Nos. 26-328 & 26-350

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.

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.

On Petitions for Writs of Certiorari
to the Supreme Court of South Carolina

BRIEF OF *AMICUS CURIAE* AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

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

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether the territorial limits on state courts' power embodied in the Due Process Clause, the Commerce Clause, and principles of federalism prohibit a state-court receiver from controlling the litigation decisions and other internal affairs of an out-of-state corporation when the receiver has not been recognized in the corporation's place of incorporation. ATRA submits this brief to place this case in context. The receivership here, and the ex-

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

[2] *See* American Tort Reform Ass'n, Judicial Hellholes 2025-2026, at 24-30 (2025).

pansive authority the receiver claims, is the culmination of a series of imbalanced rulings in the state's asbestos litigation that require the intervention of this Court.

All asbestos cases in South Carolina are assigned to a single judge ("the asbestos court") and the number of cases filed in that court has surged in recent years.[3] Since 2020, companies that are named as defendants in litigation before the asbestos court may find themselves subject to a court-appointed receivership, as occurred here. As the Charter Petitioners note, the South Carolina asbestos court has appointed the same local plaintiffs' attorney as receiver over a defendant 24 times. No. 26-328, Pet. at 5. This practice has targeted ongoing businesses—including Cape Intermediate Holdings Limited ("Cape"), an active corporation incorporated and headquartered in the United Kingdom, as well as long-defunct entities that supplied asbestos or made asbestos-containing products.

This is not right. In fact, the Third Circuit recently rejected the receiver's assertion that his appointment stripped a New Jersey corporation's board of directors of the ability to make key decisions about the business's litigation without his approval. *In re Whittaker Clark & Daniels Inc.,* 176 F.4th 241 (3d Cir. 2026), *pet. for cert. filed*, Nos. 26-159, 26-263. Courts abroad have found the receiver's extraordinary attempts to assert control over businesses and

[3] Asbestos complaints filed in Richland, South Carolina rose 137% between 2023 and 2025, placing it in the top 15 most frequent jurisdictions for plaintiffs' attorneys to file asbestos claims nationwide for the first time. *See* KCIC, Asbestos Litigation, 2025 Year in Review 7 (2026).

their assets far beyond South Carolina's borders "astonishing" and even tortious. *See In re Plan of Arrangement or Compromise of: Asbestos Corp. Ltd.*, No. 235-11-000008-259, at ¶ 23 (Quebec Super. Ct., Canada, July 30, 2025); *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC (Ch) 2999 (Eng.), at ¶ 112.

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

ARGUMENT

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

The South Carolina asbestos court has made it a common practice to place companies in receiverships under the control of a local personal injury attorney. Although asbestos litigation is the nation's longest-running mass tort, no other jurisdiction has routinely used receiverships in this manner against both ongoing businesses and defunct companies.

South Carolina's asbestos court has established receiverships over businesses that are incorporated in other states or countries, and that have no operations in South Carolina. Those companies may contest the South Carolina state court's jurisdiction over them. But the South Carolina court appoints a receiver to accept service, engage counsel, collect and administer the company's insurance assets, sue third parties in the company's name, and take other action to settle personal injury asbestos claims in a place where the company has never done business. That is the situation in the cases now before this Court.

In some instances, the path to receiverships begins with the asbestos court, at the request of plaintiffs' counsel, sanctioning defendants, typically for purported discovery violations. While such sanctions are rare in other jurisdictions, they are common in South Carolina's asbestos court. *See, e.g., South Carolina Judge Sanctions Insurer Over Corporate Deposition Failures*, 35-17 Mealey's Litig. Rep. Asb. 13 (Oct. 14, 2020) (reporting, at that time, there were 22 pending motions for discovery sanctions in just five asbestos cases). The sanctions imposed can be disproportionate to the conduct at issue. For example, the court has stripped away defenses, such as by instructing the jury to presume the company exposed the plaintiff to asbestos.[4]

Defendants that go to trial, rather than settle, may also find themselves in a receivership after experiencing a "nuclear" verdict. For example, Whittaker Clark & Daniels was hit with a $29 million verdict in 2023 in a case in which a plaintiff pinned her development of mesothelioma on use of cosmetic talc products. *See Whittaker Clark & Daniels,* 176 F.4th at 250. Days later, the plaintiff moved to place the talc supplier into receivership, which the court granted. *Id.* As a result of the verdict, the onslaught of asbestos lawsuits, and the receivership, Whittaker filed a petition for bankruptcy. *See id.* at 251*; see also*

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

Dietrich Knauth, *Talc Supplier Whittaker Clark & Daniels Files for Bankruptcy*, Reuters, Apr. 27, 2023.

The South Carolina asbestos court has also placed long-defunct companies into receiverships to go after their former insurers for money from decades-old policies that may cover asbestos claims. *See* Akiko Matsuda, *Asbestos Bankruptcies Test Reach of Frequent South Carolina Receiver*, Wall St. J., Sept. 22, 2025. Acting in the name of a company that no longer exists, the receiver subpoenas and sues the insurer, collects a settlement, and uses that money without transparency for anything related to asbestos litigation, including fees for other plaintiffs' lawyers. *See id.* The receiver reportedly has collected more than $100 million, dispersing it through Delaware trusts while retaining one third as a contingency fee. *See* Daniel Fisher, *U.S. Supreme Court Asked to Settle Fight in South Carolina Asbestos Court*, Legal Newsline, Sept. 22, 2026.

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

and affirmed summary judgment rulings for the receiver.[5]

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

Receiverships are, as the South Carolina Supreme Court has acknowledged, reserved for "the rarest of cases" when "there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined." *Welch v. Advance Auto Parts, Inc.*, 916 S.E.2d 320, 330 (S.C. 2025), *cert. denied sub nom. Atlas Turner, Inc. v. Welch*, 146 S. Ct. 1497 (2026) (citing *Richland County v. South Carolina Dep't of Revenue*, 811 S.E.2d 758, 769 (S.C. 2018)). *Amicus curiae* agree with the state supreme court's observation that appointing a receiver is an "extreme power" that "may only be used in extreme cases" such as when a defendant is "fraudulently concealing

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

or disposing of assets that may be responsive to a later judgment." *Id.* (citing 1 Ralph Ewing Clark, Clark on Receivers § 181 (3d ed. 1959)).

In that instance, the South Carolina Supreme Court affirmed the asbestos court's appointment of a receiver over Atlas Turner, an active Canadian company that contended it had never done business in South Carolina, as a sanction for a discovery violation. *See Welch*, 916 S.E.2d at 325. The court found that the receiver could pursue the company's insurance assets that have the potential to cover that plaintiff's injuries only. *See id.* at 334-35. Its ruling included an important message: "The Receivership order does not grant the Receiver entry into the Atlas Turner boardroom or some vague right to 'take over' operation of the company." *Id.* at 335.

It now seems that the South Carolina Supreme Court has abandoned its own cautionary instructions about the broad use of receiverships. About one year after ruling in the *Atlas Turner* case, the state high court again allowed this supposedly rare and extraordinary practice in the present case. *See Tibbs v. 3M Co.*, 933 S.E.2d 254 (S.C. 2026). This time, the court affirmed the appointment of Mr. Protopapas as a receiver over Cape, an English corporation named as a defendant in South Carolina asbestos litigation. After the asbestos court appointed Mr. Protopapas receiver for Cape in a case involving a different plaintiff, the receiver used this power in the *Tibbs* case to accept service of an asbestos claim on Cape's behalf, answer the complaint, and file lawsuits in Cape's name against companies allegedly responsible for Cape's asbestos liabilities. *See id.* at 259-60. The court upheld the prejudgment receivership even as it

acknowledged that the receiver had been appointed in a different case, had never sought authority to act in *Tibbs*, and should not "[i]n future cases" be permitted to act "outside the case in which he is appointed." *See id.* at 261. It reversed only the part of the trial court's ruling that found a danger of insolvency justified appointment of a receivership over Cape, which lacked evidentiary support. *See id.*at 266.

Even as the South Carolina Supreme Court reaffirmed that appointment of a receivership is an "extreme power" reserved for "extreme cases," it characterized a corporation's "conscious intent to defeat, delay, or hinder" asbestos claimants as a "moral fraud" justifying a receivership—and it found that Cape had committed such a fraud by declining to appear in United States asbestos cases in which it contested personal jurisdiction. *Id.* (internal quotations omitted). On average, each asbestos lawsuit filed in Richland County, South Carolina in recent years names about 110 companies as defendants. *See* KCIC, Asbestos Litigation: 2025 Year in Review, *supra*, at 16. Companies pulled into South Carolina from across the country and world have questioned the legitimacy of this sue-everyone approach to lawsuits filed against them.[6]

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[6] For background on the problem of over-naming of defendants, *see* Mary Margaret Gay & Sarah Beth Jones, *AI-Driven Over-Naming in Asbestos Litigation: Legislative Protections are Needed*, 2 Mealey's Litig. Rep.: Artificial Intelligence 30 (2025); Mark Behrens & Christopher Appel, *Over-Naming of Asbestos Defendants: A Pervasive Problem in Need of Reform*, 36-4 Mealey's Litig. Rep.: Asbestos 16 (2021); *see also* Complaint, *J-M Mfg. Co. v. The Gori Law Firm*, No. 3:26-cv-00094 (S.D. Ill. filed Jan. 28, 2026) (RICO action alleging a prominent law

Despite its previous caution that a receiver does not have authority to take over the affairs of a company, the South Carolina Supreme Court's May 2026 decision rejected the 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 and cannot be lawfully made by a receiver." 933 S.E.2d at 268.

South Carolina's extraterritorial receivership practice is not normal. Lester Brickman, emeritus professor at Yeshiva University's Cardozo School of Law, is "not aware of this procedure having been adopted in any other jurisdiction." Daniel Fisher & John O'Brien, *Zombies Are on the Loose in a Carolina Courtroom, Can Anyone Stop Them?*, Legal Newsline, Sept. 24, 2024. Even lawyers representing plaintiffs in South Carolina's asbestos litigation acknowledge that appointing a receiver for a viable company, such as Cape, is "unusual." Emily Cousins, *Asbestos Plaintiffs Get Path to Collect Legacy Insurance Policies,* Law.com, May 27, 2025 (quoting Trey Branham of Dean Omar Branham Shirley). There is concern that absent intervention by this Court, these receivership practices may spread to other types of tort claims or beyond South Carolina. *See* Br. of Nat'l Union Fire Ins. Co. of Pittsburgh, PA, as *Amicus Curiae* in Support of Petitioners, at 16-17, Nos. 26-328 & 26-350 (Oct. 13, 2026).

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firm's attorneys coached clients to testify they were exposed to products sold by companies that appeared on the firm's list of solvent targets to maximize the number of defendants and settlements).

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

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

Recently, the Third Circuit, reviewing an order by the same trial court appointing the same receiver, rejected the receiver's assertion of power over a New Jersey corporation. *See Whittaker Clark & Daniels,* 176 F.4th at 257. The Third Circuit recognized that while courts can appoint receivers for insolvent corporations, "that authority is not without limits." *Id.* at 256. It ruled that the receiver lacked the power to block the company's board from filing for bankruptcy for three reasons. First, the South Carolina asbestos court's order establishing the receivership did not displace the board's authority over corporate affairs. *Id.* at 257. Second, the receiver had not gone to New Jersey courts (the state of incorporation) to enforce the receivership order or followed the requirements of that state's law. *Id.* at 257-58. Third, and most analogous to the case before this Court, placing a receiver in control of the corporate affairs of a foreign (New Jersey) corporation would violate the constitutional limits on a state's authority over corporations incorporated in a sister state. *See id.* at 258. The Third Circuit concluded that interpreting the receivership order in such an expansive manner would "be an unprecedented exertion of power over a foreign corporation" whose internal affairs are governed by

another state and constitute "a radical intrusion" into that state's sovereignty. *Id.* at 259.[7]

Given the Third Circuit's reaction to an attempt by a South Carolina receiver to take control of a New Jersey company, it should come as no surprise that the asbestos court's appointment of receiverships purportedly with extraterritorial power over foreign businesses and their assets shocked courts in those countries.

In 2023, the court appointed a receiver for a Quebec mining company, Asbestos Corporation Limited (ACL), in response to discovery violations following the defendants' objection to personal jurisdiction. *See Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pleas Sept. 8, 2023) (Order on Plaintiffs' Motion to Appoint a Receiver) (on file with this Court in Docket No. 24A802). The South Carolina receivership order empowered Mr. Protopapas to "assume control of the defense of asbestos claims made against ACL in the United States," including accepting service and hiring counsel on behalf of ACL. *Id.* at 6. The order also authorized the receiver to obtain ACL's financial records, investigate and administer ACL's insurance assets, and bring claims on behalf of

[7] The South Carolina Supreme Court addressed the tension between the Third Circuit's ruling in *Whittaker* and its decision in the case before this Court by characterizing *Whittaker* as addressing only whether a post-judgment receiver can prevent a New Jersey corporation from filing for bankruptcy, rather than a prejudgment receiver's pursuit of a foreign company's insurance assets and "certain claims"—even though the Third Circuit considered whether the same receiver could make litigation decisions for another out-of-state corporation. *See Tibbs,* 933 S.E.2d. at 269.

ACL against insurance carriers or other entities. *Id.* As a result, both the receiver and ACL's management claimed to speak for the company in its dealings with insurers, leading to confusion, including sanctions on insurers and contractual disputes between the company and its insurers over the insurers' authority to settle asbestos claims. *See* Application for an Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Supreme Court of South Carolina, at 3-4, *Certain Underwriters at Lloyd's London v. Toal*, No. 24A802 (U.S. filed Feb. 14, 2025).[8]

The third party claim administrator that handles ACL's U.S. asbestos claims reported that it had been "torn between two masters," complicating and delaying resolution of claims. *In re Asbestos Corp. Ltd.*, 674 B.R. 855, 863, 871 (Bankr. S.D.N.Y. 2025), *aff'd*, No. 25-cv-9889, 2026 WL 3205530 (S.D.N.Y. Oct. 23, 2026). The receiver's actions, according to ACL, "increased liability and damages for ACL, rather than protecting ACL's interests and those of its stakeholders" and "exacerbated" its risk of default judgments. Decl. of Ayman Chaaban Pursuant to 28 U.S.C. § 1746, ¶¶ 30-31, *In re Asbestos Corp. Ltd.*, No. 1:25-bk-10934 (Bankr. S.D.N.Y. filed May 6, 2025).

Due in part to the receivership, ACL filed for bankruptcy protection. Months later, a Canadian court found the South Carolina asbestos court's re-

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

ceivership order "astonishing in the eyes of a court rooted in Canadian . . . judicial culture" and found that it had "seriously compromised" ACL's defense of the lawsuits filed against it in the United States. *In re Plan of Arrangement or Compromise of: Asbestos Corp. Ltd.*, No. 235-11-000008-259, at ¶ 23 (Super. Ct. of Quebec, Canada, July 30, 2025)); *see also* Akiko Matsuda, *Asbestos Bankruptcies Test Reach of Frequent South Carolina Receiver*, Wall St. J., Sept. 22, 2025 (reporting on ACL receivership). A federal bankruptcy judge recognized the validity of the Canadian insolvency proceeding, granting Chapter 15 recognition, noting the national and international controversy the South Carolina receivership has caused. *See In re Asbestos Corp. Ltd.*, 674 B.R. at 863.

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

The English court found it "quite clear" that a court in South Carolina cannot appoint a receiver over a foreign business that has no presence in South

Carolina or anywhere in the United States. *Id.* ¶ 98. Although English law does not recognize his receivership, the court noted that Mr. Protopapas continues to purport to make admissions on behalf of the company that are "positively damaging to the legitimate interests of the company over whose assets he has been appointed, despite the fact that one of his obligations is to act in its proper interests." *Id.* ¶ 120. Allowing a South Carolina court to act in this manner, the English court found, could have serious consequences for a company, including impacting its finances, interfering with its operations, damaging its reputation, and leading to more lawsuits against the company in South Carolina and worldwide. *Id.* ¶¶ 113, 114. In fact, the English court ruled that by "purporting to act as an agent of [Cape] without authority recognised in English law" the receiver commits a tort. *Id.* ¶¶ 111, 112.[9]

The South Carolina Supreme Court has shrugged off the English court's ruling. *See Tibbs*, 933 S.E.2d at 264-65. The South Carolina Supreme Court found that the English court "did what it believed English law required it to do," but that "we do not quite follow" how the English court could threaten a South Carolina-appointed receiver with fines, costs or imprisonment should he act on behalf of the English company, as the asbestos court directed. *Id.* at 264.

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

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

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

CONCLUSION

For these reasons, ATRA respectfully requests that this Court grant the Petitions.

Respectfully submitted,

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