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**Jan 16 2025**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
IN THE 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,  
Appellant/Claimant,**

**v.**

**The Regional Medical Center, Self-Insured Employer, Through Antum Risk,  
Respondent/Defendant.**

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO  
STRIKE**

Appellate Case No. 2024-001935

**TO:** THE COURT OF APPEALS OF SOUTH CAROLINA AND ATTORNEYS FOR THE  
RESPONDENTS:

COMES NOW the Pro se Appellant, Serge Wandji, and files this Response in Opposition to the  
Respondents' Motion to Strike, showing the Court as follows:

**INTRODUCTION**

The Respondents' Motion to Strike seeks to exclude references in Appellant's Initial Brief to the deposition testimony of Dr. John H. Samies. The Respondents contend that this deposition was not part of the record before the Workers' Compensation Commission and should therefore be excluded from appellate consideration. This argument misinterprets both procedural rules and the equitable doctrines inherent in the review of workers' compensation matters. The Motion to Strike should be denied for the reasons set forth below.

## ARGUMENT

### I. The Deposition of Dr. Samies is Critical to the Appellant's Case and Triggered the Present Appeal

The deposition of Dr. John H. Samies constitutes the newly discovered evidence that forms the very basis of the Appellant's Motion to Reopen and this appeal. Dr. Samies' testimony directly contradicts the earlier findings of the Workers' Compensation Commission and exposes significant inaccuracies and undisclosed conflicts of interest. Specifically, Dr. Samies' deposition confirms:

1. **Pervasive Exposure to COVID-19 at the Workplace:** Dr. Samies admitted that employees, including the Appellant, who were working in units treating COVID-19 patients, faced an elevated risk of exposure. He further acknowledged that multiple employees on the same unit contracted COVID-19 during the relevant time (**Exhibit #1:** Deposition Transcript, p. 31, lines 16-23; p. 31, lines 22-23).
2. **Undisclosed Bias:** Dr. Samies served as a member of The Regional Medical Center's Board of Trustees and as Chair of its Infection Control Department, creating a direct conflict of interest that undermines the credibility of his previous testimony (**Exhibit # 1:** Deposition Transcript, p. 6, lines 15-21; p. 7, lines 1-2).
3. **Misrepresentation of Facts:** Dr. Samies admitted that his earlier statements characterizing the Appellant's exposure as "unrelated to employment" were speculative and based on incomplete information (**Exhibit # 1:** Deposition Transcript, p. 26, lines 11-13; p. 27, lines 9-11).

This deposition not only contradicts key findings of the Commission but also undermines the impartiality and reliability of the testimony upon which the Respondents heavily relied.

## **II. Newly Discovered Evidence Warrants Reconsideration Under Rule 60(b)**

Rule 60(b) of the South Carolina Rules of Civil Procedure permits the reopening of cases based on newly discovered evidence that could not have been presented earlier through due diligence and that would likely change the outcome. See *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 536 S.E.2d 698 (Ct. App. 2000); *Ledford v. Dep't of Pub. Safety*, 341 S.C. 89, 533 S.E.2d 314 (2000).

1. **Inaccessibility During the Original Hearing:** The deposition was obtained during civil litigation initiated after the Workers' Compensation hearing, as the Respondents failed to disclose relevant information during discovery.
2. **Material Impact:** Dr. Samies' admissions substantiate the Appellant's claim that his COVID-19 infection was work-related and demonstrate that the Commission's reliance on Dr. Samies' earlier testimony was misplaced.

South Carolina courts have consistently held that newly discovered evidence must be both material and likely to produce a different result. See *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981).

## **III. Equitable Considerations Require Inclusion of the Deposition in the Record on Appeal**

Workers' compensation proceedings are fundamentally equitable in nature, designed to provide a fair and just resolution for injured employees. Strict adherence to procedural

technicalities should not preclude the consideration of evidence that directly impacts the fairness of the outcome. See *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 753 S.E.2d 416 (2013). By excluding Dr. Samies' deposition, the Court risks perpetuating an unjust result.

#### **IV. Respondents' Procedural Arguments Are Baseless**

The Respondents assert that they were denied the opportunity to participate in Dr. Samies' deposition and that its inclusion violates their due process rights. However, this argument is unfounded because:

1. **Adequate Notice:** The deposition was conducted in accordance with civil litigation procedures. An Attorney (Mrs. Amanda Williams) retained by the Respondents was present and had the opportunity to challenge its admissibility in that context.
2. **Substantive Fairness:** The deposition does not introduce surprise evidence but rather clarifies and corrects previous misrepresentations made by Dr. Samies.

South Carolina courts have long emphasized the importance of procedural fairness, particularly when expert testimony is central to the case. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

#### **V. Exclusion of Dr. Samies' Testimony Would Result in Prejudice to the Appellant**

Granting the Respondents' Motion to Strike would deprive the Appellant of the ability to present the full context of his case, undermining the integrity of the appellate review process. The testimony of Dr. Samies is central to establishing:

1. The extraordinary circumstances justifying the reopening of the case.

2. The Respondents' pattern of misconduct, including the reliance on biased and speculative testimony to deny the Appellant's claim.

## **VI. Failure to Address Dr. Samies' Testimony Violates Appellant's Due Process Rights**

The exclusion of critical evidence, such as Dr. Samies' deposition, violates the principles of due process by depriving the Appellant of the opportunity to present all relevant facts. See *State v. Fletcher*, 354 S.C. 555, 581 S.E.2d 127 (2003). Procedural fairness requires that courts consider all material evidence necessary to ensure a just outcome.

## **CONCLUSION**

The Respondents' Motion to Strike is an attempt to shield critical evidence from scrutiny and to constrain this Court's ability to render a just decision. Dr. Samies' deposition provides essential insights that directly impact the merits of the Appellant's case. For the foregoing reasons, the Appellant respectfully requests that this Court deny the Motion to Strike in its entirety and consider the deposition of Dr. Samies in its review of this case.

Respectfully submitted this 16th day of January, 2025.

**s/Serge Wandji**  
Pro Se Appellant  
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**Dated:** January 16, 2025

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The Regional Medical Center, Self-Insured Employer, Through Antum Risk,  
Respondent/Defendant.**

**CERTIFICATE OF SERVICE**

Appellate Case No. 2024-001935

I hereby certify that on this January 16, 2025, a true and correct copy of the **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR EXTENSION OF TIME** was served upon the following party via certified mail, and email to the Defendant Attorney in file as followed:

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**Cover Letter**

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**January 16, 2025**

**South Carolina Court of Appeals**

**Re: Opposition to Defendant's Motion to Strike  
Appellate Case No. 2024-001935**

Dear Judges of the Court of Appeals,

Please find enclosed the **Plaintiff's Response in Opposition to Defendant's Motion to Strike**, filed in connection with the above-referenced case. This response highlights the critical importance of Dr. John H. Samies' deposition to the Appellant's case and demonstrates why the Defendant's motion to exclude this evidence should be denied.

Dr. Samies' testimony reveals material facts that directly impact the merits of this appeal, addressing both the work-related nature of the Appellant's exposure to COVID-19 and the credibility of prior testimony. Excluding this evidence would not only undermine the integrity of the appellate process but also prejudice the Appellant's right to present his case fully and fairly.

I respectfully urge the Court to consider the enclosed response and deny the Defendant's Motion to Strike. Thank you for your time and attention to this matter. Should the Court require any additional information or clarification, I am available at your convenience.

Respectfully submitted,

**s/Serge Wandji**  
Appellant (Pro Se)