

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2007-CP-40-3564  
Appellate Case No. 2011-197986

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MAR 17 2015

S.C. Supreme Court

Columbia/CSA-HS Greater Columbia Healthcare System  
d/b/a Providence Hospital,..... Petitioner,

v.

The South Carolina Medical Malpractice Liability Joint  
Underwriting Association and Michael P. Taillon, ..... Respondents.

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF  
PETITION FOR REHEARING**

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules, the South Carolina Hospital Association (“the Hospital Association”) hereby moves the Court for leave to file a brief as *amicus curiae* in support of the petition for rehearing currently pending before this Court in this matter. The Hospital Association is a private, non-profit organization representing over 90 member hospitals and health systems in South Carolina. The Hospital Association was created in 1921 to serve as the collective voice of the state’s hospital community. It’s mission is to support its member hospitals as they continue to improve the delivery of healthcare for the people of South Carolina.

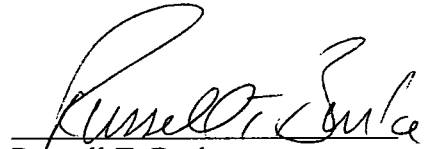
As provided by Rule 213, SCACR, the Hospital Association’s interest in this matter is that (1) the Court’s opinion impacts every hospital in South Carolina due to the medical malpractice actions filed each year, (2) that the opinion if left as written will

medical malpractice actions filed each year, (2) that the opinion if left as written will likely have a negative practical impact on hospitals, doctors, and patients in this State, and (3) that the opinion will also negatively impact judicial economy in South Carolina.

Thus, the Hospital Association has an identifiable interest in this matter pursuant to Rule 213 of the South Carolina Appellate Court Rules. As explained in the brief conditionally filed with this motion, the issue in this case is the proper interpretation of the medical malpractice statute of repose. The Association's member hospitals are often named in malpractice suits based on the theory of apparent authority under *Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 53, 533 S.E.2d. 312, 323 (2000), or on the basis of *respondeat superior*. The underlying malpractice actions can be brought three years from the date of discovery, and often take years to resolve. Any equitable indemnity claim which may become available to a hospital defendant under the facts of a case, however, cannot arise under settled South Carolina law until a hospital is compelled to pay for damages imputed to it by the medical professional's tortious conduct. See *Fowler v. Hunter*, 388 S.C. 355, 363, 697 S.E.2d 531, 535 (2010). The hospital's indemnity cause of action thus may often only arise *after* the six year statute of repose for medical malpractice claims. If this were the result intended by the General Assembly, it could have so stated explicitly by including equitable indemnity causes of action in S.C. Code §15-3-545(A).

For the foregoing reasons, the Association respectfully requests that the Court grant leave to file a brief as *amicus curiae*. A copy of the proposed *amicus curiae* brief is

attached hereto, and is being filed conditionally with this motion in accordance with South Carolina Appellate Rule 213.

A handwritten signature in black ink, appearing to read "Russell T. Burke", written over a horizontal line.

Russell T. Burke  
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Attorneys for *Amicus Curiae*  
South Carolina Hospital  
Association

Russell T. Burke  
Member  
Admitted in SC

March 17, 2015

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S.C. Supreme Court

VIA HAND DELIVERY

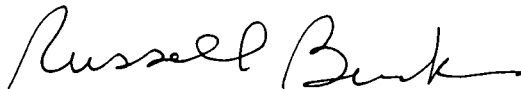
The Honorable Daniel E. Shearouse  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

Re: Columbia/CSA-HS Greater Columbia Healthcare System d/b/a  
Providence Hospital v. The South Carolina Medical Malpractice  
Liability Joint Underwriting Association and Michael P. Taillon  
Case No.: 2007-CP-40-3564  
Appellate Case No.: 2011-197986

Dear Mr. Shearouse:

Enclosed for filing in the above-referenced matter, please find an original and Seven (7) copies of the **Motion for Leave to file Amicus Curiae Brief in Support of Petition for Rehearing** as well as an original and fifteen (15) copies of the **Amicus Curiae Brief in Support of Petition for Rehearing**. Please return a clocked copy of each to us via our courier. We have also enclosed our check for \$25.00 to cover the Motion filing fee and the Proof of Service reflecting that counsel of record has been served with copies of same.

Very truly yours,



Russell T. Burke

RTB/bn  
Enclosures

cc: James Edward Bradley, Esquire  
C. Mitchell Brown, Esquire  
Michael J. Anzelmo, Esquire  
Andrew F. Lindemann, Esquire  
Monteith P. Todd, Esquire



# The Supreme Court of South Carolina

Nexsen Pruet, LLC

03/18/2015

## RECEIPT #75386

**Case No:** 2011-197986  
**Case Short Title:** Columbia/CSA v. SC Medical Malpractice  
**Event:**  
**Fee Type:** Motion Fee  
**Amount:** \$25.00  
**Payment Type:** Check  
**Reference No:** 445178  
**Check/Money Order Date:** 03/16/2015  
**Comments:**