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S.C. SUPREME COURT

Case No.: 2026-000383

The Supreme Court of the State of South Carolina

CHRISTOPHER E. MILLS; SPERO LAW LLC,

PETITIONERS

v.

ACTING CIRCUIT JUDGE JEAN H. TOAL,

RICHLAND COUNTY CIRCUIT COURT,

RESPONDENT.

v.

DONNA B. WELCH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MELVIN G. WELCH, DECEASED

PLAINTIFF BELOW AND INTERVENING RESPONDENT

INTERVENING RESPONDENT DONNA WELCH'S RETURN TO PETITION FOR WRIT OF ADMINISTRATIVE STAY IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Charles W. Branham, III (SC Bar No. 106178)
DEAN OMAR BRANHAM SHIRLEY, LLP
1801 N. Lamar Street
Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991
tbranham@dobslegal.com
Other email: tgilliland@dobslegal.com

Theile B. McVey (SC Bar No. 16682)
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
T: 803-256-4242
F: 803-256-1952
tmcvey@kassellaw.com
Other email: emoultrie@kassellaw.com

Attorneys for Intervening Respondent Donna B. Welch

INTRODUCTION

Petitioners Christopher E. Mills and Spero Law LLC have filed a Petition for Writ of Administrative Stay, seeking to have this Court preclude the Honorable Jean Hoefer Toal, retired Chief Justice of the Supreme Court, and acting Chief Judge for Administrative Purposes over all asbestosis and asbestos litigation filed within the South Carolina state court system (**Ex. 1**, 5/28/19 Order Appointing Chief Judge) from adjudicating Petitioners' motion to quash a subpoena issued by Intervening Respondent Donna B. Welch. Although Ms. Welch and her attorneys are the adverse targets in the underlying Motion to Quash, Petitioners failed to name her as a Party to this original action. As such, Ms. Welch is simultaneously filing a motion to intervene, in the hope this Court will permit them to be heard in this matter which unequivocally goes to Ms. Welch's discovery rights.

Petitioners' Petition is long on rhetoric, short on facts, and most importantly, seeks to evade this Court's May 28, 2019 Order (**Ex. 1**, "Toal Appointment Order") appointing Justice Toal as acting Chief Judge for Administrative Purposes over ***all*** asbestosis and asbestos litigation filed within the South Carolina state court system. It requests sanctions and makes thinly veiled threats of disciplinary action against Ms. Welch's attorneys, and makes various factual and legal claims unsupported by the record or the law. Finally, it serves as another example of Atlas Turner's willingness to commit moral fraud and its continuing contempt for the powers of South Carolina courts in general and asbestos docket in particular. For the following reasons, Intervening Respondent Donna Welch respectfully requests this Court deny Petitioners' Petition for Writ of Prohibition and Emergency Motion for Administrative Stay.[1]

[1] Intervening Petitioner has been made aware of two orders issued by Chief Justice John Kittredge on February 23, 2026, and that these orders may make many issues raised by the Petition and argued in this Return moot. However,

BACKGROUND

On May 21, 2025, this Court issued its opinion in *Welch v. Advance Auto Parts*, 445 S.C. 640, 916 S.E.2d 320 (2025), finding Atlas Turner, Inc. had engaged in "moral fraud" justifying the appointment of a Receiver over it.[2] Atlas Turner, or someone acting on its behalf, then hired Petitioners to file a Petition for a Writ of Certiorari with the United States Supreme Court. **(Ex. 2**, p. 4). That Petition was subsequently denied. (**Ex. 2**, p. 3).

Atlas Turner has long engaged in a practice of moral fraud designed to hide its assets and insurance coverage from persons injured by its asbestos in the United States, including Ms. Welch.

> First, Atlas Turner's contemptuous disregard of the court's discovery orders and other conduct demonstrates it is seeking to evade its responsibilities as a civil litigant. There is evidence that Atlas Turner's corporate policy for responding to asbestos lawsuits is to adopt a "minimum defense posture" and incur default judgments. Atlas Turner followed that policy here. Second, Atlas Turner represented to the trial court that it had no Insurance Assets relevant to these cases. However, there is evidence Atlas Turner was involved in a transaction that may have compromised some of its potential insurance coverage. The record further discloses that Atlas Turner has refused to tender its policies to certain insurers for defense and indemnity.

Welch, at 661. "The evidence supports the finding that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and Respondent." *Id.* at 662.

Thus, the subject matter underlying the Receivership, the appeals, and Petitioners representation in this matter is what, if any, assets Atlas Turner has to satisfy a judgment now that it has been defaulted and where those assets are located. Atlas Turner has represented it will ***never*** comply with a South Carolina court order regarding discovery (**Ex. 3,** 5/4/23 Welch hearing transcript, p. 12:14-13:4). As such, to the extent Ms. Welch has any opportunity to obtain discovery

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to the extent any issues remain, Ms. Welch respectfully requests she be included as a party and permitted to participate in this original action.

[2] Although affirming as to every other issue, this Court narrowed the scope of "insurance assets" subject to the Receivership.

regarding Atlas Turner's assets, it must come from either 1) the Receiver, or 2) persons or entities other than Atlas Turner.

To that end, Ms. Welch issued a carefully tailored subpoena to Petitioners designed to discover three things, 1) who paid Petitioners for their work on the United States Supreme Court Appeal, 2) how much was paid, and 3) where are those funds currently located? Taking the position that Rule 45 trumps this Court's Toal Appointment Order, Petitioners filed a motion to quash in Charleston County Circuit Court, seeking to avoid Justice Toal's authority over all asbestos matters in the state. After Justice Toal was informed of Petitioners' actions, she instructed the Charleston County Circuit Court that she would be presiding over the Motion to Quash based upon the authority granted her by the Toal Appointment Order. (*see*¸ Exhibit F to Petition for Writ of Prohibition and Emergency Motion for Administrative Stay). The current Petition ensued.

ARGUMENT

A. Justice Toal has Jurisdiction

Petitioners assert Rule 45 requires this motion be heard in a Charleston county because they are "third-parties" and that is where they reside. Regardless of whether Atlas' Counsel are really third-parties,[3] this Court has explicitly appointed Justice Toal acting Chief Judge for Administrative Purposes over ***all*** asbestosis and asbestos litigation filed within the South Carolina state court system. (**Ex. 1**). Pursuant to this Toal Appointment Order (emphasis added),

> Justice Toal is authorized, ***on a statewide basis***, to monitor the progress of the asbestosis and asbestos litigation docket, conduct pretrial hearings including motions hearings, issue scheduling orders, grant continuances request by counsel

[3] No South Carolina court has ruled on this issue as it relates to South Carolina Rule of Civil Procedure 45. While inappropriately cited by Atlas' Counsel in the *Jolly* case addressed *infra*., the South Carolina Supreme Court made clear that South Carolina's version of Rule 45 is different than Fed. R. Civ. P. 45. *See Jolly v. Gen. Elec. Co.,* 435S.C. 607, 673, 869 S.E.2d 819, 855 (Ct. App. 2021)(noting that the South Carolina General assembly did not limit the geographic reach of a subpoena under Rule 45 as Congress did under the federal rule, nor has the question of whether firms representing a party, are considered third parties under the rule).

> for good and sufficient legal cause, resolve scheduling conflicts, and address additional administrative matters as necessary.

The subpoena at issue here was issued in an asbestos case presided over by Justice Toal. It is within the scope of cases and authority over which this Court has appointed Justice Toal as Chief Judge.

Other states have addressed similar conflicts between mass tort litigation and standard trial rules. For instance, on June 6, 2005, the Indiana Supreme Court addressed the conflict created by having a mass tort docket (for silica and asbestos cases) and trial rules designed for typical cases (**Ex. 4**, 6/6/05 Indiana Court Order Denying Petition and Remanding to Trial Court). Specifically, various silica defendants attempted to utilize Indiana Trial Rule 76(B) to obtain an automatic change of judge to preside over approximately 40 silica cases. The Indiana Supreme Court determined the rules creating the mass tort dockets took precedence over the standard trial rule allowing for an automatic change of judge. Noting such "normal" rules were inconsistent with the policies behind mass tort dockets, the Court held,

> Trial Rule 42(A) now recognizes the need for provisions addressing issues of multiparty litigation and specifically calls for special provisions in groups of cases involving "common questions of law or fact." The policies underlying the provisions for addressing large groups of cases can under some circumstances conflict with the policies underlying Trial Rule 76(B). In addition, Trial Rule 1 contemplates interpretation of the Trial Rules to accomplish the speedy and economical administration of justice. The need for procedures to handle lawsuits of a scale not contemplated at the time the Trial Rules were adopted may under some circumstances preclude implementation of the mandate of Trial Rule 76(B).
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> ***
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> In the case of groups of cases involving common issues, the countervailing grounds may preclude granting motions under Trial Rule 76(B) for change of judge. If so, there is no mandatory change of judge under those circumstances.

Ex. 4.

The same policies which guided the Indiana Supreme Court should also dictate the outcome of this Petition. This Court has found a need for a Chief Judge to preside over asbestos claims on

a statewide basis. **Ex. 1**. Such need should take precedence over the provisions of Rule 45.

Furthermore, Petitioners have followed the recent pattern in asbestos cases of defendants and defense-related parties (e.g., defendants' insurers) inundating this Court and the Court of Appeals with requests for interlocutory or immediate review, writs, stays and extraordinary relief. This Court has recently explicitly discouraged such activities. (**Ex. 5**, June 26, 2025 Order, *Tibbs v. 3M Company*, *et al.* Case Nos. 2024-001423, 2024-001499, 2024-000916, 2024-002114, 2024-002116, 2024-002117, 2025-000052). This Court has also previously recognized this rule (and its prior versions) "was adopted for the purpose of this court protecting itself in the orderly manner of conducting the business of this court 'form the tremendous burden of hearing originally an avalanche of cases.'" *King v. Aetna Ins. Co.*, 168 S.C. 84, *15 (1932).

The Toal Appointment Order grants Justice Toal authority to preside over asbestos matters on a statewide basis. The subpoena in question was issued in an asbestos case in this state to attorneys practicing and licensed in this state, representing a defendant in an appeal arising out of a South Carolina state-court action, and concerns the underlying issue (Atlas Turner's assets) which necessitated the tortured appellate process in the first place.

Petitioners suggest Justice Toal and the Richland Circuit Court lack jurisdiction over this issue. This argument is without merit. The South Carolina Constitution, Article V, Section 11 states, "The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases . . .." Cases have consistently interpreted this language to mean that Circuit Courts are courts of general jurisdiction. *State v. Walker*, 14 Rich. 36 (1866); *Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265 (2017).; *State v. Harrison*, 432 S.C. 448, 466 (2021). "There is but one Circuit Court in South Carolina, with uniform subject matter jurisdiction *throughout the State*." *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598 (1994) (emphasis in original, *citing*

State ex rel. Riley v. Martin, 274 S.C. 106, 111, 262 S.E.2d 404, 406 (1980), S.C. Const. art.V, §1). As such, Rule 45 is a venue provision, not a jurisdictional one. And in either event, the Toal Appointment order provides Justice Toal with both statewide jurisdiction and venue to oversee asbestos actions.

For these reasons alone, Ms. Welch respectfully requests this Court deny the Petition. However, because the Petition also argues the underlying merits of the subpoena at issue (while suggesting Ms. Welch's counsel should be sanctioned and/or disciplined), Intervening Respondent provides the following responses to Petitioners arguments on the merits.

B. Merits of the Underlying Motion to Quash

1. The information subpoenaed is both relevant and discoverable.

Since the *Welch* lawsuit was initiated (including in its briefing and arguments to this Court), Atlas Turner has repeatedly claimed it has no assets in South Carolina. This raises the question of how Petitioners, South Carolina lawyers, were paid, and who paid them. As such, the underlying subpoena at issue is narrowly tailored to seek documents showing 1) who paid Petitioners to work on the United States Supreme Court Appeal, 2) how much they were paid, and 3) where the money for that payment originated. The subpoena issued to Petitioners was narrowly tailored to seek only communications and evidence of payment and its sources. The subpoena specifically noted that "[t]his request is not intended to request attorney-client communications by rather to determine the amounts paid to you and your firm and the source of such funds." (*see*, Exhibit A to Petition for Writ of Prohibition and Emergency Motion for Administrative Stay).

Atlas Turner has refused to participate in discovery in this case, and has represented that it will *never* do so. Ms. Welch is entitled to information about Atlas Turner's insurers and assets which may be used to satisfy a judgment. Money paid to a South Carolina attorney working on an

appeal of a South Carolina case for a Defendant which refuses to participate in South Carolina discovery is not only relevant and discoverable, but Atlas Turner's contempt for South Carolina's court system necessitated the subpoena in the first place. For this initial reason, Petitioners first argument on the merits of the subpoena is without merit.

(2) The time for compliance was both reasonable and negotiable.

Petitioners also complain that Ms. Welch's subpoena does not allow reasonable time for compliance. Petitioners give no indication of the amount of time they would deem "reasonable," instead making the unsupported claim that 13 days from service is not sufficient. Rule 45 itself, upon which Petitioners so heavily rely, provides that 10 days is sufficient for the production of documents. SCRP 45(a)(4).

Further, had Petitioners attempted to relay their time concerns to Ms. Welch's counsel, it is likely a reasonable compromise could have been reached so long as the requested extension was made in good faith. Petitioners offer no support for the proposition that the records responsive to the subpoena could not have been gathered within 13 days. Given that it is Petitioners' burden to show the provided time limit was unreasonable, its lack of explanation for why simple billing records could not be produced within 13 days is fatal.

3. Petitioners were not requested nor required to travel beyond 50 miles.

Petitioners also contend that responding to the subpoena would require them to travel more than 50 miles. Not so, as the subpoena only requires the production of documents. Those documents could be mailed, or sent electronically to the address for production. Nothing requires counsel to travel. Notably, counsel provides no law or citation that a place for production must be within 50 miles of the subpoena. Even so, had Petitioners raised this issue with Ms. Welch's counsel, a mutually convenient location (including Petitioners' law office itself) for the production

could have been negotiated. In short, Petitioners' complaint about travel is a manufactured obstacle designed to delay production of information relevant to Ms. Welch's lawsuit.

4. The subpoena does not request privileged or protected information.

i. If payments were made by Atlas Turner.

Petitioners complain that the materials sought request information concerning "material protected by the attorney-client privilege, work-product doctrine, and common-interest protections." "In general, the burden of establishing the privilege rests upon the party asserting it." *In re Mt. Hawley Insurance Company*, 427 S.C. 159, 164, 829 S.E.2d 707, 710 (2019)."[T]he party asserting the privilege has the initial burden to make a prima facie showing that the communications in question are privileged." Id. at 168-69 "[T]he attorney-client privilege does not extend to communications made in furtherance of criminal, tortious, or fraudulent conduct." *Id.* at 168.

Even presuming Atlas Turner itself paid Petitioners, such arguments are false and unsupported by any facts. The subpoena requests how much Petitioners were paid to work on Atlas Turner's Supreme Court Appeal, who paid them, and where the funds were located. Nothing of this concerns, much less discloses, anything regarding strategy or communications from a client.

"The determination of whether a communication is privileged and confidential is a matter for the trial judge to decide after a preliminary inquiry into all the facts and circumstances . . . . [and] . . . will not be overturned absent an abuse of discretion." *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287 (2010). This Court has explained the attorney-client privilege as follows: *"*(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692

S.E.2d 526, 530 (2010). The payment and source of funds does not fall within this definition.

ii. If payments were made by third parties.

Petitioners also claim the subpoena seeks materials protected by the common interest privilege, claiming their production would necessarily require them to produce communications with co-defense counsel, consultants, experts, and other participants in a coordinated defense. Such arguments fail on multiple levels. First, Atlas Turner was the only Petitioner before the United States Supreme Court, and thus there were no other parties for it to have a common interest with. Even were that not the case, Petitioners fail to in any way identify 1) who the "common interest" parties are, or 2) what the "common interest" is. The requested documents specifically exclude communications from anyone "employed by, retained by or otherwise representing Atlas Turner, Ltd . . . " Thus co-defense counsel, experts retained by Atlas[4], and consultants retained by Atlas are all excluded from the request, and thus Petitioners are fighting a straw-man.

Petitioners provide no evidence to support their claim of a "common interest." *See* John Freeman, *The Common Interest Rule*, 6 S.C. Law. 12 (May/June 1995)(citing *In re Bevill, Bresler & Schulman Asset Management*, 805 F.2d 120, 126 (3d Cir. 1986)(rejecting a claim of joint defense privilege because the claimant produced no evidence of an agreement). In fact, Atlas Turner was the sole party Petitioning the U.S. Supreme Court, so it is unclear who the "co-defendants" Petitioners were communicating with might be. Simply because entities share a desire to see a particular court ruling or decision does not mean that a privilege attaches to their communications. *Id., see also, Marino v. Guilford Specialty Group, Inc.*, 2015 WL 13016018, *3 (D.Conn. November 18, 2015)(finding that the common interest privilege does not apply where

[44] It is unclear what experts would need to be retained for an appeal to the United States Supreme Court focusing exclusively on the jurisdictional limits of receiverships.

the parties share "a desire to succeed in an action"); *Bank Brussels Lambert v. Credit Lyonnais (Suisse)S.A.*, 1995 WL 86450 (S.D.N.Y. 1995)(holding that "the common interest doctrine does not encompass a joint business strategy which happens to include as one of its elements a concern about litigation").

Atlas Turner, throughout this course of litigation, has denied it has any insurance coverage. Thus, if there are communications from an insurer regarding Atlas Turner, Ltd. they are either (1) not Atlas Turner's insurer, and thus no possible privilege could attach to the third-party communication, or (2) Atlas Turner and its lawyers have committed fraud on this court by representing that there is no insurance for Atlas Turner.[5]

5. The subpoena does not create an undue burden on Petitioners.

Petitioners complain the subpoena constitutes an undue burden. Not so. The question posed about Atlas' payments is a simple one: How much did Atlas Turner pay Petitioners, and what was the source of the funds? A copy of a check or a printout of a wire confirmation along with any document that identifies the institution or entity from which payment was made would satisfy the subpoena's request, and should hardly present a burden to a sophisticated law firm capable of filing appeals with the United States Supreme Court.

On the other hand, if a third party paid for Atlas' Counsel's services, as described above, no privilege at all attaches and thus no log or redactions are required. Petitioners merely need to turn over the information.

Petitioners also complain about having to travel over 50 miles for a hearing in Richland. Given that Petitioners 1) are attorneys licensed to practice throughout the State of South Carolina,

[5] Rule 26(b)(2) explicitly gives parties the right to "obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. To the extent that there actually are insurers for Atlas Turner, Ltd., Plaintiffs expressly reserve the right to seek additional discovery from those carriers.

2) were retained to represent Atlas Turner before the United States Supreme Court located in Washington, D.C, in a case arising out of Richland, and 3) retained counsel, Kelly Calder Mowen, whose office is located in West Virginia, their claim of undue burden due to travel rings hollow.

Atlas' Counsel's final argument about burden is that Plaintiffs should have sought this information from Atlas. As this Court knows, Atlas refused to comply with any discovery orders, represented it would *never* comply with such orders, and was in fact defaulted for such refusal. *See, Welch*. Its attorneys cannot now complain if they are made to produce information about Atlas Turner in their possession which Atlas Turner itself has committed moral fraud in refusing to produce.

6. Petitioners' arguments about service on other parties are without merit.

Petitioners also suggest they should not have to respond to discovery because not all remaining parties had been served. But (1) the only party other than Atlas Turner which was still in the case, Spirax Sarco, has now been dismissed, (2) Petitioners represent Atlas Turner in this case, (3) Atlas Turner has been defaulted, and (4) the Receiver for Atlas Turner was served with the subpoena. The purpose of the pre-service rule for third-party discovery is to give other parties an opportunity to object before the third-party produces the discovery. To date, 1) Petitioners have produced no responses to the subpoena, and 2) no remaining party in the *Welch* matter has raised an objection to the discovery. Petitioners themselves have no right to complain on behalf of other parties to the case. For this final reason the Petition is without merit and should be denied.

CONCLUSION

For the reasons set forth above, Intervening Respondent Donna Welch respectfully requests this Court deny Petitioners' Petition for Writ of Prohibition and Emergency Motion for Administrative Stay.

Respectfully submitted, February 24, 2026

Is/ Charles W. Branham, III
Charles W. Branham, III (SC Bar No. 106178)
DEAN OMAR BRANHAM SHIRLEY, LLP
1801 N. Lamar Street, Suite 300
Dallas, TX 75202
T: 214-722-5990
F: 214-722-5991
tbranham@dobslegal.com
Other email: tgilliland@dobslegal.com

Theile B. McVey (SC Bar No. 16682)
KASSEL MCVEY ATTORNEYS AT LAW
1330 Laurel
Street Post
Office Box
1476
Columbia, South Carolina
29202-1476 T: 803-256-4242
F: 803-256-1952
tmcvey@kassellaw.com
Other email: emoultrie@kassellaw.com