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 OF *AMICI CURIAE* AMERICAN TORT REFORM ASSOCIATION AND FEDERATION OF DEFENSE & CORPORATE COUNSEL IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed *amicus* briefs in cases involving important liability issues. ATRA is concerned with the imbalanced litigation environment in the court that decides asbestos claims in South Carolina, including its use of receiverships.[2]

The Federation of Defense & Corporate Counsel (FDCC) is a not-for-profit corporation with national and international membership of 1,450 defense and corporate counsel working in private practice, as in-house counsel, and as insurance industry professionals. A significant number of FDCC members practice in the trial and appellate courts of the United States both at the federal and state level. Since 1936, FDCC's members have established a strong legacy of representing the interests of civil defendants, including publicly and privately owned businesses, public entities, and individual defendants. The FDCC seeks

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* affirm that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief. Counsel of record for all parties received timely notice of the intention to file this brief.

[2] *See* American Tort Reform Ass'n, Judicial Hellholes 2024-2025, at 20-30 (2025).

to assist courts in addressing issues of importance to its membership that concern the fair and predictable administration of justice.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether a South Carolina court can constitutionally appoint a receiver over a solvent, operating company—one that has never done business in South Carolina and has no property in the state—who can then seize control of the corporation's assets wherever that property is located. ATRA and FDCC submit this brief to place this case in context. The receivership here, and the expansive authority the receiver claims, is the culmination of a series of increasingly extreme rulings in the state's asbestos litigation that require the intervention of this Court.

All asbestos cases in South Carolina are assigned to a single judge ("the asbestos court"). Since 2020, Companies that are named as defendants in litigation before the asbestos court may find themselves subject to a court-appointed receivership, as occurred here. Sanctions, purportedly for discovery violations, have become commonplace for defendants. As Atlas Turner's petition notes, this is the 24th time the South Carolina asbestos court has appointed the same local plaintiffs' attorney as receiver over a defendant. Pet. at 6. This practice has both targeted long-defunct entities that supplied asbestos or made asbestos-containing products as well as ongoing businesses, including the Canadian company that is the subject of this case.

This is not right. In fact, the Third Circuit recently rejected the receiver's assertion that his appoint-

ment stripped a New Jersey corporation's board of directors from the ability to make key decisions about the business's operations without his approval. *In re: Whittaker Clark & Daniels, Inc.*, Nos. 24-2210, 24-2211, -- F.4th --, 2025 WL 2611753 (3d Cir. Sept. 10, 2025). Courts abroad have found the receiver's extraordinary attempts to assert control over businesses and their assets far beyond South Carolina's borders "astonishing" and even tortious. *See In re Plan of Arrangement or Compromise of: Asbestos Corp. Ltd.*, No. 235-11-000008-259, at ¶ 23 (Canada Super. Ct. July 30, 2025); *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC (Ch) 2999 (Eng.), at ¶ 112.

This Court should grant certiorari to address this misuse of judicial power in South Carolina's asbestos litigation, which has caused strife for businesses and insurers, and is now raising international concern.

ARGUMENT

I. The Path to Receiverships in the South Carolina Asbestos Court

The South Carolina asbestos court has made it an increasingly common practice to place companies in receiverships under the control of a local personal injury attorney. By making these appointments, the court empowers the receiver to accept service of process for the business, sue insurers and others, or take other actions purportedly on the company's behalf. Although asbestos litigation is the nation's longest-running mass tort, no other jurisdiction has routinely used receiverships in this manner against both defunct companies and ongoing businesses.

The path to receiverships sometimes begins with the court, at the request of plaintiffs' counsel, sanctioning defendants, typically for purported discovery violations. While such sanctions are rare in other jurisdictions, they are common in South Carolina's asbestos court. *See, e.g., South Carolina Judge Sanctions Insurer Over Corporate Deposition Failures*, 35-17 Mealey's Litig. Rep. Asb. 13 (Oct. 14, 2020) (reporting, at that time, there were 22 pending motions for discovery sanctions in just five asbestos cases). The sanctions imposed can be disproportionate to the conduct at issue. For example, the court has stripped away defenses, such as by instructing the jury to presume the company exposed the plaintiff to asbestos.[3] In the case at bar, the asbestos court struck Atlas Turner's answer, placing it in default, and then appointed a receiver, after the company did not produce a corporate witness who had knowledge of the company's operations four decades ago. *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320, 325-26 (S.C. 2025).

Defendants that go to trial, rather than settle, may also find themselves in a receivership after experiencing a "nuclear" verdict. For example, Whittaker Clark & Daniels was hit with a $29 million verdict in 2023 in a case in which a plaintiff pinned her development of mesothelioma on use of cosmetic

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[3] *See, e.g.,* David Siegel, *Pipe Insulation Company's Asbestos Blamed for Worker's Deadly Cancer as Trial Begins*, Courtroom View Network, July 17, 2018 (reporting that, as a sanction for not producing documents destroyed in a 1973 warehouse fire, the court instructed the jury, before opening statements, that the plaintiff "was exposed to asbestos insulation supplied and installed by Covil Corporation at Celanese between 1970 and 1974").

talc products. *See Whittaker Clark & Daniels,* 2025 WL 2611753, at *1. Days later, the plaintiff moved to place the talc supplier into receivership, which the court granted. *Id*. As a result of the verdict, the onslaught of asbestos lawsuits, and the receivership, Whittaker filed a petition for bankruptcy. *See id.; see also* Dietrich Knauth, *Talc Supplier Whittaker Clark & Daniels Files for Bankruptcy*, Reuters, Apr. 27, 2023.

The South Carolina asbestos court has also placed long-defunct companies into receiverships to go after their former insurers for money from decades-old policies that may cover asbestos claims. *See* Daniel Fisher & John O'Brien, *Zombies Are on the Loose in a Carolina Courtroom. Can Anyone Stop Them?*, Legal Newsline, Sept. 24, 2024. Acting in the name of a company that no longer exists, the receiver subpoenas and sues the insurer, collects a settlement, and uses that money without transparency for anything related to asbestos litigation, including fees for other plaintiffs' lawyers. *See id.* The receiver reportedly retains one third of any recovery as a contingency fee. *See id.*

The court used this process, for example, to appoint a receiver over Covil, a former insulation seller, nearly thirty years after it had dissolved. *See Protopapas v. Wall, Templeton & Haldrup, P.A.*, 898 S.E.2d 150, 151-52 (S.C. Ct. App. 2023), *reh'g denied* (Mar. 18, 2024), *cert. denied* (Feb. 12, 2025). The receiver then, purportedly on behalf of the nonexistent company, sued its former insurers for bad faith and even its former law firm for malpractice after a 2018 default judgment. *See id.* The court has also appointed receiverships for solvent companies that remain

in operation, including out-of-state and foreign corporations, such as Atlas Turner here. South Carolina appellate courts have allowed such actions to proceed and affirmed summary judgment rulings for the receiver.[4]

II. These Receivership Practices Continue, Despite the South Carolina Supreme Court's Intervention

Receiverships are, as the South Carolina Supreme Court acknowledged in this case, reserved for "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." *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320, 330 (S.C. 2025) (citing *Richland County. v. South Carolina Dep't of Revenue*, 811 S.E.2d 758, 769 (S.C. 2018)). *Amici* agree with the state supreme court's observation that appointing a receiver is an "extreme power" that "may

[4] *See, e.g., Wall, Templeton & Haldrup, P.A.*, 898 S.E.2d at 152 (rejecting insurer's defense that statute of repose precluded claims in absence of evidence that corporation or prior receiver published the necessary notice of dissolution); *Covil Corp. by & through Protopapas v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 906 S.E.2d 558, 561 (S.C. 2024), *reh'g denied* (Sept. 26, 2024) (affirming summary judgment for Covil's appointed receiver in action alleging former insurer breached contract by failing to contribute the $50,000 demanded to a settlement of an asbestos case in which Covil was named among the 53 defendants); *Protopapas v. Travelers Cas. & Sur. Co.*, 916 S.E.2d 844, 846 (S.C. Ct. App. 2025), *reh'g denied* (June 20, 2025) (affirming partial summary judgment for Starr Davis Company's appointed receiver in action against the former insurers of the dissolved installation contractor).

only be used in extreme cases" such as when a defendant is "fraudulently concealing or disposing of assets that may be responsive to a later judgment." *Id.* (citing 1 Ralph Ewing Clark, Clark on Receivers § 181 (3d ed. 1959)).

Yet, the state supreme court affirmed the asbestos court's appointment of a receiver over Atlas Turner, even before a judgment against the company, as a sanction for a discovery violation. *See Welch,* 916 S.E.2d at 331, 335. It only found that the receivership order went too far in empowering him to not only go after Atlas Turner's insurance assets to compensate Mr. Welch, but also pursue "any other assets" that could potentially "touch" anyone who might have a claim against the company. *Welch*, 916 S.E.2d at 334-35 (quoting receivership order).

The South Carolina Supreme Court did send an important message: "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." *Id.* at 335. It is troubling that this warning needed to be sent and it does not appear to have been heeded.[5]

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[5] In an Order on Remand, the South Carolina Supreme Court required the asbestos court to file monthly reports on its receiverships and to indicate progress in addressing its directives. The asbestos court's most recent report does not indicate any shift in direction. For example, the report indicates that although the court appointed a receivership over Cape at the request of a personal representative of an estate that had already closed (apparently due to "miscommunication" between the estate's asbestos and probate attorneys), the appointment was nevertheless valid. *See* Second Report to the Supreme Court of South Carolina Pursuant to its Order of Remand Dat-

South Carolina's extraterritorial receivership practice is not normal. Lester Brickman, emeritus professor at Yeshiva University's Cardozo School of Law, is "not aware of this procedure having been adopted in any other jurisdiction." Fisher & O'Brien, *supra*. Even lawyers representing plaintiffs in South Carolina's asbestos litigation acknowledge that appointing a receiver for a viable company, such as Atlas Turner, is "unusual." Emily Cousins, *Asbestos Plaintiffs Get Path to Collect Legacy Insurance Policies*, Law.com, May 27, 2025 (quoting Trey Branham of Dean Omar Branham Shirley).

III. The Receiver's Expansive Assertions of Power Have Caused Strife for Businesses and Led to Rebukes from Courts in the United States and Abroad

Courts in the United States and abroad have recoiled from the receiver's expansive assertions of power.

Recently, the Third Circuit rejected the receiver's assertion that a New Jersey corporation's board of directors could not file for bankruptcy protection without the receiver's approval. *See Whittaker Clark & Daniels,* 2025 WL 2611753, at *12. The Third Circuit recognized that while courts can appoint receivers for insolvent corporations, "that authority is not without limits." *Id.* at *5. It ruled that the receiver lacked the power to block a company's board from filing for bankruptcy for three reasons. First, the South Carolina asbestos court's order establishing the receivership did not displace the board's authority over

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ed June 26, 2025, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Com. Pleas, Aug. 26, 2025).

corporate affairs. *Id*. at *6. Second, the receiver had not gone to New Jersey courts (the state of incorporation) to enforce the receivership order and followed the requirements of that state's law. *Id*. at *7. Third, and most analogous to the case before this Court, placing a receiver in control of the corporate affairs of a foreign (New Jersey) corporation would likely unconstitutionally violate that state's sovereignty. *See id.* at *7-8. Interpreting the receivership order in this expansive manner would "be an unprecedented exertion of power over a foreign corporation" whose internal affairs are governed by another state and constitute "a radical intrusion" into that state's sovereignty. *Id*. at *8.

Given the Third Circuit's reaction to an attempt by a South Carolina receiver to take control of a New Jersey company, it should come as no surprise that the asbestos court's appointment of receiverships purportedly with extraterritorial power over foreign businesses and their assets shocked courts in those countries. In 2023, the court appointed a receiver for a Quebec mining company, Asbestos Corporation Limited (ACL), and an English corporation, Cape Intermediate Holdings Limited, in response to discovery violations following the defendants' objection to personal jurisdiction. *See* Pet. at 28.

With respect to ACL, the South Carolina receivership order empowered Mr. Protopapas to "assume control of the defense of asbestos claims made against ACL in the United States," including accepting service and hiring counsel on behalf of ACL. *See Tibbs v. 3M Co*., No. 2023-CP-40-01759, at 6 (S.C. Ct. Com. Pleas Sept. 8, 2023) (Order on Plaintiffs' Motion to Appoint a Receiver) (on file with this Court in

Docket No. 24A802). The order also authorized the receiver to obtain ACL's financial records, investigate and administer ACL's insurance assets, and bring claims on behalf of ACL against insurance carriers or other entities. *Id*. As a result, both the receiver and ACL's management claimed to speak for the company in its dealings with insurers, leading to confusion, including sanctions on insurers and contractual disputes between the company and its insurers over the insurers' authority to settle asbestos claims. *See* Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Supreme Court of South Carolina, at 3-4, *Certain Underwriters at Lloyd's London v. Toal*, No. 24A802 (U.S. filed Feb. 14, 2025).[6] The receiver's actions, according to ACL, "increased liability and damages for ACL, rather than protecting ACL's interests and those of its stakeholders" and "exacerbated" its risk of default judgments. Decl. of Ayman Chaaban Pursuant to 28 U.S.C. § 1746, ¶¶ 30-31, *In re Asbestos Corp. Ltd*., No. 1:25-bk-10934 (Bankr. S.D.N.Y. filed May 6, 2025) (Doc. #2).

Due in part to receivership, ACL filed for bankruptcy protection. Months later, a Canadian court found the South Carolina asbestos court's receivership order "astonishing in the eyes of a court rooted in Canadian . . . judicial culture" and found that it had "seriously compromised" ACL's "defense of the

[6] On May 6, 2025, ACL filed a petition for Recognition of Foreign Proceeding under Chapter 15 in the Southern District of New York to halt pending lawsuits in the United States, which led ACL's insurers to abandon their appeal in this Court. *See* Clara Geoghegan, *Canadian Asbestos Miner Seeks Ch. 15 to Wrangle Lawsuits*, Law360, May 7, 2025.

lawsuits" filed against it in the United States. Pet. at 28 (quoting *In re Plan of Arrangement or Compromise of: Asbestos Corp. Ltd.*, No. 235-11-000008-259, at ¶ 23 (Canada Super. Ct. July 30, 2025)).

The High Court of Justice Business and Property Courts of England and Wales similarly viewed the South Carolina asbestos court's receivership over Cape. In November 2024, the English court entered an injunction prohibiting Mr. Protopapas from acting as Cape's receiver, anywhere, and from acting or purporting to act for the company. *See Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC (Ch) 2999 (Eng.), ¶ 98. The English court observed that Mr. Protopapas went to "excessive lengths" to pursue "what he conceives to be his rights and duties" and "does not regard his powers as being confined to South Carolina. *Id.* ¶ 77.

The English court found it "quite clear" that a court in South Carolina cannot appoint a receiver over a foreign business that has no presence in South Carolina or anywhere in the United States. *Id.* ¶ 98. Although English law does not recognize his receivership, the court noted that Mr. Protopapas continues to purport to make admissions on behalf of the company that are "positively damaging to the legitimate interests of the company over whose assets he has been appointed, despite the fact that one of his obligations is to act in its proper interests." *Id.* ¶ 120. Allowing a South Carolina court to act in this manner, the English court found, could have serious consequences for a company, including impacting its finances, interfering with its operations, damaging its reputation, and leading to more lawsuits against the company in South Carolina and worldwide. *Id.*

¶¶ 113, 114. In fact, the English court ruled that by "purporting to act as an agent of [Cape] without authority recognized in English law" the receiver commits a tort. *Id.* ¶¶ 111, 112.[7]

Other foreign corporations have found themselves caught up in the South Carolina receivership morass, including mining companies DeBeers and Anglo-American. *See* Daniel Fisher, *It's Big Diamond vs. Local Lawyer in South Carolina Showdown*, Legal Newsline, July 22, 2025.

The intervention of this Court is needed to address this extraordinary delegation of judicial power in South Carolina, which is emblematic of the imbalanced litigation environment in the state's asbestos litigation, has caused strife for businesses and insurers, and is now raising international concern.

CONCLUSION

For these reasons, *amici curiae* respectfully request that this Court grant the Petition.

Respectfully submitted,

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[7] Following this ruling, an English court reportedly ordered the receiver to pay one million British pounds (about $1.3 million) to compensate Cape for its legal fees. *See* Daniel Fisher, *Carolina Lawyer Tasked with Mining for Asbestos Money Hit with $1.3M U.K. Penalty*, Legal Newsline, Apr. 9, 2025 (updated May 28, 2025).

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