

**FORM 13  
BRIEF OF APPELLANT\***

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**THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals**

DEC 18 2024

**SC Court of Appeals**

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
T. Scott Beck, Commissioner

Workers' Compensation File No. 2118696.

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**Serge R. Wandji,  
Claimant, Appellant,**

**v.**

**The Regional Medical Center, Employer, and Antum Risk, Carrier,  
Respondents.**

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INITIAL BRIEF OF APPELLANT  
Appellate Case No. 2024-001935

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TABLE OF CONTENTS

Table of Authorities .....ii
Statement of Issue on Appeal.....4
Statement of the Case.....4
Standard of Review .....5
FACTS .....9

Arguments

1. THE WORKERS' COMPENSATION COMMISSION ERRED IN DENYING THE CLAIMANT'S MOTION TO REOPEN BASED ON NEWLY DISCOVERED EVIDENCE .....14
2. THE COMMISSION FAILED TO ADDRESS FRAUD, MISREPRESENTATION, AND PROCEDURAL MISCONDUCT BY THE RESPONDENT.....14
3. THE COMMISSION'S RELIANCE ON CONFLICTED TESTIMONY VIOLATED LEGAL STANDARDS REQUIRING INDEPENDENT AND UNBIASED EXPERT EVIDENCE.....15
4. THE COMMISSION FAILED TO PROPERLY WEIGH THE RESPONDENT'S PATTERN OF RETALIATORY AND UNLAWFUL CONDUCT.....18
5. DENIAL OF THE MOTION TO REOPEN CONSTITUTED AN ABUSE OF DISCRETION.....19
CONCLUSION:.....20

TABLE OF
AUTHORITIES\*CASES

Frame v. Resort Servs., Inc., 357 S.C. 520, 524, 593 S.E. 2d 491, 493 (Ct. App. 2004).....6
Shatto v. McLead Reg'l Med. Ctr., 406 S.C. 470, 478, 753 S.E. 2d 420 (2013).....6

Hawkins v. Bruno Yacht Sales, Inc., 342 S.C 352, 360 536 S.E.2d 698, 702 (Ct. App. 2000),...  
7, 14

Ledford v. Dep't of Pub. Safety, 341 S.C. 89, 95, 533 S.E. 2d 314, 316 (2000).....7, 19

Hines v. Blue Cross Blue Shield of South Carolina, 411 S.C. 108, 119 (2014).....7, 18

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981).....8, 16

State v. Fletcher, 354 S.C. 555, 562 (2003).....8

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).....15, 18

State v. Galbreath,359 S.C. 398 (2004).....15

Futch v. McAllister Towing, 335 S.C. 598, 618, 518 S.E. 2d 591, 601 (1999)) .....12

Clark v. Aiken County Hospital .....12, 19

Mary's Honor Center v. Hicks, 509 U.S. 502, 511 (1993).....18

Lauderdale v. Dixon .....18

STATUTES

S.C. Code Ann. § 42-17-90.....4

Rule 60 (b)....., 4, 5, 6, 7, 8, 9, 14

OTHER AUTHORITIES

## **STATEMENT OF ISSUES ON APPEAL**

1. Whether the Workers' Compensation Commission erred in denying the Claimant's Motion to Reopen based on newly discovered evidence that directly contradicts key testimony and was unavailable during the original proceedings.
2. Whether the Workers' Compensation Commission failed to properly consider evidence of fraud, misrepresentation, or misconduct by the Defendant, including the solicitation and fabrication of expert testimony to mislead the Commission.
3. Whether the Commission's reliance on the testimony of Dr. John H. Samies, an expert with significant undisclosed conflicts of interest as a member of the Defendant's Board of Trustees and Chair of the Infection Control Department, violated legal standards requiring independent and unbiased expert evidence.
4. Whether the use of false and misleading testimony that misrepresented the circumstances of the Claimant's COVID-19 exposure constituted a violation of the Claimant's due process rights and undermined the integrity of the proceedings.
5. Whether the Workers' Compensation Commission erred in overlooking the Defendant's pattern of misconduct, including HIPAA violations and retaliatory tactics designed to undermine the Claimant's ability to pursue his claim.
6. Whether the denial of the Claimant's Motion to Reopen under Rule 60(b) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 42-17-90, despite compelling evidence of procedural violations and material misrepresentations, was in error.

## **STATEMENT OF THE CASE**

This appeal arises from the Workers' Compensation Commission's denial of the Appellant's Motion to Reopen or modify a prior decision under Rule 60(b) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 42-17-90. The Appellant, a nurse at The Regional Medical Center (TRMC), filed for workers' compensation benefits after contracting COVID-19 while caring for patients during a significant outbreak at the hospital. Despite clear evidence that the infection was work-related, the Commission denied his claim.

The Appellant subsequently filed a Motion to Reopen based on newly discovered

evidence, including deposition testimony revealing that Dr. John H. Samies, the Defendant's expert witness, had significant undisclosed conflicts of interest as a member of TRMC's Board of Trustees and Chair of its Infection Control Department. This evidence contradicted Dr. Samies' testimony and undermined his credibility as an independent expert. The Motion to Reopen also cited evidence of fraudulent misrepresentation and procedural misconduct by the Defendant, including HIPAA violations and coercive settlement tactics designed to frustrate the Appellant's ability to pursue his claim.

Despite the compelling nature of this evidence, the Workers' Compensation Commission denied the Motion to Reopen. The Appellant now seeks appellate review, arguing that the Commission's decision was unsupported by substantial evidence, failed to address the Respondent's misconduct, and was tainted by reliance on biased and misrepresented testimony.

This appeal raises critical issues regarding the integrity of the workers' compensation process, the proper application of Rule 60(b), and the legal standards governing the admissibility of expert testimony and evidence of misconduct. The Appellant respectfully requests that the Court reverse the Commission's decision and remand the case for further proceedings consistent with the principles of fairness and due process.

#### **STANDARD OF REVIEW**

The Court must evaluate whether the Workers' Compensation Commission's decision to deny the Claimant's Motion to Reopen under Rule 60(b) of the South Carolina Rules of Civil Procedure was supported by substantial evidence or was affected by an error of law. The

appellate court's role is to ensure that the decision is based on a proper application of law and that no abuse of discretion occurred.

### **1. Standard of Review: Substantial Evidence Standard**

The appellate review of the Workers' Compensation Commission's findings is governed by the substantial evidence standard. Substantial evidence is defined as evidence that, when viewed in the context of the entire record, allows reasonable minds to reach the same conclusion as the Commission. See *Frame v. Resort Servs., Inc.*, 357 S.C. 520, 524, 593 S.E.2d 491, 493 (Ct. App. 2004). The appellate court must evaluate whether the evidence presented supports the Commission's findings without substituting its judgment for that of the Commission on factual matters.

While deference is given to the Commission's factual determinations, its legal conclusions are reviewed de novo. See *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 478, 753 S.E.2d 416, 420 (2013). In this case, the Appellant asserts that the Workers' Compensation Commission's findings were not supported by substantial evidence because they relied on fraudulent, misrepresented, and biased testimony and overlooked key evidence of misconduct by the Respondent.

### **2. Standard of Review: Rule 60(b) and the Abuse of Discretion Standard**

Rule 60(b) of the South Carolina Rules of Civil Procedure permits a judgment to be revisited in cases of newly discovered evidence, fraud, misrepresentation, misconduct, or other extraordinary circumstances. Motions under Rule 60(b) require the moving party to demonstrate that the new evidence could not have been discovered earlier with reasonable diligence and that

the evidence would likely change the outcome of the case. See *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 360, 536 S.E.2d 698, 702 (Ct. App. 2000).

The appellate court reviews the Commission's denial of Rule 60(b) motions under the abuse of discretion standard. An abuse of discretion occurs when the decision is controlled by an error of law, is unsupported by substantial evidence, or reflects an arbitrary or capricious exercise of judgment. See *Ledford v. Dep't of Pub. Safety*, 341 S.C. 89, 95, 533 S.E.2d 314, 316 (2000).

### **3. Standard of Review: Overlooking Patterns of Misconduct and Retaliation**

The Workers' Compensation Commission also erred by failing to address or properly weigh evidence of the Respondent's pattern of misconduct, which included HIPAA violations and retaliatory tactics designed to undermine the Claimant's ability to pursue his claim. The Respondent's actions, such as disclosing the Claimant's Protected Health Information (PHI) in multiple unencrypted emails sent to unauthorized recipients and fabricating a retroactive leave of absence to create a pretext for claim denial, demonstrate systemic attempts to frustrate the Claimant's case. These actions were not isolated incidents but part of a broader pattern of retaliation and procedural misconduct.

The South Carolina courts have consistently emphasized that when reviewing administrative decisions, the Commission must account for all evidence of bad faith or misconduct. See *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119 (2014) (holding that pretextual actions by an employer can establish retaliation and bad faith). By overlooking the Respondent's retaliatory tactics and HIPAA violations, the Commission failed to

address key elements of the Claimant's case, significantly undermining the fairness of the proceedings.

#### **4. Standard of Review : Application of Legal Standards**

Under Rule 60(b), newly discovered evidence must be both material and likely to produce a different result if the case were reopened. In this case, the Appellant has presented critical new evidence, including deposition testimony from the Respondent's expert, Dr. John H. Samies, which exposes significant inaccuracies and undisclosed conflicts of interest in his prior testimony. These revelations, combined with evidence of retaliatory conduct and HIPAA violations, directly impact the integrity of the original decision and demand reconsideration.

The Commissioner's reliance on the testimony of a conflicted expert and failure to account for the Respondent's misconduct constitutes an error of law. South Carolina courts have long recognized that a judgment based on compromised or procedurally flawed evidence must be revisited to prevent injustice. See *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981) (holding that administrative decisions must be supported by substantial evidence and free from legal error).

#### **5. Standard of Review : Due Process and Procedural Integrity**

The Respondent's misconduct, including obstructing the Claimant's attempts to depose Dr. Samies, improperly influencing expert testimony, and withholding critical information, further violated the Claimant's procedural rights. South Carolina courts have held that procedural fairness is essential in administrative proceedings, particularly in cases involving expert testimony. See *State v. Fletcher*, 354 S.C. 555, 562 (2003) (emphasizing the importance of cross-

examination in ensuring due process). By failing to address these procedural and substantive violations, the Commission not only disregarded key evidence but also compromised the fairness of the proceedings.

## **Conclusion**

The Court must apply the substantial evidence standard to determine whether the Workers' Compensation Commission's findings were supported by credible evidence and free from legal error. Additionally, under Rule 60(b), the Commission's denial of the Motion to Reopen must be reviewed for abuse of discretion, particularly in light of the Respondent's pattern of misconduct, including HIPAA violations, illegal hospital billings, and retaliatory tactics. Given the new evidence, procedural violations, and legal errors in the original proceedings, the Claimant respectfully requests that the Court reverse the Commission's decision and remand the case for reconsideration.

## **FACTS**

The Plaintiff, Serge R. Wandji, began his employment at The Regional Medical Center (TRMC) in Orangeburg, South Carolina, on March 8, 2021, as a staff nurse. His position was explicitly classified as high-risk, with his job description acknowledging regular exposure to infectious and contagious diseases, including interaction with patients in a variety of potentially hazardous circumstances (APA #27 p. 38). This designation placed him in direct contact with patients with contagious illnesses, including COVID-19, during his employment.

In August 2021, a COVID-19 outbreak swept through TRMC, exposing many employees, including the Plaintiff, to the virus (APA #6, p. 6 and APA #26 p. 37). On August

27, 2021, the Plaintiff tested positive for COVID-19 and was medically removed from his duties by TRMC. Despite being severely ill, the Plaintiff acted promptly and filed a workers' compensation claim on August 31, 2021, through TRMC's online reporting system, while also submitting an incident report to the Employee Health Department (APA # 12 p. 13). The filing of this claim initiated a pattern of retaliatory actions by the Defendant, which would persist over the following months.

**Retaliatory Actions During Plaintiff's Illness and Hospitalization:** On September 3, 2021, while the Plaintiff was gravely ill and isolated at home following his COVID-19 infection at his workplace, TRMC sent a text message urging him to return to work (APA # 14, p. 15-18). This communication exacerbated his health issues, leading to his hospitalization on September 6, 2021. The Plaintiff was admitted to TRMC with a diagnosis of COVID-19 pneumonia and acute stress disorder (APA #15, p. 19; APA# 17, p. 21). Also, while the Plaintiff was hospitalized (at TRMC) in the intensive care unit fighting for his life, TRMC issued further retaliatory measures. On September 7, 2021, TRMC sent a letter to the Plaintiff's home demanding the completion of Family and Medical Leave Act (FMLA) paperwork within 15 days (APA # 56 p. 132). This demand was unreasonable for several reasons:

- The Plaintiff had never requested FMLA leave.
- TRMC was fully aware that the Plaintiff was medically removed from duty after contracting COVID-19 at work and was ineligible for FMLA, having worked at TRMC for only six months.
- The Defendant knew the Plaintiff was hospitalized at their facility and incapacitated, making it impossible for him to comply with the request.

On September 24, 2021, while the Plaintiff was recovering at home, TRMC escalated its retaliatory actions by retroactively approving a fictitious leave of absence that the Plaintiff never requested (Defendant's APA #7, p. 41). The leave was backdated to August 28, 2021—the date the Plaintiff was removed from duty due to his COVID-19 infection at work. This forced and retroactive leave approval was a clear attempt to misrepresent the Plaintiff's absence as voluntary, undermining his workers' compensation claim.

**Financial and Administrative Hardships Imposed on Plaintiff:** While recovering from his illness, and still legally under workers' compensation leave, the Plaintiff was forced by TRMC to make monthly payments to maintain his health insurance coverage (APA # 36, p. 49-53). Despite enduring financial hardship, the Plaintiff complied, mailing checks to TRMC to avoid losing his coverage. Additionally, TRMC ignored the Plaintiff's repeated attempts to obtain updates on the status of his workers' compensation claim (APA # 19, 20, & 21, p. 23-25). This intentional lack of communication from TRMC forced the Plaintiff to file a formal **Form 50** with the South Carolina Workers' Compensation Commission on November 29, 2021, seeking compensation for an occupational disease (APA # 22, p.26).

**Coercion and Improper Settlement Offers:** The Plaintiff, a nurse at The Regional Medical Center (TRMC), contracted COVID-19 in August 2021 during the course of employment (APA # 26, p. 37) and was subsequently hospitalized and treated at TRMC (APA # 15, p. 19). Despite receiving federal CARES Act funding intended to cover COVID-19-related medical expenses, TRMC improperly billed the Plaintiff for charges exceeding his insurance coverage (APA # 37, p. 59-63). When questioned about this during deposition, TRMC's CEO, Mr. David Sutherland,

admitted he could not explain why the Plaintiff was charged (Sutherland Tr., pg. 15, lines 19-24; pg. 16, lines 1-4). TRMC used these unauthorized charges as leverage in settlement negotiations, offering to waive the illegal bills and issue a \$100 check in exchange for the Plaintiff signing a general release waiving his right to pursue a retaliation claim. This coercive settlement tactic violated South Carolina workers' compensation law, which requires agreements to be voluntary and free from undue pressure (*Futch v. McAllister Towing*, 335 S.C. 598, 618, 518 S.E.2d 591, 601 (1999)). Further exacerbating the harm, TRMC reported the disputed charges to debt collectors, damaging the Plaintiff's credit (APA # 37a, p. 64-65). This retaliatory conduct undermines the Plaintiff's legal rights under the CARES Act, which prohibits imposing federally covered fees, and reflects a broader pattern of coercion aimed at deterring the Plaintiff's pursuit of valid legal workers' compensation claims.

South Carolina courts recognize retaliation as including undue pressure connected to workers' compensation claims (*Clark v. Aiken County Hospital*). Leveraging unjust hospital charges as a negotiation tool constitutes bad faith and creates a genuine issue of material fact that warrants the reversal of the denial of the Appellant's claim.

**HIPAA Violations and Further Retaliation:** The Defendant's retaliatory actions extended to unlawful violations of the Plaintiff's privacy. TRMC unlawfully disclosed the Plaintiff's Protected Health Information (PHI) in multiple unencrypted emails sent to unauthorized recipients. These disclosures included sensitive information such as the Plaintiff's date of birth, address, health insurance details, medical diagnoses, and lab results. These actions constituted blatant violations of the Health Insurance Portability and Accountability Act (HIPAA) and

further demonstrated the Defendant's disregard for legal standards governing patient confidentiality and data protection.

**Efforts to Return to Work and Subsequent Termination:** The Plaintiff remained proactive in his efforts to return to work. On January 17, 2022, his primary care physician cleared him to resume work with temporary restrictions (APA #26, p.37). Despite notifying TRMC of his readiness, the Defendant refused to reinstate him. The Plaintiff's attorney also contacted TRMC's legal counsel on January 25, 2022, to confirm the Plaintiff's ability to work, but this communication went unanswered. Determined to resume his position, the Plaintiff personally traveled to TRMC to request reinstatement and subsequently sent follow-up emails to TRMC's senior leadership on February 25, 2022 (APA # 31, p. 44), and March 9, 2022. A psychologist also cleared the Plaintiff to return to duty on March 11, 2022 (APA # 32, p. 45). Despite these clearances and the Plaintiff's continued efforts, TRMC denied his return. Instead of accommodating the Plaintiff's return to work, TRMC secretly consulted with two undisclosed labor attorneys to strategize his termination under the pretext of leave exhaustion. On March 15, 2022, TRMC terminated the Plaintiff's employment (APA # 33, p. 46). This termination, which occurred despite the Plaintiff's compliance with medical clearances and his demonstrated willingness to return to work, was both unjust and retaliatory.

**Conclusion:** The Defendant's actions, including its retroactive leave approval, unlawful disclosure of PHI, illegal hospital charges, failure to accommodate the Plaintiff's return to work, and ultimate termination of his employment, reflect a clear pattern of retaliation and misconduct. These actions violated South Carolina workers' compensation laws and underscore the necessity of appellate review to ensure justice is served.

## ARGUMENTS

### **I. The Workers' Compensation Commission Erred in Denying the Claimant's Motion to Reopen Based on Newly Discovered Evidence**

The newly discovered evidence provided by the Claimant directly contradicts key testimony that was integral to the Commission's original decision. Central to the Commission's findings was the testimony of Dr. John H. Samies, who was presented as an independent expert witness. However, evidence uncovered after the original proceedings revealed that Dr. Samies was a member of TRMC's Board of Trustees and served as Chair of its Infection Control Department (Dr. Samies Tr. P. 6, lines 15-21; p.7, lines 1-2), creating a clear conflict of interest that was never explicitly disclosed in his 'expert' testimony letter. Dr. Samies' deposition further revealed that his earlier testimony misrepresented the circumstances surrounding the Claimant's COVID-19 exposure at TRMC (Dr. Samies Tr. P. 26, lines 11-13; p.27, lines 9-11).

South Carolina Rule of Civil Procedure 60(b)(2) allows for reopening a case when new evidence, which could not have been discovered through reasonable diligence during the original proceedings, is likely to alter the outcome. See *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 360, 536 S.E.2d 698, 702 (Ct. App. 2000). The evidence presented by the Claimant—including Dr. Samies' admission that the Claimant's exposure occurred at TRMC—clearly meets this standard. The Commission's refusal to reopen the case based on this material evidence constitutes an abuse of discretion.

### **II. The Commission Failed to Address Fraud, Misrepresentation, and Procedural Misconduct by the Respondent**

The Commission overlooked compelling evidence that the Respondent engaged in fraudulent and deceptive practices to mislead the proceedings. Specifically, the Respondent relied heavily on the testimony and expert report of Dr. Samies, whose conflicts of interest were deliberately concealed. Furthermore, Dr. Samies admitted during his deposition that his earlier statements about the Claimant's exposure being "unlikely" were speculative and false (Dr. Samies Tr. P. 11, lines 3-6).

Under South Carolina law, expert testimony must be impartial and free from bias. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). By failing to disclose Dr. Samies' affiliations with TRMC and how his so-called 'expert' letter was initiated and generated from within TRMC, the Respondent violated these principles, undermining the credibility of the expert testimony which was heavily relied upon by the Commission. The Respondent's actions not only constituted misrepresentation but also deprived the Claimant of his due process rights by preventing a fair evaluation of the evidence.

### **III. The Commission's Reliance on Conflicted Testimony Violated Legal Standards Requiring Independent and Unbiased Expert Evidence**

The integrity of expert testimony is foundational to fair proceedings. South Carolina courts have consistently held that expert witnesses must be impartial and independent, particularly in administrative hearings where such testimony carries significant weight. See *State v. Galbreath*, 359 S.C. 398 (2004). The Commission's reliance on the testimony of Dr. Samies (APA #58, p.144), despite his undisclosed ties to TRMC, violated these standards and tainted the fairness of the proceedings. As Chair of TRMC's Infection Control Department and a member

of its Board of Trustees, Dr. Samies had a direct financial and professional interest in the outcome of the Claimant's case. These affiliations rendered him incapable of providing the independent and unbiased testimony required under South Carolina law. See *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981).

Dr. Samies' deposition unequivocally reveals that he knowingly provided false statements in his expert report, a pivotal piece of evidence that materially influenced the Commissioner's decision to deny the Claimant's compensation claim. Specifically, Dr. Samies admitted that the Claimant, a registered nurse, was exposed to COVID-19 in August 2021 at TRMC, where multiple patients and staff tested positive (APA #50 p. 91; APA # 47, p. 84-86). The Claimant had been caring for COVID-positive patients on his own unit during this time (APA# 7, p. 7-8; Dr. Samies Transcript Pg. 31, Lines 16-23). Also, on Claimant's unit staff members tested positive for the COVID-19 virus (APA# 7a). Dr. Samies himself acknowledged, "*any employee (at the hospital including Claimant) can be exposed when there are patients with COVID-19*" (Deposition Transcript Pg. 31, Lines 22-23). This admission directly contradicts his earlier assertion in his expert testimony letter that it was "*unlikely*" the Claimant's exposure to COVID-19 was related to his employment (APA # 58, p. 144). Additionally, during the deposition, Dr. Samies conceded that his statements concerning the timing and location of the Claimant's COVID-19 exposure were inaccurate. He admitted to asserting in his letter that the Claimant's workplace exposure was "*unlikely*," despite not knowing when the Claimant was actually exposed to COVID-19 (Deposition Transcript Pg. 26, Lines 11-13). In other words, Dr. Samies repeatedly admitted that he lacked critical information about the Claimant's exposure but nonetheless concluded that workplace exposure was improbable (Deposition Transcript Pg. 27,

Lines 9-11). Moreover, Dr. Samies admitted that his previous statements were both biased and speculative. In his so-called "expert" letter, he explicitly stated, "***Given that he (the Claimant) had concerns about non-employment exposure, which prompted testing only a short time prior to his illness, I must wonder how much other potential non-employment exposure he had***" (APA # 58, p. 144). However, during his deposition, when confronted about the above statement, Dr. Samies changed his account and claimed, "*That is what I gleaned from the records of Employee Health*" (Deposition Transcript Pg. 11, Lines 3-6), later adding, "*It is what I understood from the records*" (Deposition Transcript Pg. 14, Line 5). These admissions indicate that Dr. Samies's statements were not based on any direct information he had read or been told but rather his personal imagination and interpretation of records, further demonstrating the biased and speculative nature of his testimony.

It is imperative to underscore that the defense strategy employed by Mr. Roy Howell hinged primarily on presenting witnesses who would testify that the Claimant reported a potential COVID-19 exposure outside the hospital. This approach was outlined explicitly in Mr. Howell's Pre-Hearing Brief under the "Facts in Controversy" section (Defendant's Pre-Hearing Brief). At the hearing held on February 16, 2023, the Defendant introduced two employees of TRMC, Mrs. Kelci Caruso, the head of the Employee Health Department, and Mrs. Kellie Evans, staff member of the same department, in an attempt to support this defense strategy. Contrary to the Defendant's expectations, neither Mrs. Caruso nor Mrs. Evans corroborated Mr. Howell's defense. These two employees, being the only individuals with whom the Claimant discussed his COVID-19 exposure at TRMC, failed to support the notion that the Claimant reported exposure outside the hospital. During her testimony, Mrs. Caruso explicitly stated, "No sir, I don't recall

you telling me where you were exposed” (WCC Hearing Transcript excerpt, Pg. 108, Lines 1-4). Likewise, Mrs. Evans testified, “I stated that you (Claimant) were exposed. I did not say that you stated you were exposed outside of the hospital” (WCC Hearing Transcript excerpt, Pg. 115, Lines 6-8). Even the presiding Commissioner, T. Scott Beck, after directly questioning Mrs. Evans for further clarification, noted, “*Mr. Wandji (Claimant) we’ve already made the point clear*” that Claimant never reported a possible COVID-19 exposure outside the hospital (WCC Hearing Transcript excerpt, Pg. 115, Lines 20-25; Pg. 116, Line 15-16). This inconsistency between Mr. Howell’s defense strategy and the testimonies of his key witnesses not only undermines the credibility of the Defendant’s case but also raises concerns about the ethical integrity of the defense. The lack of corroboration from Defendant’s key witnesses and the misleading reliance on biased and speculative expert testimony calls for a thorough reconsideration of the facts and legal arguments presented in this case. Misrepresentation of facts by an expert witness, as evident in this case, calls into question the integrity of the evidence. Case law, including *Lauderdale v. Dixon* and *Hines v. Blue Cross Blue Shield of South Carolina*, emphasizes the importance of transparency and impartiality in workers' compensation claims, particularly where expert testimony is involved. The failure to disclose a conflict of interest and the fabrication of evidence to bolster a defense may constitute violations of workers’ compensation laws and undermine the fairness of the proceedings. The South Carolina Workers’ Compensation system, like all judicial proceedings, mandates that claims be supported by credible and honest evidence. According to Rule 702 of the Federal Rules of Evidence and the precedent set in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), expert testimony must be founded on reliable principles and methods. In this case, the defense's reliance

on speculative and unsubstantiated assertions falls short of these legal standards. Furthermore, Dr. Samies—who serves on the Defendant’s Board of Trustees—made false and misleading statements in his so-called “expert” letter, which evidence an intentional and unlawful act. Courts have recognized that misleading representations can demonstrate intentional wrongful behavior, especially when there is evidence of dishonesty or mendacity. As articulated in *St. Mary’s Honor Center v. Hicks*, 509 U.S. 502, 511 (1993), suspicions of deceit accompanying the Defendant’s actions can suffice to show such unlawful conduct.

#### **IV. The Commission Failed to Properly Weigh the Respondent’s Pattern of Retaliatory and Unlawful Conduct.**

The Respondent’s retaliatory actions extended beyond the workers’ compensation claim and included HIPAA violations, improper settlement tactics, and procedural misconduct. The Respondent repeatedly disclosed the Claimant’s Protected Health Information (PHI) in unencrypted emails sent through the open internet to unauthorized recipients. These disclosures not only violated the Health Insurance Portability and Accountability Act (HIPAA) but also demonstrated a disregard for the Claimant’s rights and privacy.

Additionally, the Respondent attempted to coerce the Claimant into an unfavorable settlement by leveraging unauthorized medical charges. Such actions reflect a broader pattern of bad faith designed to undermine the Claimant’s ability to pursue his claim. See *Clark v. Aiken County Hospital*, 361 S.C. 143, 603 S.E.2d 814 (2004) (holding that retaliatory actions designed to frustrate an employee’s legal claims constitute evidence of bad faith). The Commission’s failure to address this pattern of misconduct further undermines the validity of its decision.

## **V. Denial of the Motion to Reopen Constituted an Abuse of Discretion**

The Commission's decision to deny the Motion to Reopen failed to account for the cumulative impact of the newly discovered evidence, the Respondent's misconduct, and the procedural irregularities that tainted the original proceedings. Under Rule 60(b), a judgment may be set aside in cases of fraud, misrepresentation, or newly discovered evidence that would likely alter the outcome. See *Ledford v. Dep't of Pub. Safety*, 341 S.C. 89, 95, 533 S.E.2d 314, 316 (2000).

The Claimant has met all the requirements for relief under Rule 60(b), including demonstrating that the new evidence could not have been discovered earlier with reasonable diligence and that it directly impacts the fairness of the original decision. The Commission's refusal to reopen the case, despite the compelling nature of this evidence, constitutes an arbitrary and capricious exercise of judgment.

## **VI. Conclusion**

The Commission's denial of the Claimant's Motion to Reopen was unsupported by substantial evidence and failed to address the Respondent's fraudulent conduct, procedural misconduct, and the newly discovered evidence undermining the credibility of key testimony. For these reasons, the Claimant respectfully requests that the Court reverse the Commission's decision and remand the case for further proceedings to ensure a fair and just resolution.

## **CONCLUSION**

For the reasons stated, this Court should reverse the judgment of the Workers'

Compensation Commission.

Respectfully submitted,

December 18, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that on this December 18, 2024, a true and correct copy of the Claimant's INITIAL BRIEF OF APPELLANT was served upon the following party via certified mail, and email to the Defendant Attorney in file as followed:

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