No. ____

In the Supreme Court of the United States

SAFEGUARD INTERNATIONAL FUND, L.P.,

Petitioner,

v.

IFC INTERCONSULT, AG,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal court has ancillary jurisdiction over a garnishment proceeding brought under FED. R. CIV. P. 69 against an entity that was not a party to the original action but has an indemnification agreement with the judgment debtor, when there is no overlap at all between the issues adjudicated in the original action and the issues adjudicated in the garnishment proceeding.

PARTIES TO THE PROCEEDING

In this Court, Safeguard International Fund, L.P., is the petitioner and IFC Interconsult, AG, is the respondent. Safeguard International Partners, LLC, was a defendant in the related district court proceeding to confirm the arbitration award. In the two consolidated appeals before the United States Court of Appeals for the Third Circuit, Safeguard International Partners, LLC, was the appellant in one appeal and an appellee in the other appeal. It is a respondent in this Court under Rule 12.6.

RULE 29.6 STATEMENT

Safeguard International Fund, L.P., is a limited partnership and private equity fund, not a corporation that has issued stock. Although some of the limited partners of Safeguard International Fund, L.P., are corporations, to the best of petitioner's knowledge none of the limited partners is a publicly held company.

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OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-35a) is reported at 438 F.3d 298. The district court's order dismissing the garnishment proceeding for lack of jurisdiction and denying summary judgment (App., *infra*, 36a-46a) is reported at 356 F. Supp. 2d 503. The district court's order confirming the arbitration award (App., *infra*, 47a-54a) is reported at 334 F. Supp. 2d 777.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 2006, and rehearing was denied on March 20, 2006 (App., *infra*, 55a-56a). This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION AND RULES INVOLVED

28 U.S.C. § 1367(a) provides in pertinent part:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Federal Rule of Civil Procedure 69(a) provides in pertinent part:

> Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court

> directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

Federal Rule of Civil Procedure 82 provides in pertinent part:

> These rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein.

STATEMENT

A panel of the Third Circuit dramatically expanded the scope of a federal district court's jurisdiction by holding that ancillary jurisdiction exists over all garnishment proceedings brought pursuant to Rule 69 of the Federal Rules of Civil Procedure. The statute that governs supplemental jurisdiction, 28 U.S.C. § 1367(a), limits ancillary jurisdiction to claims "so related to other claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). The Third Circuit's decision effectively transforms Rule 69 into a grant of federal jurisdiction, contrary to the bedrock principle that the Federal Rules of Civil Procedure neither withdraw nor expand federal jurisdiction. FED. R. CIV.

P. 82; *Owen Equip. & Erection Co.* v. *Kroger*, 437 U.S. 365, 370 (1978).

The Third Circuit's opinion is inconsistent with this Court's decision in *Peacock* v. *Thomas*, 516 U.S. 349 (1996), and with decisions from other courts of appeals. The Third Circuit failed to follow this Court's unambiguous statement – that a federal district court does not have ancillary jurisdiction "in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment," *id.* at 357 – and instead adopted a general rule that federal jurisdiction exists over any and all Rule 69 proceedings. When a Rule 69 proceeding does not satisfy the jurisdictional prerequisites summarized in *Peacock*, the proper place to seek to impose liability on a new party is in state court, not federal court.

As Justice Scalia has observed, "[n]othing is more wasteful than litigation about where to litigate." *Bowen* v. *Massachusetts*, 487 U.S. 879, 930 (1988) (Scalia, J., dissenting). The Third Circuit's opinion adds to the existing confusion among the courts of appeals regarding the proper interpretation of Section 1367, *Peacock* v. *Thomas*, and Rule 69 and invites wasteful litigation as the courts of appeals apply utterly irreconcilable standards to matters like this one. This Court should grant certiorari to resolve the circuit split, reiterate that the Court meant what it said in *Peacock* v. *Thomas*, and forestall years of wasteful litigation under the circuits' conflicting standards.

A. The Arbitration

Petitioner Safeguard International Fund, L.P. ("the Fund") is a private equity fund. Safeguard International Partners, LLP ("SIP") is the general partner of SIF Management, L.P., the general partner of the Fund. In 1996, respondent IFC Interconsult, AG ("IFC") and SIP entered into a contract pursuant to which SIP would obtain investors for the Fund, and SIP would

pay IFC placement fees. Under the terms of the agreement, "'in the event of any dispute arising under this Agreement, [the parties] will submit the dispute to binding arbitration in the City of Philadelphia, Pennsylvania under the rules of the American Arbitration Association.'" App., *infra*, 48a. A dispute arose between SIP and IFC, and IFC filed a demand for arbitration before the American Arbitration Association to recover commissions and fees due under the Agreement, naming the Fund as a respondent. *Ibid*. Shortly thereafter, SIP and the Fund filed a federal action seeking a declaratory judgment on the arbitrability of the dispute, which was dismissed for lack of jurisdiction. *Ibid.* SIP and the Fund then filed an action in the Court of Common Pleas for Philadelphia County also seeking a declaratory judgment that SIP was the only proper respondent to IFC's demand for arbitration. *Ibid.* The Court of Common Pleas then stayed the arbitration proceedings against all respondents except SIP. *Id*. at 48a–49a.

IFC filed an amended demand for arbitration, and named only SIP as a respondent. App., *infra*, 49a. A panel of three arbitrators directed that SIP pay IFC an award of $3,914,402.72 within thirty days. *Id.* at 50a.

IFC filed a petition to confirm the arbitration award in the district court for the Eastern District of Pennsylvania. App., *infra*, 50a. SIP filed a motion to dismiss for failure to state a claim under FED. R. CIV. P. 12(b)(6), arguing that two parties originally named as respondents in the arbitration indirectly participated in the proceeding in violation of the Court of Common Pleas' order. *Ibid.* SIP then filed an Application to Modify, Correct and/or Vacate the Arbitration Award in the Court of Common Pleas. *Ibid.* One week later, IFC filed a petition for a temporary restraining order and preliminary injunction in the district court, seeking to enjoin SIP from pursuing its action in state court while this action was pending. *Ibid.* SIP argued that the district court should abstain from deciding IFC's petition to

confirm the arbitration award pending SIP's action in the state court under the *Colorado River* abstention doctrine. App., *infra*, 51a; see *Colo. River Water Conservation Dist.* v. *United States*, 424 U.S. 800 (1976). The district court held that *Colorado River* abstention was not warranted, and entered judgment confirming the award in favor of IFC. App., *infra*, 53a–54a. SIP failed to bond or satisfy the judgment.

B. The District Court Order Dismissing The Garnishment Action For Lack Of Jurisdiction

Two months after the district court entered judgment against SIP, IFC filed a Rule 69 garnishment proceeding against the Fund in the same district court, arguing that, as SIP's judgment creditor, IFC was authorized to enforce the indemnity clause contained in the partnership agreement between SIP and the Fund. App., *infra*, 38a. The indemnification clause provides that:

> [The Fund] shall indemnify and hold harmless each Indemnified Person [including SIP] from any and all reasonable costs and expenses and any and all damages and claims which may be incurred by or asserted against him or it by reason of any action taken or omitted to be taken on behalf of the Partnership or in furtherance of its interest, or by reason of such Indemnified Person's connection to or relationship with the Partnership.

Id. at 37a n.1. After receiving the Fund's interrogatory responses, IFC moved for summary judgment. The Fund argued in response that the district court did not have subject-matter jurisdiction over the garnishment proceeding. The district court agreed. *Id*. at 37a.

The district court reasoned that, although it had properly exercised jurisdiction over IFC's petition to confirm the arbitration award under the Federal Arbitration Act, 9 U.S.C. § 201, *et seq.*, "the FAA's original federal jurisdiction does not extend to

actions against parties which were not parties to the initial arbitration agreement." App., *infra*, 38a. Nor, the court held, did it have ancillary jurisdiction over the proceeding. *Id*. at 43a. The court rejected IFC's argument that *Skevofilax* v. *Quigley*, 810 F.2d 378 (3d Cir. 1987) (en banc), governs this case. App., *infra*, 40a. In *Skevofilax*, the Third Circuit had held that a "district court has ancillary jurisdiction to adjudicate a garnishment action by a judgment creditor against a nonparty to the original lawsuit which may owe the judgment debtor an obligation to indemnify against the judgment, or any other form of property." 810 F.2d at 385. The district court held, however, that *Peacock* v. *Thomas*, 516 U.S. 349, 351 n.2 (1996), abrogated *Skevofilax,* and specified "the two instances in which ancillary jurisdiction may be exercised: '(1) to permit disposition by a single court of factually interdependent claims; and (2) to enable a court to function successfully, that is, to manage its proceedings.'" App., *infra*, 40a (quoting *Peacock*, 516 U.S. at 354).

Applying the principles outlined in *Peacock*, the court held that "there is an insufficient factual dependence between the claims raised in IFC's prior and resolved effort to confirm its arbitration award and the current effort to enforce it through the Fund" because the initial proceeding involved the propriety of the arbitration process whereas the garnishment proceeding involved the Fund's obligation to indemnify SIP and satisfy IFC's judgment. App., *infra*, 40a. Rejecting IFC's arguments to the contrary, the court reasoned that this Court's brief mention of garnishment as an example of "a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments," *Peacock*, 516 U.S. at 356, was insufficient to justify a general holding that ancillary jurisdiction exists over *all* garnishment proceedings. Instead, the court heeded this Court's warning that it has "never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal

judgment on a person not already liable for that judgment." *Id*. at 357. The garnishment proceeding was "a new and original proceeding," App., *infra,* 42a, based on a distinct legal theory that the Fund was obligated to pay IFC's judgment under the indemnification clause.

As an alternative holding, the court denied IFC's motion for summary judgment because the Fund raised a genuine issue of material fact. App., *infra*, 43a. The court held that the Fund's argument that the indemnification clause did not cover placement fee arrangements, and required it to reimburse SIP for the amount of the judgment only after SIP pays the judgment itself, rather than for SIP's liability, raised "an entirely new and original legal proceeding, over which this court cannot rightfully extend ancillary subject matter jurisdiction." *Ibid*.

C. The Court Of Appeals' Decision

A panel of the Third Circuit reversed the district court's ruling and directed that summary judgment be entered in IFC's favor. App*., infra*, 2a. After addressing two issues that are not relevant to this petition,[1] the court held that this Court's opinion in *Peacock* did not overrule the Third Circuit's en banc precedent in *Skevofilax*.

As the panel acknowledged, this Court said in *Peacock* that it had "granted certiorari * * * to resolve a conflict among the Courts of Appeals," and cited *Skevofilax* as one of the cases giving rise to the conflict the Court said it was resolving. 516

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[1] SIP also appealed from the district court's order confirming the arbitration award and denying its motion to stay dismiss or stay IFC's petition to confirm the award under FED. R. CIV. P. 12(b)(6). App., *infra*, 47a. The Third Circuit consolidated the appeals. This petition, however, seeks review only of the Third Circuit's opinion reversing the district court's ruling that it lacked ancillary jurisdiction and directing that summary judgment be entered in favor of IFC.

U.S. at 352 & n.2. The panel dismissed this Court's inclusion of *Skevofilax* among the cases "on the wrong side of the circuit split," however, as "hardly a well-considered dictum," App., *infra*, 17a. The panel held that *Skevofilax* remains binding precedent within the Third Circuit. *Id*. at 20a.

First, the panel reasoned that this Court's explicit statement (516 U.S. at 359 & n.7) that a Rule 69(a) proceeding is an effective mechanism for a district court to use in effectuating its judgment meant that "*Peacock* itself made clear that it does not apply to Rule 69 actions." App., *infra*, 18a. The panel believed that this Court categorically "excepted Rule 69 actions from [*Peacock*'s] reach." *Ibid*.

Second, the panel distinguished *Skevofilax* because *Peacock* "was not a collection or enforcement action." App., *infra*, 19a. Instead, this Court in *Peacock* held that a federal district court lacks ancillary jurisdiction to impose primary liability, whereas the Third Circuit in *Skevofilax* held that a federal district court has ancillary jurisdiction over an action to seek satisfaction of a judgment against a party that may be contractually obligated to be secondarily liable. *Ibid*. The panel emphasized what it saw as the "crucial factual distinction between primary and secondary liability," noting that "the plaintiff in *Peacock* was attempting to jurisdictionally bootstrap a new veil-piercing action onto his earlier ERISA suit," which, in contrast to a garnishment proceeding, "collapses corporate distinctions to make for joint primary liability." *Id.* at 19a. Thus, the panel opined, "*Peacock* only addressed jurisdiction over actions that seek to impose liability 'on a person *not otherwise liable* for the judgment.'" *Id*. at 20a (quoting, and adding emphasis to, *Peacock*, 516 U.S. at 351).

The court also reasoned that, if it did construe *Peacock* to overrule *Skevofilax*, then "there could *never* be jurisdiction over any garnishment action, as it would always be based on a new, contractual theory of liability." App., *infra*, 20a. Applying

Peacock to a Rule 69 action, the court believed, would effectively "make federal courts dependent on state courts to enforce federal judgments, thereby jeopardizing the effectiveness of federal decrees," and would "render federal courts toothless." *Id*. at 21a. The court joined the Seventh Circuit in holding that a Rule 69 action should be treated as part of the original suit, regardless of whether it is filed as part of the original suit or as a separate suit. *Id*. at 21a–22a (citing *Yang* v. *City of Chicago*, 137 F.3d 522 (7th Cir. 1998), *Wilson* v. *City of Chicago*, 120 F.3d 681 (7th Cir. 1997), and *Matos* v. *Nellis, Inc.*, 101 F.3d 1193 (7th Cir. 1996)).

The Third Circuit was unpersuaded by the Sixth Circuit's holding that a district court may not exercise ancillary jurisdiction over a garnishment action based on an indemnification agreement if there are "'legitimate, unresolved disputes'" concerning the scope of the agreement. App., *infra*, 25a (quoting *Hudson* v. *Coleman*, 347 F.3d 138, 146 (6th Cir. 2003)). The Third Circuit reasoned that the Sixth Circuit's distinction between a garnishment proceeding based on an independent legal theory and a typical garnishment proceeding, such as for a salary, was a "distinction without a difference." *Id*. at 27a. Rather, the court explained, "[g]arnishment always involves a separate theory of liability from the original action." *Ibid*.

The Third Circuit acknowledged that "Fifth Circuit precedent has always treated garnishments as independent actions, unconnected to the underlying suit establishing liability." App., *infra*, 22a n.7 (citing *Berry* v. *McLemore*, 795 F.2d 425 (5th Cir. 1986)). And this Court in *Peacock*, 516 U.S. at 352 n.2, had cited *Berry* v. *McLemore* as one of the cases giving rise to the circuit split the Court purported to resolve. Nevertheless, the Third Circuit felt free to reject the Fifth Circuit's approach because "[w]e find the results of the Fifth Circuit's decision troubling" and the consequence of following the Fifth Circuit's

approach struck the Third Circuit as "a poor use of judicial resources." App., *infra*, 22a n.7.

Despite its express rejection of the Fifth and Sixth Circuits' approaches, the panel implied that one of those two courts might have reached the same result on the facts of this case. "[O]ur disagreement with *Hudson* is immaterial because * * * the remaining questions concerning the Fund's liability are questions of law. The fact that the Fund's liability is disputed does not defeat federal jurisdiction." App., *infra*, 27a. The court did not attempt to explain how a conclusion that the remaining issues were questions of law, rather than fact, might render them any less "unresolved" (*Hudson* v. *Coleman*, 347 F.3d at 146) or any less "entirely new theories of liability" (*Peacock*, 516 U.S. at 358) than disputed questions of fact. The court cited no authority for the novel proposition that a federal court might have jurisdiction to resolve questions of law when it would *not* have jurisdiction to resolve questions of fact in the exact same case.

Having asserted jurisdiction to resolve "questions of law," the court in a lengthy discussion reversed the district court's denial of IFC's motion for summary judgment. The court directed that summary judgment be entered based on its own resolution of some four different questions, none of which had been decided by the district court in either proceeding below.[2]

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[2] The panel justified reaching issues that had never been decided below based, in part, on a factually incorrect perception that time was running out to enter meaningful judgment against the Fund because the Fund was "set to liquidate on March 31, 2006." App., *infra*, 28a n.9. The Fund did not liquidate on March 31, 2006, and the court of appeals' perception that it was scheduled to do so was based on a misunderstanding of the partnership agreement, which the court did not explore with the parties before including the erroneous statement in its opinion. See C.A. App. 57 (stating duration through March 31, 2006, but also allowing two one-year extensions). The Fund never intended to try to

First, the court held that, under Delaware law, the indemnification clause's reference to both "damages incurred" and "claims asserted" "assuredly includes judgments awarded," App., *infra*, 32a, which meant that the Fund was obligated to indemnify SIP not only for loss, but also for liability. *Ibid.* Second, the court held that the indemnification clause's coverage of "'*any* action taken or omitted to be taken on behalf of the [Fund]'" "evinces no intention to carve out a particular transaction." App., *infra*, 33a. (emphasis added). Thus, the court had no need to consider an uncontradicted affidavit by Michael Holly, who had been Managing Director of SIP when the partnership agreement was signed. *Id.* Third, while still maintaining that it was resolving only questions of "law," the court rejected the Fund's factual argument that SIP was not acting on the Fund's behalf when it failed to pay IFC for its services. *Id.* at 33a–34a. Finally, the court held that the Fund was not entitled to raise a set-off claim as a defense to garnishment. *Id.* at 34a.

REASONS FOR GRANTING THE PETITION

The Third Circuit's holding that a federal district court has ancillary jurisdiction over *any* garnishment action brought under Rule 69(a) deepens an already entrenched circuit split that has stubbornly persisted following this Court's opinion in *Peacock* v. *Thomas*. The Third Circuit felt free to follow *Skevofilax*, and reject the Fifth Circuit's holding in *Berry* v. *McLemore*, even though this Court in *Peacock* had purported to resolve a circuit split by accepting *Berry* and rejecting *Skevofilax*. Thus, the Third Circuit adhered to its previous broad holding that "the

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evade any valid federal judgment by liquidating, and has offered respondent and the Third Circuit substantial assurances that it will not do so. See Petition for Rehearing En Banc 14 n.8 (Feb. 27, 2006) (offering to place funds in escrow); Motion for Stay of Mandate (March 24, 2006) (offering to post bond, which ultimately the Third Circuit ordered and the Fund posted).

district court has ancillary jurisdiction to adjudicate a garnishment action" – *any* garnishment action – "by a judgment creditor against a nonparty to the original lawsuit which *may* owe the judgment debtor an obligation to indemnify against the judgment." *Skevofilax*, 810 F.2d at 385 (emphasis added); App., *infra*, 20a.

Peacock cannot be reconciled, however, with the breadth of the Third Circuit's undiscriminating assertion of federal jurisdiction over garnishment actions. Furthermore, the Third Circuit committed a fundamental error by claiming that a Federal Rule of Civil Procedure such as Rule 69 can, without more, create federal jurisdiction. "[I]t is axiomatic that the Federal Rules of Civil Procedure do not create or withdraw federal jurisdiction." *Owen Equip. & Erection Co.*, 437 U.S. at 370; see also *U.S.I. Props. Corp.* v. *M.D. Constr. Co.*, 230 F.3d 489, 498 n.8 (1st Cir. 2000) ("The incorporation of state enforcement procedures through Rule 69 is not alone sufficient to create *federal* jurisdiction over such enforcement proceedings."); *Sandlin* v. *Corp. Interiors Inc.*, 972 F.2d 1212, 1215 (10th Cir. 1992) ("Rule 69 creates a procedural mechanism for exercising postjudgment enforcement when ancillary jurisdiction exists * * * but cannot extend the scope of that jurisdiction.").

Because "[n]othing is more wasteful than litigation about where to litigate," *Bowen* v. *Massachusetts*, 487 U.S. at 930 (Scalia, J., dissenting), it is important that this Court speak definitively on whether federal courts have blanket jurisdiction over all Rule 69 garnishment proceedings, and resolve this conflict among the courts of appeals.

I. The Third Circuit's Holding That A Federal District Court Has Ancillary Jurisdiction Over A Garnishment Proceeding Against A Third Party Is Contrary To This Court's Precedents

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute * * *." *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The burden of establishing federal jurisdiction rests on the party seeking to assert such jurisdiction. *Ibid.*

This Court most recently addressed the issue of ancillary jurisdiction over supplementary proceedings in *Peacock* v. *Thomas*, 516 U.S. 349 (1996). Respondent Thomas brought an ERISA class action against Tru-Tech, his former employer, and Peacock, an officer and shareholder of Tru-Tech. 516 U.S. at 351. The district court entered judgment against Tru-Tech, finding that it had breached its fiduciary duty to Thomas, but ruled that Peacock was not a fiduciary. *Ibid.* While the case was on appeal, Peacock settled many of Tru-Tech's accounts with its favored creditors, including himself. *Id.* at 351-352. After Thomas was unable to collect his judgment from Tru-Tech, he sued Peacock in federal court alleging, among other things, a veil-piercing claim.

As the Court stated in *Peacock*, there are two relevant types of ancillary jurisdiction: (1) supplemental jurisdiction, which "'permit[s] disposition by a single court of claims that are, in varying respects and degrees, factually interdependent'"; and (2) ancillary enforcement jurisdiction, which "'enable[s] a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.'" 516 U.S. at 354 (quoting *Kokkonen*, 511 U.S. at 379-380); see also App., *infra*, 15a. Neither type of jurisdiction existed in *Peacock*.

First, the Court held that supplementary jurisdiction did not exist over Thomas's claims against Peacock. There was "insuf-

ficient factual dependence between the claims" in the original action and the veil-piercing action, and, "once judgment was entered in the original suit, the ability to resolve simultaneously factually intertwined issues vanished." 516 U.S. at 355. Furthermore, the Court noted, the exercise of federal jurisdiction over Thomas's allegations that Peacock attempted to shield TruTech's assets from the judgment in the original action would create "no greater efficiencies" because there was little or no factual or logical interdependence between the two actions. *Id.* at 356.

Second, the Court held that ancillary enforcement jurisdiction did not exist over Thomas's claims against Peacock because, as the Court emphatically stated, "[w]e have never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment." 516 U.S. at 357; accord *H.C. Cook Co.* v. *Beecher*, 217 U.S. 497 (1910) (holding that ancillary jurisdiction did not exist over suit by patent owner to make directors of corporation liable for patent infringement judgment obtained against their corporation). Rather, the Court explained, "[w]hen a party has obtained a valid federal judgment, only extraordinary circumstances, if any, can justify ancillary jurisdiction over a subsequent suit like this." 516 U.S. at 359. Thomas's subsequent claims all involved "new theories of liability not asserted in the ERISA suit itself," and thus, "[o]ther than the existence of the ERISA judgment itself, this suit has little connection to the ERISA case." *Ibid.*

The Third Circuit's assertion of federal jurisdiction in the present case fails to adhere to the clear principles this Court laid out in *Peacock*. IFC initiated this garnishment proceeding against the Fund *after* it obtained judgment against SIP. The Fund was not a party to the arbitration or to the district court proceeding to confirm the arbitration award against SIP, nor was

it otherwise liable for IFC's judgment against SIP. There is not even the slightest factual or logical interdependence between IFC's petition to confirm its arbitration award and its garnishment proceeding against the Fund. The district court proceedings to confirm IFC's arbitration award involved only the propriety of the arbitration procedures themselves, and did not address the merits of the dispute, much less the Fund's obligation to indemnify SIP for the amount of the award. See App., *infra*, 10a; see also *Major League Umpires Ass'n* v. *Am. League of Prof'l Baseball Clubs*, 357 F.3d 272, 279 (3d Cir. 2004) ("'[c]ourts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement'" (quoting *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 509 (2001)). The limited partnership agreement forming the Fund, which includes the indemnification clause that is the basis of IFC's action against the Fund, was not at issue when the district court decided whether to confirm the arbitration award, and indeed was not even a part of the record before the district court during the action to confirm the arbitration award. Thus, there is no foundation for any conclusion that in this case ancillary jurisdiction was necessary to "protect legal rights or effectively to resolve an entire, logically entwined lawsuit." *Peacock*, 516 U.S. at 355 (citing *Owen Equip. & Erection Co.*, 437 U.S. at 377).

The Third Circuit made no serious claim of factual interdependence between the action to confirm the arbitral award and the later garnishment proceeding requiring construction of the indemnification clause in the partnership agreement. Rather, its opinion appears to rest on the theory that this case – and every other Rule 69 proceeding – comes within the *second* category of ancillary jurisdiction identified in *Peacock*, 516 U.S. at 354, namely ancillary enforcement jurisdiction. But the Third Circuit seriously misunderstood this Court's opinion, and elevated a Rule of Civil Procedure (which cannot ever *create* juris-

diction) and its own prior *Skevofilax* opinion (which this Court disapproved in what the Third Circuit called "dictum") over a proper understanding of this Court's opinion.

Although the Third Circuit correctly quoted this Court as stating that a Rule 69(a) proceeding is an effective mechanism for a district court to use in effectuating its judgment, its reasoning relies on isolated statements from this Court's opinion in *Peacock*, the import of which can be understood only in the full context of the opinion. This Court, by using Rule 69(a) proceedings as an example, see 516 U.S. at 359 & n.7, did not confer ancillary jurisdiction on the federal district court for *all* garnishment proceedings initiated under Rule 69(a). Nor does this Court's observation that "we have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments – including attachment, mandamus, *garnishment*, and the prejudgment avoidance of fraudulent conveyances," *Peacock*, 516 U.S. at 356 (emphasis added), render the rest of this Court's reasoning in *Peacock* superfluous.

Rather, the Court was clear that it did not interpret Section 1367 as authorizing blanket jurisdiction over *any* type of proceeding, noting, "we have cautioned against the exercise of jurisdiction over proceedings * * * where 'the relief [sought is] of a different kind or on a different principle' than that of the prior decree." 516 U.S. at 358 (citing *Dugas* v. *Am. Surety Co. of N.Y.*, 300 U.S. 414, 428 (1937)). As the Third Circuit itself acknowledged in its opinion, "[g]arnishment always involves a separate theory of liability from the original action," App., *infra*, 27a, and it follows that Section 1367 does not confer ancillary jurisdiction over *all* garnishment proceedings, but rather requires a more nuanced analysis. If the relief sought is "'of a different kind or on a different principle,'" *Peacock*, 516 U.S. at 358, then ancillary jurisdiction does not exist.

The correct reading of *Peacock* is faithful to the plain language of Section 1367, which limits the ancillary jurisdiction of federal courts to only those "claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy," 28 U.S.C. § 1367(a), as well as to this Court's decisions preceding *Peacock*.[3] This Court has consistently stated that ancillary enforcement jurisdiction requires that claims have "a factual and logical dependence on 'the primary lawsuit.'" *Peacock*, 516 U.S. at 355. For example, in *Kokkonen* v. *Guardian Life Insurance Co. of America*, 511 U.S. 375, 380 (1994), the parties executed a Stipulation and Order of Dismissal with Prejudice, after arriving at an oral agreement settling all of the claims and counterclaims. *Id.* at 376-377. The district judge signed the Stipulation and Order, which did not even refer to the settlement agreement. *Id.* at 377. A dispute subsequently arose between the parties, and the respondent moved in the district court to enforce the agreement. *Ibid.* The district court entered an enforcement order based on its "inherent power" to do so. The Ninth Circuit affirmed the district court's order. This Court reversed, holding that "[e]nforcement of the settlement agreement * * * is more than just a continuation or renewal of the dismissed suit, and hence requires its own basis for jurisdiction." *Id.* at 378. The Court reasoned that the facts to be determined "are quite separate from the facts to be determined in the principal suit," and therefore enforcement of the settlement agreement should be left to the state courts. *Id.* at 381.

The Third Circuit's interpretation of Section 1367 as conferring ancillary jurisdiction on *all* Rule 69 garnishment proceedings is inconsistent with this precedent. As was the case in

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[3] "Congress codified much of the common-law doctrine of ancillary jurisdiction as part of 'supplemental jurisdiction' in 28 U.S.C. § 1367." *Peacock*, 516 U.S. at 354 n.5.

Kokkonen, the partnership agreement between SIP and the Fund, and its indemnification clause, were not even before the district court when it granted IFC's petition to confirm the arbitration award, nor was it mentioned in the district court's opinion. The court's holding that the federal district court has ancillary jurisdiction pursuant to its decision to confirm the arbitration award is directly contrary to this Court's precedent, because, just as in *Kokkonen* and *Peacock*, the facts to be determined and the relief sought are distinct from those of the principal suit. As the Third Circuit itself has stated, "*Peacock* and *Kokkonen* contemplate a very narrow concept of ancillary jurisdiction." *Peter Bay Homeowners Ass'n, Inc.* v. *Stillman*, 122 Fed. Appx. 572, 575 (3d Cir. 2004). The court's decision defies this "very narrow concept," instead significantly broadening the scope of ancillary jurisdiction to include any and all Rule 69 garnishment proceedings, regardless of the degree of factual or logical interdependence or whether relief is sought on a new theory of liability.

II. The Third Circuit's Holding Conflicts With Decisions In Other Circuits That A Federal District Court Lacks Ancillary Jurisdiction Over A Garnishment Claim That Seeks To Impose Liability On A Third Party Based On An Independent Legal Theory

Decisions in the Fifth and Sixth Circuits have squarely held that a federal district court lacks ancillary jurisdiction over a garnishment claim that seeks to impose liability on a third party based on an independent legal theory. The decision below conflicts with those holdings.[4] The Third Circuit *expressly*

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[4] Although only the Third, Sixth, and Seventh Circuits have addressed the very precise issue whether ancillary jurisdiction exists over Rule 69 garnishment proceedings brought *pursuant to an indemnity agreement*, other courts of appeals have addressed similar issues and have similarly come to conflicting conclusions. Compare *Trust* v. *Kummerfeld*, 153 Fed. Appx. 761 (2d Cir. 2005) (holding that ancillary

disagreed with both the Fifth and Sixth Circuits, and its effort to label its disagreement with the Sixth Circuit as "immaterial" cannot withstand scrutiny.

1. In *Hudson* v. *Coleman*, 347 F.3d 138 (6th Cir. 2003), a divided panel of the Sixth Circuit affirmed a judgment holding that the exercise of ancillary jurisdiction over a garnishment action against the City of Flint. The plaintiff had entered into a consent judgment with two police officers, both of whom had indemnification agreements with the City. *Id.* at 140. Although the plaintiffs had named the City as a defendant in the original Section 1983 claim against the officers, the district court had dismissed the City from the case. *Ibid.* After the consent judgment had been entered, the plaintiff filed writs of garnishment against the City. *Ibid.*

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jurisdiction exists over Rule 69(a) action to pierce corporate veil of judgment debtor), *Dulce* v. *Dulce*, 233 F.3d 143 (2d Cir. 2000) (holding that ancillary jurisdiction exists over an action brought by a judgment creditor after the death of a judgment debtor for a declaration that the judgment creditor was a creditor of the estate and discovery regarding the estate pursuant to Rule 69), *Cigna Prop. & Cas. Ins. Co.* v. *Polaris Pictures Corp.*, 159 F.3d 412 (9th Cir. 1998) (affirming district court's joinder of defendant as judgment debtor under alter ego theory of liability under Rule 69), and *Thomas, Head and Greisen Employees Trust* v. *Buster*, 95 F.3d 1449 (9th Cir. 1996) (holding that ancillary jurisdiction existed over Rule 69 proceeding to determine whether assets were fraudulently transferred by judgment debtor to avoid paying judgment, even though transferee was not a party to the original action), with *U.S.I. Props. Corp.*, 230 F.3d at 489 (holding that ancillary enforcement jurisdiction does not extend to the Commonwealth of Puerto Rico as an alter ego of the judgment debtor), and *Futura Dev. of P.R., Inc.* v. *Estado Libre Asociado de P.R.*, 144 F.3d 7 (1st Cir. 1998) (holding that judgment creditor's claim that the Commonwealth of Puerto Rico was an alter ego of the judgment creditor, and thus liable for the judgment in the original action, was not subject to ancillary jurisdiction under *Peacock*).

The Sixth Circuit held that, because the indemnity claim was not asserted until after the City was dismissed and the consent judgment entered, "there are no factually intertwined issues to resolve and neither the convenience of the litigants nor considerations of judicial economy justify the exercise of ancillary jurisdiction[.]" 347 F.3d at 143. The court also reasoned that – because the plaintiffs' subsequent action sought to impose liability on "the City, a third party not a party to the consent judgment, on the basis for the indemnity agreement, a legal theory entirely independent from that in the original action," the indemnification agreement had not been interpreted, and there remained "substantial questions" regarding its interpretation – the proceeding, which sought relief "'of a different kind or on a different principle,'" *ibid.*, could not fall within the district court's ancillary jurisdiction. Accord *U.S.I. Props. Corp.*, 230 F.3d at 498 ("[f]ederal courts have drawn a distinction between postjudgment proceedings that simply present a mode of execution to collect an existing judgment and proceedings that raise an independent controversy with a new party, attempting to shift liability").[5]

Judge Moore's dissent advanced reasoning similar to the reasoning the Third Circuit panel would later adopt in this case.

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[5] The Sixth Circuit majority said that the "precise issue" it needed to resolve, with respect to ancillary enforcement jurisdiction, was "whether the fact that the garnishment action is proceeding under the same case number as the original action, rather than in a second lawsuit, sufficiently distinguishes the case from *Peacock*." 347 F.3d at 143. The court answered that question in the negative. In the present case, too, the garnishment action proceeded in the district court under the same case number as the original action. Yet, as *Hudson* demonstrates, that fact cannot by itself support federal jurisdiction *unless* one believes – as the Third Circuit did – that Rule 69 proceedings are categorically exempt from *Peacock*'s analysis and from the need to find a *statutory* basis for federal jurisdiction.

Although petitioner believes Judge Moore's analysis to be flawed for much the same reasons as the Third Circuit's analysis, the persistence of the disagreement only highlights the need for this Court to take the issue up so that lower courts will not, by their inconsistent standards, continue to encourage wasteful litigation about where to litigate.

Unlike the Third Circuit's opinion in this case, the Sixth Circuit majority's reading of *Peacock* acknowledged the nuances of this Court's reasoning. "The Supreme Court's acknowledgment of the fact that garnishment sometimes falls within ancillary jurisdiction is obviously not imprimatur for all garnishment actions arising from previous factually similar underlying federal claims to proceed in federal court." *Hudson*, 347 F.3d at 144. The court noted that this Court had drawn a distinction between those garnishment proceedings based on an independent legal theory, over which ancillary jurisdiction does not exist, and those that "contemplate[] the garnishee's paying the judgment creditor/garnishing party directly for funds, such as a salary, owed by the garnishee to the defendant in the underlying action." *Ibid.*[6] Accord *U.S.I. Props. Corp.*, 230 F.3d

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[6] The Third Circuit stated that "[t]he Sixth Circuit's jurisprudence on ancillary jurisdiction appears unsettled," citing *Condaire, Inc.* v. *Allied Piping, Inc.*, 286 F.3d 353 (6th Cir. 2002). App., *infra*, 26a–27a. In *Condaire*, the plaintiff sought to garnish the defendant's bank account, and the bank argued in response that it was entitled to set off the funds in defendant's account against the defendant's debts to the bank. 286 F.3d at 353. Although the Sixth Circuit did not cite *Condaire* in its opinion in *Hudson*, *Condaire* is in line with the reasoning of *Hudson* because the plaintiff sought to garnish funds that the bank was holding for the plaintiff, and not to establish the liability of the bank for the judgment. Thus, the garnishment proceeding at issue in *Condaire* was more akin to the "typical garnishment proceeding" referred to by the court in *Hudson*, in which "the garnishee's paying the judgment creditor/garnishing party directly for funds, such as a salary, owed by the garnishee to the defendant in the underlying action," *id*. at 144, and the

at 497 ("Thus these proceedings can reach third parties so long as it is necessary to reach assets of the judgment debtor under the control of the third party in order to satisfy the original judgment and thereby guarantee its eventual executability.").

The Third Circuit explicitly disagreed with the Sixth Circuit's holding, stating that the distinction between garnishment of a salary and garnishment based on an indemnification agreement is "a distinction without a difference." App., *infra*, 27a. "Garnishment always involves a separate theory of liability from the original action," *ibid.*, the court reasoned, and in this example, one is based on an employment agreement and the other on an indemnification agreement. *Ibid.*

2. Although the Third Circuit dismissed its disagreement with the Sixth Circuit's analysis in *Hudson* as "immaterial," App., *infra*, 27a, the Third Circuit's own analysis proves that it was exercising jurisdiction over issues unrelated to the original action to confirm the arbitration award. In its opinion, the court resolved four questions of law – none of which was resolved by the district court in the proceeding to confirm the arbitration award – that the Third Circuit deemed necessary to resolve before liability could be imposed on the Fund. *Id.* at 30a–31a. The court's own opinion goes against this Court's reasoning in *Peacock*, by "impos[ing] an obligation to pay an existing federal judgment on [an entity] not already liable for that judgment." *Peacock*, 516 U.S. at 357.

That the Third Circuit labeled all of the questions it resolved as "questions of law" does not suffice to distinguish *Hudson*, even if the label is accurate. First, *Hudson* rested, squarely, on the fact that the garnishment claim raised new issues of *law*: "At this stage, there has simply been no

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district court's exercise of ancillary jurisdiction in *Condaire* was proper under that analysis.

interpretation of the indemnity clause in the labor agreement between the City and the Police Officer's union." 347 F.3d at 143-144 (emphasis added). Second, we are aware of – and the Third Circuit cited – no support for the proposition that a federal court might have jurisdiction to resolve questions of law in a situation in which it would not have jurisdiction to resolve questions of fact. There is thus an undeniable conflict between the Third and Sixth Circuits.

3. The Third Circuit also expressly disagreed with a Fifth Circuit decision that preceded – and was cited with apparent approval in – *Peacock*. In *Berry* v. *McLemore*, 795 F.2d 452 (5th Cir. 1986), the plaintiff won a Section 1983 suit against the Chief of Police of the Town of Maben. Although the plaintiff also brought a claim of vicarious liability against the Town, the court directed a verdict in the Town's favor. After the Chief failed to pay the judgment, Berry filed a garnishment action against the Town and its insurer. The Fifth Circuit held that the district court lacked ancillary jurisdiction over the garnishment action against the Town because (1) the Town's insurer was a party to the court's judgment in the Section 1983 action; (2) the plaintiff had already failed to obtain a judgment against the Town for the amount allegedly owed, and thus the Town was a third party to the garnishment proceeding; (3) "[t]he writ of garnishment, under the clear precedent of this court, is an action separate and independent from the action giving rise to the judgment debt"; and (4) the bases of the two proceedings were different. *Id.* at 455 & n.2. The court ultimately held that the district court had diversity jurisdiction – but not ancillary enforcement jurisdiction – over the garnishment proceeding against the insurer. *Id.* at 456.

The Third Circuit described the Fifth Circuit's reasoning as "troubling," because "it would largely restrict the ability of federal courts to enforce their judgments to the diversity of citizenship of garnishee and garnishor." App., *infra*, 22a n.7.

The Fifth Circuit's decision is consistent with this Court's decision in *Peacock*, however, and was even cited favorably by the Court. *Peacock*, 516 U.S. at 352 n.2. As explained above, this Court drew a distinction between typical garnishment proceedings, and those that "impose[d] an obligation to pay an existing federal judgment on a person not already liable for that judgment." *Peacock*, 516 U.S. at 357. And the Third Circuit's notion that diverse and non-diverse parties must be treated alike for jurisdictional purposes[7] – and that therefore the Fifth Circuit's reasoning should be rejected in favor of a blanket rule that gives federal courts jurisdiction over *all* proceedings brought under Rule 69 – is simply an impermissible rejection of Congress's prerogative to draw that very distinction for jurisdictional purposes. If anything is going to give rise to "jurisdictional mischief," App., *infra*, 22a n.7, it is federal courts' *ad hoc* refusal to honor bedrock distinctions (like the distinction between diverse and non-diverse parties) and bedrock principles (like the principle that Rules of Civil Procedure do not create jurisdiction) whenever they find the consequence "troubling" (*ibid.*).

4. The Third Circuit's decision does, however, find some arguable support in the Seventh Circuit's post-*Peacock* jurisprudence, deepening the divide among the circuits. The court itself claimed, "[o]ur reading of *Peacock* comports with the jurisprudence of the Seventh Circuit, which has considered the issue on no less than three occasions." App., *infra*, 21a.

Like the Third Circuit, the Seventh Circuit has analyzed the question in terms of whether this Court overruled the court of appeals' own pre-*Peacock* precedent. In the Seventh Circuit the

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[7] "The possibility that some garnishees will be haled before a federal court while other garnishees on the same judgment will end up before a state court strikes us as a poor use of judicial resources and creates too many opportunities for jurisdictional mischief." App., *infra*, 22a n.7.

relevant prior case – which, like *Skevofilax*, was cited with apparent disapproval in footnote 2 of *Peacock* – was *Argento* v. *Village of Melrose Park*, 838 F.2d 1483 (7th Cir. 1988).

In *Yang* v. *City of Chi.*, 137 F.3d 522 (7th Cir. 1998), the Seventh Circuit's most recent opinion on this issue, the plaintiff brought a Section 1983 action against two police officers and the City of Chicago. The City and one of the officers were dismissed from the action, but the court entered judgment against the other officer. *Id.* at 524. The Seventh Circuit reversed the district court's dismissal of the first officer, and entered judgment against him. *Ibid.* The plaintiff sought indemnification from the City for both judgments, and the district court ultimately ruled that it lacked subject-matter jurisdiction over the plaintiff's petition for indemnification. *Ibid.*

The Seventh Circuit noted at the outset that "[w]e have held that garnishment proceedings to collect a judgment are not separate lawsuits" and that "[w]e addressed this very question in *Argento*." 137 F.3d at 524-25. The court reasoned, as the Third Circuit did, that this Court's citations to "Rule 69 as a procedure under ancillary jurisdiction to be used in executing federal judgments in accordance with state procedure and practice," and to garnishment as an example of a supplementary proceeding over which the Court has approved the exercise of ancillary jurisdiction, meant that *Peacock* did not overrule the court of appeals' precedent in *Argento*. *Id.* at 525. See also *Matos* v. *Richard A. Nellis, Inc.*, 101 F.3d 1193, 1195 (7th Cir. 1996) (holding that *Peacock* applies only to cases seeking to pierce the corporate veil); *Wilson*, 120 F.3d at 681 (holding that *Peacock* did not abrogate *Argento* and that federal jurisdiction existed over a garnishment claim brought against the City, which had previously been dismissed from the case).[8]

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[8] In *Hudson*, the Sixth Circuit expressed its disagreement with the Seventh Circuit's analysis in *Yang*, stating:

Petitioner believes (and argued in its rehearing petition below) that even the Seventh Circuit's approach is in conflict with the Third Circuit's blanket assertion that "*Peacock* excepted Rule 69 actions from its reach." App., *infra*, 18a. But the *correct* approach to this issue is, we submit, closer to the Fifth and Sixth Circuits' analysis than to the Third and Seventh Circuits' analysis. As the court below noted, "the Seventh Circuit has stated in no less than three cases that *Peacock* did not overrule [its pre-*Peacock* precedent]." App., *infra*, 22a. The time is undeniably ripe for this Court to step in and resolve this mature conflict.

III. The Issue Presented Is Recurring And Important

The principle that federal jurisdiction is limited to the power authorized by the Constitution and by statute, and "is not to be expanded by judicial decree," is one of the cornerstones of federal jurisdiction. *Kokkonen*, 511 U.S. at 377. The Third Circuit's opinion fails to respect the well-established limits of federal jurisdiction, however, instead interpreting Section 1367 as authority for federal courts to exercise ancillary jurisdiction over all Rule 69 proceedings, regardless of its relation to the original action. This Court's opinion in *Peacock* tried – but

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> We disagree with *Yang*'s application of the "functionally separate" framework in deciding the indemnification issue and hold that legitimate, unresolved disputes concerning whether conduct occurs within the scope of employment or authority deprives a federal court of ancillary jurisdiction in a garnishment action pursuant to *Peacock*. As stated, the City of Flint's liability under the newly presented indemnity principle is far from established; thus, the issues to be litigated under the indemnity agreement deprive the Court of ancillary jurisdiction. It is inappropriate for the Court to decide legitimate scope of employment and/or scope of authority questions *without the benefit of fact-finding and briefing*.

347 F.3d at 146 (emphasis added).

apparently failed – to resolve an already existing conflict among the courts of appeals regarding whether ancillary jurisdiction exists when the garnishment proceeding involves an indemnity agreement between the judgment debtor and an employer or insurer. See *Sandlin*, 972 F.2d at 1216. The continuing divide among the courts of appeals over such a fundamental issue therefore requires further clarification by the Court.

As explained above, the confusion among the courts of appeals following this Court's opinion in *Peacock* is profound, and it is impossible to resolve the varied analyses of the different circuits. The different approaches of the courts of appeals breed continued uncertainty in the district courts, frustrating the purpose of ancillary jurisdiction to promote "judicial economy, convenience, and fairness to litigants." *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726 (1966). Instead, there is no clear guidance for parties as to which is the proper forum in which to bring their garnishment claims based on indemnity agreements, prompting unnecessary and wasteful litigation.

Clarity as to how far ancillary jurisdiction extends over Rule 69 garnishment proceedings will also shed light on the proper analysis for determining the scope of ancillary jurisdiction over other types of proceedings, such as "attachment, mandamus, * * * and the prejudgment avoidance of fraudulent conveyances." *Peacock*, 516 U.S. at 356. This may help to prevent a similar divide from developing among the courts of appeals over the scope of ancillary jurisdiction in the context of other supplementary proceedings involving third parties.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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