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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Honorable Edgar W. Dickson

Appellate Case No. 2025-002188
Court of Appeals Appellate Case No. 2023-001779

Andrew Pampu; Amanda Pampu; and John Pampu, Petitioners-Respondents,

vs.

CLAWSON FARGNOLI, LLC; Samuel R. Clawson, Jr., Esq.;
Christina R. Fagnoli, Esq.; Barrett R. Brewer, Esq.; and
BREWER LAW FIRM, LLC;.....Respondents-Petitioners.

**BRIEF OF PETITIONERS-RESPONDENTS
(for Clawson Petition)**

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INTRODUCTION

Respondent–Petitioners’ Joint Brief in support of their Petition asks this Court to impose a hyper-technical pleading forfeiture that the text of S.C. CODE ANN. §15-36-100 does not require and that would elevate form over substance. The Pampus filed their initial complaint within days of the limitations deadline and, consistent with the statute’s express safety valve for cases filed within ten days of the expiration of the limitations period, they filed the required expert affidavit within the statute’s 45-day window. The Court of Appeals correctly held the affidavit was timely and the action should proceed on the merits.

Respondent–Petitioners’ position depends on adding an extra condition to S.C. CODE ANN. § 15-36-100(C)(1): that the initial complaint must recite a specific “time constraints” allegation in a particular way, on pain of dismissal—even when the affidavit is filed within 45 days and the complaint itself invokes the statute’s exception. Nothing in the statute mandates such a trap. And nothing in S.C. CODE ANN. § 15-36-100 supports converting a remedial timing provision into a “magic words” requirement that extinguishes otherwise timely claims. The Court of Appeals found that the sequence of invoking the exception in the original complaint and later pleading the time-constraint allegation adequately met the statutory requirements.

This Court should affirm the Court of Appeals’ holding that the Pampus’ affidavit was timely under S.C. CODE ANN. § 15-36-100 and reject Respondent–Petitioners’ strict-construction argument to the extent it rewrites the statute.

STANDARD OF REVIEW

Respondent–Petitioners correctly state that review of a Rule 12(b)(6) dismissal is

de novo. Under that standard, the Court must accept as true the well-pleaded factual allegations of the complaint and draw all reasonable inferences in favor of the plaintiff. The Court also considers exhibits attached to and incorporated into the pleadings; for purposes of a Rule 12(b)(6) motion, those pleading exhibits—including the expert affidavit filed as part of the pleadings—must be credited as true rather than weighed or discounted.

Accordingly, the statutory issue here—whether the affidavit was timely filed under section 15-36-100—should be evaluated within the proper pleadings framework. The Court’s task at this stage is not to decide the merits; it is to determine whether the pleadings (including their exhibits) state a claim and whether the statutory affidavit requirement has been satisfied in the manner the statute provides.

ARGUMENTS

I. The statute’s text makes the Pampus’ affidavit timely: the action was filed within ten days of the limitations deadline and the affidavit was filed within forty-five days.

Section 15-36-100(B) states the general rule that an expert affidavit “must be filed contemporaneously with the filing of the complaint” in a professional negligence action. See S.C. CODE ANN. §15-36-100(B). Section 15-36-100(C)(1) then provides an express exception for complaints filed in the final days of the limitations period—i.e., where “time constraints” prevent obtaining the affidavit by the filing date—allowing the affidavit to be filed after the complaint, within the 45-day time the statute specifies. See S.C. CODE ANN. § 15-36-100(C)(1). The Court of Appeals properly applied that exception.

The record referenced in Respondent–Petitioners’ Joint Brief establishes the critical timing facts:

- The initial Complaint was filed March 19, 2021, shortly before the limitations deadline referenced by Respondent–Petitioners (and within ten days of that deadline as their brief frames it). (Complaint, R. p. 55, ¶ 103 (as cited in Respondent–Petitioners’ brief).)
- The expert affidavit was filed with the Amended Complaint on April 30, 2021. (Amended Complaint, R. pp. 58–78; Expert Affidavit, R. pp. 79–87 (as cited in Respondent–Petitioners’ brief).)

These timing facts align with the statute’s purpose: to prevent plaintiffs from losing their claims solely because an expert affidavit cannot be secured in the last few days before the deadline. See Ranucci v. Crain, 409 S.C. 493, 763 S.E.2d 189 (2014) (purpose of this grace period is specifically “to toll the statute of limitations when a professional negligence plaintiff files her complaint within ten days of the running of the statute in order to allow her time to procure an expert affidavit.”). The Pampus did what the statute contemplates: they filed the complaint to preserve the claims and then filed the affidavit within the statute’s post-filing window.

Respondent–Petitioners attempt to transform section 15-36-100(C)(1) into a pleading “gotcha” that turns on whether the initial complaint included a particular allegation phrased a particular way, regardless of whether the affidavit was actually filed within the statutory period. The Court should reject that approach because it is inconsistent with the statute’s remedial structure and because it adds a condition the legislature did not impose.

II. Respondent–Petitioners’ “magic words” theory is not strict construction; it is judicial amendment of the statute.

Respondent–Petitioners argue the statute must be “strictly construed” (citing Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 725 S.E.2d 693 (2012)) and that strict construction requires dismissal because the initial complaint allegedly did not include a specific

allegation that the affidavit “could not be prepared” due to time constraints. But strict construction means applying the statute as written—no more and no less. It does not authorize courts to create extra-textual prerequisites that the legislature did not write.

Respondent–Petitioners’ reading improperly elevates a particular form of allegation over the core statutory requirement: timely filing of the affidavit within the statute’s permitted period when the complaint is filed within the final ten days. The Court of Appeals’ holding—expressly quoted in Respondent–Petitioners’ brief—recognized that the Pampus invoked section 15-36-100(C)(1) and filed the affidavit within the statutory timeframe, and that this “adequately met” the exception. That is faithful to the statute’s function.

If this Court adopted Respondent–Petitioners’ view, plaintiffs would lose otherwise timely claims based not on the absence of expert support (the legislature’s central concern), but on a pleading omission—even when the affidavit is promptly filed and the defendants suffer no prejudice. That outcome would defeat the statute’s purpose and expand it beyond its text.

III. The Court of Appeals correctly declined to treat section 15-36-100(C)(1) as a forfeiture provision where the affidavit is actually filed within the statutory window.

Respondent–Petitioners place heavy weight on the contention that the Pampus’ initial complaint did not say, in so many words, that “because of time constraints, the expert affidavit could not be prepared” and that this allegation first appeared in the Second Amended Complaint. (Second Amended Complaint, R. pp. 129–30, ¶ 103 (as cited in Respondent–Petitioners’ brief).)

Even accepting Respondent–Petitioners’ characterization of the pleadings for

purposes of this brief, it does not follow that the statute commands dismissal where: the complaint was filed within the final ten days of the limitations period (as Respondent–Petitioners frame the dates), and the affidavit was filed within the time S.C. CODE ANN. § 15-36-100(C)(1) allows after filing.

Respondent–Petitioners’ argument effectively converts section 15-36-100(C)(1) into a dual requirement: a timely affidavit plus a particular pleading incantation in the original complaint. The statute’s text does not justify that extra penalty, and reading it in would improperly heighten pleading requirements in a way inconsistent with notice pleading and the *de novo* Rule 12(b)(6) standard.

At minimum, the pleadings and filings described by Respondent–Petitioners support a reasonable inference that the complaint was filed when time constraints existed and the affidavit followed within the statutory window—precisely the circumstance the exception addresses. That is enough to defeat dismissal under Rule 12(b)(6), SCRCPP.

IV. Respondent–Petitioners’ reliance on other “strict compliance” cases and on Shell does not support dismissal here.

Respondent–Petitioners cite strict-compliance decisions in other statutory settings (e.g., tax sale notices, annexation notices, and consumer protection enforcement) and argue those authorities support dismissal for failure to “strictly comply” with S.C. CODE ANN. § 15-36-100(C)(1). Those cases involve different statutory schemes, different purposes, and frequently different consequences where the statute explicitly conditions validity on strict compliance with notice content or procedure. They do not authorize adding prerequisites to section 15-36-100(C)(1) that are not in its text.

Respondent–Petitioners also urge this Court in Fn. 1 of their Joint Brief to consider

the Court of Appeals’ findings in an unpublished opinion, Shell v. Law Office of Neil T. Phillips, 2026-UP-107, 2026 WL 710206 (S.C. Ct. App. filed March 4, 2026), for the proposition that S.C. CODE ANN. § 15-36-100(E) permits amendment of an affidavit that has already been filed and does not help where no affidavit was filed with the initial complaint. That point does not advance their argument because the Pampus did file an affidavit—within the statute’s timeframe contemplated by subsection (C)(1). This is not a case where plaintiffs never secured an expert affidavit; it is a case where the affidavit followed shortly after filing, as subsection (C)(1) contemplates for filings on the of the statute of limitations expiration.

Respondent–Petitioners’ briefing attempts to analogize the Pampus’ situation to a complete noncompliance case. The record citations in their own brief show the opposite: the affidavit was filed early in the litigation and well before merits discovery, dispositive motions on the merits, or trial. The statute was satisfied in timing and in the core substantive function it was enacted to serve.

V. Under the Rule 12(b)(6) pleading standard, the Court must credit the complaint and its exhibits—including the expert affidavit—and that affidavit confirms this is not a frivolous action.

Respondent–Petitioners’ position would have this Court treat S.C. CODE ANN. § 15-36-100 as a procedural guillotine, severing claims without regard to what the pleadings and their exhibits show. That approach is incompatible with Rule 12(b)(6), SCRC.P.

At the motion-to-dismiss stage, the Court must accept as true the allegations in the pleadings and must consider—and credit—the exhibits attached to or incorporated into those pleadings. Here, the expert affidavit filed in the pleadings is not something the Court may ignore or treat as a mere technicality. The affidavit is central to the very policy

Respondent–Petitioners invoke: screening out baseless professional-negligence cases at the outset.

Under the proper Rule 12(b)(6) standard, Justin Dillon, Esq.’s detailed expert affidavit must be taken as true for purposes of the motion. Crediting it as Rule 12(b)(6) requires, the affidavit confirms the merits of the Pampus’ claims and demonstrates this is not a frivolous lawsuit—the precise kind of case section 15-36-100 is designed to filter out. The statute’s purpose is served, not undermined, by allowing this case to proceed when the pleadings include timely-filed expert support.

Respondent–Petitioners’ proposed rule would invert the statute’s function: it would dismiss a case that is supported by a timely expert affidavit, based solely on an asserted pleading defect in the initial complaint. That would transform S.C. CODE ANN. § 15-36-100 from a substantive gatekeeping device (expert confirmation of merit) into a technical drafting trap—an outcome neither compelled by the statute’s text nor consistent with Rule 12(b)(6), SCRCP.

VI. Section 15-36-100(D) supports the timeliness of the Pampus’ expert Affidavit.

Section 15-36-100(D) states that while this section does not extend the applicable period of limitation, it provides that if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely. See S.C. CODE ANN. § 15-36-100(D). This provision directly supports the timeliness of the Pampus’ affidavit.

The Pampus filed their affidavit within the 45-day window allowed by S.C. CODE ANN. § 15-36-100(C)(1), which is the period specified by the statute for cases where the

complaint is filed within ten days of the limitations deadline. Therefore, under S.C. CODE ANN. §15-36-100(D), the affidavit is deemed timely, and Respondent–Petitioners cannot use the statute of limitations as a defense against its filing.

This statutory language reinforces the remedial purpose of S.C. CODE ANN. § 15-36-100, ensuring that plaintiffs are not unfairly penalized for filing an affidavit shortly after the limitations period, provided they comply with the statutory timeframe. The Court of Appeals’ decision aligns with this provision, affirming that the Pampus’ affidavit was timely and should not be dismissed on limitations grounds.

By adhering to the statutory timeline, the Pampus have satisfied the requirements of S.C. CODE ANN. § 15-36-100, and any argument to the contrary disregards the clear legislative intent expressed in subsection (D).

VII. Public policy supports the timeliness of the Pampus’ expert affidavit.

South Carolina has established robust public policies protecting plaintiffs’ rights to pursue legitimate legal malpractice claims against lawyers, reflecting our State’s commitment to maintaining high professional standards and ensuring accountability within the legal profession. These policies are grounded in both common law principles and statutory frameworks that recognize the critical importance of the client-lawyer relationship while providing meaningful remedies when lawyers breach their professional duties.

In Sentry Select Ins. Co. v. Maybank Law Firm, LLC, this Court emphasized the necessity of holding lawyers accountable to maintain public confidence in the legal system. The Court recognized that allowing plaintiffs to pursue claims without undue procedural

barriers is essential to uphold the integrity of the profession and ensure justice is served. Sentry Select Ins. Co. v. Maybank L. Firm, LLC, 426 S.C. 154, 159, 826 S.E.2d 270, 272 (2019). This aligns with the Court of Appeals' decision to deem the Pampus' affidavit timely, as it prevents procedural technicalities from obstructing legitimate claims.

Similarly, in Fabian v. Lindsay, the Court underscored the importance of providing plaintiffs with a fair opportunity to present their cases, emphasizing that procedural rules should not be used to unjustly bar meritorious claims. Fabian v. Lindsay, 410 S.C. 475, 491, 765 S.E.2d 132, 141 (2014). The decision in Fabian supports a flexible interpretation of procedural requirements to ensure that substantive justice prevails over formality.

Moreover, as stated in Norris v. Alexander,

It is a vital necessity to the well-being of society and the administration of justice that attorneys, who are officers of the court and a part of our judicial system, should exhibit the most scrupulous care in conducting themselves and their business in such a manner as will secure and maintain the respect and confidence of the public in an attorney and the profession generally.

An attorney, who contracts to prosecute an action on behalf of his client, impliedly represents that he possesses the requisite degree of learning, skill and ability, which is necessary to the practice of his profession; that he will exert his best judgment in the prosecution of the litigation entrusted to him; and that he will exercise reasonable and ordinary care and diligence in the use of his skill and in the application of his knowledge to the cause of his client.

Norris v. Alexander, 246 S.C. 14, 18, 142 S.E.2d 214, 217 (1965).

These policy considerations affirm that the Court of Appeals correctly applied S.C. CODE ANN. § 15-36-100 to allow the Pampus' claim to proceed. By recognizing the affidavit as timely, the Court upheld South Carolina's commitment to ensuring that plaintiffs have access to remedies when attorneys fail to meet their professional obligations. This approach not only aligns with statutory intent but also reinforces public trust in the

legal system by prioritizing substantive justice over procedural hurdles.

CONCLUSION

Respondent–Petitioners ask this Court to reverse the Court of Appeals and reinstate a dismissal that would rest on a non-textual, hyper-technical pleading requirement rather than on any failure to timely provide expert support. The statute’s purpose and structure, the record timing described in Respondent–Petitioners’ own citations, and the Rule 12(b)(6) standard—which requires the Court to credit the pleadings and their exhibits, including Mr. Dillon’s affidavit—all support the Court of Appeals’ holding that the Pampus’ expert affidavit was timely under S.C. CODE ANN. § 15-36-100.

The Pampus respectfully request that this Court affirm the Court of Appeals on the expert-affidavit timeliness issue and deny Respondent–Petitioners’ request to reinstate the dismissal.

Respectfully submitted,

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