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

RESPONDENT DONNA B. WELCH'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, where a state court has personal jurisdiction over a defendant who engages in "conspicuous misconduct" in litigation, the Due Process Clause prohibits the appointment of a receiver imbued with limited authority to investigate and act with respect to the defendant's in personam contractual rights directly related to the litigation.

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INTRODUCTION

In this "atypical and extraordinary" case, the South Carolina Supreme Court upheld a trial court's determination that Petitioner Atlas Turner acted with "contemptuous disregard" when it "refused to abide by court orders requiring it to answer basic information" and sought "to evade its responsibilities as a civil litigant." Pet. App. 19a–20a, 29a. The court concluded that Atlas's conduct risked depriving Respondent Donna B. Welch, whose husband died as a result of exposure to Atlas's asbestos-containing products, of the ability to recover on any judgment she obtained against Atlas. Further, the court found that Atlas's conduct reflected a strategy designed to keep plaintiffs across the country from recovering against Atlas by incurring defaults and "compromis[ing] its potential insurance coverage." *Id.* 20a.

Finding sufficient evidence that Atlas "engaged in moral fraud against the trial court, the state of South Carolina," and Mrs. Welch, *id.*, the court upheld the trial court's striking of Atlas's answer, and its subsequent appointment of a third-party receiver to protect Mrs. Welch's ability to recover on a future judgment. At the same time, however, the court narrowed the receiver's powers to investigating whether and to what extent Atlas had insurance that could cover a default judgment in favor of Mrs. Welch, and, should he identify any such insurance, making claims on Atlas's behalf. The Supreme Court further held that only these "insurance assets," which the trial court had held constituted property within South Carolina, were properly within the receivership estate. Further, the Supreme Court made explicit that the receiver did *not* have a right to take over operation of the company. And it emphasized that pre-judgment

receiverships should *not* be imposed by lower courts in the state as a matter of course.

This narrow, fact-bound decision in an interlocutory appeal bears no connection to the broad question that Atlas asks this Court to address: whether the Due Process Clause allows courts with personal jurisdiction over a defendant to exercise in rem jurisdiction over that defendant's out-of-territory property. Whatever the answer to that question may be, the South Carolina Supreme Court did not purport to answer it in its non-final decision in this case. In fact, Atlas did not even raise that question below, where its briefs did not mention the Due Process Clause or the phrase "in rem." Instead, Atlas focused on whether, as a matter of state law, South Carolina statute authorized the receivership at issue and whether Atlas's conduct warranted the imposition of sanctions.

That the parties have not briefed and the lower courts have not considered the question raised by the petition is no oversight. Rather, it reflects that the sole assets subject to the receivership here are potential contractual insurance rights that are held in personam, not in rem. This fact distinguishes this case from the cases on which Atlas relies. Further, as the trial court recognized, as a matter of state law, the intangible rights at issue—rights to defense and indemnity in a South Carolina action arising out of injury to a South Carolina resident as a result of exposure to Atlas's asbestos-containing products in South Carolina—are present in South Carolina. Because this case involves neither extraterritorial property nor in rem jurisdiction at all, it is not a suitable vehicle to consider when a court may exercise in rem jurisdiction over extraterritorial property.

Atlas spends much of the petition talking about *other* receiverships—receiverships imposed without the benefit of the South Carolina Supreme Court's explicit direction in this case that receiverships before judgment should *not* "be used in the typical default case" and that such receiverships do not automatically carry with them the right to "'take over' operation of [a] company." Pet. App. 28a–29a. But other cases not before this Court do not justify review of the South Carolina Supreme Court's approval of the narrow receivership in this case.

STATEMENT OF THE CASE

Atlas's strategic default

Atlas, a manufacturer and seller of asbestos and asbestos-containing products, has frequently been sued in United States courts for "allegedly causing serious injury to American workers and citizens related to the pernicious products it sold for profit even after the lethal risk these products posed was known." Pet. App. 19a. In 1985, after several years of defending these cases on the merits, Atlas "elected to adopt a strategic 'posture' of minimal engagement, with its insurers (acting either in concert with Atlas or independently) withdrawing their defense of Atlas, resulting in the entry of default judgments against Atlas in asbestos litigation across the country." ROA.1854.[1] Atlas has deployed this strategy in dozens of cases around the country in a two-step tactic. First, it moves to dismiss for lack of personal jurisdiction based on the theory that its sales of goods in a given jurisdiction does not provide a sufficient basis to

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[1] "ROA" cites are to the record on appeal in the South Carolina Court of Appeals.

exercise specific personal jurisdiction over claims related to those goods. Pet. App. 19a; ROA.1857–88.[2] "When that ploy fails, Atlas Turner's version of due process is to refuse to abide by court orders," including orders relating to jurisdictional discovery. Pet. App. 19a.

Atlas followed that strategy here, after Melvin Welch and his wife commenced this action against Atlas and other asbestos manufacturers, sellers, and distributors in the Richland County Court of Common Pleas in July 2022.[3] The complaint alleges that Mr. Welch suffered mesothelioma and other lung damage as a result of his exposure to asbestos and asbestos-containing products manufactured, sold, and distributed by the defendants in South Carolina, and includes claims sounding in negligence, strict liability, breach of warranty, and fraudulent misrepresentation.

Atlas first moved to dismiss, and later for summary judgment, on the basis of lack of personal jurisdiction, including an affidavit from an attorney named Richard Dufour, who made various representations as to Atlas's operations—past and present. Dufour's affidavit included, for example, statements that "Atlas Turner, Inc., has no records of

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[2] *See, e.g.*, *Carre v. ACandS, Inc.*, No. CIV. A. 85-1737, 1986 WL 537, at *1 (E.D. Pa. Dec. 29, 1986) (rejecting Atlas Turner's personal jurisdiction argument); *In re Conn. Asbestos Litig.*, 677 F. Supp. 70, 72–76 (D. Conn. 1986) (same); *McDaniel v. Armstrong World Indus.*, 603 F. Supp. 1337, 1341–45 (D.D.C. 1985) (same).

[3] Mr. Welch died from mesothelioma in May 2023, and his wife, Donna, now maintains this action in both her personal capacity and as personal representative of her late husband's estate.

sales to any company in South Carolina prior to 1968," and that "Atlas Turner, Inc. never manufactured or sold asbestos containing friction products such as automobile brakes, clutches, or gaskets." ROA.752.

In opposition, the Welches produced evidence that Atlas had supplied asbestos insulation to the South Carolina plant in which Mr. Welch worked. The Welches also served discovery on Atlas, including a notice pursuant to South Carolina Rule of Civil Procedure 30(b)(6), seeking the deposition of a corporate representative as to, among other things, Atlas's past and current connections to South Carolina—including on the topics addressed in the Dufour affidavit as well as information about insurance policies that might apply to Mr. Welch's injuries. Atlas did not respond to the Welches' discovery requests other than to file motions for a protective order—claiming that, despite the Dufour affidavit, it could not produce anyone that could testify as to Atlas's contacts or lack thereof with South Carolina, and, in an argument inconsistent with decisions from both this Court and the Canadian Supreme Court, that a Quebec "blocking" law prohibited it from complying with discovery requests. *See* Pet. App. 9a–11a (quoting, among other cases, *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 544 n.29 (1987) (addressing blocking laws generally); *Hunt v. Lac d'Amiante du Québec Ltée*, [1993] 4 S.C.R. 289, 327–331 (in case involving Atlas, holding same blocking law *ultra vires* to the extent it governed discovery outside Quebec)).

At an April 2023 hearing, the trial court denied Atlas's personal-jurisdiction related motions, finding that the Welches had produced sufficient evidence to

support personal jurisdiction. ROA.517–20. At that same hearing, the court directed Atlas to produce a Rule 30(b)(6) witness for a deposition. ROA.520–21. In response, Atlas's counsel stated: "My client will not have a witness available tomorrow or ever." ROA.521. Atlas's counsel also repeated its view that, as a Canadian company, Atlas was not "subject to the subpoena power of the Court." ROA.524. The court advised that if Atlas did not produce a Rule 30(b)(6) witness at the scheduled deposition, "further action will be taken." ROA.523.

Atlas did not appeal the trial court's ruling on personal jurisdiction or its refusal to quash the subpoena. Rather, it simply refused to comply.

The trial court's remedy to protect the impending judgment

"In an attempt to resolve Atlas' intransigence," the trial court held a status conference to ascertain "whether Atlas would participate in discovery or otherwise comply with [the trial court]'s orders." May 11, 2023 Order (ROA.001). At that conference, "it was clear to [the court] that Atlas does not intend to participate in this matter and that [the court's] orders on discovery will continue to be ignored." *Id.* The court thus held Atlas in contempt, and ordered the parties to brief the appropriate sanctions. *Id.*

The Welches requested that the court strike Atlas's answer, and then, as a result of the default, appoint a receiver to marshal Atlas's insurance assets to ensure that the ensuing default judgment could be satisfied, pointing to evidence of Atlas's "scheme to avoid its legal responsibilities to persons injured from using" the asbestos-containing products they sold, by deciding "to simply contest personal jurisdiction and,

where it loses that battle … refus[ing] to participate in cases in which" it is a defendant. ROA.1477–78. This attempt to evade jurisdiction, they argued, were part of an "intentional scheme to defraud its creditors," i.e., workers like Mr. Welch who were exposed to, and injured by, asbestos-containing products manufactured and/or sold by Atlas. ROA.1477.

In opposition, Atlas argued that the South Carolina receivership statute, S.C. Code Ann. § 15-65-10, was inapplicable for a variety of reasons, including because Atlas had no property within South Carolina. ROA.1502–05. It also argued that the trial court lacked personal jurisdiction over Atlas, repeating the arguments the court had already rejected. ROA.1506–13. Atlas made no argument that the proposed receivership would constitute an unconstitutional exercise of in rem jurisdiction.

The court addressed the Welches' motion in two orders. First, as a sanction for its "intentional and willful refusal to participate in discovery," the court struck Atlas's answer, thus leaving Atlas in default. June 20, 2023 Order (ROA.009). The following day, it appointed a receiver "over the Insurance Assets of Atlas," and directed individuals and entities with relevant information "to cooperate with this Court's receiver in locating and marshalling those assets." Pet. App. 31a.[4] The statutory requirements for receivership were satisfied, the court found, given Atlas's "active wrongdoing and illegal refusal to comply with" court orders. *Id.* 33a. Further, the court

[4] The court defined those assets to include insurance policies, proceeds of those policies, claims relating to those policies, and information relating to those policies. Pet. App. 34a n.4.

held that the receivership statute's reference to "property within this state" did not bar the receivership, because that provision simply prevented state courts from "asserting jurisdiction over … property located in another jurisdiction." *Id*. Here, the court explained, the receiver was not being vested with title to property at all, but with Atlas's contractual "rights of action." *Id.* 34a (citing *Hirson v. United Stores Corp.*, 263 A.D. 646 (N.Y. App. Div. 1942)). Alternatively, to the extent that insurance assets existed, they were subject to South Carolina's jurisdiction pursuant to South Carolina Code Ann. § 38-61-10, because they were "intended to protect… lives, interests and property within South Carolina." *Id.* 34a–35a. Addressing the sole due process argument raised by Atlas—that the appointment of a receiver was contrary to due process "because the court lacks personal jurisdiction over Atlas," ROA.1506 (capitalization altered)—the court found that Atlas's sales of its products to South Carolina provided a sound basis to exercise jurisdiction. Pet. App. 36a.

In setting out the powers of the receiver, the court did not vest the receiver with any property rights. Rather, it gave the receiver "the power and authority [to] fully administer all insurance assets" of Atlas. *Id*. It also gave the receiver associated investigatory powers. *Id.* 36a–37a.

Appellate proceedings

Atlas appealed the trial court's orders holding it in contempt, striking its answer, and appointing the receiver (and its denial of related motions to reconsider). It did not appeal the trial court's orders on personal jurisdiction or discovery.

On appeal, Atlas raised no due process argument and did not reference in rem jurisdiction. Rather, it argued that, as a matter of South Carolina law, the receivership statute was inapplicable because "Atlas Turner has no property in South Carolina" and South Carolina statutes do not have extraterritorial effects. Appl't Br. 6–7. It also argued that other requirements of the state receivership statute were not satisfied. *Id.* at 8–12. And it argued that the trial court abused its discretion in holding it in contempt and in imposing "too severe" a sanction. *Id.* at 12–17. In its short reply brief, Atlas again made arguments as to construction of the receivership statute without reference to due process. Appl't Reply 1–4. In so doing, it acknowledged that the trial court had ruled "that Atlas Turner has property in South Carolina," but it argued that that holding relied on a misconstruction of South Carolina Code section 38-61-10.

The South Carolina Supreme Court subsequently certified the appeal for review without determination by the Court of Appeals. Pet. App. 5a. In a unanimous opinion, the South Carolina Supreme Court affirmed in part and reversed in part. First, the court engaged in a lengthy analysis of Atlas's arguments as to the propriety of its litigation conduct, explaining that those arguments had no support in fact or law and affirming the decision to issue sanctions. *Id.* 6a–13a. In so doing, it noted the incongruity of Atlas's reliance on factual assertions in the Dufour affidavit in arguing the court lacked personal jurisdiction, then later refusing to produce a Rule 30(b)(6) witness on the grounds that "the historical facts of [Atlas's] corporate conduct are unknown to anyone." *Id.* 8a. And, while "mindful of comity concerns," the court considered and rejected Atlas's argument about the

Quebec blocking law as inconsistent with this Court's precedent in S*ociété Nationale*. *Id*. 9a–12a (citing 482 U.S. at 540 n.25 and 544 n.28, n.29).

Second, the court found "that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and [Respondent Welch]," *id.* 20a, thus making this one of "the rarest of cases" where the appointment of a receiver was merited before judgment, *id.* 17a. The court found the trial judge had properly exercised its discretion, noting that "Atlas Turner's strident and outspoken refusal to comply with the trial court's orders convinces [the court] it will continue to act in bad faith as the case against it progresses." *Id.* 19a.

Next, the court considered Atlas's arguments that "the trial court had no jurisdiction to appoint a Receiver because it neither owns nor possesses any property within the borders of South Carolina." *Id.* 21a. Whether or not there was property within South Carolina, the court explained, was immaterial, because courts sitting in equity may "order a party over whom it has personal jurisdiction to convey and produce its property and assets, regardless of where they may be located." *Id.* 22a. Recognizing that a receiver could be effective even in a situation where there was no property within the state, the court also cited cases in which receivers had exercised a defendant's rights with respect to property outside the state. *Id.* at 23a–24a (citing *Madden v. Rosseter*, 187 N.Y.S. 462, 462–63 (N.Y. 1921), and *United States v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962)).

Finally, the court turned to the scope of the Receiver's authority, holding that the only assets properly within the receivership estate were those

"that may cover Mr. Welch's injuries," because those were the only insurance assets subject to South Carolina's jurisdiction. *Id.* 26a. For that reason, the court found "it appropriate to shrink the scope of the Receivership order" to apply *only* to "insurance policies that have the potential to cover Mr. Welch's injuries," and not to any other assets. *Id.* The court also made explicit that "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.* 28a. It concluded by "emphasiz[ing] that … the appointment of a Receiver before judgment … is an extraordinary remedy reserved for the most extraordinary cases" and should not "be used in the typical default case." *Id.* 29a.

REASONS FOR DENYING THE WRIT

Because the Court lacks jurisdiction to review the South Carolina Supreme Court's interlocutory decision affirming the appointment of a receiver, because this case does not involve the exercise of in rem jurisdiction over extraterritorial property, because neither Atlas nor the South Carolina Supreme Court addressed the propriety of such jurisdiction in prior proceedings, and because this case is not a proper vehicle to address Atlas's arguments about *other* receiverships, the petition should be denied.

I. This Court lacks jurisdiction over this interlocutory appeal.

This Court's appellate jurisdiction with respect to state court decisions is limited to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). "To qualify as final, a state court judgment must be

'an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 12 (2020) (quoting *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997)). No such judgment or decree has been issued in this case. Atlas seeks review of a decision that modified a *pre-judgment* receivership, designed only to identify and, if located, preserve assets to be used to satisfy a later judgment. *See* Pet. App. 17a– 21a.

While conceding that "there will be 'further proceedings in the lower courts to come,'" Pet. 1, Atlas argues that this case falls into one of the "exceptional categories of cases" in which this Court has found jurisdiction despite the lack of a final judgment. *Johnson v. California*, 541 U.S. 428, 429 (2004) (per curiam). Specifically, Atlas asserts that a "'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." Pet. 1 (quoting *Moore v. Harper*, 600 U.S. 1, 16 (2023)). But this is not so.

In this case, the receiver has been granted the authority to do two things. First, the receiver has the authority to investigate whether Atlas has any insurance assets that may be relevant to Mrs. Welch's claims. Second, if such assets are identified, the receiver has authority to "bring the Insurance Assets to bear in covering Mr. Welch's injuries." Pet. App. 27a. Nowhere in the petition does Atlas challenge the South Carolina courts' jurisdiction with respect to the first of these tasks; its objection goes solely to the second. *See, e.g.*, Pet. 21, 22, 26 (arguing the South Carolina Supreme Court erred in allowing receiver to control Atlas's insurance rights). But it remains uncertain if the receiver will ever get to that task. In

a recent report, the receiver indicated that the relevant insurance policies had been bought out, and that it is unclear whether any cash from those buyout transactions remains. *See* Receiver's Rep't on Current Receiverships on S.C. Asbestos Docket at 42, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pls. July 11, 2025).

Thus, this case is not, as Atlas suggests, one where "nothing that could happen in the course of the [receivership] … would foreclose or make unnecessary" a decision on the question presented. Pet. 1–2 (citing *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975)). To the contrary, if the receiver concludes Atlas has no relevant insurance assets, the question whether the receiver has jurisdiction to marshal those nonexistent assets will be moot. *See Jefferson*, 522 U.S. at 82 (finding no jurisdiction where resolution of factual questions could moot question presented).

In addition, Atlas's petition assumes that the South Carolina courts have conclusively resolved that they have personal jurisdiction over it. *See*, *e.g.*, Pet. i, 2, 3, 9, 25. While Mrs. Welch agrees, that question has not been finally resolved by the South Carolina courts. Rather, recognizing that the question of personal jurisdiction was *not* before it, the South Carolina Supreme Court stated that its opinion addressing the receivership should not "be construed as affecting the merits of any later appeal of the personal jurisdiction issue." Pet. 16a. The *Cox* exception on which Atlas relies thus "cannot apply here because the [South Carolina] courts have not yet conclusively adjudicated a personal-jurisdiction defense that, if successful, would 'effectively moot the federal-law question raised here.'" *Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1088–89

(2022) (Thomas, J., concurring in denial of certiorari) (quoting *Jefferson*, 522 U.S. at 82).

II. Neither Atlas nor the South Carolina Supreme Court addressed the question presented in prior proceedings.

This Court is one "of review, not first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Nonetheless, Atlas asks this Court to grant certiorari to address a question that was neither raised before nor decided by the South Carolina Supreme Court. Atlas's request should be denied.

In briefing before the South Carolina Supreme Court, Atlas did not argue that the receivership constituted an unconstitutional exercise of in rem jurisdiction. In fact, the terms "due process" and "in rem" appeared nowhere in either its principal or reply brief, and Atlas's only reference to the Constitution concerned the Commerce Clause. Appl't Br. 11. While Atlas asserted that it lacked property in South Carolina, it did so as part of an argument about state law: that in-state property was necessary for a receivership under one of the prongs of the South Carolina statute. *See id.* at 7 (arguing "our receivership statute only allows a South Carolina court to appoint a receiver over the assets of a foreign corporation that are found "within this state" (quoting S.C. Code Ann. § 15-65-10(4)). The South Carolina Supreme Court did not address that argument, because it found a receivership was appropriate under a different prong of the receivership statute, S.C. Code Ann. § 15-65-10(5). Pet. 17a.

Not surprisingly given that Atlas did not raise below the question it asks this Court to address, the South Carolina Supreme Court did not address that

question. Atlas is wrong that the South Carolina Supreme Court held "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." Pet. 2. Rather, that court answered the question Atlas presented to it: whether, as a matter of state law (which codified equitable practice), a receiver is powerless to act where a defendant lacks property within South Carolina. *See* Pet. App. 21a. The court answered that question no, explaining that "[e]quity 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," and citing multiple cases recognizing the broad power of a receiver at equity. *Id.* 22a (citing *Penn v. Lord Baltimore* (1750) 1 Ves. Sr. 444; *Massie v. Watts*, 10 U.S. 148, 158–63 (1810); *Muller v. Dows*, 94 U.S. 444, 449 (1876); *Booth v. Clark*, 58 U.S. 322, 332 (1854)) Atlas concedes that the court's statement as to the scope of equitable authority was correct and, indeed, acknowledges that the court could have ordered it "to turn over" the insurance assets at issue here. Pet. 22.

In concluding that the state statutory requirements were satisfied, the South Carolina Supreme Court did not address whether, by acting upon Atlas's contractual rights, the receiver would be exercising in rem or in personam jurisdiction. Atlas's suggestion that this Court infer that the South Carolina Supreme Court resolved this unbriefed question based on its citation to "in rem cases," Pet. 21, only highlights that the issue is not squarely presented. The phrase "in rem" appears only once in the court's decision—in a quotation in a parenthetical at the end of a string cite. Even then, the parenthetical

reference is not in the discussion of jurisdiction, but in the part of the opinion where the court *narrowed* the scope of the receivership. Pet. App. 26a (citing *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019)). There, the citation, to the background section of a Fifth Circuit opinion on an unrelated topic, stood for the undisputed proposition that insurance policies can form part of a receivership estate. *See Stanford Int'l Bank*, 927 F.3d at 840.

Contrary to Atlas's assertion, the South Carolina Supreme Court also did not hold that a court with personal jurisdiction could "appoint a receiver with authority 'to collect and accumulate' that corporation's property, *wherever* that property is located." Pet. 21–22 (citing Pet. App. 23a, 27a). Again, the quoted language comes from the section of the opinion where the court *narrowed* the scope of the receivership. The opinion more fully states that "a Receiver has the right and duty to collect and accumulate the property and assets of the defendant *specified in the appointment order*." Pet. App. 27a (emphasis added). This is an unobjectionable statement about how receivership works in general. *Cf.* 75 C.J.S. Receivers § 123 ("The appointing court defines the powers of a receiver[.]"); 2 Fed. R. Civil P., Rules and Commentary § 66:10 ("The receiver's powers and authority are established by the order of appointment."). The court's statement does *not* suggest that any property and assets whatsoever are *always* properly included within a particular appointment order. We know that to be the case since, in the paragraph immediately following, the court went on "to shrink the scope of the Receivership order." Pet. App. 27a.

How the court went on to shrink the scope of the order is fatal to Atlas's attempt to broaden the court's holding: The court held that the appointment order properly included only "the power to pursue claims *in South Carolina's* jurisdiction to bring the Insurance Assets to bear in covering Mr. Welch's injuries," not "every claim relating to Atlas Turner's assets and business activities." *Id.* (emphasis added). That is, the court provided the very geographic hook that Atlas argues is constitutionally required.

This point becomes even more clear when considered in the context of the trial court's discussion of South Carolina insurance law, S.C. Code Ann. § 38-61-10. The trial court had held that, under that statute, insurance policies that are "intended to protect the lives, interests and property within South Carolina" are subject to South Carolina's jurisdiction. Pet. App. 34a–35a (citing *Sangamo Weston v. Nat'l Sur. Corp.*, 414 S.E.2d 127, 130 (S.C. 1992)). As Atlas itself acknowledged in its state court appellate briefing, in so holding, the trial court (in Atlas's view, erroneously) "construe[d] [its] insurance assets as *property in* South Carolina." Appl't Reply Br. 2; *see also* Appl't Br. 11 (arguing that the trial court erred in concluding that the insurance assets were "property in South Carolina").[5] As discussed below, *see* part III.B, *infra*, that state law conclusion was correct. And although it does not reference section 38-61-10 explicitly, the South Carolina Supreme Court's discussion of which insurance assets were properly

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[5] Atlas's assertion that the trial court did not "purport[] to find that Atlas Turner's contractual insurance rights are located in South Carolina," Pet. 20, is both wrong and incompatible with the arguments it made below.

included in the receivership estate goes to this aspect of the trial court's decision. To the extent that Atlas's insurance policies were intended to protect against claims brought in South Carolina, based on harm that occurred in South Carolina as a result of Atlas's distribution of products to South Carolina, those policies were within South Carolina's jurisdiction—as the South Carolina Supreme Court recognized in holding that the receivership appropriately included contractual rights under those policies. Pet. App. 27a. Atlas's *other* insurance assets, which did not have that same South Carolina nexus, were excluded from the receivership estate. *Id.*

III. The facts of this case do not implicate the question presented.

Not only was the question presented by the petition not raised by Atlas or addressed by the South Carolina Supreme Court, but it is not implicated by the facts of this case. While the petition assumes that (1) the insurance assets at issue are subject to in rem jurisdiction, and (2) that the insurance assets were extraterritorial, neither assumption is correct. The sole assets at issue here are contractual rights—which are subject to in personam, not in rem, jurisdiction. And to the extent that those intangible rights are "present" anywhere, they are present in South Carolina.

A. Jurisdiction over the insurance assets is in the nature of in personam jurisdiction over Atlas, not in rem.

As Atlas recognizes, "the South Carolina Supreme Court upheld the Receiver's powers over Atlas Turner's contractual insurance rights for purposes of this case." Pet. 8 n.2. That power is an exercise of in

personam jurisdiction over Atlas, not in rem jurisdiction over any property.

"An insurance policy and all rights arising from the policy are controlled by principles of contract, rather than property law." *Mazon v. Camden Fire Ins. Ass'n*, 389 S.E.2d 743, 744 (W. Va. 1990) (citing 10A Michie's Jurisprudence *Insurance* § 17 (1977)). Like all contract rights, rights under insurance policies are held in personam: "that is, they bind only the parties to the contract." Thomas W. Merrill & Henry E. Smith, *The Property/Contract Interface*, 101 Colum. L. Rev. 773, 776–77 (2001). "Property rights, on the other hand, are in rem—they bind 'the rest of the world.'" *Id.* at 777. As a corollary, actions to enforce or adjudicate contractual insurance rights are exercises of in personam jurisdiction. *See, e.g.*, *Harnischfeger Sales Corp. v. Nat'l Life Ins. Co.*, 72 F.2d 921, 923 (7th Cir. 1934) (recognizing that both claims to cancel an insurance policy and those for recovery of benefits "are strictly in personam"); *Hindorff v. Sovereign Camp of Woodmen of the World*, 129 N.W. 831, 833 (Iowa 1911) (holding that action on insurance policy was "not in rem, but in personam").

Although receiverships *may* be exercises of in rem or quasi in rem jurisdiction, this receivership was not. *Cf. Brill & Harrington Invs. v. Vernon Sav. & Loan Ass'n,* 787 F. Supp. 250, 253 (D.D.C. 1992) (rejecting argument that a receivership is always an in rem remedy and holding that the receivership at issue was "essentially in personam relief"); *State ex rel. Petro v. Gold*, 850 N.E.2d 1218, 1232 (Ohio Ct. App. 2006) (holding that receivership action was one in personam). By directing a receiver to investigate and assert Atlas's personal rights, the court was acting on those personal rights; authorizing the receiver to

exercise Atlas's powers under Atlas's insurance policies did not bind the rest of the world. Thus, personal jurisdiction over Atlas provided the South Carolina courts with sufficient authority to act.

This conclusion is consistent with other cases involving jurisdiction and contractual insurance rights. In *Provident Mutual Life Insurance Co. of Philadelphia v. Ehrlich*, 508 F.2d 129 (3d Cir. 1975), for example, a Pennsylvania court had established a receivership over real and personal property of a husband who had absconded from his wife and children to another state. *Id.* at 131. A Pennsylvania insurance company refused to allow the husband to make changes to his life insurance policy, taken out while he was a Pennsylvania resident, on the basis of the receivership. *Id.* at 131–32. The Third Circuit, however, held that, absent personal jurisdiction over the husband (then a Nevada resident), the Pennsylvania court (and thus the receivership) lacked jurisdiction over the husband's contractual rights under the policy. It explained, "what is involved is a right of the insured, personal to him, to make a change pursuant to the contract." *Id.* at 134. As such, "personal jurisdiction over the insured" was necessary for the receiver to control those contractual rights. *Id.* So too here, personal jurisdiction over the insured was necessary (and sufficient) to control Atlas's rights under its insurance contracts—personal jurisdiction which the trial court found present and that Atlas does not challenge. *See also Robinson v. Cabell Huntington Hosp. Inc.*, 498 S.E.2d 27, 34–35 (W. Va. 1997) (rejecting notion that quasi in rem jurisdiction could exist over an insurance policy apart from personal jurisdiction over policyholder).

That jurisdiction to control contractual insurance rights is an exercise of personal jurisdiction over the rightsholder is confirmed by this Court's decision in *Rush v. Savchuk*, 444 U.S. 320 (1980), relied upon by Atlas, *see* Pet. 24. There, the Court held that a state court could not exercise jurisdiction over an out-of-state resident based on the notion that the insurance policy was "present" in the state. 444 U.S. at 327–33. In so doing, the Court explained that, in an action to garnish an insurance policy, only the defendant's minimum contacts with the forum, not "the fictitious presence of the insurer's obligation," can provide a basis for jurisdiction. *Id.* at 328–30. By that same logic, South Carolina's personal jurisdiction over Atlas is what determines whether the State may exercise control over its insurance assets—not the theoretical situs of those intangible assets.

B. To the extent they are located anywhere, the insurance assets are located in South Carolina.

The facts of this case do not concern the question presented in Atlas's petition for a second reason: the insurance assets are located in South Carolina. Under applicable state law, to the extent the insurance covers Mrs. Welch's claims, it constitutes property within South Carolina. Pet. App. 34a. And because, regardless of the nature of jurisdiction implicated, there is no constitutional bar to South Carolina's exercise of jurisdiction over property within South Carolina, the question that Atlas asks this Court to resolve is academic.

The trial court's holding on this point was neither addressed by the South Carolina Supreme Court nor discussed in the petition. That, to reach Atlas's

question presented, this Court would have to consider (and reject) the trial court's holding on an issue not addressed by the South Carolina Supreme Court or by Atlas in the petition is yet another reason why this case is unsuitable for review. This is particularly true because the issue is a matter of state law. *See Butner v. United States*, 440 U.S. 48, 54–58 (1979) (recognizing that "property interests are created and defined by state law" and "declin[ing] to review the state-law question" as to property rights); *Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1131 (9th Cir. 2010) (looking to state law "[t]o determine the location of an intangible right to payment") (citing *GP Credit Co., LLC v. Orlando Residence, Ltd.*, 349 F.3d 976, 979–81 (7th Cir. 2003), and *Levin v. Tiber Holding Corp.*, 277 F.3d 243, 249 (2d Cir. 2002)). "This Court does not generally review decisions premised on state law." *Wilson v. Hawaii*, 145 S. Ct. 18, 23 (2024) (Thomas, J., concurring in denial of certiorari).

Regardless, the trial court's treatment of the contract rights at issue as being "within" South Carolina was correct. Intangible property "has no physical location," and "modern situs rules acknowledge that intangibles may be located in multiple situses." *Timoria LLC v. Anis*, __ A.3d __, No. 2025-0883, 2025 WL 2827657, at *7 (Del. Ch. Oct. 6, 2025) (citation omitted); *see Hanson v. Denckla*, 357 U.S. 235, 247 (1958) ("[T]his Court has concluded that 'jurisdiction' over intangible property is not limited to a single State."). While "[d]etermining the situs of intangible property," like Atlas's rights to make claims on its insurance policies, "for jurisdictional purposes long has been a source of difficulty and confusion," Jurisdiction Based on Property—Intangibles, 4A Fed. Prac. & Proc. Civ. § 1071 (4th

ed.), courts agree that "[t]he selection of a situs for intangibles must be context-specific, embodying a 'common sense appraisal of the requirements of justice and convenience in particular conditions.'" *Af-Cap Inc. v. Republic of Congo,* 383 F.3d 361, 371 (5th Cir. 2004) (quoting *U.S. Indus., Inc. v. Gregg,* 540 F.2d 142, 151 n. 5 (3rd Cir. 1976)); *see also Office Depot Inc. v. Zuccarini*, 596 F.3d 696, 702 (9th Cir. 2010) (quoting *Af-Cap*).

The trial court's determination that, under South Carolina Code § 38-61-10 and the South Carolina Supreme Court's decision in *Sangamo Weston*, Atlas's rights to defense and indemnity against claims by South Carolina residents, brought in South Carolina courts, and under policies subject to South Carolina law, are present in South Carolina is consistent with such a "common sense appraisal." The petition presents no argument as to why this Court should revisit that interpretation of state law. Notably, Atlas has not at any point identified where it believes the assets *are* located beyond its cursory "general claim that all property it owns rests outside the borders of the state," Pet. App. 22a, and its refusal to comply with the trial court's discovery orders makes an assessment of the veracity of that assertion impossible.

IV. There is no disagreement among the lower courts.

Contrary to Atlas's assertion, this case does not implicate "an important longstanding disagreement among lower courts." Pet. 2. Atlas does not point to any other decision that addresses the inclusion of insurance rights, or any other in personam rights, in

receiverships, much less one that reflects disagreement with the decision below.

In the most analogous case Mrs. Welch has been able to identify, *Hotel 71 Mezz Lender LLC v. Falor*, 926 N.E.2d 1202 (N.Y. 2010), the New York Court of Appeals considered the appointment of a receiver with the power "to administer defendants' intangible personal property for purposes of satisfying" a judgment, where that intangible property consisted of uncertificated ownership interests in out-of-state entities. *Id.* at 1212. Similar to the facts here, the trial court had imposed a receivership in response to the "defendants' disregard for [the court]'s discovery orders," and did not confer power over "the day-to-day operation of a foreign corporation," but merely granted the receiver "the authority to marshal" intangible ownership interests in support of a future judgment. *Id.* Applying this Court's decision in *Harris v. Balk*, 198 U.S. 215 (1905), the court held that a defendant's intangible interests, which he "possesses or has custody over, travel with him," and thus that personal jurisdiction over the defendant supported jurisdiction over the intangible assets. 926 N.E.2d at 1210–12. While the property at issue in *Hotel 71* was held in rem, not in personam, the New York court's conclusion that that intangible property was properly within a New York court's jurisdiction is consistent with the decision in this case.

The decision here is also consistent with *Petro*, where an Ohio appellate court held that a court "that has in personam jurisdiction can … appoint a receiver to operate, oversee, and administer the business and assets of a charitable organization when the assets are located outside the forum state." 850 N.E.2d at 1231–32.

The three cases on which Atlas relies as evidencing a conflict involve meaningfully different facts. None involve receiverships, and all involve property rights held in rem. Two of the cases, which involved the transfer of interests in real property located in another jurisdiction, stand for no more than the proposition that a state court cannot directly affect title to real property in other jurisdictions, although it may adjudicate the parties' interests in those properties. *In re Marriage of Kowalewski*, 182 P.3d 959 (Wash. 2008) (addressing jurisdiction to bestow title to real property); *Gammon v. Gammon*, 684 P.2d 1081, 1085 (Mont. 1984) (same). Whether a court can directly affect a change to property rights held in rem is irrelevant to this case, where the court did not purport to do so in transferring control of rights to the receiver. *Cf. Emmons v. Emmons*, 355 N.W.2d 898, 902 (Mich. Ct. App. 1984) (recognizing that "a receiver appointed by a Michigan court may not transfer out-of-state property" but finding receiver's management of that property while defendant retained title appropriate).

The third case cited by Atlas, *State v. Western Union Financial Services*, 208 P.3d 218 (Ariz. 2009), expressly recognizes that, under *Rush* and the cases that preceded it, "[i]f those with interests in [intangible] property are subject to in personam jurisdiction in the forum state, a court in that state undoubtedly has jurisdiction consistent with the Due Process Clause to enter orders relating to the property." *Id.* at 225. That conclusion is consistent with the decision of the South Carolina Supreme Court here. In *Western Union*, though, the court held that Arizona lacked jurisdiction over the wire transfers at issue given that Arizona lacked "in

personam jurisdiction over any owner or interest holder of any seized transfer." *Id.* at 220. That court did not address what Arizona's powers would be in a case like this one, where the court *does* have personal jurisdiction over the interest holder.

V. This case is not a suitable vehicle to address broader concerns about receiverships.

Reflecting that this case does not present a legal question warranting this Court's review, Atlas devotes much of its petition to discussion of *other* receivership orders issued by the same trial court. *See*, *e.g.*, Pet. 4, 5, 6, 28–31. But those orders and the facts of those cases are not before this Court. Moreover, those orders were issued prior to the South Carolina Supreme Court's opinion in this case—an opinion that "shr[a]nk the scope of the Receivership Order," "emphasize[d]" that "the appointment of a Receiver before judgment" should not "be used in the typical default case," and made clear that the receivership in this case does *not* properly include "the right to 'take over' operation of [a] company." Pet. App. 28a, 29a. This Court should assume the lower state courts will take the South Carolina Supreme Court's guidance seriously.

Atlas's argument that one of those other receiverships has created "international tension," Pet. 28–31, is irrelevant to this case. Atlas provides no basis to believe that the limited receivership here creates any such tension, beyond pointing to fact that Atlas is a Canadian-chartered company. Such an argument could be made by any international corporation that does business in the United States. But this Court has never suggested that a defendant's international incorporation leaves state courts

powerless over them where, as here, the requirements of personal jurisdiction are satisfied. *Cf. J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 885–86 (2011) (plurality op.) (applying "purposeful contacts" standard to determine whether foreign company could be sued in state court); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 444–49 (1952) (directing state court to apply general principles of personal jurisdiction to suit against Filipino corporation). And notably, the South Carolina Supreme Court made clear that it takes concerns about comity seriously: In addressing the only argument about Canadian sovereignty that Atlas made in the state courts, the Supreme Court, applying this Court's *Société Nationale* decision, concluded that enforcing discovery orders "would not undermine an important national interest of Canada." Pet. App. 9a–11a. Should parties in future cases raise foreign relations objections to particular receiverships, the South Carolina courts may similarly consider those objections under the appropriate legal frameworks.

In sum, in this case, where Atlas's "arguments throughout this case have been contrary to longstanding legal principles," *id.* 28a, where Atlas "has refused to abide by or honor its responsibilities under [the] process of civil law," *id.* 29a, and where the question presented in the petition was not raised below, review is unwarranted.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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