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May 8, 2026

S.C. SUPREME COURT

**STATE OF SOUTH CAROLINA**
**In the Supreme Court**

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**APPEAL FROM LANCASTER COUNTY**
**Court of Common Pleas**

Deandrea G. Benjamin, Circuit Court Judge

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**Case. No. 2018-CP-001127**
**Appeal No. 2025-002144**

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

**v.**

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

**Of Whom, Morphis Pediatric Group of Lancaster, PA and Elizabeth J. Morphis M.D are Petitioner--Respondents**

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# PETITIONER-RESPONDENTS' REPLY TO AMICUS'S BRIEF

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Charles F. Thompson, Jr.
Malone, Thompson, & Summers
339 Heyward Street
Columbia, S.C. 29201

Ryan Beasley, Esq.
Ryan Beasley Law
416 E. North St. Level 2
Greenville, SC 29601

Attorneys for the Petitioner-Respondents

Other counsel of record:

David E. Rothstein, Esq.
Burnette Shutt McDaniel

415 W. Washington St.
Greenville, SC  29601

Attorney for the Respondent-Petitioner

Frank L. Epps
Eppes & Plumbee, PA
PO Box 10066
Greenville, SC 29603

Attorney for Amicus Curiae South Carolina Association for Justice

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## RESPONSE TO AMICUS SOUTH CAROLINA ASSOCIATION OF JUSTICE (SCAJ) STANDARD OF THE CASE

Only one item requires a response to SCAJ's Statement of the Case. In a footnote, SCAJ seems to be asserting there is a preservation issue because Morphis filed no additional objections to the judge's instructions to the jury. This appeal does not involve improper instructions. To the extent SCAJ is inferring that a party must renew their directed verdict arguments when jury instructions are given, this is plainly incorrect. *Thomasko v. Poole,* 349 S.C. 7, 10, 561 S.E.2d 597, 598 (2002) (citing *Staubes v. City of Folly Beach,* 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000)); *Fettler v. Gentner*, 396 S.C. 461, 469, 722 S.E.2d 26, 30 (Ct. App. 2012) ("Once a party moves for a directed verdict on an issue, and that motion is denied, the party is not required to object again to the subsequent jury instruction regarding that issue."); *See also Carter v. Peace,* 229 S.C. 346, 355, 93 S.E.2d 113, 117 (1956) (finding a motion for a directed verdict on the issue of negligence had been refused; thus, the negligence instructions were correct under the trial court's conception of the evidence and there was no duty upon appellant to object to the instruction because it would be futile and unnecessary). *See also, Thomasko,* 349 S.C. at 10–11, 561 S.E.2d at 598–99 ("This [c]ourt does not require parties to engage in futile actions in order to preserve issues for appellate review." ).

## RESPONSE TO AMICUS SOUTH CAROLINA ASSOCIATION OF JUSTICE (SCAJ) STANDARD OF REVIEW

SCAJ makes the same false presumption that Hess makes. It presumes that Morphis's arguments require resolution of a factual dispute by this court. As stated in Morphis's initial and

reply briefs, there are no factual disputes in this appeal. Morphis, as it must, presumes all facts issues are resolved in Hess's favor. The only things that remain are the legal conclusions to be drawn from the facts. This courts owes no one deference on legal conclusions. *See, e.g., Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 217, 407 S.E.2d 637, 638 (1991) ("These issues are only proper to present to the jury when there is a genuine issue as to some material fact for the jury to consider."); *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 10 S.E.2d 3, 6 (1940) (differentiating fraud as a legal conclusion from facts that must be asserted to support the claim); *Towill v. S. Ry. Co.*, 121 S.C. 447, 114 S.E. 416, 420 (1922) (same).

If SCAJ were correct, then appellate courts could never rule, as a matter of law, that, "objectively . . . [a] person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code. Ann. § 15-3-535; *Walbeck v. I'On Co., LLC*, 426 S.C. 494, 519, 827 S.E.2d 348, 361 (Ct. App. 2019). The fact that South Carolina courts have, on numerous occasions, ruled that plaintiffs failed to meet this standard, despite facts disputed below, belies SCAJ's position. *See, e.g., Dean v. Ruscon Corp.*, 321 S.C. 360, 365–66, 468 S.E.2d 645, 648 (1996). *Benton v. Roger C. Peace Hosp.,* 313 S.C. 520, 443 S.E.2d 537 (1994); *Snell v. Columbia Gun Exch., Inc.,* 276 S.C. 301, 278 S.E.2d 333 (1981); *Wiggins v. Edwards,* 314 S.C. 126, 442 S.E.2d 169 (1994); *Garner v. Houck,* 312 S.C. 481, 435 S.E.2d 847 (1993); *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995) (Defendant stonewalled requests for information.).

## RESPOSNE TO SCAJ's ARGUMENT

SCAJ's argument is that the discovery rule is always a question of fact because it is based on the question of when a reasonable person had "enough knowledge to alert [them] of the

existence of a claim ….” (p. 7 SCAJ Brief). The logical fallacy of the argument is that this is always the question when applying the discovery rule and yet this court has not hesitated to rule on the issue, as a matter of law, in numerous cases. *(see cases cited infra).*[1]

Interestingly, contrary to SCAJ's position, in three of the six cases[2] cited by SCAJ for the proposition that application of the discovery rule is a question solely for the jury, the appellate courts held that the limitations period had, or could, run, as a matter of law. *Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (“Appellant asserts the time of discovery is the time when the treating physician's actual negligence becomes known [however] in this case, appellant was informed by another physician on January 24 that her post-partum bleeding was caused by Dr. Parr's failure to deliver all of the placenta. This information was sufficient to put a person of common knowledge on notice that some claim against Dr. Parr might exist.”); *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998) (the employer's refusal to answer questions about bonus calculations was enough, as a matter of law, to start the statute of limitations running.); *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 648 (1996) (Ruling, as a matter of law, that Dean had sufficient information for the clock to start when wall cracks first appeared rather than later when the most significant damage occurred);

In the other cases cited by SCAJ on this point, there was nothing like Hess's admissions on his knowledge of his claim. *Walbeck v. I'On Co., LLC*, 439 S.C. 568, 584, 889 S.E.2d 537, 545 (2023) (HOA never admitted it had suspicions outside the limitations period); *Brown v.*

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[1] *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) (invalidating the mere scintilla rule).

[2] SCAJ also cited *Dunbar v. Carlson*, 341 S.C. 261, 269, 533 S.E.2d 913, 917 (Ct. App. 2000) but that case was decided “on the propriety of the amendment [of the answer].” The court did not have before it the question of how to apply the discovery rule.

*Finger*, 240 S.C. 102, 113, 124 S.E.2d 781, 786 (1962) (no admissions by Plaintiff as to when his wife ended consortium with him); *Garner v. Houck*, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993) (son was unhappy with his mother's nursing care outside the limitations period but had no knowledge of the cause of his mother's death until autopsy results were received within the limitations period).

SCAJ goes on to make the same error (or misstatement) that Hess does. It equates legal conclusions based on the facts with material issues of fact. It is the latter that creates a jury question. *Metro. Life Ins. Co. v. Stuckey*, 194 S.C. 469, 10 S.E.2d 3, 6 (1940) (differentiating fraud as a legal conclusion from facts that must be asserted to support the claim); *Towill v. S. Ry. Co.*, 121 S.C. 447, 114 S.E. 416, 420 (1922) (same). The question in this case, as it is in many discovery rule cases, is whether "the injury is discoverable by the exercise of reasonable diligence [or if there was] sufficient information ... to put [plaintiff] on inquiry notice, which, if developed, would have revealed the defects." *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 15, 825 S.E.2d 707, 714 (Ct. App. 2019). This court, and the court of appeals, however, consistently treat this as a question of law which they can decide. For example, in *Allwin*, the court held the plaintiff was on such notice because they had observed the construction damage. The fact that more damage accrued later and the plaintiffs "failed to comprehend" the defects did not prohibit this legal conclusion. Similarly, this court, in *Dean v. Ruscon*, held that Dean was aware of small cracks in his building in 1984. Even though in 1984 Dean was advised to just monitor the cracks, and the more significant damage did not materialize until 1985, the court ruled, as a matter of law, the clock had begun to run in 1984. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 648 (1996). In *Arant*, the plaintiff did not know that a doctor's alleged negligence caused infertility. However, she did know the doctor's actions had caused her

bleeding outside the limitations period. This court held, as a matter of law, the limitations began to run at the time of the bleeding. *Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997). In *Maher*, the employer stonewalled and evaded Maher's repeated questions about a bonus plan. *Maher v. Tietex Corp.,* 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). The court ruled, as a matter of law, that the employer's evasions were enough to begin the limitations to run. Maher's allegations that Tietex misrepresented profitability and hid the termination of the bonus plan did not preclude this ruling. Therefore, Hess and SCAJ are demonstrably incorrect that this court cannot hold as a matter of law that the limitations period began to run more than three years before Hess filed this action.

SCAJ's remaining arguments about Morphis' alleged refusal to provide full financial information are duplicative of Hess's arguments and are fully addressed in Mophis's Initial and Rely briefs.

## CONCLUSION

For all the foregoing reasons, the SCAJ has present no reason why the decision of the court of appeals should not be reversed.

MALONE, THOMPSON & SUMMERS LLC

_/s/Charles F. Thompson Jr. _____
Charles F. Thompson, Jr. (64219)
Lake Summers
Michael D. Malone
Attorneys for Defendant
339 Heyward Street
Columbia, South Carolina 29201
(803) 254-3300

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