

Nos. 26-328, 26-350

IN THE
Supreme Court of the United States

CHARTER CONSOLIDATED LTD., ET AL.,
Petitioners,

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, ET AL.,
Respondents.

ALTRAD INVESTMENT AUTHORITY S.A.S., ET AL.,
Petitioners,

v.

CAPE INTERMEDIATE HOLDINGS LIMITED, ET AL.,
Respondents.

**On Petitions for Writs of Certiorari
To the Supreme Court of South Carolina**

**BRIEF OF NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONERS**

JASON M. KNOTT
ZUCKERMAN SPAEDER LLP
2100 L Street, N.W.
Washington, D.C. 20037
(202) 778-1813
jknott@zuckerman.com

PATRICK HOFER
Counsel of Record
CLYDE & Co US LLP
1775 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006
(202) 747-5100
patrick.hofer@clydeco.us

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES	III
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT.....	7
ARGUMENT	8
I. The Court Has Frequently Granted Certiorari to Stop Tort Litigation Abuses that Violate the Constitution or Federal Statute, Especially in the Asbestos Context	8
A. <i>Rush v. Savchuk</i> : The Abuse of <i>Quasi in Rem</i> Jurisdiction.....	8
B. <i>Travelers Indemnity Co. v.</i> <i>Bailey</i> : Affirming a Bankruptcy Bar on Direct Actions Against an Asbestos Insurer	11
C. <i>Truck Insurance Exch. v. Kaiser</i> <i>Gypsum Co.</i> : Insurer Is a “Party in Interest” to Challenge Asbestos Reorganization Plan ..	12
II. Other States Hold that the Constitution Forbids Their Courts From Appointing a Receiver to Usurp the Corporate Powers of Corporations Formed in Other States.....	14

III.	Some States Seek to Follow South Carolina’s Lead in Permitting Abusive Receiverships, and South Carolina Is Expanding its Receivership Practices Beyond Asbestos Suits.....	16
IV.	The Payne & Keller Receivership Confirms that the Receiver Seeks to Wrest Jurisdiction from Other States	18
	CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997)	15
<i>Bugg v. American Standard, Inc.</i> , 2005-Ohio-2613, 2005 WL 1245043 (Ct. App.)	13
<i>Fuld v. Palestine Liberation Org.</i> , 606 U.S. 1 (2025)	7
<i>Harrington v. Purdue Pharma L.P.</i> , 603 U.S. 204 (2024)	14
<i>Howard v. Allen</i> , 254 S.C. 455, 176 S.E.2d 127 (1970).....	12
<i>In re 530 Donelson, LLC</i> , 660 B.R. 887 (Bankr. M.D. Tenn. 2024)	19
<i>In re All Cases Against Sager Corp.</i> , 132 Ohio St. 3d 5, 967 N.E.2d 1203 (2012).....	16
<i>In re Federal-Mogul Global Inc.</i> , 684 F.3d 355 (3d Cir. 2012).....	14
<i>In re Johns-Manville Corp.</i> , 517 F.3d 52 (2d Cir. 2008).....	13
<i>In re Kaiser Gypsum Co., Inc.</i> , 60 F.4th 73 (4th Cir. 2023).....	14
<i>In re Licores</i> , 2013 WL 6834609 (C.D. Cal. Dec. 20, 2013).....	19

<i>In re Orchards Village Invs., LLC</i> , 405 B.R. 341 (Bankr. D. Or. 2009)	19
<i>In re Whittaker Clark & Daniels Inc.</i> , 176 F.4th 241 (3d Cir. 2026)	17
<i>Lilliquist v. Copes-Vulcan, Inc.</i> , 2011 PA Super 102, 21 A.3d 1233 (2011)	17
<i>Mallory v. Norfolk Southern Rwy. Co.</i> , 600 U.S. 122 (2023)	19
<i>National Union Fire Ins. Co. v. Payne & Keller Co.</i> , 731 S.W.3d 58 (Tex. App.—Houston [14th Dist.] 2026, no pet.)	4
<i>Rush v. Savchuk</i> , 444 U.S. 320 (1980)	9, 10, 11
<i>Seider v. Roth</i> , 17 N.Y.2d 111, 216 N.E.2d 312 (1966)	10
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977)	9
<i>Travelers Indem. Co. v. Bailey</i> , 557 U.S. 137 (2009)	13
<i>Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.</i> , 602 U.S. 268 (2024)	15
<i>Williams v. Clark Sand Co.</i> , 212 So. 3d 804 (Miss. 2015)	17
Statutes	
735 Ill. Comp. Stat. Ann. 5/2-209	18

765 Ill. Comp. Stat. Ann. 1090/5	18
765 Ill. Comp. Stat. Ann. 1090/6	18
805 Ill. Comp. Stat. Ann. 5/13.20	18
Tex. Bus. Corp. Act art. 7.12 (1984)	2

Other Authorities

Roger Parloff, <i>The Tort That Ate the Constitution</i> , The American Lawyer, July-Aug. 1994	15
---	----

**BRIEF OF NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

INTEREST OF *AMICUS CURIAE*¹

National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) is an insurance underwriter. For the last half century, National Union has sought to resolve insurance coverage matters arising from asbestos-exposure bodily injury claims. Because to this day the number of asbestos claims remains so large, and the damages at issue remain so enormous, asbestos claims continue to test the bounds of the tort system. When plaintiffs’ lawyers have previously pushed the limits of statute, jurisdiction, and due process beyond the breaking point, this Court has appropriately granted certiorari to put an end to the abuse. National Union has a strong interest in ending the latest improper stratagem promoted by the plaintiffs’ bar, at issue here: state court receiverships that abuse jurisdictional boundaries.

National Union is a defendant in one such receivership in the South Carolina asbestos docket, involving Payne & Keller Company n/k/a Frentex

¹ Pursuant to this Court’s Rule 37.2, *amicus* gave at least 10 days’ notice to counsel for petitioners and respondents of its intent to file this brief. Pursuant to this Court’s Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the brief’s preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to the brief’s preparation or submission.

Enterprises Company of Texas (“Payne & Keller”). Payne & Keller was a Texas corporation from 1961 until late 1986, when it sold its operating assets and dissolved. Payne & Keller purchased insurance from National Union and other insurers to cover its liabilities.

Under the Texas statute in effect at the time of its dissolution, once three years had passed, a dissolved company could not sue or be sued. Tex. Bus. Corp. Act art. 7.12 (1984). On December 3, 1989, Texas’s three-year survival period expired, and all claims against Payne & Keller were forever barred.

Nevertheless, almost 32 years later, in July 2021, Lenora Childers filed an asbestos personal-injury action in Richland County, South Carolina, naming Payne & Keller and nine other dissolved companies as defendants.² Childers voluntarily dismissed one defendant, but for the other nine, including Payne & Keller, she moved to appoint the same receiver, Peter D. Protopapas, to marshal their alleged remaining assets—*i.e.*, their alleged insurance policies.

Four days after Childers filed her appointment motion as to Payne & Keller, the Circuit Court of Richland County, which presides over the *Childers* case and all other asbestos litigation in South Carolina, appointed Mr. Protopapas as receiver.³

² Complaint, *Childers v. Davis Mech. Contractors, Inc.*, No. 2021-CP-40-03484 (S.C. Ct. C.P., filed July 14, 2021).

³ Order, *Childers*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Aug. 27, 2021) (order appointing Receiver over Payne & Keller). The South Carolina trial court has appointed a receiver over the following non-South Carolina corporations: Asbestos Corporation Ltd. (Canada); Atlas Turner Inc. (Canada); Beaty Investments, Inc. (North Carolina); Cape Intermediate Holdings

The receiver then initiated lawsuits against National Union. Those suits were only the beginning of the receiver’s efforts to expand his authority over Payne & Keller at National Union’s expense. After National Union asserted that Payne & Keller could no longer sue or be sued under Texas law, Childers, with the receiver’s support, obtained an order from the *South Carolina* Circuit Court purporting to revoke Payne & Keller’s 1986 *Texas* dissolution as “fraudulent” under a *Texas* statute that did not exist when the company dissolved.⁴ The receiver directed Payne & Keller’s defense counsel not to oppose the motion to revoke.⁵

Next, the receiver filed the South Carolina order in a Texas state court, purporting to “domesticate” it, and he used that filing to obtain a Certificate of Revocation of Dissolution from the Texas Secretary of State, reviving Payne & Keller. All of this happened in one day.

Ltd. (England); Cape plc (Bailiwick of Jersey); Flame Refractories Inc. (Florida); General Boiler Casing Co., Inc. (North Carolina); Great Barrier Insulation Co. (Florida); Heat & Frost Insulation Co., Inc. (North Carolina); J&L Insulation, Inc. (North Carolina); Payne & Keller Co. (Texas); Piedmont Insulation, Inc. (North Carolina); Presnell Insulation Co., Inc. (North Carolina); Standard Insulation Co. of N.C., Inc. (North Carolina); Starr Davis Company, Inc. (North Carolina); United Construction Co. of Rome, Inc. (Florida); and Whittaker, Clark & Daniels, Inc. (New Jersey).

⁴ Findings of Fact and Conclusions of Law on Pls.’ Mot. to Revoke the Termination of Payne & Keller Co., *Childers*, No. 2021-CP-40-03484 (S.C. Ct. C.P. Oct. 5, 2023).

⁵ The receiver also sued Payne & Keller’s Texas defense counsel for asserting Payne & Keller’s dissolution as a defense in a Texas case. *Protopapas v. Baker*, No. 2023-CP-40-05203 (S.C. Ct. C.P.).

Within months, the receiver went further still: he purported to convert the reinstated *Texas* corporation into a *South Carolina* corporation—installing a South Carolina registered agent and authorizing 100,000 shares of stock in the reconstituted entity, all under his own exclusive control. He represented that the shareholders of Payne & Keller had authorized the conversion, even though there is no evidence that Payne & Keller’s sole shareholder at the time of its dissolution—now known as SKRLA, LLC—authorized the move. Based on this manufactured corporate history, Payne & Keller has since been named as a defendant in asbestos suits filed by at least 1,226 plaintiffs across the country, with National Union, as one of its insurers, having to fund much of its defense.

National Union contested these unprecedented maneuvers in the courts of Texas—the only sovereign with legitimate authority over Payne & Keller’s corporate existence. That effort has succeeded—up to a point. On February 3, 2026, the Fourteenth Court of Appeals held that the South Carolina order revoking Payne & Keller’s dissolution was not a final judgment and therefore was not entitled to full faith and credit in Texas. *National Union Fire Ins. Co. v. Payne & Keller Co.*, 731 S.W.3d 58, 65 n.3, 72 (Tex. App.—Houston [14th Dist.] 2026, no pet.). The court also held that the Texas statute that the South Carolina court used to revoke Payne & Keller’s dissolution could not be applied retroactively. The dissenting justice agreed with the majority on that latter point. On remand, the Harris County district court entered an agreed order vacating the receiver’s domestication filing, dismissing the proceeding and declaring that the underlying South Carolina order “is not subject to

enforcement in Texas because it is a facially non-final foreign order which the Receiver has not shown to be a final judgment.”⁶

Yet the receiver has refused to treat that Texas ruling as undoing the revocation of Payne & Keller’s dissolution or its purported redomestication to South Carolina. To the contrary, in a recent letter, he has told the Texas Secretary of State that Payne & Keller “has been a South Carolina corporation, now, for over two years,” and that only South Carolina—not Texas, and not any reviewing court—may say otherwise.

The Cape Intermediate Holdings Limited (“CIHL”) receivership and the Payne & Keller receivership are two examples of the same broader problem. Both involve the same South Carolina court purporting to exercise extraterritorial control over the assets, litigation decisions, and internal affairs of an entity organized under the law of a different sovereign. Neither sovereign—England or Texas—has ever recognized the receiver’s authority to do so. Rather, in both cases, courts in both jurisdictions have emphatically told the receiver he does not have that authority. Yet as to Payne & Keller, the receiver asserts that his unilateral action in purportedly reviving and relocating Payne & Keller to South Carolina has deprived Texas of authority to do anything about the problem.

The question presented in these petitions is whether the Due Process Clause, the Commerce Clause, and principles of federalism permit a state-court receiver to control the litigation decisions and

⁶ Agreed Order, *Childers v. Payne & Keller Co.*, No. 2023-70875 (Tex. Dist. Ct. Harris Cty. May 28, 2026).

other internal affairs of an out-of-state corporation. That question will directly bear on the lawfulness of the authority the receiver continues to assert over Payne & Keller notwithstanding the Texas Court of Appeals' decision. It will also bear on whether the attempts to manufacture newfound liability for a dissolved and nonexistent Texas corporation—and consequently, for its insurers—will be permitted to persist. National Union accordingly has a direct and continuing interest in this Court's resolution of that question.

SUMMARY OF ARGUMENT

Our federal form of government depends on state courts' respecting territorial limits on their own power. This constitutional mandate is enforced in part by limits on state court jurisdiction under the Due Process Clause of the Fourteenth Amendment and "limits imposed on [states] by their status as co-equal sovereigns in a federal system." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025).

On many occasions over the last 50-plus years, however, tort plaintiffs have sought to eviscerate these limits on court jurisdiction, as well as other legal limits, including repeatedly in the context of liability for asbestos bodily injury. Where appropriate, the Court has granted certiorari to call a halt when the litigation abuses violate the Constitution or federal law.

Although here the South Carolina Supreme Court has approved appointment of a receiver to make litigation decisions on behalf of an out-of-state (indeed, out-of-country) corporation, other states have rejected that gambit, acknowledging that constitutional restrictions on state court power bar such receiverships in closely analogous circumstances.

Yet some states are seeking to follow South Carolina's lead on abusive receiverships, claiming the power to appoint receivers for any corporation—no matter where it is incorporated—with exclusive power to control its property wherever located. The Court should grant certiorari to stop South Carolina and other states from exceeding constitutional limits on their own jurisdiction.

ARGUMENT

I. THE COURT HAS FREQUENTLY GRANTED CERTIORARI TO STOP TORT LITIGATION ABUSES THAT VIOLATE THE CONSTITUTION OR FEDERAL STATUTE, ESPECIALLY IN THE ASBESTOS CONTEXT

As made clear in the Petitions and as discussed above, South Carolina has adopted an unprecedented view on the territorial reach of its courts' jurisdiction, specifically, approving their jurisdiction to take control, through a receiver, of the corporate powers of foreign corporations. But this theory of unfettered jurisdiction should be seen for what it is: the latest effort by the tort plaintiffs' bar to disregard the bounds of jurisdiction, due process and statute to upend the tort system. As it has in the past, the Court should grant certiorari to stop this unconstitutional overreach.

A. *Rush v. Savchuk*: The Abuse of Quasi in Rem Jurisdiction

A prime example of the Court's willingness to step in to halt state court jurisdictional abuse is *Rush v. Savchuk*, 444 U.S. 320 (1980). Coming on the heels of the Court's decision in *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977), which made clear that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny," the Court rejected as unconstitutional an expansive theory of state-court jurisdiction over out-of-state tort defendants known as *quasi in rem* jurisdiction. That theory was first adopted in New York by *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312 (1966). Under that theory, a foreign tort defendant's insurance rights—the right to be

defended in suit, and the right to be indemnified for covered judgments—were treated as “assets” subject to attachment *in rem* in any state where the *insurer* (not the tort defendant) was subject to suit, allowing the court with *in rem* jurisdiction to hear the tort claim against the tort defendant *quasi in rem*, even though the defendant had no contacts with that state. *Rush*, 444 U.S. at 325-26.

In essence, *Seider*-type jurisdiction treated the inchoate contract obligation of the insurer as “property” located within the territory of the state and subject to its *in rem* jurisdiction in order to back into *in personam* jurisdiction of the actual defendant, wherever that defendant was located. This jurisdictional artifice was justified, courts adopting the theory said, because “[v]iewed realistically, the insurer in a case such as the present is in full control of the litigation” and “the real party in interest,” with the actual tort defendant “viewed simply as a conduit, who has to be named as a defendant in order to provide a conceptual basis for getting at the insurer.” *Id.* at 326 (citations omitted).

But the Court soundly rejected the *quasi in rem* theory’s short-circuiting of requirements of personal jurisdiction to allow plaintiffs to “get[] at the insurer.” *Id.* at 332. Plaintiffs argued that the tort defendant was a “nominal” party, with slight interest in the outcome, whereas *quasi in rem* jurisdiction allowed a “direct action” against the insurer. *Id.* at 330. The Court rebuffed this effort to evade territorial limits on state courts’ power:

Seider actions are not equivalent to direct actions, however. The State’s ability to exert its power over the

“nominal defendant” is ***analytically prerequisite*** to the insurer’s entry into the case as a garnishee. If the Constitution forbids the assertion of jurisdiction over the insured based on the policy, then there is no conceptual basis for bringing the “garnishee” [insurer] into the action. Because the party with forum contacts [the insurer] can only be reached through the out-of-state party, the question of jurisdiction over the nonresident cannot be ignored.

Id. at 330-31 (emphasis added). Creating personal jurisdiction over a foreign defendant because of the alleged contacts of its insurer, the Court said, “is forbidden by *International Shoe* and its progeny.” *Id.* at 332.

The parallels between *Rush* and this case are clear. Under *Seider* jurisdiction, courts treated a defendant’s potential insurance as an “asset” subject to *in rem* jurisdiction wherever the insurer was found, then used an *in rem* proceeding—attachment or garnishment—to assert the ancillary power to decide the associated tort claim *quasi in rem*. Here, South Carolina similarly treats foreign defendants’ potential insurance as an “asset” subject to its *in rem* power, but then uses the *in rem* remedy of receivership to go even further: to assert control over corporate powers of the insured—regardless of any *in personam* jurisdiction—for the avowed purpose of “getting at the insurer.”

South Carolina’s claim to receivership jurisdiction therefore goes far beyond the assertion of personal jurisdiction condemned in *Rush*. South Carolina’s

receivership rulings also defy its own precedent on whether liability insurance is an “asset”: South Carolina was among the first states to *reject Seider*-type jurisdiction on the ground that inchoate insurance rights of a foreign defendant were *not* assets or property subject to *in rem* attachment in South Carolina, because unless and until a covered tort judgment is entered against the insured, the insurance provides “nothing of economic value to which the insured may make claim, receive or assign.” *Howard v. Allen*, 254 S.C. 455, 461, 176 S.E.2d 127, 129 (1970). The California Supreme Court followed *Howard* on this point in rejecting *Seider*-type jurisdiction in *Javorek v. Superior Court*, 17 Cal. 3d 629, 637 n.7, 552 P.2d 728, 735 n.7 (1976). *Howard* completely rejects the premise of the asbestos defendant receiverships recently approved by the South Carolina Supreme Court—putatively to “marshal” insurance “assets”—because South Carolina recognizes it has no *in rem* jurisdiction over inchoate insurance rights. But its receivership rulings (such as the ruling challenged in this case) have not even addressed *Howard*.

**B. *Travelers Indemnity Co. v. Bailey*:
Affirming a Bankruptcy Bar on Direct
Actions Against an Asbestos Insurer**

Like the plaintiff in *Rush*, asbestos plaintiffs later sought to “get at the insurer” directly instead of proceeding against insureds in the tort system, asserting so-called “direct actions” against insurers on the claim that the insurers knew of the dangers of asbestos long ago and had a “duty to the world” to warn of them. Courts were skeptical of the theory—a duty to warn arises only as to third parties with whom one has a “special relationship,” not as to “the

world”—and the claims “met with almost universal failure in the state courts.” *In re Johns-Manville Corp.*, 517 F.3d 52, 68 (2d Cir. 2008).⁷ But in one case an insurer sought to enforce a bankruptcy injunction barring suits against it as insurer of Johns-Manville Corporation after it contributed millions of dollars to a trust for resolution of claims. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009). The Court granted certiorari and reversed the Second Circuit’s ruling that the injunction went beyond the bankruptcy court’s jurisdiction, on the ground that the bankruptcy court’s jurisdiction could not be collaterally attacked. *Id.* at 152. The Court did not resolve whether a bankruptcy court could enjoin claims against nondebtor insurers that were “not derivative of the debtor’s wrongdoing.” *Id.* at 155. The Court later held, however, that, outside of the asbestos context, reorganization plans under Chapter 11 of the Bankruptcy Code may not release direct liabilities of nondebtor third parties to other nondebtors without the consent of the affected parties. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024).

C. Truck Insurance Exch. v. Kaiser Gypsum Co.: Insurer Is a “Party in Interest” to Challenge Asbestos Reorganization Plan

Following the enactment of Section 524(g) of the Bankruptcy Code in 1994, asbestos defendants and plaintiffs’ attorneys often sought to enter into

⁷ See, e.g., *Bugg v. American Standard, Inc.*, 2005-Ohio-2613, 2005 WL 1245043, ¶ 10 (Ct. App.) (affirming trial court dismissal of direct actions against 47 insurers on ground of no “special relationship” with plaintiffs).

bankruptcy reorganization plans under which current and future asbestos claims were channeled to a “trust” for payment, under agreed “trust distribution plans,” and with the debtor’s insurance rights assigned to the trust—in many instances without any insurer involvement or agreement. Courts held that such reorganization plans could be sustained over insurer objection if they were “insurance neutral,” that is, if the plan purported not to affect the rights and defenses of insurers. *E.g.*, *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 379 (3d Cir. 2012) (rejecting insurer challenge to asbestos reorganization plan that included “insurance neutrality language”). This led some courts, in turn, to hold that insurers were not even “parties in interest” to challenge an asbestos reorganization plan. *E.g.*, *In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 87 (4th Cir. 2023) (“[T]he Plan is insurance neutral. Accordingly, we hold that Truck, in its capacity as an insurer, is not a party in interest.”).

The Court granted certiorari in *Kaiser Gypsum* and rejected the notion that insurers could not even be heard in a bankruptcy case to object to a plan that affected millions of dollars of their insurance, holding that alleged “insurance neutrality” could not be assumed *ex ante* to preclude insurers from having a say in the plan. *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 282 (2024) (“Where a proposed plan ‘allows a party to put its hands into other people’s pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed.’”) (citation omitted).

Thus, the Court has a history of appropriately granting certiorari to end abusive tort litigation tactics that violate the Constitution or federal statute,

particularly in the context of asbestos claims. *See also* Roger Parloff, *The Tort That Ate the Constitution*, *The American Lawyer*, July-Aug. 1994, at 74 (summarizing constitutional arguments raised by objectors to nationwide asbestos class action settlement based on lack of due process and Article III standing, a class action that was later rejected by this Court under Fed. R. Civ. P. 23 in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622-28 (1997)).

II. OTHER STATES HOLD THAT THE CONSTITUTION FORBIDS THEIR COURTS FROM APPOINTING A RECEIVER TO USURP THE CORPORATE POWERS OF CORPORATIONS FORMED IN OTHER STATES

South Carolina is not the first state where asbestos plaintiffs' lawyers have sought to have a state court appoint a receiver to litigate on behalf of a foreign corporation not subject to suit there. Asbestos plaintiffs attempted this maneuver in Ohio, obtaining an order appointing a receiver for a long-dissolved Illinois corporation that, under Illinois law, was no longer subject to suit. *In re All Cases Against Sager Corp.*, 132 Ohio St. 3d 5, 5, 967 N.E.2d 1203, 1204 (2012). The Ohio Supreme Court reversed, holding that such a receivership was unconstitutional, as it revived an Illinois corporation in violation of Illinois law, contrary to Ohio's obligation to give full faith and credit to Illinois law. *Id.* ("Fundamental to our analysis is the principle that we must afford full faith and credit to laws in our sister states and that a dissolved foreign corporation that is no longer amenable to suit in its state of incorporation is likewise not amenable to suit in Ohio."). The Ohio Supreme Court further ruled that Ohio could not end-run its obligation to give effect to Illinois law by

appointing an Ohio receiver to pursue “insurance assets” directly, because any unexhausted insurance of a dissolved corporation was not an “asset” at all, since the insurance applied to the insured’s liability and the insured itself no longer could be sued—the same “analytical prerequisite” recognized in *Rush. Id.* at 13-15, 967 N.E.2d at 1210-11.

The Mississippi Supreme Court followed *Sager* in rejecting appointment of a receiver for a dissolved Florida corporation, finding *Sager*’s analysis “persuasive” and comporting “with the requirements of the Full Faith and Credit Clause.” *Williams v. Clark Sand Co.*, 212 So. 3d 804, 811 (Miss. 2015). See also *Lilliquist v. Copes-Vulcan, Inc.*, 2011 PA Super 102, 21 A.3d 1233, 1237 (2011) (asbestos suit; “appointment of a receiver to manage SVI’s insurance funds for Lilliquist’s benefit would constitute a cause of action against SVI’s assets—which . . . is not permitted under Alabama law (as accorded full faith and credit by this Court)”).⁸

⁸ In a case involving yet another South Carolina asbestos receivership, the Third Circuit recently confirmed that if South Carolina’s appointment of a receiver for a New Jersey corporation purported to divest the foreign corporation of the power to declare bankruptcy—as the same receiver here contended—“it 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.” *In re Whittaker Clark & Daniels Inc.*, 176 F.4th 241, 258-59 (3d Cir. 2026) (citing “the very nature of the federal union of States” and due process, full faith and credit and dormant Commerce Clause principles). The receiver and claimants against the corporation have separately petitioned this Court for writs of certiorari. Nos. 26-159, 26-263.

III. SOME STATES SEEK TO FOLLOW SOUTH CAROLINA’S LEAD IN PERMITTING ABUSIVE RECEIVERSHIPS, AND SOUTH CAROLINA IS EXPANDING ITS RECEIVERSHIP PRACTICES BEYOND ASBESTOS SUITS

Although South Carolina’s unconstitutional receivership practices alone would warrant this Court’s review, the Court should be aware that some states are seeking to follow South Carolina’s lead, magnifying the problem.

Illinois’s new Receivership Act, effective January 1, 2026, grants Illinois courts power to appoint a receiver in an action against a corporation if the object of the suit is to dissolve the corporation, if the acts of the corporation “are illegal, oppressive, or fraudulent,” or if the corporation is “insolvent”—with no provision explicitly limiting that power to Illinois corporations. 765 Ill. Comp. Stat. Ann. 1090/6(a)(3); *id.* 1090/4(a) (in provision defining “Scope” of Act, stating that “the Act applies to a receivership for an interest in any . . . person that is not an individual [e.g., a corporation],” with no geographic limitation). The Act also purports to endow receivership courts with “exclusive jurisdiction and authority . . . over all receivership property wherever located.” *Id.* 1090/5(b). The scope of the Illinois Receivership Act is especially troublesome given Illinois has also recently passed a statute (805 Ill. Comp. Stat. Ann. 5/13.20(b)) and a court rule (735 Ill. Comp. Stat. Ann. 5/2-209(b)(5)) that together purport to grant Illinois courts “general personal jurisdiction” in toxic tort cases over all foreign corporations that register to do business in the state, on the theory of “consent” jurisdiction at issue in *Mallory v. Norfolk Southern Rwy. Co.*, 600 U.S. 122 (2023).

Some state courts have appointed receivers to preclude a corporation from declaring bankruptcy. *E.g.*, *In re Licores*, 2013 WL 6834609, at *7 (C.D. Cal. Dec. 20, 2013) (upholding state court receivership order as depriving corporation of “authority to file bankruptcy in view of the vesting in Receiver of the exclusive right to do so”). Other federal courts are at least skeptical of the power of state courts to do so, with some holding that state courts cannot pre-empt a federal right to declare bankruptcy by appointing a receiver. *E.g.*, *In re 530 Donelson, LLC*, 660 B.R. 887, 892 (Bankr. M.D. Tenn. 2024) (state court receivership order did not preclude bankruptcy filing explicitly, but even if it did, it likely would violate federal preemption); *In re Orchards Village Invs., LLC*, 405 B.R. 341, 349 (Bankr. D. Or. 2009) (“a state court receivership proceeding cannot be used to preclude a debtor from seeking federal bankruptcy protection”).

Finally, South Carolina’s receivership practices are not limited to the asbestos context and have been extended to reach other toxic tort contexts. *See* Order, *Mimms v. Burlington Indus.*, Case No. 2021-CP-4005873 (S.C. Ct. C.P. Richland Cty. May 13, 2022) (receiver appointed over Burlington Industries, Inc., an out-of-state defendant, in case alleging PCB contamination); *Burlington Indus., Inc. by and through its Receiver v. Continental Cas. Co.*, Case No. 2024-CP-42-04138 (S.C. Ct. C.P. Spartanburg Cty.) (action filed by Burlington Industries receiver seeking various declarations of coverage for lawsuits arising out of per- and polyfluoroalkyl substances (PFAS)).

IV. THE PAYNE & KELLER RECEIVERSHIP CONFIRMS THAT THE RECEIVER SEEKS TO WREST JURISDICTION FROM OTHER STATES

The Payne & Keller saga reveals that South Carolina's court-appointed receiver is exercising unbounded and unprecedented control over out-of-state defendants.

Start with timing. Texas law extinguished every claim against Payne & Keller—and, with it, the company's capacity to sue or be sued—on December 3, 1989. For more than three decades, no court, plaintiff, or creditor treated Payne & Keller as anything but extinct. Yet in 2023, the receiver and Childers persuaded a South Carolina court to retroactively erase that statutory extinguishment and revive the corporation, in plain violation of South Carolina's obligation to give Texas law full faith and credit. The receiver then filed the South Carolina order in Texas and obtained a Texas certificate of revocation all in a single day, before anyone could object (including on full faith and credit grounds). If a corporate dissolution that has been final for decades can be undone this easily by a foreign state and its court-appointed receiver, then no dissolution anywhere is secure from collateral attack whenever it becomes inconvenient to a plaintiff. The receiver's theory of his own power recognizes no temporal limit past which a corporation's legal dissolution is final.

The receiver did not stop at merely reviving Payne & Keller, later purporting to convert the company to a South Carolina corporation under his exclusive control. When a Texas appellate court later held that the underlying South Carolina order was not a final judgment entitled to enforcement in Texas,

the receiver's response was not to concede the point, but rather to tell the Texas Secretary of State his relocation of Payne & Keller could not be undone: that Payne & Keller "has been a South Carolina corporation, now, for over two years," and that only South Carolina may undo his acts. A receiver who revives and relocates a foreign corporation, and then disregards its home state court's rejection of the "domesticated" order that he used to initiate that process, transgresses critical boundaries on his power.

These wide-ranging abuses are not confined to Payne & Keller. The same receiver, invoking the same theory of unbounded receivership power, asserts absolute control over the litigation decisions and causes of action of CIHL—an active English company with no operations, assets, or presence in South Carolina. The story of Payne & Keller shows where that theory leads.

CONCLUSION

Charter's and Altrad's petitions for writs of certiorari should be granted.

Respectfully submitted.

JASON M. KNOTT
ZUCKERMAN SPAEDER LLP
2100 L Street, N.W.
Washington, D.C. 20037
(202) 778-1813
jknott@zuckerman.com

PATRICK HOFER
Counsel of Record
CLYDE & Co US LLP
1775 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006
(202) 747-5100
patrick.hofer@clydeco.us

Counsel for Amicus Curiae

October 13, 2026