insurance rights by appointing a receiver to "fully administer all insurance assets of Atlas Turner." Pet. App. 36a. The South Carolina Supreme Court nevertheless upheld the trial court's extraterritorial projection of power, declaring that Atlas Turner's "Insurance Assets are within South Carolina's exclusive jurisdiction" simply because the trial court found that it "ha[d] jurisdiction over the defendant" (a conclusion that the South Carolina Supreme Court did not review). Pet. App. 23a, 27a. That conclusion is flatly at odds with this Court's precedent limiting a court's in rem jurisdiction to "property within its territory." *Shaffer*, 433 U.S. at 199.

It is also at odds with the federal cases, from this Court and other courts, on which the South Carolina Supreme Court premised its holding. Those decisions merely hold that a court can order a defendant over whom it has personal jurisdiction to take actions with respect to property located in a different State or country. *See Booth*, 58 U.S. at 332-33 (a court can act on property "beyond the reach of the court" only by "compel[ing]" a defendant over whom it has personal jurisdiction); *Massie v. Watts*, 10 U.S. (6 Cranch) 148, 160 (1810) (a court with in personam jurisdiction may enforce a decree against the person even if it affects

"lands not within the jurisdiction of that court"); *Muller*, 94 U.S. at 449 (similar).[4]

None of the cases holds that a court can exercise direct control over property located outside its territorial bounds. In fact, many of the decisions explicitly recognize that in rem jurisdiction is limited to property located within the court's territory. *See Booth*, 58 U.S. at 334 ("the receiver's right to the possession of the debtor's property is limited to the jurisdiction of his appointment"); *Massie*, 10 U.S. at 158-59 (if the case involved "a naked question of title"—an "*in rem*" proceeding—"the jurisdiction of the [out-of-state court] would not be sustained"); *Muller*, 94 U.S. at 449 (a court sitting in one state "cannot . . . deliver possession of land in another jurisdiction").

By rejecting the South Carolina Supreme Court's flawed decision and resolving the split that decision deepened, this Court would clarify that in rem and in personam jurisdiction remain distinct sources of judicial power with distinct requirements. Uncertainty on that issue might stem from *Shaffer*, which held that "*all* assertions of state-court jurisdiction"—presumably including in rem jurisdiction—"must be evaluated according to the standards [of fairness and substantial justice] set forth in *International Shoe* and its progeny." *Shaffer*, 433 U.S. at 212 (emphasis added).

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[4] *See also City of Jamestown v. Pa. Gas Co.*, 1 F.2d 871, 878 (2d Cir. 1924) (a court acting in personam can order the defendant to act as to a res "beyond the territorial jurisdiction of the court"); *United States v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962) ("Personal jurisdiction gave the court power to order Ross to transfer property whether that property was within or without the limits of the court's territorial jurisdiction."); *Stewart v. Laberee*, 185 F. 471, 474 (9th Cir. 1911) (court could order defendant to turn over out-of-state property to receiver).

This Court has never had occasion to explain how that standard applies to in rem jurisdiction. The fact that both kinds of jurisdiction—over persons and over property—are subject to the same due-process standard might lead courts to conclude incorrectly that the two strands of jurisdiction are interchangeable. In reality, the minimum-contacts test as applied to in rem jurisdiction incorporates the traditional territorial rule that this Court has always applied, which limits in rem jurisdiction to "property within [the court's] territory." *Pennoyer*, 95 U.S. at 722.

This is not the first time a lower court has "constructed an ingenious jurisdictional theory" involving alleged in rem authority over insurance in an effort to project judicial power beyond the court's territorial bounds. *Rush v. Savchuk*, 444 U.S. 320, 328 (1980). In *Rush*, this Court granted review to clarify that a court cannot exercise quasi in rem jurisdiction to establish authority over an out-of-state defendant by attaching his insurance rights based on in-state activity by the *insurer*. *Id.* This case presents the inverse of *Rush*—there, this Court rejected an attempt to use quasi in rem jurisdiction to obtain personal jurisdiction over an out-of-state defendant; here, the South Carolina Supreme Court approved the use of in personam jurisdiction to obtain in rem jurisdiction over out-of-state assets. Both extraterritorial assertions of judicial power equally violate due-process limits on jurisdiction.

As it did in *Rush*, the Court should grant review to clarify that the South Carolina Supreme Court's similarly flawed analysis, empowering a Receiver to commandeer a defendant's out-of-state insurance

rights based on the trial court's purported specific personal jurisdiction over the defendant, stretches in rem jurisdiction too far.

III. THE QUESTION PRESENTED IMPLICATES IMPORTANT FEDERALISM AND FOREIGN-RELATIONS CONCERNS.

If left undisturbed, the South Carolina Supreme Court's decision will invite further extraterritorial assertions of in rem jurisdiction that infringe on the sovereignty of other States or, as in this case, other nations. In fact, the trial court's receivership practices have already resulted in conflicting orders from U.S. and foreign courts.

A. The Extraterritorial Receivership Order Impermissibly Injects South Carolina Courts Into Foreign Relations.

As this Court recently reiterated, due-process limits on state courts' jurisdiction serve "'the principles of interstate federalism embodied in the Constitution.'" *Fuld*, 606 U.S. at 14 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)). The Fourteenth Amendment ensures that "'the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.'" *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 292). Those concerns are amplified when a state court purports to exercise authority over property in a foreign *country*. The federal government has "exclusive authority '[i]n international relations and with respect to foreign intercourse and trade.'" *Id.* at 15 (quoting *Bd. of Trs. of Univ. of Ill. v. United States*, 289 U.S. 48, 59 (1933)); *see also* U.S. Const. art. I, § 8, cl. 3; U.S. Const. art. I, § 10, cl. 1.

The South Carolina Supreme Court's decision sustaining the transnational Receivership Order powerfully illustrates the perils of States' interference with foreign relations. In vesting the Receiver with authority to exercise Atlas Turner's contractual insurance rights, Pet. App. 36a-37a, the Receivership Order overrides the insurance-related corporate powers and rights that the Canadian government granted to Atlas Turner's board and officers under a Canadian charter. The South Carolina Supreme Court's decision upholding that cross-border intrusion risks impairing relations between the United States and an essential ally and trading partner.

Indeed, it is a settled principle that corporations' internal affairs and governance are determined by the law of the jurisdiction in which they are incorporated. *See CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89-90 (1987) (corporations are a "product of state law," "organized under, and governed by, the law of a single jurisdiction, traditionally the corporate law of the State of its incorporation").

In derogation of that principle, the South Carolina Receivership Order wrests control of Atlas Turner's contractual insurance rights from its Canadian board and officers, placing them in the hands of a South Carolina receiver and overriding the Canadian government's authority over Atlas Turner's corporate governance. But the Constitution bars state courts from "sit[ting] in judgment upon the acts" of the Canadian government in granting a charter and corporate powers to Atlas Turner. *United States v. Belmont*, 301 U.S. 324, 327 (1937).

The international consequences of the South Carolina Supreme Court's decision extend beyond diplomatic relations between Canada and the United

States to commercial ties between Canadian and U.S. companies. Under the South Carolina Supreme Court's decision, a foreign company exporting goods to that State risks appointment of a South Carolina receiver over its foreign property—a prospect certain to stifle foreign commerce with the United States. And "[i]f other States followed [the South Carolina Supreme Court's] example," *Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 450-51 (1979), foreign companies might find themselves subject to competing and conflicting state-court orders purporting to grant receivers similar authority. Those conflicting orders "would plainly prevent this Nation from 'speaking with one voice' in regulating foreign commerce." *Id.* at 451. They would also create a risk of reprisal against U.S. companies exporting goods to Canada. "Such retaliation of necessity would be directed at American [companies] in general, not just [those]" in South Carolina. *Id.* at 450. If Canada responded in kind, "the Nation as a whole would suffer." *Id.*

Those concerns all stem, in this case, from the state courts' "unacceptably grasping" view of their jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014). By reaching beyond South Carolina's territorial bounds, the South Carolina courts disregarded the Framers' constitutional design and this Court's decisions reaffirming that States have no role in regulating foreign relations or foreign commerce.

B. South Carolina's Extraterritorial Receivership Practices Have Already Fostered International Discord.

The concerns that the Atlas Turner receivership will generate international strife and reprisals are far

from hypothetical: The South Carolina courts' transnational receivership practices have already fomented international tension.

In 2023, the same South Carolina trial court appointed the same South Carolina attorney as receiver for another Canadian corporation, ACL, and for an English corporation, Cape Intermediate Holdings Limited, which had both been named as asbestos personal-injury defendants in South Carolina. ACL eventually pursued insolvency proceedings in Canada based in part on the South Carolina receivership. In granting a motion to stay all proceedings against ACL, a Canadian court remarked that the South Carolina trial court's order "is astonishing in the eyes of a court rooted in Canadian . . . judicial culture" and had "seriously compromised" ACL's "defense of the lawsuits" filed against it in the United States. *In re Plan of Arrangement or Compromise of: Asbestos Corp. Ltd.*, No. 235-11-000008-259, ¶ 23 (Canada Super. Ct. July 30, 2025).

For its part, the English corporation, Cape, responded by filing suit in the United Kingdom to enjoin the South Carolina attorney from acting as its receiver. The High Court of Justice of England and Wales issued an injunction to "prevent[ ] the receiver, *even in South Carolina*, from acting or purporting to act for or on behalf of" Cape. *Cape* Order ¶¶ 136-37 (emphasis added).

The U.K. court's injunction order began from the fundamental premise—also recognized in U.S. law—that "the law of the country of incorporation governs the capacity of a corporation to enter into transactions and all matters relevant to the internal governance of the corporation." *Cape* Order ¶ 93; *see CTS Corp.*, 481

U.S. at 89-90. The U.K. court recognized that a foreign court could take certain actions with respect to an English corporation if that corporation has "sufficient connection with the foreign jurisdiction." *Cape* Order ¶ 94. But the court concluded it was "quite clear" the South Carolina trial court lacked authority to appoint a receiver over Cape, which had no property and had conducted no business in South Carolina. *Id.* ¶ 98. The "consequence" of the U.K. court's conclusion that "the receivership is not capable of recognition in this jurisdiction" was "that the receiver's acts should not be recognized for English law purposes." *Id.* ¶ 100. The South Carolina receiver was therefore committing a tort by "purporting to act as agent of [Cape] without authority recognised in English law." *Id.* ¶ 112.

The U.K. court's remedy analysis is particularly telling. In deciding whether to grant Cape an injunction, the court analyzed the harms at issue and the foreign-policy implications of its decision. The court concluded that the receiver had "extensive powers" that posed "real" risks to Cape, which would have "serious and unjustified" "consequences." *Cape* Order ¶¶ 114-15. Among them: The receivership created "two centres of power"; the receiver's acts were "potentially damaging to the reputation of" Cape and its affiliates; the receiver's appointment could trigger a "default" affecting Cape's financing; and the receiver's acts "may lead to substantial new liability claims inside and outside South Carolina and worldwide"—not to mention the risk that the receiver "will take unpredicted and unpredictable steps which could disrupt the affairs of" Cape. *Id.* ¶ 113.

The U.K. court concluded that those harms "entitled [Cape] to relief which will help protect it from the

effects of that conduct"—namely, an injunction. *Cape* Order ¶¶ 120, 126. The U.K. court "presumed" that the receiver's "appointment is lawful and effective under South Carolina law," but nevertheless declared that the receiver's appointment was "'contrary to accepted principles of international law,'" *id.* ¶¶ 128, 132, and that his conduct "with the object of marshalling assets in some sort of less than complete insolvency proceedings, falls into the very limited category . . . in which considerations of comity give way to the protection of private international law and national interests," *id.* ¶ 135. While the court noted that it does not "sit as some sort of appellate court from the South Carolina judge" and regretted creating "a clash between two court systems," it concluded that an injunction—applicable worldwide, including in South Carolina—was the only way to "successfully deal[ ] with" the "threats posed by the receiver." *Id.* ¶¶ 6, 135-37.

In response, the South Carolina Supreme Court intensified the international clash. Rather than respecting the U.K. court's judgment, the South Carolina Supreme Court doubled down on the State's receivership authority. When the receiver sought home-state relief from the U.K. court's order, the South Carolina Supreme Court described the U.K. court's order as "shocking and indefensible" because it "intervene[d] in and threaten[ed] the participants in matters properly pending in the courts of South Carolina." Pet. App. 43a. While the South Carolina Supreme Court denied the receiver's request to stay the U.K. court's order, it made clear its view that "all proceedings in these matters will continue in the ordinary course in the [trial] court and this Court" notwithstanding the U.K. court's injunction. Pet. App. 43a. And although the Cape receivership is not at issue in

this case, the South Carolina Supreme Court went out of its way to comment on the U.K. court's order in the decision below, calling it "[s]hocking to American eyes" and dismissing it as "*brutum fulmen* (an empty noise)." Pet. App. 25a.

As the Canadian court's order as to ACL foretells, the receivership here over another Canadian corporation risks creating a similar international conflict. The Receivership Order upheld by the South Carolina Supreme Court disregarded Canada's grant of powers to Atlas Turner's Canadian board and officers, creating two competing centers of power and exposing Atlas Turner to the risk of significant reputational and financial harm. The order is therefore just as much of an affront to a foreign nation's sovereignty as the order imposing a South Carolina receivership on ACL was to Canadian sovereignty and the order imposing a receivership on Cape was to U.K. sovereignty. The experiences and views of two of "this country's" most important "allies and trading partners"—which carry substantial weight—thus confirm that the South Carolina Receivership Order is likely to interfere with U.S. foreign policy. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 382-83 (2000).

It is to avoid exactly these types of unseemly conflicts that state courts' in rem jurisdiction, including in the receivership setting, extends only to property within the courts' territorial bounds. This Court should grant the petition to reaffirm that constitutional limit and put an end to both the lower courts' disagreement on this issue and the foreign-policy difficulties it has generated.

CONCLUSION

Despite this Court's precedent confining in rem jurisdiction to "property within [the court's] territory," *Shaffer*, 433 U.S. at 199, lower courts have not uniformly distinguished between in rem and in personam jurisdiction, leading to opinions—such as the decision below—in which courts have evaded the territorial limits on in rem jurisdiction by relying on inapposite concepts of in personam jurisdiction. To eradicate this division and the resulting inter-sovereign conflicts it has fostered, the Court should grant the petition.

Respectfully submitted.

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August 18, 2025

APPENDIX

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APPENDIX A

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Donna B. Welch, individually and as Personal Representative of the Estate of Melvin G. Welch, deceased, Respondent,

v.

Advance Auto Parts, Inc., American Honda Motor Co., Inc., Atlas Asbestos Co, Atlas Turner, Inc. as successor to Atlas Asbestos Co, a foreign company, Bahnson, Inc., Covil Corporation, Daniel International Corporation, Davis Mechanical Contractors, Inc., Ellington Insulation Company, Inc., Fluor Constructors International f/k/a Fluor Corporation, Fluor Constructors International, Inc., Fluor Daniel Services Corporation, Fluor Enterprises, Inc., General Parts, Inc. individually and as successor-in-interest to Carquest Corporation; Goodrich Corporation f/k/a The B. F. Goodrich Company, The Goodyear Tire & Rubber Company, Graybar Electric Company, Inc., Honeywell International, Inc. individually and as successor-in-interest to Allied Signal, Inc., as successor to Bendix Corporation, Morse Tec LLC f/k/a Borgwarner Morse Tec LLC, and successor-by-merger to Borg-Warner Corporation, Occidental Chemical Corporation as successor to Durez Corporation; O'reilly Automotive Stores, Inc., Paramount Global f/k/a Viacomcbs Inc., f/k/a CBS Corporation, a Delaware corporation f/k/a Viacom, Inc., successor-by-merger to CBS Corporation, a Pennsylvania corporation, f/k/a Westinghouse Electric Corporation, Pneumo Abex LLC successor-in-interest to Abex Corporation, Redco Corporation f/k/a Crane Co.,

Reinz Wisconsin Gasket LLC f/k/a and/or successor to Reinz Wisconsin Gasket Co. and Wisconsin Gasket Manufacturing Co., a wholly owned subsidiary of Dco LLC, Rust Engineering & Construction, Inc., Rust International Inc., Southern Insulation, Inc., Spirax Sarco, Inc., Union Carbide Corporation, Westrock MWV, LLC individually and as successor-in-interest to Westvaco, ZF Active Safety US Inc. f/k/a Kelsey-Hayes Company, Defendants,

of which Atlas Turner, Inc. is the Appellant,

and

Donna B. Welch, individually and Personal Representative of the Estate of Melvin G. Welch, deceased,

and

Peter D. Protopapas, Duly Appointed Received for Atlas Turner, Inc., are Respondents.

Appellate Case No. 2023-001096

Appeals From Richland County
Jean Hoefer Toal, Circuit Court Judge

Opinion No. 28284
Heard February 11, 2025—Filed May 21, 2025

AFFIRMED IN PART AND REVERSED IN PART

Stephen Lynwood Brown, Russell Grainger Hines, and James D. Gandy, III, all of Clement Rivers, LLP, of Charleston, for Appellant Atlas Turner, Inc.

Theile Branham McVey, of Kassel McVey, of Columbia; Aaron Daniel Chapman and Ka'Leya Q. Hardin,

both of Dallas, TX; Charles William Branham, III, of Dean Omar Branham Shirley, LLP, of Dallas, TX; and Todd Barnes, of Indianapolis, IN, all for Respondent Donna B. Welch.

Jonathan M. Robinson and Shanon N. Peake, both of Smith Robinson Holler DuBose Morgan, LLC, of Columbia; George Murrell Smith, Jr., of Smith Robinson Holler DuBose Morgan, LLC, of Sumter; and John Kenneth Chandler and Brian Montgomery Barnwell, both of Rikard & Protopapas, LLC, of Columbia, all for Respondent Peter Demos Protopapas.

JUSTICE HILL: In this appeal from an asbestos case, Atlas Turner, Inc. (Atlas Turner) challenges the order of the trial court imposing discovery sanctions and appointing a Receiver. Given Atlas Turner's conspicuous misconduct, we conclude the sanctions were plainly justified and the appointment of the Receiver was also within the trial court's discretion. Accordingly, we affirm the order granting sanctions, and we affirm the portion of the Receivership order appointing the Receiver over Atlas Turner's Insurance Assets. However, because the trial court erred in giving the Receiver authority beyond that necessary to investigate and collect Atlas Turner's Insurance Assets, we reverse the Receivership order in part.

I. Facts

Melvin G. Welch, of Abbeville, South Carolina, died in 2023 of mesothelioma caused by his exposure to asbestos. His widow and personal representative, Respondent Donna B. Welch, sued Atlas Turner and others she alleges caused his death. Atlas Turner is a still active Canadian company that produced and sold asbestos insulation. Atlas Turner's customer lists reveal it shipped asbestos insulation to South Carolina.

It is alleged Welch was likely exposed to Atlas Turner's asbestos products while he worked in Greenwood, South Carolina.

Respondent's lawsuit was brought in Richland County and assigned to the Honorable Jean H. Toal, who presides over the South Carolina asbestos docket. Cases on the docket are subject to standard mandatory discovery procedures and scheduling orders so they may be timely resolved.

Atlas Turner moved to dismiss the claims against it on the ground that South Carolina lacked personal jurisdiction over it. After the trial court denied Atlas Turner's motion, it ordered that Atlas Turner participate in discovery. Atlas Turner ignored deposition notices served upon it pursuant to Rule 30(b)(6), SCRCP, which requires a corporation to designate a representative to appear and be questioned according to the rule. The trial court warned Atlas Turner that if it did not cooperate with the Rule 30(b)(6) notices and answer other pending discovery, it would be sanctioned and possibly held in contempt.

Atlas Turner refused to respond to any discovery, even jurisdictional discovery (discovery limited to unearthing facts about the extent of Atlas Turner's activities and contacts with South Carolina) ordered by the trial court. It claimed it would not produce a Rule 30(b)(6) witness at the scheduled deposition time "or ever." It maintained it had no witness available because none of its employees had knowledge of the company's activities during the relevant period covered by the complaint. It alternatively argued that the Québec Business Concerns Records Act (QBCRA) prohibited it from responding to a South Carolina Court order for discovery. Specifically, Atlas Turner asserted that complying with the order would entail disclosing the

contents of the company's records and such disclosures were prohibited by the QBCRA (a topic we will return to later in this opinion).

The trial court held Atlas Turner in contempt for its "willful and intentional" refusal to comply with court ordered discovery. As a sanction, the trial court struck Atlas Turner's answer, placing it in default. The trial court later appointed a Receiver over "the Insurance Assets" of Atlas Turner.

We certified Atlas Turner's appeal pursuant to Rule 204(b), SCACR.

II. Discovery Sanctions

We first take up the propriety of the discovery sanctions. Imposing sanctions for violating discovery rules is guided by the trial court's discretion, meaning we will not disturb the sanctions unless no reasonable evidence supports them or they were imposed contrary to the correct law. *Innovative Waste Mgmt., Inc. v. Crest Energy Partners GP, LLC*, 445 S.C. 19, 28, 911 S.E.2d 406, 410 (2025); *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989).

Atlas Turner asks us to reverse the trial court's sanction of striking its answer. This issue need not detain us long, for the record overflows with examples of Atlas Turner's cavalier disdain of the elementary rules of civil procedure. Fortune may favor the bold, but a party that persists in a bold refusal to comply with basic ordered discovery may soon realize it is the architect of its own misfortune. So it is here.

Atlas Turner disputes that its refusal to attend the Rule 30(b)(6) deposition was willful. It says it could not comply because it had no witness who knows what the company did forty odd years ago. It further

claims the QBCRA forbids it from producing documents requested in the Rule 30(b)(6) notice and other discovery and also prevents it from allowing anyone to review its corporate records to prepare themselves to be a Rule 30(b)(6) designee. Both claims are untenable.

A. Rule 30(b)(6), SCRCP

Rule 30(b)(6) depositions are often vital to any litigation involving companies, the government, or other organizations. The whole idea behind Rule 30(b)(6) is to allow a party the opportunity to discover relevant facts about an organization by questioning the organization's designated representative under oath. The rule allows a party to name the organization as the deponent "and describe with reasonable particularity the matters on which examination is requested." Rule 30(b)(6), SCRCP. The organization then has the duty to designate one or more persons who will testify on its behalf and "the matters on which he will testify." *Id*. The designee(s) "shall testify as to matters known or reasonably available to the organization." *Id*.

Our Rule 30(b)(6) tracks the federal rule, which was adopted in 1970 to stop the childish game-playing that often plagued parties seeking to find facts from corporations. Before the rule change, a party had to identify by name the specific corporate employee it wished to depose about relevant matters. What ensued was a guessing game resembling "Marco Polo," where the requesting party often knew nothing about the labyrinths of the company's personnel structure or labor division. And the company had no duty to prepare the witness for the deposition. 8A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2103 (3d ed. April 2025 Update). The purpose of the new Rule was to "curb the 'bandying' by

which officers or managing agents of a corporation are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization and thereby to it." Committee Note to 1970 Amendments to Fed. R. Civ. P. 30(b)(6).

This history underscores that Rule 30(b)(6) gives an organization the privilege of selecting the person who will speak for it on the designated matters, but also imposes a duty to prepare the speaker. *See* 7 James Wm. Moore et al., *Moore's Federal Practice* § 30.25[3] (3d ed. 2021) ("[T]he organization has an affirmative duty to prepare the designated deponents so that they can give full, complete, and non-evasive answers to questions regarding the relevant subject matter.").

This duty does not end, as Atlas Turner seems to think, with the end of the designees' personal, firsthand knowledge of the noticed matters. Instead, the organization must endeavor in good faith to prepare its designee to testify on matters not only known to him, but on those topics within the notice that are, as the rule puts it, "reasonably available" to the organization. Rule 30(b)(6), SCRCP; Moore, *supra*, at § 30.25[3] ("Thus, the rule requires a good faith effort to find out the relevant facts, which may mean collecting information, reviewing documents, and interviewing employees with personal knowledge."); 8A Wright and Miller, *supra*, at § 2103 (in a Rule 30(b)(6) deposition, "unlike all other depositions, there is an implicit obligation to prepare the witness[, and a]s specified in the rule, this preparation is not limited to matters of which the witness has personal knowledge, but extends to all information reasonably available to the responding organization"). Many courts have so inter-

preted the rule. *See, e.g.*, *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006) (holding defendant violated Fed. R. Civ. P. 30(b)(6) by failing to prepare designee as to issues beyond designee's personal knowledge but within corporate knowledge of organization: the company had duty to "prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources"); *Bigsby v. Barclays Cap. Real Estate, Inc.*, 329 F.R.D. 78, 81 (S.D.N.Y. 2019) (same); *Crawford v. George & Lynch, Inc.*, 19 F. Supp. 3d 546, 554 (D. Del. 2013) ("The duty of preparation goes beyond the designee's personal knowledge and matters in which the designee was personally involved. If necessary, the deponent must use documents, past employees, or other resources to obtain responsive information." (citation omitted)).

We find it telling that when Atlas Turner argued South Carolina had no personal jurisdiction over it, it relied on an affidavit of Richard Dufour, Canadian counsel for Atlas Turner. In his affidavit, Mr. Dufour declares Atlas Turner has never been registered or authorized to do business in South Carolina; never had offices, employees, or agents in the State; and never owned any bank accounts or real property here. As its counsel, Mr. Dufour is an agent of Atlas Turner. Given that he made these statements of "facts" in his affidavit "based upon" his "personal knowledge, information and belief," it is curious how he gained access to these facts if, as Atlas Turner contends, the historical facts of their corporate conduct are unknown to anyone. In a later affidavit, Mr. Dufour states:

> Atlas Turner, Inc. has no former employees competent to testify to the topics listed on the 30(b)(6) Notices of Deposition in this case, and

> for the most part Atlas Turner, Inc. does not even maintain or possess the records that would be necessary to educate a witness to be able to testify to matters contained in the 30(b)(6) Notices of deposition.

We know of no reason why Mr. Dufour could not have been designated as the Rule 30(b)(6) corporate representative. *See* Moore, *supra*, at 30.25[3] ("There is no rule that would prevent corporate counsel . . . from serving as a Rule 30(b)(6) deponent.").

B. The QBCRA

The second reason Atlas Turner gives as to why it could not produce a Rule 30(b)(6) designee is that the QBCRA protects it from disclosing the contents of company records in response to a discovery request from any court outside of the province of Québec. As relevant here, the QBCRA provides:

> [N]o person shall, pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside Québec, remove or cause to be removed, or send or cause to be sent, from any place in Québec to a place outside Québec, any document or résumé or digest of any document relating to any [business] concern.

QBCRA, Que.Rev.Stat. ch 278, §§ 1(b), 2 (1964). The QBCRA is a local law known as a "blocking statute." The argument that a foreign blocking statute, such as the QBCRA, is an insuperable barrier to discovery in American courts has been rejected by the United States Supreme Court. *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 544 n.29 (1987) ("It is well settled that [blocking] statutes do not deprive an American court

of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute."). Many courts have addressed whether the QBCRA furnishes a valid excuse for a Québec company to resist discovery ordered by foreign courts. Almost all have answered that question with a resounding "No." *See, e.g.*, *Am. Indus. Contracting, Inc. v. Johns–Manville Corp.*, 326 F. Supp. 879, 880–81 (W.D. Pa. 1971). A number of these rulings were in asbestos cases, several of which featured Atlas Turner making the exact QBCRA-based arguments it recycles here. *See Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 644–46, 644 n.24 (D.S.C. 1992) (rejecting identical QBCRA theories presented by Atlas Turner); *see also Lyons v. Bell Asbestos Mines, Ltd.*, 119 F.R.D. 384, 387–89 (D.S.C. 1988) (finding company did not show it would be violating the QBCRA by producing documents and answering interrogatories, and noting even if the QBCRA did apply and "assuming the applicability of comity and other principles of international law to the present discovery dispute, those principles do not compel blind obedience to the legislative enactments of foreign jurisdictions").

We are mindful of comity concerns raised by the QBCRA. The Court in *Société Nationale* noted factors informing a comity analysis include the specificity of the discovery sought, its importance to the litigation, whether the information sought originated in the United States, whether there is an alternative way to secure the information, and what effect the ruling would have on important interests of the respective sovereigns. *Société Nationale*, 482 U.S. at 544 n.28. Any comity concerns with the QBCRA are slight. Québec is not a sovereign nation, only a province of one. And the Supreme Court of Canada, the sovereign of

which Québec is a part, has held that, as a constitutional matter, the QBCRA does not bar discovery of a Québec company's records sought by a party located in another Canadian province. *Hunt v. Lac d'Amiante du Québec Ltée*, 4 S.C.R. 289 (1993). Indeed, the court went so far as to say the QBCRA lacks "minimum standards of order and fairness" and is therefore "counter to comity." *Id*.

We can dispatch any lingering comity worries by considering the *Société Nationale* factors. The discovery sought here included not only the Rule 30(b)(6) notice but standard mandatory discovery in South Carolina asbestos cases. The information sought was important and specific. It was not indigenous to Canada, for many of the facts related to Atlas Turner's role in Mr. Welch's asbestos exposure occurred in this state, a state where Atlas Turner chose to do business. *See Société Nationale*, 482 U.S. at 540 n.25 ("Petitioners made a voluntary decision to market their products in the United States . . . they are subject to the same legal constraints, including the burdens associated with American judicial procedures, as their American competitors."). No alternative source for these facts has been suggested, except for Atlas Turner's inappropriate proposal that Respondent's counsel could search for them in "repositories" of asbestos data compiled by other plaintiffs from other cases. Finally, ordering discovery despite the QBCRA would not undermine an important national interest of Canada, for that country's own supreme court has downgraded the QBCRA and left it all but toothless. On the other hand, were we to allow the QBCRA to block the discovery here, it would "represent an extraordinary exercise of legislative jurisdiction" by a local foreign province over South Carolina's courts. *Id.* at 544 n.29.

Our rejection of the QBCRA as a legitimate block on the discovery sought is further justified by Atlas Turner's failure to show how our rejection hampers its ability to respond. Atlas Turner tells us that, if it were to educate a witness from its corporate records (records it also denies even exist), then it would violate the QBCRA. This argument cannot survive the scrutiny of reason. If Atlas Turner's interpretation of the QBCRA were correct, one wonders how it conducted business in the United States and around the world for so many decades.

Judge Toal gave Atlas Turner extensive opportunities to express its positions, such as they were, and be heard. She listened closely. She understood and explored its arguments. She also understood that its overbearing position was a grotesque distortion of elementary discovery principles. She said: "Enough."

We agree. In selecting the appropriate sanctions, the trial court must consider the nature of the discovery refused, the discovery stage of the case, willfulness, and prejudice. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457 (2009). The sanction of striking a party's pleadings is extreme, but it is a specific response our rules endorse. Rule 37(b)(2)(C), SCRCP. Such a sanction is "harsh medicine," reserved for episodes of discovery misconduct displaying bad faith, willful disobedience, or a callous indifference to the rights of other parties and the discovery process. *Davis v. Parkview Apartments*, 409 S.C. 266, 282, 762 S.E.2d 535, 544 (2014); *Rickerson v. Karl*, 412 S.C. 215, 221, 770 S.E.2d 767, 770 (Ct. App. 2015). Any sanction imposed must be sufficient to vindicate the important rights the discovery rules guarantee and the essential tools they provide to allow lawyers to prepare their clients' cases for trial.

Atlas Turner claims the trial court exceeded its sanctioning discretion because it only considered its willful misconduct. But Atlas Turner was emphatic that it did not intend to comply with repeated discovery orders issued by the trial court. The trial court did not need to spell out what all involved knew: that the nature of the discovery at issue was the very right to discovery itself, in all its stages. *See Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (Ct. App. 2003) ("Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed.").

Striking the pleadings of a party who refuses to abide by the basic governing rules was, under the circumstances here, a measured act of discretion. Atlas Turner was consistent in its campaign to stymie any discovery about them. Our civil procedure is guided by rules whose prime directive is to "secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP; *see also In re Anonymous Member of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001) ("The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." (quoting *In re Alford Chevrolet–Geo*, 997 S.W.2d 173, 180 (Tex. 1999))); *id*. ("[T]he discovery process is designed to 'make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.' " (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958))). A party can foul out of the process. *See Innovative Waste*, 445 S.C. at 22, 911 S.E.2d at 407 ("[I]n discovery, time does eventually run out on bad behavior.").

III. Personal Jurisdiction

The trial court found Atlas Turner placed its products into the stream of commerce with the knowledge or expectation that the products would be sold and used by consumers in South Carolina. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980) ("The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."); *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 462, 388 S.E.2d 796, 798 (1990) ("[A]t the pre-trial stage of the proceedings, the plaintiff need only make a prima facie showing [of personal jurisdiction] by pleadings and affidavits."). According to Respondent's prima facie showing, Mr. Welch was exposed to asbestos in 1965 to 1967, and Atlas Turner sold asbestos-containing pipe insulation and spray insulation to a Charlotte based wholesaler installer who supplied South Carolina companies in 1967, as well as to a Greenville based installer from 1968 to 1973. Evidence also indicated (1) the asbestos-containing pipe insulation sold by Atlas Turner matched the description of the pipe insulation installed at the plant where Mr. Welch worked in South Carolina and (2) Atlas's spray insulation was also used at the plant where Mr. Welch worked.

Persons and companies that choose to do business in South Carolina receive in return the benefit and protection of our laws and our legal system. Our laws allow them the confidence to enter contracts here that they are assured will be enforced impartially by our courts and that their economic rights will be pro-

tected. These legal benefits and protections are essential to the formation of reliable markets and an appealing business environment. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 367 (2021). Anyone entering and profiting from a business market in South Carolina that our laws and courts helped foster has fair warning that any wrongs he commits here will be subject to the remedies of those same courts. He also has notice that should he create harm to the citizens of this state, it would be reasonable and fair that our citizens could sue him here, rather than having to travel to pursue him elsewhere. Due process, at least as far as personal jurisdiction is concerned, has always considered this exchange fair, the balance true. *Id.* at 355 ("When a company . . . serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit."). Some parties, after enjoying the benefits on their side of the scale, seek to trick the balance. When brought into the courts of the state in which they selected to transact business—for injuries done to the citizens and workers of that state by their conduct—these parties respond with shock and surprise. And uninformed (but not uninterested) observers decry that such a reckoning with justice is "bad for business."

The trial court found Respondent had produced enough evidence at the pretrial stage to show Atlas Turner chose to do business here and conducted business to a point where it should have known it would be held to account for any injury its business caused here. Atlas Turner has not appealed the trial court's ruling denying its motion to dismiss for lack of personal jurisdiction. Respondent asks us to declare Atlas Turner has abandoned and waived this issue. At-

las Turner claims it has "reserved" the personal jurisdiction issue, maintaining that it could not appeal the issue because the ruling was interlocutory. It is settled law that we may consider the otherwise interlocutory ruling denying a motion to dismiss for lack of personal jurisdiction when it is joined with other appealable matters. *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004). Nevertheless, we will not address the issue now, and nothing in this opinion may be construed as affecting the merits of any later appeal of the personal jurisdiction issue.

IV. Appointment of Receiver

Atlas Turner next contends the trial court abused its discretion in appointing a Receiver. "[T]he power of appointment of a receiver should be resorted to only in exceptional circumstances[.]" *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384, 402, 1 S.E.2d 797, 805 (1939).

The equitable right to have a Receiver appointed is "an ancient one." *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887). Its roots reach back to Elizabethan times when English courts appointed Receivers to manage and preserve the assets of a debtor's estate when there was a risk the debtor was purposefully diminishing it. 1 Ralph Ewing Clark, *Clark on Receivers* § 4 (3d ed. 1959).

A Receiver is an officer of the court, appointed to marshal and collect—to receive—the assets of the corporation. In that sense, the Receiver stands in the corporation's shoes. *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 218, 118 S.E. 303, 304 (1923). Receiverships were more common before the Great Depression and the expansion of the federal bankruptcy laws, but they can still be a useful equitable tool. *Digit. Media Sols., LLC*

v. S. Univ. of Ohio, LLC, 59 F.4th 772, 777–78 (6th Cir. 2023). The effect of appointing a Receiver means that the Receiver, as a "hand of the court," exercises power and control over the defendant's assets and property specified in the appointment order and administers them at the court's discretion for the benefit of creditors and the debtor's estate. *Allen v. Cooley*, 53 S.C. 414, 446, 31 S.E. 634, 646 (1898). Title, though, remains in the defendant's name. A Receiver must administer the estate in compliance with the appointing order and "in accordance with the laws of this State." Rule 66(a), SCRCP.

A. Appointment of Receiver under S.C. Code Ann. § 15-65-10(5) (2005)

Our law allows appointment of a Receiver in several circumstances, including "[i]n such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code." § 15-65-10(5). At common law, an equity court had the inherent power to appoint a Receiver before judgment. 1 Clark, *supra*, at § 149. A Receiver may only be appointed before judgment in the rarest of cases, when "there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined." *Richland County v. S.C. Dep't of Revenue*, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (quoting *Pelzer*, 27 S.C. at 416, 3 S.E. at 785). This extreme power may only be used in extreme cases, such as where a defendant's conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment. 1 Clark, *supra*, at § 181. The Receiver may then collect the defendant's assets and administer property. *Id.* at § 163. We have

followed this general rule and upheld the appointment of a Receiver before judgment where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat the plaintiff's recovery. *See Virginia-Carolina Chem. Co. v. Hunter*, 84 S.C. 214, 220–21, 66 S.E. 177, 179 (1909) ("[W]hen a debtor is trying to defeat his creditors by an act or course of conduct which indicates moral fraud—a conscious intent to defeat, delay, or hinder his creditors in the collection of their debts—then a court of equity will grant any relief within its jurisdiction appropriate and effective to protect creditors against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and a return of nulla bona on the execution."). As this Court explained:

> When a business man, merchant, or manufacturer or farmer disposes of large resources, and then, professing to have nothing, leaves his debts unpaid, and sets his creditors at arm's length by refusing to give any account of his property or to take any interest in the satisfaction of their claims, the court is warranted in drawing the inference that there has been a fraudulent disposition of the property.

Id. at 223, 66 S.E. at 180.

We would not be inclined to affirm a trial court's appointment of a Receiver before judgment except in the rarest case. Because Receiver appointment is an equitable remedy and equity follows the law, one holding a tort, contract, or other legal claim generally has no right before judgment to a debtor's property. *See Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497–501

(1923) (explaining an unsecured contract claim is insufficient to warrant appointment of Receiver before judgment); 12 Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § § 2983 (3d ed. April 2025 Update) (stating party seeking Receivership against defendant must show he has some legally recognized right to defendant's property "that amounts to more than a mere claim against defendant"). We decline to upset the trial court's discretionary decision here, for this is that rare instance when equity's aid may be called upon before the legal claims have been reduced to judgment. Atlas Turner's strident and outspoken refusal to comply with the trial court's orders convinces us it will continue to act in bad faith as the case against it progresses. It is not lost upon us that Atlas Turner has long experience as a defendant in asbestos cases. We note too that when faced with lawsuits—for allegedly causing serious injury and death to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known—its tactic has been to claim that, if the courts exerted jurisdiction over them, it would offend the "traditional notions of fair play and substantial justice" due process guarantees. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). When that ploy fails, Atlas Turner's version of due process is to refuse to abide by court orders requiring it to answer basic information. It is alleged Atlas Turner has come into our state, turned profits by selling its hazardous wares in our state, and inflicted grievous harm on citizens in our state. Then, when the shadow of the courthouse door falls upon it, it insists it was never here, and if a court asks anything else about it, it responds: we have nobody who knows anything. Atlas Turner seems to

claim its corporate form allows it to "both be and not be." Robert H. Jackson, What Price "Due Process"?, 5 N.Y. L. Rev. 435, 438 (1927).

We conclude Atlas Turner's conduct justified the appointment of a Receiver before judgment. First, Atlas Turner's contemptuous disregard of the court's discovery orders and other conduct demonstrates it is seeking to evade its responsibilities as a civil litigant. There is evidence that Atlas Turner's corporate policy for responding to asbestos lawsuits is to adopt a "minimum defense posture" and incur default judgments. Atlas Turner followed that policy here. Second, Atlas Turner represented to the trial court that it had no Insurance Assets relevant to these cases. However, there is evidence Atlas Turner was involved in a transaction that may have compromised some of its potential insurance coverage. The record further discloses that Atlas Turner has refused to tender its policies to certain insurers for defense and indemnity. *See Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc.*, 999 F.2d 314, 317 (8th Cir. 1993) (affirming appointment of Receiver where defendant refused to cooperate in discovery and provided inaccurate financial information: "Faced with this pattern of willful nondisclosure and false disclosure, followed by transfer to avoid a tenacious judgment creditor, the district court was well within its discretion in turning to a drastic remedy such as a receiver").

The evidence supports the finding that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent. *Virginia-Carolina Chem. Co.*, 84 S.C. at 220–21, 66 S.E. at 179; 12 Wright & Miller, *supra*, at § 2983 ("actors that courts have considered relevant to establishing

the requisite need for a receivership include . . . fraudulent conduct on the part of defendant . . . .").

B. Jurisdiction to Appoint a Receiver

Atlas Turner also says the trial court had no jurisdiction to appoint a Receiver because it neither owns nor possesses any property within the borders of South Carolina. Consequently, according to Atlas Turner, a South Carolina Receiver is powerless to control any of its property. The order appointed a Receiver over Atlas Turner's Insurance Assets. Atlas Turner has not explained where it contends these assets are located, other than its general claim that all property it owns rests outside the borders of this state.

Atlas Turner points to *Pollock v. Carolina Interstate Building & Loan Ass'n*, 48 S.C. 65, 25 S.E. 977 (1896), and claims a Receiver has no power to affect property outside South Carolina. This distorts *Pollock*, for there the court only held an order of a North Carolina court appointing a Receiver over a North Carolina company did not affect the validity of service of a lawsuit filed here on the company's South Carolina registered agent. *Id*. at 74–76, 25 S.E. at 980. Atlas Turner's recourse to *Booth v. Clark*, 58 U.S. 322 (1854), fares no better, for there it was held only that a Receiver appointed by a state court had no absolute right to sue in a foreign jurisdiction. 58 U.S. at 338. This aspect of *Booth* has been supplanted by various federal statutes and rules. *See* 2 Ralph Ewing Clark, *Clark on Receivers* § 591 (3d ed. 1959); *Mentink v. World Time Corp. of Am.*, 131 F.R.D. 210, 211 (S.D. Fla. 1990); 28 U.S.C. § 754 (2018). Although a Receiver's right to sue in another state is not squarely before us, that issue is controlled by the law of the foreign state, the full faith and credit clause, and comity.

See 65 Am. Jur. 2d Receivers § 260 (Jan. 2025 Update); 2 Clark, *supra*, at § 591. We have allowed a foreign Receiver to sue in South Carolina. *Wilson v. Keels*, 54 S.C. 545, 553–56, 32 S.E. 702, 704–06 (1899).

We hope Atlas Turner does not believe a court exercising its equity powers cannot order a party over whom it has personal jurisdiction to convey and produce its property and assets, regardless of where they may be located. Equity can compel one over whom it has personal jurisdiction to do an act even though that act may affect property outside the court's territorial jurisdiction. That equity may force just such a thing has been a basic principle recognized for centuries. *See Penn v. Lord Baltimore* (1750) 1 Ves. Sr. 444 (ordering specific performance of contract even through order affected lands in Pennsylvania and Maryland). Chief Justice Marshall, relying on *Penn*, held that, in contract cases, an equity court's jurisdiction "is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be affected by the decree." *Massie v. Watts*, 10 U.S. 148, 158–63 (1810) (holding Kentucky federal court had jurisdiction to compel defendant over whom it had personal jurisdiction to convey land located in Ohio); *Muller v. Dows*, 94 U.S. 444, 449 (1876) ("It is here undoubtedly a recognized doctrine that a court of equity, sitting in a State and having jurisdiction of the person, may decree a conveyance by him of land in another State, and may enforce the decree by process against the defendant."); *Booth*, 58 U.S. at 332 ("Although the property of a defendant is beyond the reach of the court, so that it can neither be sequestered nor taken in execution, the court does not lose its jurisdiction in relation to that property, provided the person of the defendant is within the jurisdiction. By the ordinary course of proceeding, the defendant may be

compelled either to bring the property in dispute, or to which the defendant claims an equitable title, within the jurisdiction of the court . . . ."). Because equity has jurisdiction over the defendant, "it is immaterial that the res is beyond the territorial jurisdiction of the court." *City of Jamestown v. Pennsylvania Gas Co.*, 1 F.2d 871, 878 (2d Cir. 1924) (New York federal district court had power to order defendant to cut off its gas supply located in Pennsylvania).

Atlas Turner mistakes not only equity's power, but the Receiver's role. The Receiver stands in the companies' shoes. He may do whatever the corporation could do in relation to its property, for it is in his possession subject to the control of the court. We doubt a company or individual would claim it had no right to funds it owned on deposit at a bank simply because the bank is located in another jurisdiction. No one would dispute a holder of an asset such as an insurance policy has the power and the right to invoke the policy's benefits, regardless of where the policy "resides." And nothing would prevent a state court that has personal jurisdiction over the company from compelling the company to do whatever was necessary to bring the benefits of the policy to litigation in this state. *See* Rule 66(b), SCRCP (stating a Receiver "shall . . . have general power and authority to sue for and collect the debts, demands and rent belonging to the debtor . . ."); Restatement (Second) of Conflict of Laws § 53 cmt. a (1971) ("A state which has judicial jurisdiction over a person is not limited to the issuance through its courts of a money judgment against him. The state may likewise order the person to do, or to refrain from doing, one or more acts. And the power of the state to make such an order is not affected by the fact that the acts called for are to be done in another state."). In one well-known case, a Receiver appointed

by a New York court for a California defendant, over whom it had personal jurisdiction, was authorized to retrieve a thoroughbred racehorse from California and ship it to Kentucky. *Madden v. Rosseter*, 187 N.Y.S. 462, 462–63 (N.Y. 1921).

In like manner, courts have required defendants over whom they have jurisdiction to transfer foreign stock the defendant owns to a Receiver. *See United States v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962) (defendant ordered to turn over stock located in Bahamas to Receiver in New York: "Personal jurisdiction gave the court power to order [the defendant] to transfer property whether that property was within or without the limits of the court's territorial jurisdiction"); *Stewart v. Laberee*, 185 F. 471, 474 (9th Cir. 1911) ("A court may control by its receivership property beyond its territorial jurisdiction when it has jurisdiction of the parties, and it may restrain them from interfering with the receiver's possession of such property."); *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1188 (11th Cir. 1991) ("[I]t is undisputed that the district court has *in personam* jurisdiction over the defendant, thus the receiver could be empowered to reach foreign assets."). We therefore affirm the trial court's appointment of a Receiver for Atlas Turner's Insurance Assets.

We take a moment to discuss Atlas Turner's conduct in these cases and how it affects Receivership. Its conduct fits the strategy we earlier mentioned: to shun the civil process of South Carolina's courts to the point of being declared in default and then fight the enforceability of the default judgment on what it perceives to be friendlier soil. That is in fact what an English company has done in another South Carolina asbestos case where the trial court appointed a Receiver.

And an English court has gone along, ruling as a matter of private international law that the defaulting company did not submit to jurisdiction in South Carolina and English law will only enforce foreign judgments against a corporate defendant if the company has established a "fixed place of business" in the foreign forum. *Cape Intermediate Holdings Ltd. And Cape PLC v. Protopapas* [2024] EWHC 2999 (Ch), 13–14, 49–51. The English Court went so far as to issue an injunction against the Receiver, purporting to bar him from action even in South Carolina. *Id*. at 72.

The English court reasoned that English law may restrain a foreign court to prevent "injustice." *Id.* at 69–70. It quoted a decree that gave as an example a foreign court whose standard for personal jurisdiction was so wide as to be against accepted international law principles. *Id*. at 70. The English court then proceeded to note that the powers given to the Receiver stretched worldwide. *Id*. It reasoned that the English company could not risk fighting its case in South Carolina because it would then be submitting to jurisdiction here. *Id*. at 70–71.

Shocking to American eyes, the English court enjoined the Receiver "from acting or purporting to act for or on behalf of" the English company in default, even in a South Carolina court. *Id*. at 61, 72.

We appreciate that the laws of different countries may differ, even countries that have a special relationship with each other. Our respect and spirit of comity—not to mention our duty to follow the law—does not permit us to enjoin a court of another sovereign nation from interfering with our rulings on the propriety of a Receivership. As it would with any court, such a ruling by us would be in the words of Lord Scarman, a *brutum fulmen* (an empty noise).

C. Scope of Receiver's Authority

It is common knowledge that the asbestos industry knew of the dangers of their product as early as the 1930s. *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076, 1083–86 (5th Cir. 1973). In early asbestos cases, some asbestos companies claimed they did not know of the dangers until 1965, the year Dr. Irving J. Selikoff published his landmark work on asbestos related diseases. *Id.* (discussing when the dangers of asbestos became widely known, including the publication of Dr. Selikoff's studies). Mr. Welch was allegedly exposed in the late 1960s and early 1970s, well after the wide release of Dr. Selikoff's findings. Lung cancer and mesothelioma are particularly horrendous diseases. Atlas Turner is in default. If there are Insurance Assets available to compensate Respondent for Mr. Welch's medical costs, lost income, pain, and suffering as a result of Atlas Turner's corporate misconduct, justice requires that they be brought to bear. We hold any Insurance Assets owned by Atlas Turner that may cover Mr. Welch's injuries are properly within the Receivership estate, meaning those Insurance Assets are within South Carolina's exclusive jurisdiction. *See Palmer v. State of Texas*, 212 U.S. 118, 125 (1909) ("If a court of competent jurisdiction, Federal or state, has taken possession of property, or by its procedure has obtained jurisdiction over the same, such property is withdrawn from the jurisdiction of the courts of the other authority as effectually as if the property had been entirely removed to the territory of another sovereignty."); *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019) (recognizing that insurance policies and proceeds may be part of a Receivership estate and placed in the state court's exclusive *in rem* jurisdiction).

Further, it is well established that a Receiver has the right and duty to collect and accumulate the property and assets of the defendant specified in the appointment order, including its rights and claims. 1 Clark, *supra*, at § 163; 2 Clark, *supra*, at § 365. This includes rights under an insurance policy the defendant has purchased. We hold the trial court properly gave the Receiver power to pursue claims in South Carolina's jurisdiction to bring the Insurance Assets to bear in covering Mr. Welch's injuries. However, we hold that power does not properly extend to reach every claim relating to Atlas Turner's assets and business activities. *Stanford Int'l Bank*, 927 F.3d at 841.

As such, we find it appropriate to shrink the scope of the Receivership order. *See Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971) ("The remedial powers of an equity court must be adequate to the task, but they are not unlimited."). The trial court defined Insurance Assets as:

> [A]ny insurance policy, proceeds of insurance policies, claims related to those policies, information relating to those insurance policies, including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

We find equity only allows insurance policies that have the potential to cover Mr. Welch's injuries to be included in this definition, and we reverse and vacate the portion of this definition that allows the Receiver to have power over "any other assets which are related to, touch or are otherwise relevant to such insurance."

The Receivership order does not grant the Receiver entry into the Atlas Turner boardroom or some vague right to "take over" operation of the company.

Finally, we note Atlas Turner retains the right to post a bond to lift the Receiver appointment order. S.C. Code Ann. § 15-65-50 (2005).

V. Conclusion

As can be seen, Atlas Turner's arguments throughout this case have been contrary to longstanding legal principles. It persists in repeating long debunked theories that no thinking court would accept. This causes us to repeat once again what no one should have to be told: that a lawsuit "is not a children's game, but a serious effort on the part of adult human beings to administer justice[.]" *Griffin v. Cap. Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) (quoting *United States v. A.H. Fischer Lumber Co.*, 162 F.2d 872, 873 (4th Cir. 1947)).

No matter what manner of injury compensation system a society chooses to be governed by, there will be those who say it does too much, and those who say it does too little. Some will point to its excesses, others to its limitations. Unwelcome outcomes become sensationalized, often unmoored from objective facts that were critical to the outcome but inconvenient to the shaping of soundbites or op-ed pieces.

We are aware there are many cases on the asbestos docket in South Carolina. The docket of this Court and the court of appeals have seen a radical increase in appeals by asbestos defendants. Almost all of these appeals were properly dismissed as premature and obviously interlocutory. We have yet to see an asbestos case where the trial court has exercised personal jurisdiction over a defendant that did not meet the

level of minimum contacts with our state that due process demands. If we were to see one, we would not hesitate to hold that the South Carolina courts lack jurisdiction.

Likewise, we emphasize that while equity allows the appointment of a Receiver before judgment in this unusual case, it is an extraordinary remedy reserved for the most extraordinary cases. It is not to be used in the typical default case. This case is atypical and extraordinary where Atlas Turner's behavior warrants the relief ordered by the veteran trial judge who gave Atlas Turner many chances to comply and follow the rules like every other litigant. If Atlas Turner disagreed with the trial courts' pre-trial personal jurisdiction ruling, it had the usual recourse, including raising the issue again at trial. *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780–81 (1993). Instead, Atlas Turner acted as if a ruling against them granted it license to ignore its responsibilities. Such conduct has consequences.

It is unfortunate that Atlas Turner has refused to abide by or honor its responsibilities under our process of civil law. When Atlas Turner defied the rule of law, the trial court not only followed it but enforced it by responding with remedies the law has long recognized. It is these rulings that we uphold today.

We therefore affirm the discovery sanctions against Atlas Turner, and we affirm in part and reverse in part the order appointing the Receiver.

AFFIRMED IN PART AND REVERSED IN PART.

KITTREDGE, C.J., FEW, JAMES, JJ., and Acting Justice Paula H. Thomas, concur.

APPENDIX B

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS** **FOR THE FIFTH JUDICIAL CIRCUIT**
MELVIN G. WELCH and **DONNA B. WELCH** Plaintiffs, v. **3M COMPANY** f/k/a MINNESOTA MINING AND MANUFACTURING COMPANY, et al. Defendants.	**C/A NO. 2022-CP-40-03834**

ORDER ON PLAINTIFFS' MOTION TO APPOINT A RECEIVER

This order follows the Court's order finding Atlas Turner Inc. f/k/a Atlas Asbestos Company ("Atlas") in contempt of court and this Court's entry of an order striking Atlas' pleadings. Before the Court is Plaintiffs' Motion to Appoint a Receiver over Atlas Turner, Inc. f/k/a Atlas Asbestos Company, Ltd ("Atlas").

BACKGROUND

For the reasons set for below, the Court grants Plaintiffs motion to appoint a receiver over the Insurance Assets[1] of Atlas. Peter Protopapas is appointed as receiver over those Insurance Assets and the Court expects anyone or any entity having information or materials which are reasonably calculated to lead to the discovery of admissible evidence to cooperate with this Court's Receiver in locating and marshalling those assets.

PROCEDURAL BACKGROUND

On May 11, 2023, this Court found Atlas to be in contempt of Court. The Court based its contempt order on Atlas' flat refusal to comply with this Court's orders to produce documents, a witness or otherwise participate in discovery. As part of this Court's order on contempt, the Court ordered Plaintiffs to brief the issue of the sanction requested.

On May 11, 2023, Plaintiffs filed their brief requesting that this Court strike Atlas' pleadings. Atlas' response was filed on May 15, 2023 and Plaintiffs' reply was filed on May 18, 2023. After considering the briefing of the parties, this Court determined that striking Atlas' answer was the appropriate sanction for contempt of this Court's orders.

Now, having struck Atlas' answer, Atlas is in default.[2]

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[1] This term is defined below.

[2] The process of actually entering default judgment is merely a ministerial process. In the absence of an answer, default is nothing more than that ministerial act. *Stark Truss Co., Inc. v. Superior Const. Corp.* 360 S.C. 503 (Ct. App. 2004)

LAW AND ANALYSIS

A. Appointment of a Receiver is Appropriate and Warranted

The South Carolina receivership statute provides in relevant part that a receiver may be appointed in cases in accordance with "existing practice." S.C. Code Ann. 15-65-10(5).[3]

Historically, receivers are appointed by courts sitting in equity in order to ensure a fair result. *First Carolinas Joint Stock Land Bank of Columbia v. Knotts*, 191 S.C. 384 (1939). Indeed, "[t]he right to have a receiver appointed is an ancient one . . . ." *Pelzer v. Hughes*, 27 S.C. 408 (1887) But where, as here, Atlas' has been struck, and thus only a ministerial action being left for Atlas to be in judgment, a receiver to take possession of and, to the extent necessary, litigate Atlas' insurance assets is exactly the type of historical circumstances, the Court's of this state have found appropriate. Specifically, where, as here, a debtor, solvent or otherwise,

> is trying to defeat his creditors by an act or course of conduct which indicates moral fraud-a conscious intent to defeat, delay or hinder creditors in the collection of debts-then a court will grant any relief within its jurisdiction appropriate and effective to protect creditors

[3] A receiver is also available to carry a judgment into effect, which is the practical result of the coming default following the unopposed striking of Atlas' answer. Atlas further argues that there is no evidence of its insolvency, yet it refuses to comply with this Court's orders to discovery that and many other issues. The Court does not believe it is appropriate for Atlas to use this refusal as a sword. Regardless, other elements of the receivership statute are satisfied and thus, this argument is unavailing.

> against the fraud without requiring the creditor to run the risk of losing his debt from the delay of obtaining judgment and return of nulla bona on the execution.

Virginia Carolina Chemical v. Hunter, 84 S.C. 214 (1909).

Here it is exactly the moral fraud of Atlas' personal jurisdiction claims, exposed by decades of opinions dismissing those very assertions and Atlas continued refusal to participate in this that warrants the appointment of a receiver.

Thus, where there is active wrongdoing and illegal refusal to comply with this Court's orders, the appointment of a receiver is appropriate.

As Plaintiffs have requested, a receiver appointed here would have the authority to administer "any insurance assets" including "any claims related to the actions or failure to act of Atlas's insurance carriers." This Court's view of the scope of a receiver's authority is not unique. The United States Supreme Court recognized in *Porter v. Sabin,* 149 U.S. 473 (1893) that "[t]he whole property of the corporation [is] within the jurisdiction of the court which appointed the receiver, **including all its rights of action**, except so far as already lawfully disposed of under orders of that court, [and] remains in its custody, to be administered and distributed by it." *Id*. at 480 (emphasis added).

That the South Carolina receivership references "property within this state" is not a limitation on the Receiver's authority in this case. Instead, the statutory reference is consistent with principles of comity, which deter a state court from reaching beyond a state's borders and asserting jurisdiction over such property located in another jurisdiction. These same

principles of comity support a state court's authority to vest a statutory receiver to assert an insolvent corporation's rights of action. *See e.g. Hirson v. United Stores Corp.* 263 A.D. 646, 34 N.Y.S.2d 122 (App. Div. 1st Dep. 1942), *aff'd* 43 N.E.2d 712 (N.Y. App. Ct. 1942) (holding that title to choses in action held by a receiver appointed pursuant to Delaware law would be afforded "full faith and credit"). That is the authority given to be given the receiver here.

That authority includes the insurance assets of Atlas. Even assuming Atlas' interpretation of §15-65-10 is correct, to the extent they exist, Atlas' Insurance Assets[4] would be intended to protect the lives, interests and property within South Carolina. The result is that the insuring assets are subject to the laws of South Carolina, including the duly appointed Receiver.

S.C. Code Ann §38-61-10 states that

> [a]ll contracts of insurance on property, lives, or interests in this state are considered to be made in the State and all contracts of insurance the applications for which are taken within this State are considered to have been made within this State and are subject to the laws of this State.

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[4] For purpose of clarity, this Court defines "Insurance Assets" as any insurance policy, proceeds of insurance policies, claims relating to such insurance policies, including but not limited to, claims relating to any breaches of duty relating to those policies, information relating to those insurance policies including, but not limited to mail, files of counsel, or other information which is reasonably calculated to lead to the discovery of admissible evidence about those insurance policies or any other assets which are related to, touch or are otherwise relevant to such insurance.

In interpreting §38-61-10, the South Carolina Supreme Court held that "[i]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located." *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992)(Toal, C.J.). The result is that "South Carolina substantive law governs [the insuring assets of Atlas]" *Id.*[5] Thus the appointment of a receiver over those assets is appropriate.

B. Due Process has not and will not be violated

Atlas continues to ignore the jurisprudence of this state which directly addresses its due process argument. Atlas ignores, again, the teachings of the South Carolina Supreme Court in *Sangamo*.

Just as here, *Sangamo* argued that §38-61-10 was "unconstitutional." *Id.* at 131. The South Carolina Supreme Court there opined that

> insuring property, lives and interests in South Carolina constitutes a significant contact with this state. South Carolina has a substantial interest in who bears the liability for operations conducted in this state which result in injury to South Carolina property and citizens. Although the parties are not residents of this state, both parties availed themselves of

[5] As more fully set forth above, the funds at issue appear to be the proceeds from settlements involving insurance contracts designed to protect lives, interests and property within the state and thus would also be governed by substantive South Carolina law.

> the law of South Carolina when they respectively provided or received insurance on interests located in this state.

Id. Atlas sold its poison throughout the United States well knowing that it would end up in the workplaces of working men and women throughout the nation, including sales, specifically to South Carolina. Therefore, under the statutory scheme of this state and its interpreting precedent, whatever insuring assets of Atlas exist and related claims are subject to the substantive law of South Carolina and nothing about that result is violative of due process.

POWERS OF THE RECEIVER

As set forth above, the powers afforded to the receiver here are all related to the insurance assets of Atlas. Therefore, this Court hereby orders that Peter Protopapas be and hereby is appointed Receiver in this case with the power and authority fully administer all insurance assets of Atlas Turner, Inc. and any subsidiaries, accept service on behalf of Atlas, engage counsel on behalf of Atlas and take any and all steps necessary to protect the interests of Atlas whatever they may be. This order includes the right and obligation to administer any insurance or indemnification assets of Atlas as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which the Atlas may have claims.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, powers and authority, insofar as they are related to the discovery of and recovery of insurance assets, to:

1) open any mail which is reasonably believed to contain information relating to insurance assets addressed to the defendant and addressed to any business owned by the Atlas; redirect the delivery of any such mail addressed to the Atlas or any business of the Atlas, so that such mail may come directly to the receiver; 2) endorse and cash all checks and negotiable instruments payable to Atlas relating to insurance assets; 3) obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of Atlas; 4) hire any person necessary to accomplish any right or power under this Order; and 5) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Atlas may be situated, and to review and obtain copies of all documents related to insurance assets of Atlas.

The Court expects the Receiver to investigate the existence of all insurance or indemnifications coverages or claims relating thereto which are potentially available to Atlas. The Receiver will provide potential insurers or indemnifiers with lists of work sites, contractors, and insurance brokers and agents to facilitate the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of Atlas or any entity for whom Atlas did work or supplied materials or licensed products or the use thereof as an "additional insured" under coverage written to another entity). The Court expects all insurers or indemnifiers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

This Court notes that under the *Barton* doctrine, suit against the Receiver outside of this Court is expressly prohibited.

CONCLUSION

For the foregoing reasons, the appointment of a receiver for Atlas to marshal all of the available insurance assets, including claims related thereto and any other property subject to this receivership of Atlas and its subsidiaries, successors, and assigns, is appropriate. Peter Protopapas is hereby appointed the receiver over Atlas consistent with this order.

IT IS SO ORDERED.

APPENDIX C

The Supreme Court of South Carolina

John A. Tibbs and Margaret B. Tibbs, Plaintiffs,

v.

3M Company, et al., Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-000916

AND

John A. Tibbs and Margaret B. Tibbs, Plaintiffs,

v.

3M Company, et al., Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its

duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-001423

AND

John A. Tibbs and Margaret B. Tibbs, Plaintiffs,

v.

3M Company, et al., Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority S.A.S. are the Petitioners.

Appellate Case No. 2024-001499

AND

John A. Tibbs and Margaret B. Tibbs, Plaintiffs,

v.

3M Company, et al., Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which ArranCo US, LLC, Hawk Bidco US Inc., Sparrows Offshore, LLC, Mohed Altrad, Altrad Investment Authority SAS, Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-002114

AND

John A. Tibbs and Margaret B. Tibbs, Plaintiffs,

v.

3M Company, et al., Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Mohed Altrad and Altrad Investment Authority S.A.S. are the Petitioners.

Appellate Case No. 2024-002116

AND

John A. Tibbs and Margaret B. Tibbs, Plaintiffs,

v.

3M Company, et al., Defendants,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff, Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., et al., Third-Party Defendants,

Of which Charter Consolidated Ltd., ESAB Corporation, and Central Mining & Investment Corporation Ltd. are the Petitioners.

Appellate Case No. 2024-002117

ORDER

Peter D. Protopapas, Receiver for Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, has filed a motion for a writ of supersedeas and a temporary restraining order and a motion to stay the filing deadlines pending resolution of the motion for a writ of supersedeas.

The basis for the supersedeas request is an order issued by Justice Mann of the High Court of Justice Business and Property Courts of England and Wales Business List (CHD) (the English Court Order), which declares the March 16, 2023 order issued by the South Carolina Fifth Judicial Circuit Court appointing the Receiver "is not recognised and has no legal effect in England and Wales and worldwide." The Order further restrains the Receiver's actions on behalf of Cape Intermediate Holdings Limited "in England and Wales . . . *in the South Carolina Court* and worldwide." (Emphasis added). The English Court Order threatens the Receiver, as well as any person who knows of and disobeys the Order or does anything that helps or permits any person to whom the Order applies to breach the terms of the Order, with contempt of court, imprisonment, fines, or seizure of assets.

Any attempt by a foreign court to intervene in and threaten the participants in matters properly pending in the courts of South Carolina would be shocking and indefensible. The dispute giving rise to the English Court's attempt to intervene in these matters involves the appropriate reach of the Receiver appointed by the South Carolina Circuit Court—an issue this Court will hear during its February term of court and resolve after oral argument.

As an independent judiciary in a sovereign independent state, we are well-equipped to decide the issues presented to us. In the interim, all parties shall comply with all scheduling orders and rules, and all proceedings in these matters will continue in the ordinary course in the circuit court and this Court.

Having addressed the underlying and legitimate concerns of the parties related to the English Court

Order, we conclude there is no reason for a writ of supersedeas to be issued in these matters. Therefore, we deny the Receiver's emergency motion for supersedeas and motion to stay the filing deadlines.

/s/ John Kittredge C.J.

/s/ John Cannon Few J.

/s/ George James, Jr. J.

/s/ D. Hill J.

Verdin, J., not participating

Columbia, South Carolina
January 16, 2025

APPENDIX D

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. art. I, § 8, cl. 3.

The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

U.S. Const. art. I, § 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.