No. 24A___

IN THE

Supreme Court of the United States

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON and CERTAIN LONDON MARKET INSURANCE COMPANIES,

Petitioners,

v.

THE HONORABLE JEAN H. TOAL, in her capacity as Acting Circuit Court Judge, and PETER PROTOPAPAS, in his capacity as Receiver for Asbestos Corporation Ltd.,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT:

Pursuant to this Court's Rule 13.5, Certain Underwriters at Lloyd's, London and certain London market insurance companies ("Certain London Market Insurers" or "CLMI") respectfully request a 60-day extension of time, to and including May 11, 2025, within which to file a petition for a writ of certiorari to the Supreme Court of South Carolina.[*]

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[*] Certain London market insurance companies as to which the claims are administered by third-party claims administrator, Resolute Management, Inc., consist of The Scottish Lion Insurance Company Ltd.; Tenecom Ltd. (as successor to Winterthur Swiss Insurance Company, formerly known as Accident & Casualty Insurance Company of Winterthur, Switzerland); Yasuda Fire and Marine Insurance Company (UK) Limited, now known as Tenecom Ltd.; The Ocean Marine Insurance Company Limited (as successor to liabilities

(Cont'd on next page)

The Supreme Court of South Carolina issued its order denying CLMI's petition for a writ of prohibition on December 12, 2024. Unless extended, the time within which to file a petition for a writ of certiorari will expire on March 12, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a). A copy of the South Carolina Supreme Court's order denying CLMI's petition for a writ of prohibition is attached hereto as Exhibit B.

1. All asbestos litigation in South Carolina is currently assigned to a single trial court judge, the Honorable Jean H. Toal. This case arises from the South Carolina trial court's decision to appoint a receiver over Asbestos Corporation Limited ("ACL"), an active Canadian corporation that has no property in South Carolina and that has never done business in the State.

In *Tibbs v. 3M Co.*, No. 2023-CP-40-01759, ACL was named as a defendant in an asbestos personal-injury action and entered an appearance to object to personal jurisdiction. The trial court overruled that objection, and ACL subsequently filed an answer and responded to discovery requests to the extent it deemed compatible with its legal obligations under the Québec Business Concerns Records Act. The plaintiffs responded

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of Commercial Union Assurance Company Limited, The Edinburgh Assurance Company, The Indemnity Marine Assurance Company Limited, The Northern Assurance Company Limited, The Road Transport & General Insurance Company Limited, United Scottish Insurance Company Limited, and The Victoria Insurance Company Limited); and NRG Victory Reinsurance Limited as successor to liabilities of New London Reinsurance Company Limited. The corporate disclosure statement required by this Court's Rule 29.6 is attached as Exhibit A.

by filing a motion to hold ACL in contempt and to strike its pleadings for supposedly failing to participate in discovery, as well as a motion to appoint a receiver for ACL.

The trial court granted both motions. After holding ACL in contempt and striking its pleadings, the trial court appointed Peter Protopapas as Receiver for ACL—the *twenty-fourth* time it has appointed Mr. Protopapas a receiver for an asbestos defendant over the past five years. *See* Receivership Order (Exhibit C). Although the Receivership Order does not displace ACL's Canadian board and management in full, it grants the Receiver sweeping powers over ACL's litigation and insurance, including the powers (1) to "fully administer all insurance assets of Asbestos Corporation, Ltd."; (2) to "accept service on behalf of ACL"; (3) to "engage counsel on behalf of ACL"; (4) to "obtain from any financial institution, bank, credit union, savings and loan or title, credit bureau or any other third party, any financial records belonging to or pertaining to the insurance assets of ACL"; (5) to "open any mail which is reasonably believed to contain information relating to insurance assets addressed to [ACL] and addressed to any business owned by" ACL; (6) to "assume control of the defense of asbestos claims made against ACL in the United States"; and (7) to "take any and all steps necessary to protect the interests of ACL whatever they may be." The Receiver has exercised those powers in connection with both the *Tibbs* case and other cases pending against ACL.

CLMI, as insurers of ACL, are directly and adversely affected by the trial court's Receivership Order. After the trial court issued the Receivership Order, both the Receiver and ACL's Canadian board and management have claimed to speak for ACL in its dealings

with CLMI—taking diametrically opposed positions on litigation and insurance matters and leaving CLMI to navigate these irreconcilable instructions.

For example, in two personal-injury cases against ACL, the trial court directed that "[t]he insurers for . . . ACL are expected to cooperate with the Receiver." Order, pp. 5-6, *Link v. 4520 Corp.*, No. 2022-CP-40-005543, *Donaghy v. 4520 Corp.*, No. 2022-CP-40-03108 (S.C. Ct. Common Pleas, 5th Cir. Feb. 23, 2024). But ACL took the position that the Receiver was without authority to act on ACL's behalf and objected to CLMI's extending settlement authority in those cases in sums consistent with the Receiver's expectations. CLMI followed ACL's directives, and the mediation was unsuccessful. The Receiver then moved for sanctions against CLMI based on their purported failure to participate meaningfully in the mediation. The trial court granted the Receiver's request, imposing sanctions of $50,000 a day against CLMI for supposedly failing to "comply with th[e] Court's orders" with respect to the ACL receivership, which would continue to accrue until the Receiver advised the court that CLMI had come into compliance. Order on Plaintiffs' and Receiver's Motion for Sanctions and Contempt, p. 7, *Link v. 4520 Corp*., No. 2022-CP-40-05543, *Donaghy v. 4520 Corp*., No. 2022-CP-40-03108 (S.C. Ct. Common Pleas, 5th Cir. Mar. 22, 2024).

The Receiver has also filed a third-party coverage complaint against CLMI, seeking findings in conflict with the longstanding agreement among ACL and CLMI on application of the insurance policies. And when CLMI provided funds to the Receiver to settle five asbestos cases pending against ACL, attorneys retained by ACL's board and officers in Canada accused CLMI of breaching their contractual obligations to ACL.

With no other way to avoid the serious ongoing harms inflicted by the Receivership Order, CLMI filed a petition for a writ of prohibition with the South Carolina Supreme Court, asking it to bar the trial court from enforcing the Receivership Order and to enjoin the Receiver from taking any action—through litigation or otherwise—on behalf of ACL. CLMI argued that the Receivership Order violated South Carolina law and the U.S. Constitution.

The South Carolina Supreme Court issued an order denying the petition for a writ of prohibition. It noted only that "[t]he issue [CLMI] ask this Court to consider is pending on direct appeal" before the South Carolina Supreme Court in two other cases: *Tibbs v. 3M Co.*, No. 2023-001461 (S.C. Sup. Ct.), and *Welch v. Advance Auto Parts, Inc.*, No. 2024-00180 (S.C. Sup. Ct.). *See* Exhibit B hereto.

2. This Court's review would be sought on the ground that the extraterritorial Receivership Order—and the South Carolina Supreme Court's order denying CLMI's writ of prohibition challenging that extraordinary order—conflict with the U.S. Constitution and this Court's precedent, which reserve to the federal government the exclusive authority over foreign affairs and foreign commerce.

The Receivership Order authorizes the Receiver to take control of ACL's insurance and litigation—displacing the authority of ACL's Canadian board and management. In so doing, the Receivership Order contravenes fundamental limits on a State's authority in the American constitutional system. The Constitution reserves to the federal government exclusive authority over foreign affairs. *See* U.S. Const. art. I, § 10, cl. 1; *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1875). When a State purports to override the prerogatives of

a foreign corporation's board and management, it transgresses the Constitution's vesting of authority "over external affairs" in "the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942); *see also Young v. JCR Petroleum, Inc.*, 423 S.E.2d 889, 892 (W.Va. 1992) (the limit on interstate dissolution of corporations rests in a similar principle embedded in the Full Faith and Credit Clause). The federal government must speak "with one voice in dealing with other governments," *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 381 (2000), and thus a State's action that creates a "likelihood" of "produc[ing] something more than [an] incidental effect" on foreign affairs is a nullity, *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 420 (2003).

Here, there is no question that this unprecedented Receivership Order exceeds those constitutional bounds. By imposing a South Carolina receivership on a Canadian corporation that has no property in South Carolina and that is actively managed by its Canadian board and officers, the Receivership Order risks undermining relations with an essential ally and partner by calling into question the status and powers Canada has conferred on a Canadian corporation. *See Pink*, 315 U.S. at 233 ("No State can rewrite our foreign policy to conform to its own domestic policies," so New York law gave way to federal policy on priority of claims).

The risk of international conflict inherent in this type of transnational receivership has already manifested itself in connection with the same South Carolina trial court's appointment of Mr. Protopapas as receiver for an English corporation named as an asbestos personal-injury defendant in South Carolina. The English corporation responded by filing suit in the United Kingdom to enjoin Mr. Protopapas from acting as its receiver. The High

Court of Justice of England and Wales issued an injunction to "prevent[] the receiver, even in South Carolina, from acting or purporting to act for or on behalf of" that English company. Order ¶¶ 136-37, *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC (Ch) 2999 (Eng.). The U.K. court explained that it was "quite clear" the South Carolina trial court lacked authority to appoint the receiver over the English company, *id.* ¶ 98, and that Mr. Protopapas was committing a tort by "purporting to act as agent of [the English corporation] without authority recognised in English law," *id.* ¶ 112. The court recognized that competing orders from the U.K. and South Carolina courts would create "a clash between two court systems," but concluded that an injunction was the only way to "successfully deal[] with" the "real" and "serious" "threats posed by the receiver." *Id.* ¶¶ 111-15, 135-37.

When Mr. Protopapas then asked the South Carolina Supreme Court for relief from the High Court's order, the South Carolina Supreme Court described the U.K. court's order as "shocking and indefensible" to the extent it "intervene[d] in and threaten[ed] the participants in matters properly pending in the courts of South Carolina." Order, *Tibbs v. 3M Co.*, No. 2024-002117 (S.C. Sup. Ct. Jan. 16, 2025). The trial court's order here imposing a receivership on a Canadian corporation risks the same stark and immediate foreign-policy conflict.

The federal government's "exclusive and plenary" authority over foreign commerce leads to the same conclusion. *Bd. of Trs. of Univ. of Ill. v. United States*, 289 U.S. 48, 56 (1933). The Commerce Clause vests in Congress the power "To regulate Commerce with foreign Nations, and among the several States." U.S. Const. art. 1, § 8, cl. 3. Congress's

authority over foreign commerce "may not be limited, qualified, or impeded to any extent by state action," *Bd. of Trs.*, 289 U.S. at 56-57—a principle rooted in the same foundational rule that governs foreign relations more broadly: that the federal government must "speak with one voice when regulating commercial relations with foreign governments," *Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 449 (1979). State laws that unduly burden, impair, or discriminate against foreign commerce are therefore invalid. *See id.*; *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273-74 (1988). By giving the Receiver authority to control an active Canadian corporation's insurance and litigation in South Carolina and throughout the United States, the Receivership Order imposes a severe burden on foreign commerce that risks reprisal against U.S. companies. It is unimaginable that the Constitution leaves that decision to each individual State. *See Japan Line*, 441 U.S. at 455 ("California may not tell this Nation or Japan how to run their foreign policies.").

3. Additional time for CLMI to file their petition for a writ of certiorari is warranted because the outcome of two suits currently pending before the South Carolina Supreme Court could eliminate CLMI's need to seek this Court's review. In *Tibbs v. 3M Co.*, No. 2023-001461 (S.C. Sup. Ct.), the South Carolina Supreme Court is considering the validity of the ACL receivership under South Carolina law and the U.S. Constitution, and in *Welch v. Advance Auto Parts, Inc.*, No. 2024-00180 (S.C. Sup. Ct.), that court is considering the validity of a materially similar receivership that the trial court imposed on another active Canadian corporation, Atlas Turner Inc. The South Carolina Supreme Court heard argument in those cases on February 11, 2025, and that court's decision is expected to be issued in due course.

If the South Carolina Supreme Court holds that the Receivership Order is invalid, there may be no need for CLMI to seek further relief from this Court. An extension of time would therefore promote judicial economy and potentially conserve the parties' resources. This extension would not prejudice Respondents; an extension would leave the Receivership Order in force pending the South Carolina Supreme Court's decisions in *Tibbs* and *Welch* and potential review of the Receivership Order by this Court.

CONCLUSION

Accordingly, CLMI respectfully request that an order be entered extending the time to file a petition for a writ of certiorari by 60 days, to and including May 11, 2025.

Respectfully submitted.

/s/ Amir C. Tayrani

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