

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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NOV 12 2024

SC Court of Appeals

Serge Wandji,
Appellant/Claimant,
v.
The Regional Medical Center, Self-Insured Employer,
Through Antum Risk, Respondent/Defendant.

NOTICE OF APPEAL

TO: THE HONORABLE SOUTH CAROLINA COURT OF APPEALS, THE REGIONAL MEDICAL CENTER, AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the Claimant, Serge Wandji, hereby appeals to the South Carolina Court of Appeals from the Order of the South Carolina Workers' Compensation Commission, which denied his Motion to Reopen the workers' compensation case, W.C.C. File No. 2118696, on November 1, 2024. The Claimant appeals on the following detailed grounds:

1. Newly Discovered Evidence

The Claimant has presented significant newly discovered evidence that was not available during the initial hearings and could not have been obtained through reasonable diligence. This new evidence includes a critical deposition and affidavit from Dr. John H. Samies, the expert witness whose testimony played a pivotal role in the Commission's decision to deny the Claimant's compensation. Specifically, the newly uncovered evidence reveals that:

- **Undisclosed Roles and Affiliations:** Dr. Samies holds executive positions at The Regional Medical Center (TRMC), including serving on the Board of Trustees and chairing the Infection Control Department. These roles establish a direct and significant

conflict of interest. His affiliation with the Defendant organization was never explicitly disclosed in his 'expert' letter, despite the fundamental requirement for impartiality in expert testimony.

- **Inaccuracies in Expert Testimony:** Dr. Samies's deposition shows that he lacked critical knowledge about the Claimant's COVID-19 exposure. Despite this, he asserted in his expert letter that it was "unlikely" the Claimant contracted COVID-19 at work. Under questioning, he admitted that any employee at the hospital, including the Claimant, could have been exposed to the virus, given the high prevalence of COVID-19 cases at TRMC. This acknowledgment starkly contradicts his earlier claims, demonstrating that his initial testimony was speculative and unreliable.

2. Evidence of Fraud, Misrepresentation, or Misconduct

The Claimant has also uncovered substantial evidence of fraud, misrepresentation, and misconduct by the Defendant and its counsel:

- **Solicitation and Fabrication of Testimony:** Dr. Samies admitted in his deposition that his expert letter, presented as an independent assessment, was actually solicited and generated by the Defendant's Infection Control Department, which he himself chairs. This arrangement undermines any claim of independence and exposes the testimony as being intentionally crafted to favor the Defendant. Furthermore, Dr. Samies was fully aware that his letter would be used in labor litigation, specifically to challenge the Claimant's workers' compensation claim.
- **Misleading Statements:** Dr. Samies provided false and misleading assertions regarding the likelihood of workplace exposure. He conceded that his conclusions were based on

assumptions and incomplete records rather than direct evidence. Despite these admissions, the Defendant relied heavily on his testimony, which misled the Commission and compromised the fairness of the proceedings.

3. Undisclosed Conflict of Interest

The Claimant has demonstrated that there was a significant and undisclosed conflict of interest involving Dr. Samies:

- **Dual Roles Compromising Objectivity:** As both a Board member and Chair of the Infection Control Department at TRMC, Dr. Samies has a vested interest in the outcome of the case. His financial and professional ties to the Defendant create a clear and undeniable conflict. South Carolina law, as emphasized in *State v. Galbreath*, 359 S.C. 398 (2004), and *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119 (2014), mandates that expert testimony must be independent and free from bias. The failure to disclose these conflicts violated these legal principles and undermined the credibility of the evidence used against the Claimant.
- **Violation of Established Legal Standards:** The use of conflicted testimony contravenes established standards for expert evidence, as outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which require that expert opinions be both impartial and reliable. The Commission's reliance on Dr. Samies's compromised testimony has resulted in a decision based on faulty and biased evidence.

Conclusion

The Claimant contends that the Workers' Compensation Commission's denial of the Motion to Reopen, despite this compelling new evidence and clear instances of fraud and conflict of interest, was in error. The Commission's decision was heavily influenced by testimony that has since been proven to be compromised and unreliable. Therefore, the Claimant respectfully requests that the South Carolina Court of Appeals review and reverse the decision of the Workers' Compensation Commission, granting appropriate relief based on the newly discovered evidence and the egregious misconduct uncovered.

WHEREFORE, the Claimant, Serge Wandji, respectfully appeals to the South Carolina Court of Appeals, seeking a full review of the Commission's decision to ensure that justice is served in light of the extraordinary circumstances and serious procedural violations.

Dated: November 12, 2024

**Respectfully submitted,
s/Serge Wandji
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CERTIFICATE OF SERVICE

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I hereby certify that on this November 12, 2024, a true and correct copy of the Claimant's **Notice to Appeal** was served upon the following party via certified mail, and email to the Defendant Attorney in file as followed:

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