

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

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May 21 2026

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

S.C. SUPREME COURT

Deandrea G. Benjamin, Circuit Court Judge

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

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 Beaston and
Woodham LLP; Defendants**

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

MOTION TO PROVIDE SUPPLEMENTAL BRIEFING

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At the hearing on this matter on May 20, 2026, the court raised two issues, *sua sponte*, which the parties had neither briefed nor otherwise raised to the court.

Petitioner Morphis believes the court would benefit from supplemental briefing on these issues and requests permission to provide the same to the court. The court has allowed supplemental filings in these circumstances. *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 649, 817 S.E.2d 273, 277 (2018) (abuse of discretion for the court of appeals to raise this issue *sua sponte* then to deny Petitioners' request to supplement the record with materials in response to the court of appeals' questions at oral argument.); *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9 (2004) (the Court of Appeals raised *sua sponte* the issue of the timeliness of an appeal and "directed the parties brief the issue" before ruling on it.); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002) ("the Court of Appeals *sua sponte* directed the parties to address this issue of prosecutorial retaliation in a supplemental petition").

The first issue was whether or not the discovery rule applied to South Carolina Wage Payment Act (WPA) claims. Petitioner acknowledges that any discussion of this issue could not affect this case as it is, as Justice Kittredge noted "the law of the case." This was not an oversight by the parties. Judge Benjamin was advised in pre-trial briefs, that the only known guidance (*Doyle v. Horry Cnty.*), was that the discovery rule did apply to WPA claims. No. 2017-000015, 2019 WL 4052478, at *3–4 (S.C. Ct. App. Aug. 28, 2019) (unpublished). Upon further review, at least two South Carolina federal district court judges have also applied the rule to WPA claims. *Thornton v. Johnson and Alda Inc.*, 20-cv-1449 fn. 4 (D.S.C. Dec. 7, 2020)¹ (citing *Weaver v. John Lucas Tree Expert Co.*, 2014 Westlaw 12849772 (D.S.C. Nov. 13, 2014)).

¹ This case does not appear to be available in any published volumes, therefore, is attached.

In addition, this Court has expanded the discovery rule to other statutes of limitation to which the legislature has not specifically provided for a discovery rule. The court did so despite the legislature specifically applying the discovery rule to some statutes of limitations. A useful discussion of the court's history of doing so, and the reasoning behind it, is examined in *Santee Portland Cement v. Daniel International*, 299 S.C. 269, 384 S.E.2d 693 (S.C. 1989).

The second issue raised *sua sponte*, was whether each bonus payment could be a discrete event for purposes of starting the statute of limitations. A useful discussion of this issue is contained within *Maher v. Tietex Corp.*, in which the court rejected the contention that each payment was a discrete event from which the limitations period might run. 331 S.C. 371, 384, 500 S.E.2d 204, 211 (Ct. App. 1998).

In conclusion, Petitioner feels the court might benefit from supplemental briefing on these issues. Petitioner feels that such submissions would be concise because the issues are very limited and compact.

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Dated this 21st day of May 2026