

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2022-0001574

Steven R. Edwards, Individually and as Personal Representative of the Estate of Steven Redfearn Steward, .. Respondent,

v.

Scapa Waycross, Inc., Petitioner

**AMERICAN TORT REFORM ASSOCIATION'S MOTION FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER**

Pursuant to Rules 213 and 240 of the South Carolina Appellate Court Rules, the American Tort Reform Association (ATRA) respectfully requests permission to file the accompanying *amicus curiae* brief in support of Petitioner.

Founded in 1986, 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 over three decades, ATRA has filed *amicus curiae* briefs in cases that address important liability issues. ATRA members include defendants in South Carolina asbestos cases.

This case presents an opportunity for this Court to provide urgently needed guidance on a key issue the Court passed on in *Jolly v. General Electric Co.*, Appellate Case No. 2022-000272: *i.e.*, the proper analysis to establish specific causation in asbestos cases. In *Jolly* and here, the Court of Appeals applied an approach from a controversial Pennsylvania case (*Rost v. Ford*

Motor Co., 151 A.3d 1032 (Pa. 2016)) that is at odds with this Court’s test in *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 664 S.E.2d 724 (2017), and the majority of courts nationwide.

The proposed *amicus* brief will assist the Court by providing a broad perspective that shows why the Court should grant the Petition and ensure that South Carolina courts apply sound science and basic fairness in asbestos cases. The proposed *amicus* brief will also provide a broad perspective regarding the use of additur and setoffs of settlement proceeds in asbestos cases. The brief discusses how the trial court’s additur ruling conflicts with this Court’s precedents and reflects an outlier approach. In addition, the brief explains how the trial court’s decision to permit setoffs of settlement proceeds based on Plaintiffs’ “internal” allocation creates a significant potential for gamesmanship and abuse.

The rulings in this case have favored asbestos plaintiffs. Plaintiffs’ lawyers (often from out-of-state) have been filing more asbestos cases in South Carolina, even as such litigation declines nationwide. Hence, ATRA seeks to file the accompanying brief.

CONCLUSION

Because *amicus* has an identifiable interest in this matter satisfying South Carolina Appellate Court Rule 213, *amicus* asks the Court to grant this motion and accept the brief.

s/ Caroline M. Gieser

Caroline M. Gieser (SC Bar No. 102718)

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