THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 6115 (S.C. Ct. App. filed July 9, 2025)
Appellate Case No. 2025-002144

Paul David Hess, APRN-BC,.. . . . . Respondent-Petitioner

v.

Morphis Pediatric Group of Lancaster, P.A.; Elizabeth J. Morphis, M.D.; Gregory M. Alexander, CPA; and Moore Beauston and Woodham, LLP,.. . . . . Defendants

Of whom Morphis Pediatric Group of Lancaster, P.A. and Elizabeth J. Morphis, M.D. are. . . . . Petitioners-Respondents

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BRIEF OF RESPONDENT-PETITIONER

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QUESTIONS PRESENTED

(1) May an employee seek private remedies for an employer's violation of section 41-10-30(A) of the South Carolina Code (2021)?

(2) Did the court of appeals err in holding the question of whether Respondent-Petitioner knew or should have known he had a claim more than three years before filing his action, thus barring the action under the three-year statute of limitations of section 41-10-80(C) of the South Carolina Code (2021), was properly submitted to the jury?

The above questions are taken verbatim from the Court's Order of January 16, 2026, granting Petitioners-Respondents' Petition for Certiorari on two of the five issues they raised in their petition.

Petitioners-Respondents phrased the Questions Presented for Review in their brief in an argumentative fashion, premised on a gross misreading of the trial record, especially when the facts in the record must be taken in the light most favorable to Respondent-Petitioner as the party who obtained a favorable jury verdict based on the entirety of the evidence.

STATEMENT OF THE CASE

The underlying case was tried in the York County Court of Common Pleas before then-state Circuit Court Judge, the Honorable DeAndrea Gist Benjamin. After a six-day trial in late January and early February 2022, Respondent-Petitioner, Paul David Hess, APRN-BC (hereinafter "Mr. Hess"), received jury verdicts in his favor in the total amount of $548,290.42 of back pay on all of the causes of action he raised in his Complaint, which included breach of contract, breach of contract accompanied by a fraudulent act, violation of the South Carolina Payment of Wages Act, fraud, and negligent misrepresentation against Petitioners-Respondents, Morphis Pediatric Group of Lancaster, P.A. (hereinafter "MPGL") and Elizabeth J. Morphis, M.D. (hereinafter "Defendant Morphis,"

collectively "Morphis Defendants").[1] After additional closing arguments and jury instructions on punitive damages during the bifurcated portion of the trial as requested by the Accounting Defendants, the jury returned a verdict of $475,000 in punitive damages against the Morphis Defendants on February 2, 2022, based on the causes of action for breach of contract accompanied by a fraudulent act, fraud, and negligent misrepresentation.

Mr. Hess filed an Election of Remedies on February 3, 2022, electing to pursue his full remedies under the South Carolina Payment of Wages Act, including treble damages and attorney's fees and costs, for all years in question (2010-2015), and to forego the jury's verdict on punitive damages against the Morphis Defendants. On February 14, 2022, Mr. Hess filed a Petition for Treble Damages, Attorney's Fees and Costs, and Pre-Judgment Interest.

On November 2, 2022, the Circuit Court entered an order denying the Morphis Defendants' Motions for JNOV and for Remittitur. Also on November 2, 2022, the Court entered an order granting Mr. Hess's Petition for Treble Damages, Attorney's Fees and Costs, and Pre-Judgment Interest.

The Morphis Defendants served their Notice of Appeal on November 9, 2022. Mr. Hess served his Notice of Cross Appeal on December 2, 2022, challenging Judge Benjamin's decision sua sponte to reduce hourly rate sought in the fee petition from $450.00 per hour to $300.00 per hour.

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[1]The Complaint also included claims for fraud, negligent misrepresentation, and tortious interference with contract against Defendants Gregory M. Alexander, CPA, and Moore Beauston and Woodham, LLP (hereinafter "Accounting Defendants"). The Accounting Defendants provided accounting service to the Morphis Defendants throughout the relevant period covered by the complaint. The jury awarded a verdict in favor of Mr. Hess, including punitive damages, against the Accounting Defendants on some of the causes of action for one of the years in dispute (2015). The Accounting Defendants reached a settlement with Mr. Hess while the post-trial motions were pending.

The Court of Appeals heard argument on the appeal and cross-appeal on November 7, 2024. The Court of Appeals entered its opinion on July 9, 2025, ruling in favor of Mr. Hess on all issues, other than reversing the trial court's award of prejudgment interest.

On July 23, 2025, Petitioners-Respondents filed a Petition for Rehearing and Suggestion for Rehearing En Banc, with respect to all of the issues decided against them by the Court of Appeals. Also on July 23, 2025, Respondent-Petitioner filed a Petition for Rehearing in Part, on Pre-Judgment Interest Issue Only, and Suggestion for Rehearing En Banc.

After requesting and receiving returns to both petitions, the Court of Appeals entered an order on September 22, 2025, denying both Petitions for Rehearing and declining en banc consideration. Both parties subsequently filed Petitions for Writ of Certiorari to this Court, which granted Petitioners-Respondents' petition in part on the two issues set forth above.

FACTS

This is a claim for wage theft that occurred over a six-year period, from 2010 to 2015. Mr. Hess is a nurse practitioner and was employed by MPGL, a pediatrics practice in Lancaster, SC, from January 2009 to July 31, 2018. Pursuant to a written Employment Agreement starting January 1, 2010, Mr. Hess was promised an annual base salary of $100,000 (which never changed throughout his entire nine-and-a-half year tenure with MPGL), plus a bonus based on 50% of the Lancaster practice's net profits. (2010 Employment Agreement and Appendix A thereto) (R. 835-836, 839).

With regard to the bonus payments, the Employment Agreement provides, "All or any bonuses shall be at the discretion of the Board or as determined in any appendix that is hereby signed and agreed upon by both parties." (2010 Employment Agreement, at 4, ¶ 4) (emphasis added) (R. 836). Mr. Hess's contract contained an Appendix A, sub-titled "Bonus Compensation," which states

as follows:

> Provided that the employee meets criteria as decided upon by the Board, the employee will be eligible for an annual bonus paid by the company based on the following formulation.
>
> All end of the year profits generated by this above-mentioned business shall be divided and the employee is granted 50% (fifty percent) of the said monies after all debts, expenses, royalties and expenditures have been allowed. These monies will be determined by the Company Accountant after the close of the year on December 31st of each calendar year and payable by the 15th of February.

(2010 Employment Agreement, Appendix A) (emphases added) (R. 839). Appendix A was signed by Dr. Morphis and Mr. Hess and was witnessed by Sandra Tyner, who was the office manager of MPGL throughout Mr. Hess's employment there. (Id.).

Mr. Hess received bonuses at the end of each year from 2010 to 2013, although he was never given any details about how his bonuses were calculated, and he was repeatedly denied access to the financial records of the practice whenever he raised questions about the profitability of the practice. (Hess Testimony, Tr. Vol. 1, at 28, ll. 9-22; at 39, ll. 2-10) (R. 513, 524). In 2014, no bonus was included in Mr. Hess's W-2 for that year. (Id. at 40, ll. 11-17) (R. 525). When Mr. Hess questioned Dr. Morphis about the omission, she said that she was late in getting the information to the accountant, which caused the bonus not to be paid by December 31, 2014. When Mr. Hess's 2014 bonus (paid in early 2015) was identical to the bonus he received in 2013, he asked the practice's accountant about the coincidence, and the accountant told him that the practice had switched from a C-Corp to an S-Corp in 2014 and that Dr. Morphis did not think it was fair to Mr. Hess to burden him with the additional legal and accounting expenses involved in that conversion, so they decided to leave the bonus the same as it had been the prior year. (Pl. Ex. 5, at 2) (R. 848); (Pl. Ex. 2, at 3) (R. 842).

On May 28, 2015, Dr. Morphis, Defendant Alexander (MPGL's outside accountant), Tom Hinson (MPG Hartsville's office manager), and perhaps Ms. Tyner met with Mr. Hess to discuss a proposal to change his bonus formula, from being based on 50% of net profits to 5% of gross revenues of the Lancaster practice. Mr. Alexander brought some financial analysis to the meeting purporting to demonstrate the fairness of the new proposed bonus formula and to show Mr. Hess that his bonuses from 2010 to 2014 had historically averaged approximately 5% of gross revenues. When Mr. Hess asked Mr. Alexander whether he had been receiving 50% of the net profits of the Lancaster practice since 2010, Mr. Alexander refused to answer, instead stating that Mr. Hess's question would require him to reveal confidential information about Dr. Morphis's tax situation. (Hess Testimony, Tr. Vol. 1, at 44 to 51) (R. 529-536). This was a pre-planned response by Mr. Alexander as discussed in his email of May 22, 2015, to Dr. Morphis prior to the May 28 meeting, if Mr. Hess asked a question that Mr. Alexander did not feel comfortable answering. (Pl. Ex. 2) (R. 841) ("If there are items you are not comfortable sharing then when asked I will respond, "*That is part of a larger tax position we are taking for Dr. Beth [Morphis] personally & the details are not relevant.*") (italics in original).

Shortly after the meeting, Mr. Alexander sent an email to Mr. Hess and Dr. Morphis with a copy of the financial information he had discussed during the meeting comparing the bonus amounts with gross revenues from 2010 to 2014. (Pl. Ex. 4) (R. 845-846). Shortly before sending this joint email, Mr. Alexander also sent an email only to Dr. Morphis, in which Mr. Alexander included three additional lines of information for each year from 2010 through 2014 to the spreadsheet he created only for her to see: (1) "Net Income," (2) "Doctor Bonuses," and (3) "Net Income Before Doctor Bonuses." (Pl. Ex. 3) (R. 844). In the cover email he sent only to Dr. Morphis, Mr. Alexander told

Dr. Morphis, "I thought it may be helpful for you to see what kind of profit you are receiving from the practice in Lancaster. This is for your benefit only. I won't share this with David [Hess]." (Pl. Ex. 3) (R. 843) (emphasis added).

At the end of 2015, the Morphis Defendants presented to Mr. Hess a proposed Employment Agreement changing the bonus formula as discussed during the May 28, 2015 meeting. Mr. Hess signed the new employment contract on December 30, 2015, purporting to be retroactive to March 1, 2015, which would have changed the bonus calculation from 50% of the net profits to 5% of gross receipts of the Lancaster practice. (2015 Employment Agreement, and Exhibit A thereto) (R. 912-922). Unbeknownst to Mr. Hess at that time, the new bonus calculation resulted in a bonus for 2015 that was over $190,000 less than he would have earned under the 2010 Employment Agreement. Mr. Hess was paid bonuses in 2015, 2016, and 2017 under the new contract, based on 5% of the gross revenues of the practice.

Only in the summer of 2018, when Dr. Morphis announced that she had decided to sell the Lancaster practice, was Mr. Hess finally able to see some of the complete accounting records for the practice. (Hess Testimony, Tr. Vol. 1, at 61, ll. 7-20) (R. 546). Mr. Hess and one of the other providers in Lancaster decided to make a bid to purchase the Lancaster practice from Dr. Morphis, so they were able to obtain the prior five full years of accounting records for the practice as part of the due diligence process for submitting their bid. (Id. at 61, ll. 7-20) (R. 546). As soon as Mr. Hess saw the accounting records going back to 2013, he immediately knew that he had not been paid properly according to his 2010 Employment Agreement and that he had been misled into signing the new contract at the end of December 2015.

To summarize the bonus history, in 2010, Mr. Hess received a bonus of $75,000, and Dr.

Morphis received over $148,000 from the Lancaster practice. In 2011, Mr. Hess's bonus dropped to $25,000; yet Dr. Morphis took a bonus of $180,000 from MPGL. In 2012, Mr. Hess's bonus was just under $47,000, but Dr. Morphis received a bonus of $330,000 from MPGL. In 2013, Mr. Hess's bonus was $48,000, and Dr. Morphis's bonus was $151,000 from MPGL. As discussed above, in 2014, Mr. Hess's bonus was not paid until early 2015 and was exactly the same as it had been in 2013 ($48,000), and Dr. Morphis took a salary of $81,212, plus pass-through income of over $196,000 in profit from the Lancaster practice, which had been converted to an S-Corporation that year for the first time. Finally, in 2015, Mr. Hess received a bonus of $70,267.41, and Dr. Morphis took a salary of $80,000 and received pass-through income of over $374,000 in profits from the Lancaster practice. (Pl. Ex. 19) (R. 923). In summary, Mr. Hess never received 50% of the profits of the Lancaster practice as his bonus, as he was promised in the 2010 Employment Agreement and the bonus formula set forth in Appendix A to that Agreement. (R. 552, ll. 11-24).

Dr. Morphis rejected the bid submitted by Mr. Hess and the other provider to purchase the Lancaster practice. Shortly thereafter, Dr. Morphis terminated both Mr. Hess's and the other provider's employment immediately, without notice and without cause.

Mr. Hess brought this lawsuit on September 27, 2018, approximately two months after Dr. Morphis rejected his and the other provider's offer to purchase the Lancaster practice and unceremoniously terminated their employment.

The Questions Presented for Review and the Factual Background as stated by Petitioners-Respondents in their brief completely disregard the well-settled principle that after a jury trial, the facts in the record must be liberally construed in the light most favorable to the prevailing party at trial. See, e.g., Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 463, 629 S.E.2d 653, 663

(2006) ("The appellate court must determine whether a verdict for a party opposing the motion [for directed verdict] would be reasonably possible under the facts as liberally construed in his favor. If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.") (internal citation omitted). Contrary to this command, Petitioners-Respondents include in their Brief loaded phrasings of their Questions Presented for Review that are premised entirely on sharply disputed facts and that contain very dubious inferences and hyperbolic mischaracterizations of the Court of Appeals's decision. In addition, Petitioners-Respondents present their Statement of the Factual Background in a very argumentative and misleading fashion, cherry-picking portions of the trial testimony out of context and completely disregarding evidence in the record that contracts their position. A fair reading of the record as a whole fully supports the jury's verdicts in favor of Mr. Hess on all of his causes of action.

Petitioners-Respondents do not even acknowledge or recite the very limited standard of review that applies in this appeal at this stage of the proceedings, which prevents an appellate court from "decid[ing] credibility issues or . . . resolv[ing] conflicts in the testimony or evidence." Id. Respondent-Petitioner feels compelled to respond to a few of the more glaring misstatements of the trial record in Petitioners-Respondents' factual recitation.

First of all, Mr. Hess never admitted that he understood that he had a claim against Petitioners-Respondents outside of the three-year statute of limitations, as falsely asserted by Petitioners-Respondents. (Pets.' Br., at 5). Mr. Hess received bonuses at the end of each year from 2010 to 2014 under the 2010 Employment Agreement, although he was never given any details about how his bonus was calculated and was repeatedly denied access to the financial records of the practice whenever he raised questions about the profitability of the practice or how his bonus was

determined. (Hess Testimony, R. 513, ll. 9-22; 524, ll. 2-10). Whenever Mr. Hess asked a specific question about the finances of the Lancaster practice, Dr. Morphis would say that she did not know the answer to Mr. Hess's questions or that she would have get the information from the accountants, which she apparently never did. (R. 515, ll. 17-24).

Next, in 2014, Dr. Morphis did not simply "realize" that she had forgotten to calculate and pay Mr. Hess's bonus, as stated by Petitioners-Respondents. (Pets.' Br., at 8). In early 2015, after Mr. Hess received his W-2 for 2014, which did not include any bonus payment at all, he confronted Dr. Morphis about why his gross income had decreased by almost $50,000 compared to the prior year. Dr. Morphis responded that she would have to check with the practice's outside accountant to see what happened. (R. 526, l. 23 to 527, l. 2). The accountant (Alexander) subsequently told Mr. Hess that his 2014 bonus would be identical to the one he received in 2013 ($48,000). The accountant explained to Mr. Hess that because the Lancaster practice had switched from a C-Corp to an S-Corp in 2014, they did not want to penalize Mr. Hess for the additional costs involved in the conversion, so they decided to leave the bonus the same as it had been the prior year. (R. 527, ll. 4-13); (Pl. Ex. 5, at 2) (R. 848); (Pl. Ex. 2, at 3) (R. 842). This was a false, but plausible explanation for why Mr. Hess's bonus was identical from 2013 to 2014. As the financial records at trial ultimately showed, however, the Lancaster practice actually had net income of over $196,600 dollars in 2014, even after Dr. Morphis paid herself over $81,000 in total compensation, substantially greater than the net profits for MPGL from 2013, even despite any additional expenses relating to the change in the corporate status of the practice. (Pl. Ex. 3) (R. 844).

With respect to the meeting that occurred at the end of May 2015 between Mr. Hess, Dr. Morphis, the accountant (Defendant Alexander) and the practice manager from Morphis's main

office in Hartsville, that meeting was not suggested by Mr. Hess and was not called to review the numbers used to calculate his bonus, as Petitioners-Respondents now assert. (Pets.' Br., at 9). The meeting occurred on May 28, 2015 and was actually pre-planned by Dr. Morphis and Defendant Alexander to try to convince Mr. Hess to change the method for calculating his bonus from one based on 50% of the net profits of the practice to one based on a lower percentage gross revenues. According to Mr. Alexander's email to Dr. Morphis on May 22, 2015, almost a week prior to the meeting, the first two items he explained as his understanding for the meeting with Mr. Hess are: (1) to negotiate a new contract with Mr. Hess, and (2) to convince Mr. Hess why his bonus should be based on gross revenues instead of net income. (R. 842). Only the third item on Mr. Alexander's draft agenda was to explain to Mr. Hess why his 2014 bonus was identical to the 2013 bonus, which explanation Mr. Alexander had previously provided to Mr. Hess over the phone in February 2015.

As noted previously, shortly after the May 28 meeting, Mr. Alexander sent an email to Mr. Hess and Dr. Morphis with a copy of the financial information he had discussed during the meeting, comparing the bonus amounts with gross revenues from 2010 to 2014. (Pl. Ex. 4) (R. 845-846). Unbeknownst to Mr. Hess, Mr. Alexander also sent a similar spreadsheet only to Dr. Morphis, stating in the cover email, "Attached is the spreadsheet you requested. I thought it may be helpful for you to see <u>what kind of profit you are receiving from the practice in Lancaster. This is for your benefit only, I won't share this with David</u>." (Pl. Ex. 3) (R. 843) (emphasis added). The spreadsheet that Mr. Alexander sent to Dr. Morphis only, at her specific request, contained three additional lines of data below the line "Bonuses as a % of Gross Revenues" for each year from 2010 to 2014: "Net Income," "Doctor Bonuses," and "Net Income Before Doctor Bonuses." (Pl. Ex. 3) (R. 844). These last three lines were not on the spreadsheet that Mr. Alexander sent to both Mr. Hess and Dr.

Morphis less than 15 minutes later the same day. This secret spreadsheet was the "smoking gun" document in the case because it revealed that Mr. Alexander's explanation to Mr. Hess about why his bonus in 2014 was identical to the one he received in 2013 was a complete fabrication. Mr. Alexander and Dr. Morphis clearly knew that the net income of the practice in 2014 was over $100,000 higher than it was in 2013, even after figuring in Dr. Morphis's "Doctor Bonuses" each year. This evidence was the primary basis for the jury's finding of negligent misrepresentation and corresponding award of punitive damages against the accounting Defendants.

Dr. Morphis never apologized to Mr. Hess or acknowledged that she deliberately cheated him on the bonus every single year from 2010 to 2014 or that she and her accountant misled Mr. Hess into believing that changing his bonus formula in 2015 would be beneficial to him, even if they had provided timely, written notice of the proposed change as required by the South Carolina Payment of Wages Act.

STANDARD OF REVIEW

The applicable standard of review in this case was best described by this Court in Erickson v. Jones St. Publishers, LLC, 368 S.C. 444, 629 S.E.2d 653 (2006):

> In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings.

Id. at 464, 629 S.E.2d at 663-64 (emphasis added). It is well established that a claim under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-80(C), is an action at law. Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010) ("Actions seeking damages for breach of contract and actions for violation of the Payment of Wages Act are actions

at law."). The findings of fact underlying a jury's verdict "are conclusive on appeal when supported by competent evidence." Id.

Review of the trial court's decision on a motion for JNOV is extremely narrow. This Court has repeatedly cautioned that a motion for JNOV should be granted "'only when there is no evidence to support the [jury's verdict].'" Garrison v. Target Corp., 435 S.C. 566, 576, 869 S.E.2d 797, 803 (2022) (quoting Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 42, 691 S.E.2d 135, 145 (2010) (emphasis added)). "'A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.'" RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (quoting Gastineau v. Murphy, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998)). In considering a motion for JNOV, the trial court must provide substantial deference to the jury's decision and cannot weigh the evidence or make determinations regarding the credibility of witnesses. Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (Ct. App. 2000). The trial court is required to deny a motion for JNOV if the jury's verdict was "reasonably possible under the facts as liberally construed in [the prevailing party's] favor." Jones v. General Elect. Co., 331 S.C. 351, 356, 503 S.E.2d 173, 176 (Ct. App. 1998).

Petitioners-Respondents incorrectly assert that "All questions in this appeal are questions of law which did not require fact-finding and are, therefore, reviewed *de novo*." (Pets. Br., at 6).

ARGUMENTS

1. THE COURT OF APPEALS CORRECTLY RULED THAT THE NOTICE PROVISIONS OF THE SOUTH CAROLINA PAYMENT OF WAGES ACT, S.C. CODE ANN. § 41-10-30(A), THAT ANY CHANGES TO THE WRITTEN TERMS OF EMPLOYMENT "MUST BE MADE IN WRITING AT LEAST SEVEN CALENDAR DAYS BEFORE THEY BECOME EFFECTIVE," CAN FORM THE BASIS FOR A CIVIL ACTION UNDER THE REMEDIES

> SECTION OF THE ACT, BY AN EMPLOYEE WHOSE EMPLOYER FAILS TO PAY HIM ALL WAGES DUE TO HIM, WITHOUT DIVERSION OR WITHHOLDING AS REQUIRED BY S.C. CODE ANN. § 41-10-40(A) AND (C).

The Court's phrasing of the first issue in Order of January 16, 2026, granting Petitioners-Respondents' Petition for Certiorari in part is somewhat inapposite. Mr. Hess did not seek a remedy for the violation of the notice provision of the SC Payment of Wages Act itself; rather, Mr. Hess argued that the proposed change to his bonus calculation–from 50% of net profits to 5% of gross revenues–could not have been "effective" before the end of 2015. Accordingly, Mr. Hess's 2015 bonus should have been paid under the 2010 Employment Agreement instead of the 2015 Employment Agreement as a matter of law. Mr. Hess's remedy in this case was pursued under the private remedy provision of the Act, S.C. Code Ann. § 41-10-80(C).

Section 41-10-30(A) of the South Carolina Payment of Wages Act provides, in relevant part, "Any changes in these terms [of employment] must be made in writing at least seven calendar days before they become effective." S.C. Code Ann. § 41-10-30(A) (emphasis added). No evidence was presented at trial of the actual date the revised contract was first provided to Mr. Hess, other than the date of his signature, December 30, 2015. (Pl.'s Ex. 18) (R. 912). Mr. Hess testified that during the May 28, 2015 meeting described above, the concept of changing the bonus to a percentage of gross revenue, rather than net income, "was brought up briefly. There was no paperwork, there was no nothing. It was just let's convert from this to this." (R. 588, ll. 9-11).

Furthermore, the 2015 Employment Agreement purports to be effective retroactively to March 1, 2015. (Pl.'s Ex. 18, ¶ 6) (R. 914). If Mr. Hess received the contract on the date he signed it, the earliest the contract could have been "effective" would have been January 6, 2016, which was

seven calendar days after written notice of the change was provided to him. Although the 2015 contract provides that "said payment of the annual bonus detailed herein being made on or before the 15th of February following the close of the fiscal year," (Pl.'s Ex. 18, Appx. A) (R. 922) (emphasis added), Mr. Hess's 2015 bonus of $70,267.41 was actually paid on or before December 31, 2015 and was included in the 2015 Profit & Loss Statement of MPGL. (Pl.'s Ex. 9) (M13) (R. 880). Petitioners-Respondents produced no evidence to support an argument that Mr. Hess's bonus was actually paid after January 6, 2016, or that they provided written notice of the 2015 contract to Mr. Hess on or before December 24, 2015, such that they somehow satisfied the seven-day notice provision from the Act.

Moreover, the phrase "become effective" as used in the statute does not mean "payable after." Employees are often paid in arrears, such as one or two weeks after the pay period for which such compensation was actually earned. If the 2015 Employment Agreement could not, as a matter of law, have "become effective" until January 6, 2016 (or sometime after December 31, 2015), Mr. Hess's entitlement to a bonus in 2015 would have necessarily been based on the 2010 Employment Agreement, which was still in effect and which provided for a bonus of 50% of the net income of the Lancaster practice. (Pl.'s Ex. 1, Appx. A)) (R. 830); (Hess Testimony, R. 503, l. 14 to 504, l. 5); (Morphis Testimony, R. 650, ll. 2-18).

Petitioners-Respondents argue that the Fourth Circuit's decision in Barton v. House of Raeford Farms, Inc., 745 F.3d 95 (4th Cir. 2014), should have compelled a judgment in their favor as a matter of law on Mr. Hess's claims under the Payment of Wages Act for the 2015 bonus. Petitioners-Respondents' reliance on Barton is unavailing. First of all, the Barton case is not binding precedent on a South Carolina court on matters of state statutory law. Secondly, the discussion in

Barton about S.C. Code Ann. § 41-10-30(A) is clearly dicta because that issue was not material to the outcome of that case since the Fourth Circuit determined that the state-law wage claims were pre-empted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), as the issue of compensable work time was covered by the collective bargaining agreement ("CBA") between the defendant employer and the plaintiffs' labor union. Barton, 745 F.3d at 99, 108-09. The issue in the Barton case was whether the plaintiff-group of poultry workers were entitled to additional compensable time for donning and doffing protective gear, walking to and from the production area, and/or washing their protective gear before and after work. Id. at 100. The workers were paid based on the employer's long-standing practice of using "line time" rather than "clock time." Id. The Fourth Circuit determined that the workers' exclusive remedy was to pursue a grievance and arbitration under the CBA, not by filing a civil lawsuit under the SC Payment of Wages Act. The Barton court's discussion of the SC Payment of Wages Act actually starts with the word "nonetheless," confirming that the analysis of Section 41-10-30(A) is purely dicta.

In any event, the claims in the Barton case are materially different than the claims that Mr. Hess raised in the instant case against Petitioners-Respondents. In Barton, the plaintiffs complained that the initial, written terms of employment notices they were provided at the start of their employment did not specify that they would be paid only according to "line time" instead of "clock time." The Barton court expressed doubt that such information was even required by S.C. Code Ann. § 41-10-30(A). Barton, 745 F.3d at 108 ("First, it is far from clear whether § 41–10–30(A) required Columbia Farms to provide written notice to its employees that their 'normal hours' would be measured based on 'line time.'").

Here, by contrast, Mr. Hess's claim under the South Carolina Payment of Wages Act for the

2015 bonus relates to a change in his bonus formula, not to his original terms of employment notice. Under the plain language of Section 41-10-30(A), that change could not have been "effective," as a matter of law, until 7 days after the written notice of the new bonus provisions was provided to Mr. Hess. The operable Employment Agreement governing Mr. Hess's bonus for 2015 was the original 2010 Employment Agreement and its bonus provisions as spelled out in Appendix A to that document.

Perhaps more importantly, the Barton court's overly narrow analysis of the Payment of Wages Act is contrary to the well-established, underlying, remedial purpose of the Act in protecting workers from unjustifiably withheld wages. See Dumas v. InfoSafe Corp., 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995) (holding that the SC Payment of Wages Act is "remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld."); see also Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 317, 698, S.E.2d 773, 782 (2010) (recognizing that the underlying purpose of the SC Payment of Wages Act is "'to protect employees from the unjustified and willful retention of wages by the employer.'") (quoting Rice v. Multimedia, Inc., 381 S.C. 95, 98, 456 S.E.2d 381, 383 (1995)). The Barton court did not cite to any of these important, binding precedents from the South Carolina appellate courts interpreting the Payment of Wages Act.

The trial court correctly recognized that the South Carolina Department of Labor, Licensing & Regulation's express power under Section 41-10-80(A) to issue civil penalties or fines to employers for notice violations of the Act does not negate or limit the private civil remedy in Section 41-10-80(C). Such remedies are obviously cumulative, not mutually exclusive. Again, this is a remedial statute that should be liberally construed to effectuate its underlying purpose: to protect

employees and empower them to recover unlawfully withheld wages.

The interplay between Section 41-10-30(A) and the private remedies provision in Section 41-10-80(C) is also significant. Section 41-10-80(C) provides that an employee can bring a civil case for violations of Sections 41-10-40 or 41-10-50 to remedy an employer's failure to pay wages due. S.C. Code Ann. § 41-10-80(C). As relevant here, Section 41-10-40(A) provides that every employer in the State shall pay all wages due to the employee and that such payments must be made in lawful United States money or by negotiable warrant or check dated the same day as the pay date. S.C. Code Ann. § 41-10-40(A). In addition, Section 41-10-40(C) provides, "An employer shall not withhold or divert any portion of an employee's wages . . . without written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30. S.C. Code Ann. § 41-10-40(C). Because subsection 41-10-40(C) specifically refers to the notice provision of the Act (S.C. Code Ann. § 41-10-30(A)), a civil action under Section 41-10-80(C) expressly can be brought where an employer diverts or withholds any pay that is not made pursuant to a valid and effective written notice. Petitioners-Respondents' wrongfully diverting a portion of Mr. Hess's full 50% share of the Lancaster profits as his annual bonus to Dr. Morphis herself is plainly a violation of Section 41-10-40(C) and, therefore, is the proper subject of a civil action by Mr. Hess under Section 41-10-80(C).

Mr. Hess's claim under the South Carolina Payment of Wages act was not based simply on the Morphis Defendants' technical failure to provide the notice itself, like the South Carolina Department of Labor, Licensing & Regulation might enforce through a warning and administrative penalty for each occurrence under Section 41-10-80(A); rather, Mr. Hess's lawsuit sought money damages because the change in his pay could not have become "effective" until 7 days after he

received written notice of the change, which was sometime in January 2016 at the earliest.

Petitioners-Respondents also cite to an unpublished decision of the South Carolina Court of Appeals in Gould v. Worldwide Apparel LLC, Unpublished Op. No. 2019-UP-262, 2019 WL 3216893 (S.C. Ct. App. July 17, 2019) (unpublished). Significantly, Appellants-Respondents never mentioned the Gould case before–not to the trial judge, not in their final appellate briefs, nor at oral argument in this appeal; therefore, they cannot raise it for the first time on a petition for rehearing. See Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011) ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.") (quoting Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (quoting Jean H. Toal, Appellate Practice in South Carolina 309 (1999))). The first time counsel for Petitioners-Respondents ever mentioned the Gould case was in their Petition for Rehearing to the South Carolina Court of Appeals. (R. 1083). Tellingly, the Brief of Petitioners-Respondents sheepishly omits the Gould case from their Table of Authorities. (See Pets.' Br., at 3).

Even if this Court were to look at the unpublished Gould case, the Court of Appeals's holding in this case on the notice provision of the Payment of Wages Act is not inconsistent with the holding of Gould because the facts of this case are easily distinguished from the facts presented here. First of all, the Gould case was an appeal from summary judgment in favor of the plaintiff employee. Gould, 2019 WL 3216893, at * 1. The instant case is an appeal from a final judgment after jury verdicts in Mr. Hess's favor. Secondly, the Gould case involved an employee whose hours and pay were cut in connection with the imminent sale of the defendant employer. Id. The record in Gould

also included deposition testimony and copies of text messages showing that the plaintiff employee agreed to the reduction of hours and compensation. Id. The plaintiff in Gould asserted that the attempts to change his hours and pay were void because they did not comply with the advanced, written notice requirement of the Payment of Wages Act and that his agreement constituted an unenforceable attempt to circumvent the provisions of the Act. Id. Here, Mr. Hess did not assert that the 2015 contract was void, just that it could not become "effective" under S.C. Code Ann. § 41-10-30(A), until sometime in 2016 because of the 7-day requirement. Even the employer defendant in Gould argued that the word "effective" as used in Section 41-10-30(A) "is 'merely used as a timing mechanism for the giving of written notice, not a potential nullification of an act.'" Gould, at *2 (quoting Appellants' brief). Thirdly, the court of appeals in Gould concluded that "the writing requirement of section 41-10-30 is an improper basis to preclude a jury from resolving the issues concerning the existence and terms of a novation between the parties." Gould, at * 4. The jury's consideration of the entire case here is consistent with the Gould court's obvious preference for allowing the jury to resolve genuine issues of material fact, as happened in this case, after a full trial on the merits.

Furthermore, as Petitioners-Respondents themselves acknowledge, Rule 268(d), SCACR expressly provides, "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d), SCACR. Petitioners-Respondents mistakenly assert that the Gould case creates a conflict between Rule 268(d) and Rule 219(a), SCACR, which lists as one basis for the Court of Appeals to rehear cases en banc "when consideration by the full court is necessary to secure or maintain uniformity of its decisions." Rule 219(a)(1), SCACR. Because unpublished decisions of the Court of Appeals

have no precedential value beyond the same case, unpublished decisions like Gould cannot create a conflict with actual, published decisions by the Court of Appeals. Petitioners-Respondents' essentially copying-and-pasting most of the legal analysis from the unpublished opinion in Gould should not be condoned as a way to get around the clear command of Rule 268(d), SCACR.

2. THE COURT OF APPEALS CORRECTLY RULED THAT THE TRIAL RECORD IN THIS CASE, WHEN PROPERLY VIEWED IN THE LIGHT MOST FAVORABLE TO RESPONDENT-PETITIONER AS THE PREVAILING PARTY, SUPPORTED THE JURY'S FACTUAL FINDING TO REJECT THE STATUTE OF LIMITATIONS DEFENSE BASED ON THE DISCOVERY RULE AND FRAUDULENT CONCEALMENT WHERE PETITIONERS-RESPONDENTS DELIBERATELY WITHHELD FROM RESPONDENT-PETITIONER CRITICAL INFORMATION NECESSARY TO CALCULATE THE NET PROFITS OF THE LANCASTER PRACTICE, UPON WHICH RESPONDENT-PETITIONER'S ANNUAL BONUSES WERE SUPPOSED TO BE BASED, AND WHERE PETITIONERS-RESPONDENTS CONSPIRED WITH THE ACCOUNTING DEFENDANTS TO FABRICATE FRAUDULENT EXPLANATIONS ABOUT THE BONUS CALCULATIONS.

The trial court and the Court of Appeals properly concluded that the application of the discovery rule and tolling for fraudulent concealment were questions of fact for the jury to decide. The trial record in this case amply supports the jury's rejection of the statute of limitations defense raised by Petitioners-Respondents.

Under the "discovery rule," the statute of limitations begins to run when the injured party knew or reasonably should have known that its rights had been violated. See, e.g. Brown v. Sandwood Dev. Corp., 277 S.C. 581, 583, 291 S.E.2d 375, 376 (1982). The discovery rule is an objective test, which inquires when a "cause of action should have been discovered through exercise of reasonable diligence [such that] the facts and circumstances would have put a person of common

knowledge and experience on notice that some right had been invaded or a claim against another party might exist." Maher v. Tietex Corp., 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). As both the trial court and the Court of Appeals correctly recognized, where conflicting evidence exists about whether a plaintiff knew or reasonably should have known he had a cause of action, that issue must be submitted to the jury. Id.

The statute of limitations may also be suspended or tolled under the doctrine of fraudulent concealment, where the wrongdoer deliberately conceals from the plaintiff information that would have enabled him to realize that he has a cause of action. See Strong v. University of S.C. Sch. of Med., 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994). The jury must resolve conflicting evidence as to whether a plaintiff knew or reasonably should have known he had a cause of action under the discovery rule and whether to toll the statute of limitations for fraudulent concealment. See Maher, 331 S.C. at 377, 500 S.E.2d at 207.

Here, the question of the statute of limitations was properly submitted to the jury. There was substantial evidence at trial that Dr. Morphis consciously and deliberately refused to provide to Mr. Hess the financial information about the profitability of the Lancaster practice upon which his annual bonuses were supposed to be based, thereby depriving him of crucial information that would have been necessary for him to know that his promised bonuses were not being calculated and paid appropriately according to the contract. (Morphis Testimony, R. 905.9.6, l. 25 ("I feared David would question me.")); (Hinson Testimony, R. 820, l. 22 ("I kept her privacy."). Only in the summer of 2018, when Dr. Morphis solicited bids to purchase the Lancaster practice, was Mr. Hess finally given access to the preceding five years of financial records of the practice. Mr. Hess filed this lawsuit in late September 2018, within a couple of months of the disclosure of MPGL's financial

records. Mr. Hess clearly did not sit on his rights.

Furthermore, in early 2015, after Mr. Hess received a bonus for 2014 that was exactly equal to the bonus he received in 2013, the practice's accountant, Defendant Alexander, at the specific request of Dr. Morphis, provided a deliberately false but plausible explanation for why the 2014 bonus did not change from the prior year. (Pl. Ex. 5, at 2) (R. 848); (Pl. Ex. 2, at 3) (R. 842).

In addition, as noted above in the Statement of Facts, the practice's accountant deliberately created two spreadsheets in connection with the May 28, 2015 meeting: one he provided to both Mr. Hess and Dr. Morphis showing average bonus paid as a percentage of gross revenue, and the other one he provided only to Dr. Morphis, which contained three additional rows for MPGL's "Net Incomes," Dr. Morphis's "Doctor Bonuses," and "Net Income Before Doctor Bonuses." (Pl.'s Ex. 3) (R. 844). In the cover email to Defendant Morphis, Defendant Alexander stated, "This is for your benefit only, I won't share this with David [Hess]." (Id.) (R. 843). Defendant Alexander even discussed with Defendant Morphis his pre-planned, evasive response in the event that Mr. Hess asked if he had been receiving 50% of the profits of the Lancaster practice. (Pl.'s Ex. 2, at 2) (R. 841).

Although Mr. Hess candidly testified that he frequently asked questions of Dr. Morphis about his bonus and the practice's expenses prior to 2015, Mr. Hess never had any information from which he could have discovered that his contract had been breached until the summer of 2018. (Hess Testimony, R. 514, ll. 23-24 ("I didn't have access to anything."); (R. 528, ll. 7-8 ("I wasn't sure exactly what was going on and they weren't providing any information."); (R. 551, ll. 7-15) ("I thought Beth [Morphis] was my friend. With the few times I had questions and stuff, I never even questioned that it was her. I thought it was the accounting firm. I even made the recommendation

that we get a new accounting firm because I thought they were stealing from us, not just from me but from her also. I had like, a little bit of information and I would try to use everything I had to figure out where, why, things don't add up."). The practice manager in Hartsville, Mr. Hinson, also testified that he deliberately kept information about the Lancaster practice's expenses from Mr. Hess. (Hinson Testimony, R. 816, l. 25 to 817, l. 1) ("Well, he wanted to know the expenses and I couldn't tell him."). Thus, when Mr. Hess knew or reasonably should have known of a potential breach of contract by Defendant Morphis and consequent violation of the Payment of Wages Act was a disputed question of fact for a jury to decide, and there is sufficient evidence in the record to support the jury's verdict.

Petitioners-Respondents wrongly assert that the undersigned counsel for Mr. Hess made some type of binding admission about the statute of limitations during the oral argument before the Court of Appeals. This is a disingenuous argument by Petitioners-Respondents' counsel. First of all, any comment by counsel during the oral argument before the Court of Appeals was not part of the trial record or record on appeal. One of the most familiar and fundamental jury instructions is that what the lawyers say is not evidence. More importantly, Petitioners-Respondents omitted the remainder of the undersigned counsel's colloquy with Judge Hewitt during oral argument: "And every time he asked Dr. Morphis about that, she said either–she feigned ignorance and said 'I don't know about that, you'd have to talk to the account,' or she came up with an excuse." (Recording of Argument, at 16:30-16:40). The undersigned counsel spent the bulk of his argument before the Court of Appeals discussing the discovery rule and the evidence of fraudulent concealment that was contained in the trial record. (Id. at 16:40 to 22:12). Neither Mr. Hess nor his counsel ever conceded that Mr. Hess know or reasonably should have known that the had a claim against Petitioners-Respondents

more than three years prior to the filing of the Complaint in September 2018. Merely having suspicions or questions about the bonus payments does not equate to "knew or should have known" of a breach of contract with respect to the bonus payments, especially where Mr. Hess's questions were answered in a misleading fashion and critical information was deliberately concealed from him.

The record is also clear that Mr. Hess was aware only of one component of the profit calculation (i.e., gross revenues) because he had access to the EMR and billing software. The equation of profit is very straight-forward: Profit = Revenues - Expenses. The is no dispute that Mr. Hess never had a complete picture of the expenses of the Lancaster practice and that Dr. Morphis deliberately concealed the financial records of the practice from him. Dr. Morphis candidly testified, "And I said no [to Mr. Hess's repeated requests to look at the financial records of the Lancaster practice], I disagree because he's too smart. He has an MBA; he's told me that multiple times. And he would understand the numbers if I had shown him those numbers." (R. 705.6.2, ll. 17-20). The jury could reasonably conclude from the trial record that the only reason Dr. Morphis was so adamant about not sharing the complete accounting records of the Lancaster practice is because she was keeping substantially more than 50% of the net profits of the Lancaster practice for herself, in direct violation of the Employment Agreement and Appendix A. She cannot feign ignorance when her own accountant sent her an email on May 28, 2015, stating "Attached is the spreadsheet you requested. I thought it might be helpful for you to see what kind of profit you are receiving from the practice in Lancaster. This is for your benefit only, I won't share this with David [Hess]." (Pl.'s Ex. 3) (R. 843) (emphasis added). The profit Dr. Morphis received from the Lancaster practice from 2010 to 2014 was substantially higher than what Mr. Hess received as his bonuses, which were supposed to be based on an equal 50/50 split of the Lancaster profits.

The accountant's repeated refusal, during the May 28, 2015 meeting, to answer Mr. Hess's question–"Have I been receiving 50% of the profits in Lancaster?"–does not mean that Hess knew or reasonably should have known he had a claim against Dr. Morphis at that time. The record amply supports the jury's inference that the accountant's deliberately false and pre-meditated response was not enough to trigger the discovery rule so as to start the running of the statute of limitations. The first time Mr. Hess really questioned the correctness of his bonus payments was in early 2015, when his 2014 bonus was identical to the one he received in 2013. When he actually asked the accountant about the coincidence in February 2015, the accountant again gave a deliberately false, but plausible explanation that the Lancaster practice's switch from a C-Corp to an S-Corp depressed the profitability in 2014 and that he and Dr. Morphis did not think it was fair to deflate Mr. Hess's bonus, so they decided to keep the bonus the same as it had been the prior year. The evidence in the trial record showed that the Lancaster practice's net profits actually increased substantially in 2014 compared to 2013 by over $100,000, before consideration of Dr. Morphis's bonuses from those years ($151,000 in 2013 and over $81,000 in 2014). (R. 844). Again, the jury was well within its authority to reject the Morphis Defendants' suggested inference that the statute of limitations should have begun to run when Mr. Hess's bonus from 2013 to 2014 was identical to the penny.

Petitioners-Respondents wrongly assert that the Court of Appeals's decision below is inconsistent with this Court's decision in Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996). The facts of the Dean case are easily distinguishable from those present here. In Dean, a property owner in Charleston noticed cracks in the masonry or facade of her building shortly after pile-driving activity nearby in connection with the construction of the Omni Hotel by the defendant. The owner concluded in November 1984 that the crack was attributable to defendant's pile-driving

activity. The property owner immediately hired a contractor and structural engineer to inspect the building. Based on their recommendations, Dean placed a strain gauge on the crack and began to monitor it, but did not take any affirmative steps to brace the building. In the summer of 1985, the pile-driving activity continued, adjacent to the block where Dean's building was located. In August 1985, Dean noticed that the original crack had expanded and that the facade of the building appeared to be bulging and buckling at the location of the original crack. After Dean was informed that her building was no longer structurally sound, she vacated the building and closed her business. Dean did not file suit until April 1991. Dean's own expert testified that the damage to her building was "'most reasonably caused by the pile driving activity'" performed in 1984, rather than the pile driving performed in 1985. Dean herself also testified that based on "her observations she believed the damages to her building resulted from the 1984 pile driving activities." Id. at 362-63, 468 S.E.2d at 646-67. The circuit court directed a verdict in favor of defendant based on the six-year statute of limitations that existed at the time.

Here, there is no evidence in the record that Mr. Hess knew or should have known by the exercise of reasonable diligence that a cause of action for breach of contract had arisen prior to the summer of 2018, when Mr. Hess was given access to 5 years of financial records of the Lancaster practice. This is not a matter of Mr. Hess just not knowing the extent of his damages; he did know that his Employment Agreement had actually been breached by the Morphis Defendants' not paying 50% of the net profits as required by Appendix A, and he could not have known that without having access to the expenses of the Lancaster practice. The fact that Mr. Hess consulted with his own accountant in the summer of 2015 about the new proposal to base his bonus on gross revenues rather than net profits is immaterial. Mr. Hess's accountant likewise did not have any access to the

financial records of the Lancaster practice. Defendants did not take the deposition of Mr. Hess's accountant, nor did Mr. Hess's accountant testify at trial. Unlike the plaintiff's expert witness in Dean, whose testimony actually supported the defendant's statute of limitations argument, there is no testimony in the record that Mr. Hess knew or reasonably should have know that his bonuses were systematically shorted by the Morphis Defendants every year under the 2010 contract, in clear violation of the South Carolina Payment of Wages Act.

Petitioners-Respondents also attempt to rely heavily on the case of Maher v. Tietex Corp., 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998), which is easily distinguished from the facts presented here. In Maher, the plaintiff's offer letter in 1985 contained a bonus provision that 50% of the pre-tax profit of the defendant company "would be divided among the direct sales personnel, including yourself, in a manner to be determined." Id. at 375, 500 S.E.2d at 206. The company ended the "50% bonus plan" in 1987 and replaced it with new bonus plan that was more discretionary, although the plaintiff testified that he was not aware that the bonus plan had actually been eliminated until shortly before his termination in 1994, when he was informed by an employee in the defendant's HR department. The plaintiff went through a number of promotions, eventually rising to the level of vice president, before he was demoted in April 1991 and eventually terminated in 1994. Id. Importantly, the Maher plaintiff never received any bonus payments under the original 50% profit plan.

Here, by contrast, Mr. Hess did receive annual bonuses every year from 2010 to 2014 under the 2010 Employment Agreement, but he was never given access to the financial records of MPGL from which his bonus could have been determined or verified. The record evidence at trial indicated that Dr. Morphis consciously and deliberately kept the financial information about the practice from

him. Only in the summer of 2018, when Mr. Hess and his prospective business partner expressed an interest in purchasing the Lancaster practice was he finally provided several years' worth of financial information that clearly revealed that he never received the full bonus based on 50% of the net profits as required by his 2010 contract. The fact that Mr. Hess received some bonus payments every year is materially different than the situation in Maher, where the plaintiff never received any bonus payments based on company profits and necessarily had to know that he did not receive any profit-based bonuses.

Petitioners-Respondents' argument that "Hess was actually on notice of the main issue of Dr. Morphis taking a salary from MPG," (Pets.' Br., at 13), is another misrepresentation of the record. Petitioners-Respondents ignore Mr. Hess's trial testimony only a few lines down: "I don't know the timeline. It might have been later than that [2015]. . . . I really don't recall when it was." (R. 587, ll. 12-16). Furthermore, that information reportedly came from Tom Hinson, the office manager of Morphis's main practice location in Hartsville, not the "MPG accountant" as Petitioners-Respondents assert in their brief. (Pets.' Br, at 13). Mr Hinson clearly testified that he never really discussed anything with Mr. Hess about the finances of the Lancaster practice until Dr. Morphis decided to sell the practice in the summer of 2018: "Once he signed a disclosure, I guess a non-compete or a privacy disclosure." (R. 827, l. 21 to 828, l. 6).

Petitioners-Respondents incorrectly assert that the Court of Appeals's decision in this case "establishes that a plaintiff is now entitled to all information concerning a financial decision prior to the statute of limitations starting on his claim," and that "an employer has a duty to disclose full financial information to an employee if that information might impact a financial decision the employee is considering regarding his employment." (Pets.' Br., at 15). Petitioners-Respondents'

argument in this regard is simply a "parade of horribles" fallacy. The Court of Appeals did not recognize a fiduciary duty between Dr. Morphis and Mr. Hess, as falsely argued by Petitioners-Respondents, even though there is evidence in the record that Dr. Morphis referred to Mr. Hess as the "managing partner" of the Lancaster practice on several occasions. (R. 591, ll. 1-8). The Court of Appeals did not create a new type of fiduciary duty to disclose here, but rather held that the jury must decide when the statute of limitations begins to run under the discovery rule and the fraudulent concealment doctrine.

This is not the type of equitable tolling of the statute of limitations as recognized in Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989), where a plaintiff is mislead into believing that he does not need to file suit because the defendant falsely promised him that his claim would be paid. Instead, Defendant Morphis knowingly and misleadingly concealed from Mr. Hess the financial information that would have been required to perform or verify the Lancaster practice's net profits each year and, therefore, Mr. Hess's correct bonus amount.

Dr. Morphis's duty under the contract and under the South Carolina Payment of Wages Act was to pay Mr. Hess a bonus of 50% of the annual net profits of the Lancaster practice, as promised in Appendix A of the Employment Agreement. If Dr. Morphis breached the contract, unbeknownst to Mr. Hess because he did not have access to the financial records from which the bonus should have been calculated, and because Dr. Morphis and her accountant took affirmative steps to mislead Mr. Hess about his bonus payments, she took the risk that a jury might rule in Mr. Hess's favor on the discovery rule and on fraudulent concealment.

Finally, the lower courts correctly recognized that the statute of limitations may also be suspended or tolled under the doctrine of fraudulent concealment, where the wrongdoer deliberately

conceals from the plaintiff information that would have enabled him to realize that he has a cause of action. See Strong v. University of S.C. Sch. of Med., 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994). The jury must resolve conflicting evidence as to whether a plaintiff knew or should have known he had a cause of action under the discovery rule and whether to toll the statute of limitations for fraudulent concealment. See Maher, 331 S.C. at 377, 500 S.E.2d at 207.

The Strong case was not limited to cases between physicians and patients, as Petitioners-Respondents suggest. The Strong court quoted with approval the following language: "'[T]he practically universal rule is that deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action, thereby inducing him to postpone institution of a suit will be held to toll the statute.'" Strong, 316 S.C. at 191, 447 S.E.2d at 852 (quoting 1 David W. Louisell & Harold Williams, Medical Malpractice, at 13-67, ¶ 13.03 (1993)). The Strong case concluded that the plaintiff's claim there was barred by the two-year statute of limitations because "[t]here are no allegations of circumstances created by the respondent to prevent Plaintiff's discovery of the facts." Id. at 192, 447 S.E.2d at 852. Not surprisingly, the court in Strong determined that the statute of limitations began running on the plaintiff's medical malpractice claim in May 1989, when the plaintiff knew he had been rendered blind, or at least in June 1989, when one of the plaintiff's doctors noted in the plaintiff's medical records that his "blindness was due to poor follow-up care." Id. at 191, 447 S.E.2d at 852.

Here, by contrast, the trial record contains at least two false representations by the accounting Defendant, at the behest of Dr. Morphis, that were designed to prevent Mr. Hess from discovering the facts surrounding his insufficient bonuses, beyond just the failure to provide accounting records of the Lancaster practice: (1) the accountant provided Mr. Hess a plausible but demonstrably false

explanation for why the 2014 bonus was identical to the 2013 bonus; and (2) during the May 28, 2015 meeting, the accountant gave a pre-planned, false, and evasive response to Mr. Hess's question about whether he had been receiving 50% of the yearly profits from the Lancaster practice since 2010 as his annual bonus per the terms of Appendix A to his Employment Agreement. How Petitioners-Respondents can assert that the Strong case supports their arguments (Pets.' Br., at 17), is truly a mystery. The trial record here simply does not support Petitioners-Respondents' repeated conclusion that Mr. Hess believed that he had a claim against Dr. Morphis for not paying his bonus properly prior to September 27, 2015 (three years before the filing of the Complaint).

CONCLUSION

For all of the foregoing reasons, Respondent-Petitioner respectfully requests that this Court affirm the ruling of the South Carolina Court of Appeals on the issues accepted for review.

Respectfully submitted,

March 10, 2026

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 6115 (S.C. Ct. App. file July 9, 2025)
Appellate Case No. 2025-002144

Paul David Hess, APRN-BC,.. . . . . Respondent-Petitioner

v.

Morphis Pediatric Group of Lancaster, P.A.; Elizabeth J. Morphis, M.D.; Gregory M. Alexander, CPA; and Moore Beauston and Woodham, LLP,.. . . . . Defendants

Of whom Morphis Pediatric Group of Lancaster, P.A. and Elizabeth J. Morphis, M.D. are. . . . . Petitioners-Respondents

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PROOF OF SERVICE

I certify that I have served the Brief of Respondent-Appellant on Petitioners-Respondents, Morphis Pediatric Group of Lancaster, PA and Elizabeth J. Morphis, M.D., on March 10, 2026, by email addressed to their attorneys of record, Charles F. Thompson, Jr. (thompson@mtsolawfirm.com), Malone, Thompson, Summers & Ott, 339 Heyward Street, Columbia, SC 29201, and Ryan Beasley (rlb@ryanbeasleylaw.com), Ryan Beasley Law, 416 E. North St. Level 2, Greenville, SC 29601.

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