No. 25-213

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, DECEASED, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of South Carolina

BRIEF *AMICI CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 66% of the overall U.S. property-casualty insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound public policies on behalf of its members and their policyholders in legislative and regulatory forums at the federal and state levels and submits *amicus curiae* briefs in significant cases before federal and state courts.

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[1] Pursuant to Supreme Court Rule 37, *amici* state that no counsel for any party authored this brief in whole or in part, and that no entity or person, aside from *amici*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for the parties received notice of the intent to file an *amicus* brief at least ten days prior to filing.

Businesses have a strong interest in predictable jurisdictional rules. Predictable rules enable those businesses, whether domestic or foreign, to understand whether, and to what extent, their conduct exposes them to jurisdiction in forums other than those where they are essentially at home. One such rule, predating the very founding of the Republic, is that a sovereign's courts can only exercise jurisdiction over property located within the sovereign's territory. That longstanding rule establishes clear and unambiguous guidance about which courts may – and may not – assert *in rem* jurisdiction during the pendency of a civil action. That rule also helps to preserve comity by reducing friction that otherwise could arise among sovereigns (whether sister states or foreign nations) if they laid competing claims to property.

The South Carolina Supreme Court's decision undercuts predictability and undermines comity. Here, a state court of general jurisdiction has, by means of its general power to appoint a receiver, asserted control over a nonresident company's property located outside the forum state well before *any* judgment of liability has been entered. This extraordinary assertion of jurisdiction clashes with a long history in Anglo-American law strictly confining any exercise of *in rem* jurisdiction to the forum's territorial limits. It carries serious implications for American businesses who choose to place goods in the stream of interstate commerce. Finally, it upsets the delicate balance underpinning foreign affairs and interstate commerce, matters that the Constitution generally commits to the federal political branches, not state judges. *Amici* file this brief to explain the importance of the decision below to the nation's business community and the pressing need for this Court's intervention.

INTRODUCTION AND SUMMARY

The question presented by Atlas Turner's petition lies at the intersection of federalism, interstate commerce, and foreign affairs. The impact of the decision below is hardly confined to cases involving discovery sanctions or foreign companies. It carries implications for any case involving a nonresident defendant. "Most states have [ ] enacted statutes providing courts the discretion to appoint a receiver if certain, often loosely defined, requirements are met." Strategic Alternatives for and Against Distressed Businesses §13:1 (Edward I. Friedland ed., rev. ed. 2025) (hereinafter "*Friedland*"); *see also* William Meade Fletcher, Cyclopedia of the Law of Corporations § 8562 (rev. ed. Sept. 2025) (hereinafter "*Fletcher*") (collecting authorities). Consequently, the decision below sets a precedent that, by its logic, licenses *any* receiver appointed by *any* state court to assert control over *any* property against *any* non-resident company, including purely domestic ones, even where that property is located in a sister state or, as is the case here, a foreign nation. The only requirement is some finding of *in personam* jurisdiction against that nonresident company. *Never* has this Court endorsed such a boundless conception of equitable authority of a receiver appointed by a state court. On the contrary, this Court's most relevant precedent reaches the opposite conclusion: a state receiver "has no extra territorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property." *Booth v. Clark*, 58 U.S. (17 How.) 322, 338 (1854).

To understand the startling implications of the decision below, consider a case where a state court renders a judgment against a non-resident defendant or company. That judgment is not automatically enforceable. For property located *inside* the judgment-rendering state, the judgment creditor still must obtain a writ of execution. For property located *outside* the judgment-rendering state (here, South Carolina), the remedies available to the judgment creditor depend on the property's location. Where property is located in a sister state (like Georgia), the judgment creditor can invoke the Full Faith and Credit clause in an effort to enforce the judgment. *See* Gary B. Born & Peter B. Rutledge, International Civil Litigation in United States Courts 1259-60 (7th ed. 2023) (hereinafter "*Born & Rutledge*"). Even then, of course, the courts of the sister state still enjoy (and always have enjoyed) the ability to scrutinize that foreign judgment under the exceptions set forth in this Court's Full Faith and Credit jurisprudence (like lack of jurisdiction). *See Fall v. Eastlin*, 215 U.S. 1 (1909). Where property is located in a foreign country (like Canada in this case), no such Full Faith and Credit obligation exists. Born & Rutledge at 1260. Instead, the judgment creditor must rely on principles of comity (often set forth in another country's foreign judgment enforcement law) to persuade the foreign court to recognize the American judgment. Even when the recognition effort is successful, the judgment creditor still must rely on local law to execute that judgment against property located abroad. These longstanding principles carefully balance considerations of federalism, commerce, and, in international cases, foreign relations central to the proper functioning of the system of civil dispute resolution, whether interstate or international.

The judgment below effectuates a complete end-run around those settled principles and upsets that delicate balance. The court below allowed respondents to bootstrap a request to appoint a receiver onto a questionable (or even erroneous) finding of *in personam* jurisdiction and, therefrom, to exploit the receiver's control over non-resident Atlas Turner's property, including insurance policies, located in Canada. In doing so, the court below has tied up Atlas Turner's operations before it has ever been adjudged liable. The receiver's handling of Atlas Turner's property can easily create collisions with the fiduciary duties of the directors and officers under the law of Quebec, Canada, where it is incorporated. *See In re Whittaker Clark & Daniels, Inc.*, -- F.4th --, 2025 WL 2611753 (3d Cir. Sept. 10, 2025) (rejecting receiver's assertion that appointment required board to seek approval before making operational decisions). Taken to its logical conclusion, the decision below licenses a receiver to impair, deplete or deny Atlas Turner access to its assets, like insurance coverage, that otherwise would be available to address the company's daily liabilities and overall operations. Apart from this interference with a company's affairs, a receiver's actions can disrupt the delicate foreign relations that the Constitution exclusively entrusts to the national political branches. It can even invite retaliatory assertions of jurisdiction by foreign courts against American companies.

Such extraordinary assertion of equitable authority by a single state cannot be squared with this Court's jurisprudence. This Court has not hesitated to invalidate actions by state legislatures that interfere with the foreign relations of the United States. *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 427 (2003); *Crosby v. Nat'l For. Trade Council*, 530 U.S. 363, 376

(2000). It also has set aside state statutes that utilize property determinations to interfere with the foreign relations of the United States. *Zschernig v. Miller*, 389 U.S. 429, 440-41 (1968). So too here: The court-appointed receiver's extraterritorial assertion of equitable authority "affects international relations in a persistent and subtle way." *Id.* at 441. Plaintiffs should not be able to co-opt state courts to accomplish indirectly what state legislatures may not accomplish directly. The lower court's judgment is deeply flawed, and, at a minimum, warrants this Court's review.

I. A court-appointed receiver's assertion of equitable authority over property located outside the forum's territory raises issues of exceptional importance to the nation's business community.

A. A state court's jurisdiction over property has traditionally been limited to property located within that state's territory.

"The foundation of jurisdiction is physical power." *McDonald v. Mabee*, 243 U.S. 90, 92 (1917). Consistent with this foundation, *Pennoyer v. Neff*, 94 U.S. 714 (1878), drew on principles developed in this Court's Full Faith and Credit jurisprudence to announce constitutional limits, anchored in the Fourteenth Amendment's Due Process Clause, on state-court assertions of judicial jurisdiction over nonresident defendants. *See* U.S. Const. amend. XIV.

In addition to announcing limits on *in personam* jurisdiction, *Pennoyer* reaffirmed longstanding historical limits governing *in rem* jurisdiction that lie at the heart of this case. Central among those historical limits, an action *in rem* could only be brought in the

jurisdiction where the property was located. *Overby v. Gordon*, 177 U.S. 214, 221 (1900); *Bowell's Lessee v. Otis*, 50 U.S. (9 How.) 336, 348 (1850). *Cf. Mallory v. Norfolk Southern Ry. Co.*, 600 U.S. 122, 128 (2023) (plurality opinion) (citing 3 W. Blackstone, Commentaries on the Laws of England 117-18, 294 (1768)) ("[A]n action *in rem* that claimed an interest in immovable property was usually treated as a 'local' action that could be brought only in the jurisdiction where the property was located.").[2]

American courts observed this limit, whether in the rules governing jurisdiction or in the rules governing state court-appointed receivers. *See, e.g., Booth*,58 U.S. at 331-33; *Rose v. Himely*, 8 U.S. (4 Cranch) 241, 277 (1807). *See also Great Western Min. & Mfg. Co. v. Harris*, 198 U.S. 561, 576 (1905) ("[E]very jurisdiction, in which it is sought, by means of a receiver, to subject property to the control of the court, has the right and power to determine for itself who the receiver shall be, and to make such distribution of the funds realized within its own jurisdiction as will protect the rights of local parties interested therein, and not permit a foreign court to prejudice the rights of local creditors by removing assets from the local jurisdiction without an order of

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[2] At one time, this Court's jurisprudence differentiated between *in rem* actions (disputes over ownership) and *quasi in rem* actions (generally efforts to attach property, often unrelated to the underlying dispute, in order to ensure its availability to satisfy an eventual civil judgment). *Pennoyer* was just such a case, but this Court's post-*International Shoe* jurisprudence collapsed the historical distinctions, referring to both types simply as "*in rem*." *See Hanson v. Denckla,* 357 U.S. 235, 246 n. 12 (1958); *Shaffer v. Heither,* 433 U.S. 186, 199 n.17 (1977). *Cf. International Shoe v Washington*, 326 U.S. 310 (1995). For ease of reference, this brief tracks the Court's current terminology.

the court, or its approval as to the officer who shall act in the holding and distribution of the property recovered."). This longstanding limit on a court-appointed receiver's power flowed naturally from the two principles of "public law" that *Pennoyer* traced to Justice Story's influential commentaries: (1) "every State possesses *exclusive* jurisdiction and sovereignty over persons and property within its territory" and (2) "*no State can exercise direct jurisdiction and authority over* persons or *property without its territory*." 94 U.S. at 722 (emphasis added).

This traditional territorial limit on *in rem* jurisdiction endured even as *Pennoyer*'s limits on *in personam* jurisdiction eroded. *See Shaffer v. Heitner*, 433 U.S. 186, 200 (1977) (citing *Ballard v. Hunter*, 204 U.S. 241 (1907); *Arndt v. Griggs*, 134 U.S. 316 (1890); *Huling v. Kaw Valley R. Co.*, 130 U.S. 559 (1889)). This limit restricted the power of court-appointed receivers. *See Moore v. Mitchell*, 281 U.S. 18, 24 (1930). Its durability made sense because "the State in which property was located was considered to have *exclusive* sovereignty over that property." *Shaffer*, 433 U.S. at 199-200 (emphasis added).

The territorial limit proved equally durable even after *International Shoe v. Washington* held that a nonresident defendant's contacts with the forum state could give rise to *in personam* jurisdiction. 326 U.S. 310, 316 (1945). *Hanson v. Denkcla* described the very essence of *in rem* jurisdiction as "the presence of the subject property within the territorial jurisdiction of the forum State." 357 U.S. 235, 246 (1958). On that basis, *Hanson* rejected an assertion of *in rem* jurisdiction precisely because the trust assets underpinning that assertion were not physically present in the forum state. *Id.* at 247-49. Even when *Shaffer*

purported to declare that the *International Shoe* framework applied to all assertions of judicial jurisdiction, 433 U.S. at 212, it reaffirmed the traditional understanding of *in rem* jurisdiction and described it as "based on the court's power over property *within* its territory," *id.* at 199 (emphasis added).

Notwithstanding this longstanding limit, a state court judgment still ultimately could affect property located outside the forum state. As a corollary to its exercise of *in personam* jurisdiction, the state court could attempt to order the defendant to undertake certain actions outside the forum. *See* Restatement (Second) of Conflict of Laws § 53 cmt. a (1971). But sanctions for any failure to heed those orders were limited to contempt and did not extend to direct jurisdiction over the property itself. Moreover, as noted above, under ordinary principles of Full Faith and Credit jurisprudence, once a state court rendered a valid, final *in personam* judgment, the judgment creditor could seek to enforce that judgment in a sister state where the judgment debtor might have property. *See Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 232 (1998).

B. The extraordinary assertion of *in rem* jurisdiction by a court-appointed receiver upsets the predictability of jurisdictional rules upon which interstate and international businesses rely.

Clear jurisdictional rules benefit litigants and the judicial system. For litigants, clear rules enable parties readily to ascertain where suits may be filed. For defendants specifically, corporate or otherwise, clear rules permit them "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable

to suit." *Daimler AG v. Bauman*, 517 U.S. 117, 139 (2014) (internal citation and quotations omitted); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). For the judicial system, clear jurisdictional rules preserve judicial resources. Courts can "readily assure themselves of the power to hear a case." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

The above-described, traditional territorial limit on a state court's *in rem* jurisdiction exemplifies just such a clear rule. Just as this Court's decisions governing *in personam* general jurisdiction enabled identification of at least one forum where a defendant is "essentially at home," a territorial rule governing *in rem* jurisdiction offers equal clarity over the one forum where such jurisdiction over property may be exercised: namely, where the property is located. The decision below destroys the clarity of that rule by creating competing jurisdictional claims over property during the pendency of a suit: claims by the court of the sovereign where the property is located and claims by the court of the sovereign that appointed the receiver who now asserts equitable authority over that same property.

Traditional principles of equity avoided such chaos. Historically, a court-appointed receiver's power was coextensive with the jurisdiction of the appointing court, so that the receiver ordinarily could not exercise extraterritorial authority. Fletcher § 7824; Friedland § 13:12; Albert S. Bolles, *The Law Concerning Foreign Receivers*, 18 Yale L. J. 488, 488-89 (1909); James Lambert High, A Treatise on the Law of Receivers § 47 at 35-36 (1876).[3] Where court-appointed receivers

[3] Here, the focus is on a receiver appointed by a court where a civil action is pending. The brief sets to one side a particular type of receiver, sometimes called a "statutory receiver," appointed by

specifically wished to assert control over property located outside the territory of the appointing forum, they could petition for appointment of an "ancillary receiver" in the forum where the subject property was located. Fletcher § 8572. Critically, though, the prerogative whether to appoint that ancillary receiver (and whom to appoint) fell squarely within the jurisdiction of the court where the property was located, *not* the court appointing the original receiver. Note, *Federal Practice Regarding Foreign Receivers*, 43 Harv. L. Rev. 805, 806-07 (1930). This ancillary receivership mechanism helped to preserve the predictability created by the territorial rule. The extra-territorial reach authorized by the decision below guts these safeguards.[4]

A comparison of the decision below with general federal receivership further illustrates the chaos.

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the court of the state where a company is incorporated and specifically for purposes of winding down the company. Different rules apply to those "statutory receivers" and are not at issue here. *See* Fletcher § 8562.

[4] On this point, the Supreme Court of South Carolina errs badly. It cites a number of cases for the proposition that a court-appointed receiver's power extends to property located outside the forum, Pet. App. 23a-24a. Most of the cited cases involve federal receivers and do not address the authority of receivers appointed by state courts. Moreover, the court below omits any mention that the exercise of that power requires cooperation from the forum where the property is located such as by means of an ancillary receiver. For example, the only state case cited by the court below, the supposedly "well-known" court decision in *Madden v. Rosseter* (actually rendered by New York's trial court, not its highest court as the lower court opinion suggests), specifically advised that the court-appointed receiver may need to invoke "the aid of the courts of that or any other state, or of the federal courts" because the New York court's "own process falls short of effectiveness." 187 N.Y.S. 2d 462, 462-63 (Sup. Ct. 1921).

Federal law provides for court appointment of receivers under certain circumstances. *See* 28 U.S.C. §§ 754, 1692; *see also* Fed. R. Civ. P. 66. Specifically, court-appointed receivers may assert authority over property located outside the district of their appointment but must first register certain documents with the district where the subject property is located. 28 U.S.C. § 1692; *see also* 12 Wright & Miller, Federal Practice and Procedure § 2981 (rev. ed. Aug. 2025). This system is sensible in light of the sovereign-specific limitations governing the court appointing the receiver. *Fuld v. Palestine Liberation Organization*, 606 U.S. 1, 14 (2025); *J. McIntyre Machinery Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion). Even with this expanded power, however, nothing in the federal statutory scheme expressly authorizes the federal receiver to assert power over property located abroad, like the Canadian property at issue here.[5]

Viewed against this federal framework, the decision below makes no sense. By its logic, a receiver appointed by a state court would enjoy greater authority than her federal counterpart. Such an outcome cannot be reconciled with this Court's constitutional jurisprudence that, just last year, reaffirmed that stricter constitutional rules constrain state court assertions of judicial jurisdiction (by comparison to federal assertions). *Fuld*, 606 U.S. at 14. Thus, this Court's

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[5] One federal appellate court has held that a federal receiver's power extends to property located abroad. *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180 (11th Cir. 1991). *Citronelle Mobile* is wrongly decided. For present purposes, however, Atlas Turner rightly explains how that decision contributes to the split over the scope of a court-appointed receiver's equitable authority over property located outside the territory of the sovereign whose court makes the appointment. Pet. at 14-15.

review is needed to clean up the confusion wrought by the decision below over the equitable powers of a receiver appointed by a state court.

C. Unrestricted assertions of a state court's equitable authority upset the comity upon which interstate and international commerce depend.

This Court has repeatedly staunched efforts to expand judicial equitable powers beyond their historical limits where such expansions upset comity principles. *See, e.g., Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc*., 527 U.S. 308 (1999). For example, in *Grupo*, this Court held that the equitable powers of federal district courts did not include the authority to issue a preliminary injunction restricting a foreign company's disposition of its foreign-located assets pending adjudication of a plaintiff's claim for money damages. *Id.* at 329. Writing for the majority, Justice Scalia explained that those equitable powers were defined by reference to the remedies historically available in the English courts of equity. *Id.* at 318-29. Even though English courts had more recently issued such orders (colloquially described as *Mareva* injunctions), such *Mareva* injunctions were of relatively recent vintage in English law and, thus, absent congressional authorization did not fall within the equitable authority of United States District Courts. *Id.* at 329.

Building on the principles announced in *Grupo*, Justice Barrett's majority opinion in *Trump v. Casa, Inc.* similarly held that a federal district court's equitable authority did not include the power to enjoin conduct outside the district's territory. 606 U.S. 831, 860-61 (2025). Like *Mareva* injunctions, so-called nationwide injunctions were of relatively recent

vintage and, absent congressional authorization, departed from the "founding-era" antecedents that defined a federal court's equitable authority. *Id.* at 832-33. Thus, in order to ensure that *federal* court assertions of equitable authority do not upset comity, history has long constrained the extraterritorial exercise of that authority.

By comparison to the extraterritorial assertions of equitable authority in *Grupo* and *Trump*, state court assertions of equitable authority pose an even greater risk to comity and demand more rigorous guardrails. As this Court explained recently in *Fuld*, while the Constitution constrains both federal and state court assertions of judicial jurisdiction, state court assertions of jurisdiction distinctly threaten federalism values. 606 U.S. at 14. For this reason, *Fuld* held, the Fourteenth Amendment sets stricter standards governing those assertions of jurisdiction by comparison to the corresponding constraints under the Fifth Amendment (at least in cases where federal courts are not borrowing the state court long-arm statute to exercise personal jurisdiction). *Id.* at 14-15; *Nicastro*, 564 U.S. at 884 (plurality opinion).

The extraordinary exercise of equitable power over out-of-state property by a state court-appointed receiver poses a graver threat to interstate comity. For example, that receiver's assertion of extraterritorial power may frustrate another state court's ability to execute against that property in order to satisfy a judgment creditor's claim. Likewise, the state court receiver's assertion of extraterritorial power may frustrate other states' laws that govern the disposition of the property independent of cases involving a judgment creditor. The court-appointed receiver may operate in a manner inconsistent with the laws of the

company's state of incorporation. *See supra* at 5. Unless corrected, conflicts are bound to grow over time as plaintiffs, exploiting the well-developed circuit split described in the Petition, engage in forum shopping and other state courts mimic the approach adopted in South Carolina and already sanctioned by the Eleventh Circuit. Because one state court effectively lacks the ability meaningfully to check a sister state court's extraordinary assertion of authority, only this Court can remedy the dangerous precedent set by the decision below.

The decision below also has implications for international comity. For one thing, the receiver's assertion of power over property located abroad interferes with the foreign sovereign's authority over that same property. Here, the receiver's order from South Carolina has already had that effect with respect to Canada and the United Kingdom, two of this country's most important allies and trading partners. Pet. 28-31. For another thing, that extraterritorial assertion invites retaliatory assertions of jurisdiction by foreign courts over the property of American companies located here. Concerns about foreign countries' retaliatory assertions of jurisdiction have previously informed this Court's jurisprudence regarding state authority and personal jurisdiction. *See Japan Line, Ltd. v. Los Angeles County*, 441 U.S. 434, 450 (1979); *Fuld*, 606 U.S. at 43 (Thomas, J., concurring in the judgment). Those concerns weigh heavily here, given the number of foreign countries that, like the United States, have laws providing for the appointment of receivers and similar administrators with equitable authority over a nonresident defendant's activities. *See, e.g., The Receivership Remedy in Canada*, in American Law Institute, Int'l Statement of Canadian Bankruptcy Law: Transactional Insolvency: Cooper-

ation Among the NAFTA Countries I.B.5 (rev. ed. 2024); Peter Kaye, *England and Wales*, in Methods of Execution of Orders and Judgments in Europe (Kaye, ed.) 65-66 (Peter Kaye ed., Wiley 1996).

D. Upholding the ruling below will exacerbate forum shopping problems in mass-tort litigation.

Apart from offending the longstanding historical limits on *in rem* jurisdiction that offer predictability to the business community and preserve comity among the states (and with foreign nations), the decision below carries particularly deleterious consequences for the orderly resolution of mass-tort claims, including the legions of asbestos cases working through American courts.

Legal claims for injuries from asbestos involve more plaintiffs, more defendants, and higher costs than any other type of personal injury litigation in U.S. history. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999) (Souter, J.) ("[T]he elephantine mass of asbestos cases … defies customary judicial administration and calls for national legislation."). In 2024 alone, 3,931 new asbestos-related lawsuits were filed — just two more than in 2023 (3,929 lawsuits) – contributing to the nearly 42,000 asbestos-related lawsuits that have been filed over the course of the past decade. *See* KCIC, *Asbestos Litigation: 2024 Year in Review*, KCIC Industry Report 3 (Jan. 31, 2025), *available at* bit.ly/4pgLF1X (hereinafter "*KCIC*"); *see generally* Michelle J. White, *Asbestos and the Future of Mass Litigation*, National Bureau of Economic Research, Working Paper 10308 (Feb. 2004), *available at* https://www.nber.org/papers/w10308; Michelle Whitmer, *Asbestos Litigation*, Asbestos.com (June 19, 2025), *available at* bit.ly/3VcNAHh (noting U.S. insurers

recognized $92 billion in losses from asbestos liabilities in 2019); Mary Elizabeth C. Stern & Longxuan Wang, *Snapshot of Recent Trends in Asbestos Litigation: 2025 Update* NERA (June 17, 2025), *available at* bit.ly/42tPLtI ("Dollars per resolved asbestos claim rose 12% in 2024 compared to 2023, marking the seventh consecutive year of an increase and a cumulative rise of 191% since 2017.").

In particular, the decision below threatens to exacerbate an already significant forum-shopping problem. Approximately eighty-five percent of all asbestos personal injury claims are filed in just fifteen jurisdictions each year, despite the many other state and federal courts where the cases could be filed. KCIC at 5. Typically, jurisdictions initially attract mass tort claims like asbestos due to favorable procedures such as consolidation, standing for out-of-state plaintiffs, lax rules on the admissibility of expert evidence, and the imposition of punitive damages, all of which increase plaintiffs' chances of recovery. *See* U.S. Chamber of Commerce, *Unlocking the Code: The Value of Bankruptcy to Resolve Mass Torts*, Institute for Legal Reform 6-7 (Dec. 2022), *available at* bit.ly/3I6usrr. Once identified as favorable places to file mass tort claims, these jurisdictions tend to become even more favorable through the exertion of influence by the plaintiffs' bar. *Id*. at 7. As repeat litigants, plaintiffs' attorneys become familiar with the judges who oversee the asbestos dockets and who often look to plaintiffs' firms, who are familiar with the status of cases they have filed, to help manage overloaded dockets; they take advantage of the courts' rules and influence them through revisions to case management orders; and they use their large volumes of claims and influence over trial settings to gain settlement leverage. *Id.* (citing S. Todd Brown, *Plain-*

tiff Control and Domination in Multidistrict Mass Torts, 61 Cleveland State L. Rev. 391 (2013)).

South Carolina is already a hotspot for asbestos claims, and its popularity grows. Press Release, *South Carolina Asbestos Litigation Ranked 'Judicial Hellhole'*, American Tort Reform Association (Dec. 6, 2022), *available at* atra.org/south-carolina-asbestos-litigation-ranked-judicial-hellhole/. While forum shopping in South Carolina may have many causes, most notable is the fact that South Carolina asbestos filings have "more than doubled" since the state's high court selected a single judge to "serve as judge for all of the state's asbestos cases in 2017." *See* American Tort Reform Foundation, 2024-2025 Judicial Hellhole Report 20-21 (2024), *available at* https://tinyurl.com/uh22pj3t (ranking South Carolina in top three worst Judicial Hellholes for 2024-2025 and among the top ten since 2020); *see also* Order, *2017-03-03-01*, in re Asbestosis and Asbestos Litigation Assignment (S.C. Mar. 3, 2017) (appointing Honorable Jean Hoefer Toal over all asbestosis and asbestos litigation filed within the state court system); Order, *2019-03-28-01*, Asbestosis and Asbestos Litigation (S.C. Mar. 28, 2019) (relieving Judge Toal from single-judge appointment); Order, *2019-05-28-01*, Asbestos Litigation (S.C. May 28, 2019) (reappointing Judge Toal as Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation with discretion to assign cases to circuit court judges Carmen T. Mullen and William H. Seals, Jr.).

Judge shopping aside, the ready availability of a receiver with extraterritorial equitable authority adds yet another incentive to file suit in South Carolina, regardless of other states' interests in the dispute. The prospect of a receiver creates an immed-

iate "in terrorem" settlement effect on nonresident defendants. Pet. App. 22a, 26a, 27 (vesting receiver with a pre-judgment "right and duty to collect and accumulate" Atlas Turner's insurance even if it is "outside the court's territorial jurisdiction" and declaring that such assets "are within South Carolina's exclusive jurisdiction"); *see Grupo*, 527 U.S. at 321 ("[A] judgment establishing the debt was necessary before a court of equity would interfere with the debtor's use of his property."); *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) (disapproving of district court's use of receivership as "a means to process claim forms and set priorities among various classes of creditors"). Left intact, South Carolina's erroneous approach to receiverships will further attract plaintiffs' firms to file claims against businesses domestic and abroad in South Carolina courts if for no other reason than enhancing. All that is needed, according to the decision below, is a showing that the company had the requisite minimum contacts with South Carolina to support the exercise of personal jurisdiction. This cannot be the rule in any jurisdiction under our federalist system.

CONCLUSION

For the foregoing reasons, in addition to those offered by Atlas Turner, the Petition for a Writ of *Certiorari* should be granted.

Respectfully submitted,

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