

IN THE
Supreme Court of the United States

CHARTER CONSOLIDATED, LTD., *et al.*,
Petitioners,

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, INDIVIDUALLY AND AS
SUCCESSOR IN INTEREST TO CAPE ASBESTOS COMPANY LIMITED,
BY AND THROUGH ITS RECEIVER PETER D. PROTOPAPAS, *et al.*,
Respondents.

ALTRAD INVESTMENT AUTHORITY S.A.S., *et al.*,
Petitioners,

v.

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SUCCESSOR IN INTEREST TO CAPE ASBESTOS COMPANY LIMITED,
BY AND THROUGH ITS RECEIVER PETER D. PROTOPAPAS, *et al.*,
Respondents.

**On Petitions for Writ of Certiorari
to the Supreme Court of South Carolina**

**BRIEF OF ATLANTIC LEGAL FOUNDATION
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICUS CURIAE*¹

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission for the past five decades has been to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. See atlanticlegal.org.

* * *

ALF has a long-standing interest in the constitutional limits on state-court power over out-of-state corporate defendants. This is a civil-justice interest under the rule of law for injured claimants and out-of-state defendants alike. In petitions now

¹ Counsel of record for all parties were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no party, counsel for a party, or person other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

pending, ALF has urged the Court to enforce those limits against consent-by-registration jurisdiction, *Samsung Electronics America, Inc. v. Brewer*, No. 26-4, and against lax enforcement of this Court’s personal-jurisdiction precedents, *Mead Johnson & Co. v. Greear*, No. 26-29. The South Carolina Supreme Court decision below implicates the same fundamental concern in a different and troubling form: A state court that cannot reach a solvent, out-of-state corporation under this Court’s jurisdictional precedents installs its own pre-judgment appointee to do so by seizing control of the corporation’s internal affairs, including its litigation decision making.

ALF files this brief to explain why the South Carolina “asbestos court” model raises a question of interstate federalism that only this Court can resolve, and why the Court should resolve it now. This brief does not repeat the two captioned petitions, which challenge the same decision of the South Carolina Supreme Court.² Instead, it addresses four topics: (i) this Court’s corporate-governance decisions on who controls a corporation’s litigation; (ii) the “recognition doctrine” that has governed foreign receivers since 1854; (iii) the South Carolina Supreme Court’s own cited authorities, which acknowledge that the “internal-affairs doctrine” is derived from the Constitution; and (iv) *First National City Bank v. Banco Para el Comercio Exterior de Cuba*,

² ALF is filing this brief in both *Charter Consolidated, Ltd. v. Cape Intermediate Holdings Ltd.*, No. 26-328, and *Altrad Investment Authority S.A.S. v. Cape Intermediate Holdings Ltd.*, No. 26-350. “Charter Pet.” and “Pet. App.” refer to the petition and its appendix in No. 26-328.

462 U.S. 611 (1983) (*Bancec*), on which the lower court relied.

SUMMARY OF ARGUMENT

The South Carolina Supreme Court conceded that a receiver who has not been recognized in a corporation's place of incorporation cannot control the corporation's internal affairs. But it called that limit "a choice of law principle," defined internal affairs under its own precedent, and found that the receiver's control over the litigation decisions of Respondent Cape Intermediate Holdings Limited (Cape or CIHL) falls outside the definition. The Third Circuit, reviewing an order by the same trial court appointing the same receiver, held that he needed recognition in the chartering state to displace the company's board of directors, and doubted that the Constitution permits anything else. See *In re Whittaker Clark & Daniels Inc.*, 176 F.4th 241, 257–59 (3d Cir. 2026), *petitions for cert. filed*, No. 26-159 (U.S. July 24, 2026), and No. 26-263 (U.S. Aug. 25, 2026). This split of authority is not about the meaning of internal affairs; it is about what draws the boundaries of state-court jurisdiction.

The Constitution does. The states' co-equal sovereignty limits each state's power over its sisters, and no state may alter those limits on its own. South Carolina has done exactly that. Corporations are creatures of the sovereign that charters them. Who speaks for the corporation, including whether it will sue, defend, or submit to another sovereign's courts, is a matter for the chartering sovereign's law. The South Carolina Supreme Court's own cited authority treats that rule as constitutional. And *Bancec*, the case the court relied on, distinguishes third parties' rights

against a corporation from the corporation's own decisions. This case is about the latter.

Recognition by the chartering sovereign is the channel through which a foreign receiver's authority must pass. That is so whether the corporation was chartered by a sister state or, like Cape, by a foreign nation. For more than 170 years this Court has distinguished a receiver, whose power stops at the border of the appointing court, from a successor who takes under the law of incorporation and is recognized elsewhere. The South Carolina receivership order at issue is designed to skip that step. It bars suit against Cape in any other court, including the courts of England, where Cape is incorporated, unless the receiver or the South Carolina court consents. And for two and a half years it declared, wrongly, that Cape had dissolved and forfeited its charter.

The South Carolina receivership model is not confined to asbestos, South Carolina, or companies chartered abroad. It manufactures jurisdiction by having the forum's officer accept service and answer for an absent defendant. It has been applied 16 times to out-of-state corporations, including a Texas corporation whose 1986 dissolution a South Carolina court purported to revoke. It is part of a process that, in the trial court's own words, "exists to serve South Carolina claimants," and it has already been extended to a post-judgment receivership one week after rehearing was denied. And it collides with the federal bankruptcy power on a line the court below says each forum may define for itself.

The breadth of the receiver's claimed powers shows why only a bright-line rule works: The South Carolina

courts answered the board’s objection with a conflict-of-interest qualification and left in place a decision-maker whose mandate is adverse to Cape itself. Only this Court can say who draws the line.

REASONS FOR GRANTING THE PETITIONS

I. The Internal-Affairs Limit Is a Constitutional Allocation of Sovereign Authority, Not the Forum’s Choice-of-Law Preference

Describing the Third Circuit’s holding in *Whittaker* that a South Carolina receiver who had not been recognized in the corporation’s home state “could not control the internal affairs of a foreign corporation,” the South Carolina Supreme Court acknowledged that “[n]o one would quarrel with this general principle.” Pet. App. 46a. Two pages later, however, the court purported to explain why its decision did not conflict with that principle: “The ‘internal affairs’ doctrine is a choice of law principle.” Pet. App. 48a. That assertion is wrong, and it conflicts directly with *Whittaker*, where the Third Circuit described the limit as a feature of “[o]ur system of federalism” and a matter of “constitutional infirmities.” *Whittaker*, 176 F.4th at 258–59. South Carolina treats it as a rule of its own conflicts law, and therefore its own to narrow. Which court is right decides whether the limit exists at all.

A. The Constitution allocates authority among the states, and this Court enforces the allocation

Petitioners have set out the territorial-limits canon, and amicus will not repeat it. One feature of it decides this case. The limits the Constitution places on each state for the benefit of its sisters are federal

law, “implicit in its structure and supported by historical practice.” *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 247 (2019). A state whose reach the Constitution limits does not define the limit for itself. *See id.* at 245–46. That is why “courts must sometimes referee disputes about where one State’s authority ends and another’s begins,” and why those disputes are resolved under “the Constitution’s horizontal separation of powers,” whatever clause the parties invoke. *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 375, 376–77 & n.1 (2023). The referee is this Court. It is not the state whose reach is in question.

B. Corporations are creatures of the sovereign that charters them

Start with who speaks for a corporation. That is a question of corporate governance, and this Court has said so. The rules governing when a shareholder must demand that the board act before suing on the corporation’s behalf “determine who has the power to control corporate litigation,” and for that reason “this aspect of state law relates to the allocation of governing powers within the corporation.” *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 101 (1991). They implement “the basic principle of corporate governance that the decisions of a corporation—including the decision to initiate litigation—should be made by the board of directors or the majority of shareholders.” *Daily Income Fund, Inc. v. Fox*, 464 U.S. 523, 530 (1984). And because “[c]orporations are creatures of state law,” it is state law “which is the font of corporate directors’ powers.” *Burks v. Lasker*, 441 U.S. 471, 478 (1979) (quoting *Cort v. Ash*,

422 U.S. 66, 84 (1975)). Whether a corporation will sue, defend, or submit is not a relation with third parties. It is the allocation of power inside the corporation, and the chartering sovereign's law governs it.

The Constitution treats that allocation as the chartering sovereign's. "No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations." *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987). The system "depends at its core upon the fact that a corporation—except in the rarest situations—is organized under, and governed by, the law of a single jurisdiction, traditionally the corporate law of the State of its incorporation." *Id.* at 90. The corollary is that a sister state "has no interest in regulating the internal affairs of foreign corporations." *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46 (1982). This sentence was the opinion of the Court. It rested on the reason the doctrine exists: "only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands." *Id.* at 645. The question is who speaks for the corporation, and outside "the rarest situations," *CTS*, 481 U.S. at 90, the answer comes from the sovereign that created it. And a corporation is "foreign" in this sense whether it was chartered by a sister state or, like Cape, by another nation. *See* Pet. App. 27a (describing Cape as "a foreign corporation").

C. The decision below allows the forum to define its own territorial limits

The court below denied none of this. It held that the receivership “does not impair Cape’s right as a foreign corporation to conduct its internal affairs free from interference by a foreign court,” because “[t]he internal affairs of Cape—its relations between its officers, directors, shareholders, and agents—are not affected.” Pet. App. 27a–28a (citing *Pertuis v. Front Roe Rests., Inc.*, 817 S.E.2d 273, 278 (S.C. 2018)). It then rejected petitioners’ argument that “litigation decisions, such as whether and how to sue, defend a lawsuit, or accept service are solely for Cape’s board of directors,” Pet. App. 28a, and left undisturbed, for this case, the trial court’s ruling that the receiver could accept service “through all the same mechanisms as service may be made on any corporation in South Carolina,” Pet. App. 124a. On this reasoning, whether a receiver has crossed into internal affairs depends on what South Carolina says those affairs are. The forum draws the line, and then finds that its own receiver has stayed on the permissible side.

A constitutional limit that the regulated sovereign defines for itself is not a limit. If “internal affairs” means whatever *Pertuis*, 817 S.E.2d at 278, says in South Carolina, it will mean something else in the next state, and a corporation will face exactly the “conflicting demands” the doctrine exists to prevent. *Edgar*, 457 U.S. at 645. The Third Circuit understood that. It said that a receivership order placing a foreign corporation’s corporate affairs in a sister-state receiver’s hands would be “an unprecedented exertion of power over a foreign corporation whose internal

affairs are governed by the laws of a sister state, as well as a radical intrusion into the province of a co-equal sovereign,” and it explained that “[t]he state of incorporation . . . enjoys exclusive authority to govern the internal affairs of its corporations.” *Whittaker*, 176 F.4th at 259. The court below called that dicta. Pet. App. 30a. Amicus will not overstate it: The Third Circuit reached the Constitution as an independent ground, and reached it with expressed doubt. *Whittaker*, 176 F.4th at 258–59. That is the point. The only federal court of appeals to face the question doubted South Carolina held the power it claimed, and the state court of last resort then answered it the other way. Neither can settle it. This Court can.

The lower court’s own authority says as much. It cited *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1113 n.14 (Del. 2005), for the proposition that the internal-affairs doctrine does not govern third parties’ contract and tort claims. Pet. App. 50a. On that page of *VantagePoint*, the Delaware Supreme Court explained that “[t]he internal affairs doctrine is not, however, only a conflicts of law principle,” that under the Commerce Clause a state “has no interest in regulating the internal affairs of foreign corporations,” and that “application of the internal affairs doctrine is mandated by constitutional principles, except in the ‘rarest situations.’” 871 A.2d at 1113 (quoting *McDermott Inc. v. Lewis*, 531 A.2d 206, 216–17 (Del. 1987), in turn quoting *Edgar*, 457 U.S. at 645–46, and *CTS*, 481 U.S. at 90). *McDermott* was more direct still: The doctrine “is not merely a principle of conflicts law. It is also one of serious constitutional proportions” 531 A.2d at 216. Delaware decided *McDermott* on

that ground as well as on its own conflicts law: “due process and the commerce clause, in addition to principles of Delaware conflicts law, mandate reversal.” *Id.* at 218.

The court below says the same doctrine is “a choice of law principle.” Pet. App. 48a. Two state courts of last resort, South Carolina’s and Delaware’s, disagree on whether a federal limit exists. Each premise of the answer comes from this Court: litigation control is corporate governance, *Kamen*, 500 U.S. at 101; governance belongs to the chartering sovereign, *CTS*, 481 U.S. at 89–90; and a state does not define the limits on its own power, *see Hyatt*, 587 U.S. at 245–46. The court below refused to connect them.

D. *Bancec* does not move the line

The court below attempted to answer the constitutional argument with *Bancec*, 462 U.S. at 621–22. Pet. App. 49a–50a. *Bancec* reaffirms the rule. “As a general matter, the law of the state of incorporation normally determines issues relating to the internal affairs of a corporation.” 462 U.S. at 621.

“Different conflicts principles apply, however, where the rights of third parties external to the corporation are at issue.” *Id.* That distinction is the whole point. A tort plaintiff may sue the corporation, seek to pierce its veil, and ask the forum to apply forum law to her own claim. Amicus questions none of that. Nor does the settled constitutional principle that petitioners ask the Court to enforce touch the forum’s control of its own proceedings: default, sanctions, and discovery remain the forum’s. The question presented is different. It asks who decides, *in the corporation’s*

name, whether to accept service, Pet. App. 124a; whether to answer with a general denial, Pet. App. 68a–69a; and whether to initiate litigation in the corporation’s own name, Pet. App. 69a. Those are not third-party rights. They are the corporation’s decisions, and under *Bancec* the chartering sovereign’s law governs them. *Bancec* asked whether an instrumentality’s separate status shields it from liability for its sovereign’s acts. It never suggested that a court may seat its own appointee in the instrumentality’s chair.

The court below decided the federal question. It ruled that the receivership does not impair Cape’s right to conduct its internal affairs free of interference by a court outside its place of incorporation, Pet. App. 27a; called the Third Circuit’s constitutional reasoning dicta, Pet. App. 30a; and, on the stay motion, defined the doctrine as choice of law and distinguished *Whittaker* on that ground, Pet. App. 46a–48a. The court also questioned whether petitioners could raise due-process arguments at that stage and on Cape’s behalf, Pet. App. 49a. But it had already rejected the constitutional argument on the merits in its opinion, Pet. App. 27a–30a, and addressed it again, in the alternative, on the stay motion, Pet. App. 48a–50a. The state court of last resort therefore “actually considered and decided” the federal question. *Cohen v. Cowles Media Co.*, 501 U.S. 663, 667 (1991). And petitioners are not strangers to the limit. They are the defendants in the receiver’s third-party action, Pet. App. 69a, sued in the name of a corporation whose board opposes the suit. A structural limit on state power protects those

against whom the power is exercised. The question is squarely presented. Only this Court can answer it.

II. Recognition by the Chartering Sovereign Is the Constitutional Channel, and the South Carolina Model Is Built to Bypass It

The question presented incorporates a condition: the receiver “has not been recognized in the corporation’s place of incorporation.” That condition is not a technicality. It is where horizontal federalism lives. For more than 170 years this Court has distinguished between a receiver, whose authority stops at the geographical border of the court that appointed him, and a successor whose authority comes from the sovereign that created the corporation and travels with it. Recognition is how one becomes the other.

A. A receiver’s authority stops at the border

A 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; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction.” *Booth v. Clark*, 58 U.S. (17 How.) 322, 338 (1854) (emphasis added). This has been “the settled doctrine in federal jurisprudence” ever since: “The functions and authority of such receiver are confined to the jurisdiction in which he was appointed.” *Sterrett v. Second Nat’l Bank*, 248 U.S. 73, 76–77 (1918). The reason is structural. “[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 protect “the rights of local parties.” *Great W. Mining & Mfg. Co. v. Harris*, 198 U.S. 561, 576 (1905). If a receiver’s reach is to be enlarged, the enlargement “must come from legislation and not from judicial action.” *Sterrett*, 248 U.S. at 77.

The exception proves the rule. A liquidator who takes the corporation’s property under the law of the state that chartered it is different. He “is not an officer of the . . . State court, but the person designated by law,” and “[t]he law which clothed him with this trust was, in legal effect, part of the charter of the corporation.” *Relfe v. Rundle*, 103 U.S. 222, 225 (1881). “Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence.” *Id.* at 226. So his title “is the consequence of a succession established for the corporation by the law of its creation,” and a sister state that treats him as a mere receiver “denie[s] full faith and credit to the statutes and judicial proceedings” of the chartering state. *Clark v. Williard*, 292 U.S. 112, 121 (1934). The pattern is the Constitution’s. Authority that comes from the chartering sovereign follows the corporation everywhere. Authority that comes from a forum court stops at the forum.

B. Recognition runs through the chartering sovereign’s own machinery

That is why the Third Circuit required recognition. Under New Jersey law “and settled choice-of-law principles, the South Carolina Receiver needed to move for—and be granted—recognition in New Jersey and the appointment of an ancillary receiver to

displace Whittaker’s board’s control over, *inter alia*, the company’s privileges, franchises and assets.” *Whittaker*, 176 F.4th at 257. Full faith and credit did not excuse the step, because “[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law.” *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 235 (1998). And the ancillary proceeding is not a formality. Its purpose is that “creditors in [New Jersey] and in the foreign jurisdiction shall fare alike,” *Whittaker*, 176 F.4th at 256 (quoting *Stone v. N.J. & Hudson River Ry. & Ferry Co.*, 66 A. 1072, 1073 (N.J. Sup. Ct. 1907)). The Restatement agrees: “only a receiver appointed by a court in the state where the corporation was incorporated can institute action to dissolve a corporation” Restatement (Second) of Conflict of Laws § 367 cmt. d (1971); see *Whittaker*, 176 F.4th at 256.

The court below agreed with all of this. It said “[n]o one would quarrel” with the rule that a receiver not recognized by the domicile cannot control a foreign corporation’s internal affairs. Pet. App. 46a. It even described the “traditional practice” that a receiver who needs to act in a new matter must “return to the appointing court and seek an expansion of his authority.” Pet. App. 10a. What it never required was recognition by England. It did not need to, because based on its definition the receiver’s activities are not internal affairs. Pet. App. 27a–28a, 48a. The channel the Constitution provides was closed by the state court’s own convenient definition.

C. The model does not bypass recognition by accident

The appointment order says so: “The Court further orders that, as the Receiver Court, that the Receiver or Cape may not be sued outside this Court without obtaining the Receiver’s consent or an order of this Court prior to doing so.” Pet. App. 129a. Leave-of-court protection for a receiver is old and legitimate; it protects the appointing court’s custody of the assets in its hands. *Barton v. Barbour*, 104 U.S. 126, 128–29, 132–33 (1881). The overreach is the phrase “or Cape.” A South Carolina trial court, whose receiver never sought recognition in England, declared that an English corporation may not be sued in any other court in the world without the receiver’s consent or that court’s leave. The trial court then invoked the clause against the courts of the corporation’s own place of incorporation, calling the English proceeding in which Cape sued the receiver a violation of “the Barton Doctrine and the explicit language in the receivership order.” Pet. App. 106a. The later order confirming the appointment (the Confirmation Order) clarified eight points, and the court below narrowed the receiver’s powers; neither touched the clause. Pet. App. 27a, 123a–125a. *Cf. Baker*, 522 U.S. at 238 (a state’s judgment “cannot reach beyond” the parties before it “to control proceedings . . . brought in other States”).

The state trial court also adjudicated the charter. The expedited appointment order mistakenly found that Cape had “dissolved” and “has forfeited its charter.” Pet. App. 127a. Two and a half years later the Confirmation Order conceded that the company “is

not dissolved and has not forfeited its charter.” Pet. App. 123a. Whether a corporation exists is the chartering sovereign’s question. *See Relfe*, 103 U.S. at 225–26. A court that answers it wrong for two and a half years, forbids suit against the company in the company’s home court, and never asks that court for anything is not applying a choice-of-law rule. It has taken the chartering sovereign’s place. That is what recognition exists to prevent, and it is why the condition in the question presented deserves this Court’s answer.

III. Nothing in the Decision Below Is Limited to Asbestos, to South Carolina, or to Companies Chartered Abroad

The state supreme court described petitioners’ concern as “some far-fetched international crisis.” Pet. App. 45a. It is not. The reasoning below is a template, and it works the same way for a Delaware corporation sued in Ohio as for an English one sued in South Carolina. Four features of that extraterritorial model show why the question deserves review now.

A. Consent by receivership is illusory

Start with how the forum gets its defendant. Cape did not appear. The court below treated that choice as the predicate for the receivership: Cape committed “moral fraud” by “refusing to participate at all in *Park* [an earlier asbestos case] and this case, or any other United States asbestos cases.” Pet. App. 25a. The trial court’s receiver “was permitted to accept service on behalf of Cape through all the same mechanisms as service may be made on any corporation in South Carolina,” Pet. App. 124a, and answered the

complaint “with a General Denial,” Pet. App. 68a–69a. The company’s absence supplied the ground for the appointment. The appointee then supplied the company’s presence.

That sequence matters to the question presented because jurisdictional limits are “a consequence of territorial limitations on the power of the respective States,” and the “federalism interest may be decisive.” *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 263 (2017) (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). The personal-jurisdiction requirement is waivable, but it is waivable because it “represents first of all an individual right,” and “it can, like other such rights, be waived.” *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). The right belongs to the defendant. And when the defendant has not given it up, “the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.” *Bristol-Myers Squibb*, 582 U.S. at 263 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980)); *see also Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 154–56 (2023) (Alito, J., concurring in part and concurring in the judgment) (the limit is “expressed in the very nature of the federal system,” whatever clause houses it). No person waived anything here. A court appointee, installed because the company would not appear, appeared for it. Whether the corporation will submit is a litigation decision, and the question presented asks who gets to make it.

B. The domestic pattern is the larger story

The same trial court has imposed receiverships on 24 asbestos defendants and appointed the same attorney each time. Sixteen of them were incorporated outside South Carolina, including in Florida, New Jersey, North Carolina, and Texas, and in Canada and England. Charter Pet. 5, 30. Cape is English, but the model is not aimed at companies chartered abroad. It reaches corporations chartered by sister states as well.

Petitioners cite *National Union Fire Insurance Co. v. Payne & Keller Co.*, 731 S.W.3d 58 (Tex. App. 2026). Charter Pet. 31–32. ALF adds only what the episode means for Texas. A South Carolina court decided that a Texas corporation dissolved in 1986 exists again, and Texas’s own Secretary of State executed that decision the day the receiver filed the order in Texas, before any Texas court had looked at it. *Payne & Keller*, 731 S.W.3d at 62, 65. Whether a corporation exists, and for how long it may be sued after it stops existing, are questions the chartering state answers for itself. *See CTS*, 481 U.S. at 89–91. Under the rule below, Texas gets no answer. South Carolina’s definition of internal affairs governs, and Texas is a bystander to the revival of its own creature.

C. There is no stopping point among the states

The forum preference is explicit. The trial court “limits the authority of the Receiver” to administering “the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina.” Pet. App. 124a–125a. It described the receiver’s work as part of a “judicial process here in South Carolina that exists to serve South Carolina claimants.”

Pet. App. 106a. Compare the ancillary-receivership rule the Third Circuit applied, under which creditors in the home state and the foreign jurisdiction “shall fare alike.” *Whittaker*, 176 F.4th at 256 (quoting *Stone*, 66 A. at 1073). A receivership that exists to serve forum claimants is the opposite of that rule, and it is the reason the rule exists.

The model also multiplies. After the receiver appointed in *Park* accepted service in this case (*Tibbs*), the plaintiffs in a third asbestos case, *Ross*, added Cape as a defendant in October 2025 and obtained a default against it in December 2025. Pet. App. 156a. One week after rehearing was denied below, the trial court appointed the same receiver as a post-judgment receiver over Cape in *Ross*, with authority to “wholly administrate all the insurance assets and beneficial legal claims” of the company. Charter Pet. 30 (quoting Order at 3, *Ross v. Ascend Performance Materials Operations LLC*, No. 2024-CP-40-03710 (S.C. Ct. Com. Pl. Aug. 11, 2026)). And the court below has said that once a receiver is appointed after judgment, “the trial court has much more latitude in permitting the receiver to operate in other matters or lawsuits and in expanding the receiver’s authority.” Pet. App. 10a. The pre-judgment limits the court below adopted, Pet. App. 27a, do not reach that stage.

If South Carolina may do this, so may every other state. *Cf. Edgar*, 457 U.S. at 642 (plurality opinion) (“if Illinois may impose such regulations, so may other States”). Two receivers appointed by two states over the same corporation, each with authority to accept service, answer, and sue in its name, each serving its

own forum’s claimants, is not a hypothetical under the rule below. It is the rule below applied twice.

D. The model collides with the federal bankruptcy power

The trial judge who appointed the receiver in *Whittaker* explained what the appointment was for: Preventing bankruptcy “was the main factor in my signing the order so quickly.” *Whittaker*, 176 F.4th at 250–51 (quoting the South Carolina court). But bankruptcy “is an area of exclusive federal competence.” *Id.* at 256 n.6 (citing *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 187 (1902)). Congress has “plenary power . . . over the whole subject of ‘bankruptcies.’” *Hanover*, 186 U.S. at 187. A state receivership that exists to keep a national debtor out of Title 11 is a state instrument aimed at a federal remedy.

The court below did not disagree. It accepted that “a receivership order can authorize a receiver to control the decision to file bankruptcy on behalf of a domestic corporation,” and read *Whittaker* as turning on the fact that the corporation there was foreign to the forum and the receiver unrecognized at home. Pet. App. 46a. So on the court’s own account, whether a state receiver may control a corporation’s access to federal bankruptcy turns entirely on domicile and recognition. That is the line the question presented asks about, and it is the line the court below then said was “a choice of law principle” for the forum to define. Pet. App. 48a. If the forum may define it, the first state to appoint a receiver decides whether a national debtor may ever file. Only this Court can say whether that is so.

IV. The Receiver's Role Shows Why Only a Bright-Line Rule Works

The receiver here is a private attorney, appointed on plaintiffs' motion, whose mandate is to generate recoveries for forum claimants from the corporation he nominally represents. The Confirmation Order limits his authority to "the assets of Cape responsive to asbestos personal injury claims properly brought in South Carolina." Pet. App. 124a–125a. The trial court described his work as part of a process that "exists to serve South Carolina claimants." Pet. App. 106a. In enjoining him from acting for Cape, the High Court of Justice of England and Wales, the court of Cape's place of incorporation, found that his third-party complaint advanced "a case on behalf of CIHL which is . . . directly contrary to CIHL's interests," and that he had "made admissions in relation to asbestos claims . . . which are positively damaging to the interests of CIHL." *Cape Intermediate Holdings Ltd. v. Protopapas* [2024] EWHC 2999 (Ch) [61(d)], [115(c)] (Eng.). The South Carolina Supreme Court has called that injunction "[s]hocking to American eyes." *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320, 334 (S.C. 2025), *cert. denied sub nom. Atlas Turner, Inc. v. Welch*, 146 S. Ct. 1497 (2026). But the English judgment is a finding by the chartering sovereign's own court about who is acting in its corporation's interest. Under the principle the question presented invokes, the chartering sovereign's judgment on that point is the one that counts.

The court below answered the board-control argument by invoking a conflict-of-interest qualification: the rule that litigation decisions belong

to the board “only applies when the board is disinterested and not burdened by a conflict of interest.” Pet. App. 29a (citing *Star v. TI Oldfield Dev., LLC*, 962 F.3d 117, 130–33 (4th Cir. 2020)). *Star* says that “the power to control corporate litigation presupposes that the directors have no interest in its exercise.” 962 F.3d at 131 (quoting *Clark v. Lomas & Nettleton Fin. Corp.*, 625 F.2d 49, 52 (5th Cir. 1980)). The court then left in place a decision-maker whose interest in the exercise is the whole point of his appointment. Whose interests the decision-maker serves is the core of internal affairs. Under the rule below, the forum answers that question too.

Case-by-case limits do not hold. The court below stressed the receiver’s “limited scope.” Pet. App. 27a. That scope governs only a pre-judgment receiver, and the court itself explained that after judgment “the trial court has much more latitude.” Pet. App. 10a. One week after rehearing was denied, the trial court appointed the same receiver, post-judgment, with authority to “wholly administrate” the company’s insurance assets and legal claims. Charter Pet. 30. A line policed by the person whose job is to cross it is not a line. The only rule that holds is the one the question presented states: A receiver not recognized by the chartering sovereign does not control the corporation’s litigation decisions.

CONCLUSION

The petitions for a writ of certiorari should be granted.

Respectfully submitted,

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October 2026