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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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DEC 11 2017

SC Court of Appeals

C.A. No.: 2013-CP-10-1400
Appellate Case No. 2015-000269

Robert J. Burke.....Respondent,

v.

Republic Parking System, Inc.Appellant.

**PETITION AND MOTION FOR LEAVE TO FILE AN AMENDED PETITION FOR
REHEARING BY RESPONDENT ROBERT J. BURKE**

Pursuant to Rule 240 and Rule 221(a) of the South Carolina Appellate Court Rules, Respondent Robert J. Burke (“Burke”) hereby moves and petitions for leave to file an Amended Petition for Rehearing of the Court’s opinion and decision in this appeal, Opinion No. 5519 filed on October 25, 2017.

Respondent Burke timely filed and served his Petition for Rehearing in this matter, which was received by the South Carolina Court of Appeals on November 7, 2017. The Appellant has

not filed a return to the Petition and Respondent's Petition for Rehearing is still pending with the Court.

Respondent Burke requests permission of the Court to file an amended Petition for Rehearing in this case to include, among the other points already on file, the following point which Respondent contends that the Court, respectfully, overlooked and misapprehended in its opinion:

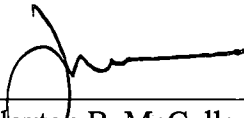
1. In deciding that the entire case was reversed and remanded for a new trial. The Court overlooks and misapprehends that the trial in this case was bifurcated between a liability and a damages phase. The Appellant, Republic Parking System, Inc. ("Republic"), sought to have Dr. Todd Shuman testify in the damages portion of the trial, after the liability verdict was already established. No medical experts testified in the liability phase, only in the damages phase. To the extent that the Court finds it was error for the trial court to have excluded Dr. Shuman from testifying, which is denied, the Court should only reverse and remand the damages phase of the bifurcated trial and allow the liability verdict to stand. Dr. Shuman would not have participated in the liability phase of the trial as did no other medical witness. Neither party presented any medical evidence / testimony during the liability phase of the bifurcated trial. The Court overlooked and misapprehended the fact that this was a bifurcated trial and to the extent that the trial court committed error with the exclusion of Dr. Shuman, the liability verdict of the jury should stand as there was no prejudice to Republic in the liability phase of the trial based on the Court's opinion.

Respondent Burke respectfully requests leave to add the above argument to its Petition for Rehearing which is pending before the Court. No prejudice will result to Appellant Republic as it has not filed a return to the Petition and the Petition is still pending

with the Court. Respondent Burke will have the Amended Petition for Rehearing filed within ten (10) days of the Court's approval of this Motion and Petition.

Respectfully Submitted,

McCULLOUGH KHAN, LLC



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(SC Bar No.: 13722)
Jamie A. Khan, Esq.
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ATTORNEYS FOR RESPONDENT ROBERT J. BURKE

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PROOF OF SERVICE

I hereby certify that a true and correct copy of the *Petition and Motion for Leave to file an Amended Petition for Rehearing by Respondent Robert J. Burke* has been served upon the following by mailing a copy, properly addressed and with the sufficient postage affixed thereto, via U.S. Mail on this 7th day of December, 2017.

Sarah P. Spruill, Esq.
Haynsworth Sinkler Boyd, P.A.
1 North Main Street, 2nd Floor
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December 7, 2017

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VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Robert J. Burke and Jane B. Burke v. Republic Parking Systems, Inc.*
Civil Action No.: 2013-CP-10-1400
Appellate Case No.: 2015-000269

Dear Ms. Kitchings:

I hope this letter finds you well. Enclosed for filing please find the original and seven (7) copies of the Petition and Motion for Leave to File an Amended Petition for Rehearing by Respondent Robert J. Burke and Proof of Service, as well as our firm's check in the amount of \$25.00 for the filing fee. Please file the original and return the extra clocked copy to our office in the enclosed self-addressed stamped envelope. We are hereby serving a copy of the Petition on counsel for Appellant.

We would appreciate the Court's consideration of the Petition and Motion.

Thank you in advance for your assistance and please do not hesitate to contact our office if you have any questions or need anything further. With kind regards, I remain

Sincerely yours,

Jamie A. Khan

JAK/dd

Enclosures

cc: Sarah P. Spruill, Esq.
Roopal S. Ruparelia, Esq.



UNITED STATES
PITNEY BOWES
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The Honorable Jenny Abbott Kitchings
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Columbia, SC 29201

