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**Jan 24 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

Appellate Case No. 2024-001935

S.C. W.C.C. File No. 2118696

Serge Wandji, Claimant,.....Appellant,

v.

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

**RESPONDENTS' REPLY TO APPELLANT'S RETURN TO  
MOTION TO EXCLUDE CERTAIN MATTERS  
DESIGNATED BY THE APPELLANT FROM THE RECORD ON APPEAL**

The Respondents filed a Motion to Exclude certain matters listed in the Appellant's Designation of Matter to be included in the Record on Appeal on the basis that they are not relevant to the proceedings, they were not part of the evidentiary record before the Commission, and they were not considered by the Workers' Compensation Commission when issuing the November 1, 2024, Order on appeal, because Rule 210, S.C.A.C.R., requires that the Record on Appeal "shall not ... include matter which was not presented to the lower court or tribunal." On January 17, 2025, the Appellant filed a "Plaintiff's response opposing Defendants' Motion to Exclude certain matters," arguing that "excluding significant documents ... would prejudice his ability to present his case fully." The Respondents respectfully contend that the Appellant's

right to “present his case” is necessarily limited to the issues preserved for appeal and the matters properly presented below. The following matters were not properly presented to, or considered by, the Workers’ Compensation Commission in denying his Motion to “reopen claim or request for modification” on November 1, 2024, and should be excluded from the Record on Appeal:

“6. Claimant/Appellant’s Reply to Respondent’s Return

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9. Transcripts of the Deposition of Dr. Samies

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16. Settlement offer letter

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18. Defendant’s email exchange with labor’s [sic] attorneys.

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19. HIPAA related letter

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20. Claimant/Appellant APAs: from APA #1 (p.1) to APA #64 (p.156)”

The present appeal exclusively concerns the Workers’ Compensation Commission’s November 1, 2024, Order denying the Appellant’s Motion to “reopen claim or request for modification.” The sole basis for the Commission’s November 1, 2024, decision to deny the Appellant’s Motion is that it improperly argued the merits of the Appellant’s workers’ compensation claim in contravention of S.C. Code Reg. 67-215(B)<sup>1</sup>. The propriety of this ruling is the only issue properly before this Court on appeal.<sup>2</sup> Therefore, the aforementioned

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<sup>1</sup> Regulation 67-215(B), states, in pertinent part, that the “Commission may entertain motions to reconsider an order, opinion, or award if the purpose of the motion is not an attempt to reargue the merits of the dispute. Any motion for reconsideration must be made within five (5) days of the date of that order, opinion, or award is served.”

<sup>2</sup> See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”); see also Elam v. S.C. Dep’t of Transp.,

documents, which were not presented to or considered by the Commission in issuing the November 1, 2024, Order, cannot be considered “critical” or even relevant to this appeal as the Appellant alleges.

With respect to the Appellant’s argument that the deposition of Dr. Samies, which was not considered by the Workers’ Compensation Commission in denying his Motion to “reopen claim or request for modification” somehow “could not have been obtained during the initial proceedings despite due diligence,” the Commission has not addressed this issue, and it is not preserved for appeal. *See Wilder Corp. v. Wilke, supra*, f.n.2. When the Appellant attempted to file the deposition of Dr. Samies as an exhibit to an untimely Reply, the Commission ordered it stricken from the record. Therefore, the Respondents respectfully contend that the deposition of Dr. Samies is not properly included in the Record on Appeal because it was not properly presented to the Commission and is not relevant to the appeal of the Commission’s November 1, 2024, Motion Order.<sup>3</sup>

Moreover, the Appellant could have deposed Dr. Samies at any time during the course of his workers’ compensation claim, which was pending for more than two years, but did not avail himself of the opportunity. Therefore, the Respondents respectfully contend that, even if Rule 60, S.C.R.C.P., applied to proceedings before the Workers’ Compensation Commission, which it

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361 S.C. 9, 23, 602 S.E.2d 772, 779–80 (2004) (“Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court.”).

<sup>3</sup> *See* Rule 210(c), S.C.A.C.R.; *Cf. Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (holding that depositions relied on by Gilmore either had not been filed as the rule required or had not been published and therefore were not in the record and the hearing judge properly disregarded the testimony that Gilmore’s counsel claimed, during his argument, was reflected by those depositions).

does not<sup>4</sup>, then this deposition could not be considered “newly discovered,” because it could have been conducted with any modicum of due diligence prior the Commission’s final Decision and Order on March 8, 2024.<sup>5</sup>

Furthermore, to the extent that the Appellant argues that Dr. Samies’s deposition is relevant to show that Dr. Samies was a member of the Board of Trustees of the Regional Medical Center and served as the Chair of their Infectious Control Committee, this fact was already clearly evidenced at the time of the February 16, 2023, hearing before Commissioner Beck. In fact, the Respondents’ APA p. 60, which the Respondents served upon the Claimant on January 12, 2024, and submitted into evidence without objection, clearly states that Dr. Samies’s medical affiliations included:

**Board of Trustees- The Regional Medical Center, 2006, 2020- present**  
**Chair, Quality Improvement Committee, 2006-2020**  
**Infection Control Committee The Regional Medical Center Chairman 1997- present**  
**Pharmacy Committee Second Heart Hospital 1997-2006**

(See attached, Exhibit 1, APA #12, p.60). Therefore, the Appellant’s contention that he did not know of Dr. Samies’s affiliations with the Regional Medical Center during the course of his

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<sup>4</sup> See Rule 1, S.C.R.C.P., Rule 81, S.C.R.C.P.; see also Stone v. Roadway Express, Emp., 367 S.C. 575, 582, 627 S.E.2d 695, 699 (2006); accord Nettles v. Spartanburg Sch. Dist. #7, 341 S.C. 580, 588, 535 S.E.2d 146, 150 at *f.n.*4 (Ct. App. 2000) (concluding that the workers’ compensation law does not provide for a motion under Rule 60, S.C.R.C.P.).

<sup>5</sup> Bowman v. Bowman, 357 S.C. 146, 152, 591 S.E.2d 654, 657 (Ct. App. 2004) (concluding “that South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial”) (internal citations omitted).

worker's compensation claim and that he could not have discovered this information "through reasonable diligence during the original proceedings," is untenable. This information has been part of the evidentiary record before the Commission for nearly 2 years and no deposition was necessary to "discover" it.

The remaining objectionable matters designated by the Appellant to be included in the Record on Appeal, including the "settlement offer letter," the unidentified "email exchange with labor's [sic] attorneys," the "HIPAA related letter," and Appellant's APA p.156, were never part of the evidentiary record before the Commission, are not new or newly discovered evidence, and have no relevance to the Claimant's Motion to "reopen claim or request for modification."

While the present attempt to include these matters in the Record on Appeal does highlight the Appellant's continued efforts to relitigate the merits of his workers' compensation claim (which were finally decided by the Commission on March 8, 2024) and other sundry grievances, this does not render these matters relevant to the Commission's November 1, 2024, decision to deny the motion to reopen the case, nor does it render them part of the record below. Therefore, the Respondents respectfully contend that these documents should also be excluded from the Record on Appeal pursuant to Rule 209 and Rule 210, S.C.A.C.R.

Respectfully submitted,

January 24, 2025



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Attorneys for Respondents

**EXHIBIT 1**  
**RESPONDENTS' APA #12**

**John Hunter Samies, M.D., FSHEA**

2850 Jackson Drive  
Orangeburg, SC 29118  
Email: [samiesjohn@yahoo.com](mailto:samiesjohn@yahoo.com)  
Phone: 803-539-0505  
Fax: 803-539-0410

**Education**

1972.1976 Bachelor of Science-Natural Sciences  
Muhlenberg College  
Allentown, Pennsylvania

1976.1980 M. D.  
Hahnemann Medical College  
Philadelphia, Pennsylvania

**Postgraduate, Fellowships**

1980.1983 Internship and Residency-Internal Medicine  
Allentown Affiliated Hospitals  
Allentown, Pennsylvania

1983.1985 Fellowship in Infectious Diseases  
Albany Medical College of Union University  
Albany, New York

**Practice**

1985-1997 - Allentown Infectious Disease Physicians, Inc . Allentown , Pennsylvania  
1997- present- private practice- Orangeburg, South Carolina. ( incorporated 2006 as Palmetto  
Infectious Disease Physicians, LLC)

**Certifications**

Licensure-Commonwealth of Pennsylvania MD026141E-(inactive )  
Licensure-State of South Carolina 19747  
Diplomate of National Board of Medical Examiners  
Diplomate of American Board of Internal Medicine 1983  
Diplomate of American Board of Internal Medicine Infectious Disease 1988  
Fellow- Society of Healthcare Epidemiologists of America  
Diplomate of American Academy of Wound Management -2008

**Publications**

Samies, J, Hathaway, B., Echols, R., Veazy, J., Pilon, V., Lung Abscess Due to *Corynebacterium equi*.  
*American Journal of Medicine* 80:685, April 1986.

Echols, R., Kowalsky, S., Samies, J., McCormick, E., Fedigan, M., Serum Bactericidal activity of  
cefotaxime, cefoperazone, and ceftizoxime: Correlation with pharmacokinetic parameters. *Infections in  
Medicine* 5:4, March 1986.

Rhodes, L., Beidemann, M., Samies, J., Infection in Traumatic Extremity Wounds: Prevention and  
Management. *Emergency Care Quarterly* 4:2, 1988

Gehling, M., Samies, J., Unanticipated palliative benefit of noncontact, low-intensity, low-frequency  
therapeutic ultrasound on lower-extremity chronic wound pain. *Ostomy Wound Management* 53:3,2007

Samies, J. Infection and pain control in wound care; getting the most out of bilayered cell therapy. *Wounds* (suppl September 2007):13-17.)

Samies, J., Gehling, M. Acoustic Pressure Wound Therapy for Management of Mixed Partial- and Full-Thickness Burns in a Rural Wound Center. *Ostomy Wound Management* 54:3 56-59, 2008

Kelachi, T., Martina, M., Hankin, C., Bronstone, A., Samies, J., Bonham, P., A randomized, investigator-blinded, controlled pilot study to evaluate the safety and efficacy of a poly-N-acetyl glucosamine derived membrane material in patients with venous leg ulcers. *Journal of the American Academy of Dermatology* doi:10.1016/j.jaad.2011.01.031.

Samies, J., Gehling, M., Yakov, R. Use of a fluorescence angiography system in assessment of lower extremity ulcers in patients with peripheral arterial disease: A review and a look forward. *Seminars in Vascular Surgery* . DOI: [10.1053/j.semvascsurg.2015.12.002](https://doi.org/10.1053/j.semvascsurg.2015.12.002)

Serena T, Cullen B, Bayliff S, Gibson C, Carter M, Chen L, Yaakov R, Samies J, Sabo M, DeMarco D, Le N, Galbraith Defining a new diagnostic assessment parameter for wound care: Elevated protease activity, an indicator of nonhealing, for targeted protease-modulating treatment. *J.Wound Repair Regen.* 2016 May;24(3):589-95. doi: 10.1111/wrr.12431. Epub 2016 May 11. PMID: 27027492

Carpenter S, Davis S, Fitzgerald R, et al. Expert recommendations for optimizing outcomes in the management of biofilm to promote healing of chronic wounds. *Wounds.* 2016;28(6 Suppl):S1-S20.

Kilgore, T., Malia, M., DiGiacinto, B., Minter, S., Samies, J. Adjuvant Lymphatic Osteopathic Manipulative Treatment in Patients with Lower-Extremity Ulcers. Effects on Wound Healing and Edema. *Journal of the American Osteopathic Association* 118:12 798-805. doi 10.7556/jaoa.2018.172.

Serena, T., Bayliff, S., Brosnan, P., DiMarco, D., Doner, B., Guthrie, D., Patel, K., Sabo, M., Samies, J., Carter, M. Bacterial protease activity as a biomarker to assess the risk of non-healing in chronic wounds: Results from a multicentre randomised controlled clinical trial. *Wound Repair and Regen.* 2021. doi.org/10.1111/wrr.12941.

### **Research Presentations**

Samies, J., Gehling, M., Unanticipated benefit of ultrasonic MIST™ therapy on chronic wound pain – Abstract and Oral Presentation .Symposium on Advanced Wound Care 2005.

Samies, J., Gehling, M. A novel approach to management of complicated wounds with exposed tendon, bone and joint utilizing MIST™ ultrasound – Abstract and Poster . Symposium on Advanced Wound Care 2006.

Samies, J. Gehling, M., Limb salvage in bilateral ischemic leg ulcers with exposed tendons with ultrasound and bilayered cell therapy- Abstract and Poster . Symposium on Advanced Wound Care 2006

Samies, J., Gehling, M. Results of a non-invasive protocol for healing leg ulcerations in sickle cell anemia utilizing non-contact ultrasound and bilayered living cell therapy- Abstract and Poster . Symposium on Advanced Wound Care 2007

Samies, J., Gehling, M. Acoustic pressure wound therapy (APWT) for outpatient full thickness burn management in a rural wound center- Abstract and Poster . Symposium on Advanced Wound Care 2008

Gehling, M, Samies, J. Predictive value of swab cultures for diagnosis of osteomyelitis in diabetic foot ulcers: Critical literature analysis – Abstract and Poster. Symposium on Advanced Wound Care 2009  
Serena, T., Cullen, B., Bayliff, S., Gibson, M., DeMarco, D., Galbraith, J., Mancinelli, M., Sabo, M., Samies, J., Protease Activity Levels Associated with Healing Status of Chronic Wounds. Abstract and Poster. Symposium on Advanced Wound Care 2012.

Gehling, M, Samies, J. DAMA (Dehydrated Amniotic Membrane Allograft) has proven healing efficacy in chronic wounds with multiple etiologies and levels of chronicity and has become a necessary tool in our Advanced Wound Healing center. – Abstract and Poster. Symposium on Advanced Wound Care

Gehling, M, Samies, J The Use of a New Purified Collagen Matrix to Support Healing in Recalcitrant Wounds.-Abstract and Poster . Symposium on Advanced Wound Care 2016

### **Medical Staff Responsibilities**

Medical Director, Regional Wound Center, The Regional Medical Center 1997-2017  
Medical Executive Committee, Sacred Heart Hospital 1994-1996  
Executive Committee of the Medical Staff, Lehigh Valley Hospital 1996-1997  
Quality Improvement Council, The Regional Medical Center 1999-2002  
Medical Executive Committee, The Regional Medical Center 2000-2001, 2005-2006, 2012-2014 , 2020-present Chairman 2006, Vice Chairman 2012 Chair 2022-present  
Quality Committee of the Medical Staff, The Regional Medical Center 2000-2003, 2005-2019  
Physicians Information Technology Committee, The Regional Medical Center, Chairman 2000-2003  
Physicians Information Technology Committee, The Regional Medical Center, Member 2004-2008  
Safety Subcommittee of Quality Committee, The Regional Medical Center, 2001-2006 Chairman 2001-2003, 2005-2020  
Safety Subcommittee of Quality Committee, The Regional Medical Center, Co-Chairman 2004  
Board of Trustees- The Regional Medical Center, 2006, 2020- present  
Chair, Quality Committee Board of Trustees The Regional Medical Center 2022- present  
Member Management Oversight Committee Board of Trustees The Regional Medical Center 2022-present  
Member Finance Committee Board of Trustees The Regional Medical Center 2022- present  
Peer Review Subcommittee of Quality Committee, The Regional Medical Center, 2007-2008  
Infection Control Committee Lehigh Valley Hospital 1985-1997  
Infection Control Committee Sacred Heart Hospital Chairman 1985-1997  
Infection Control Committee The Regional Medical Center Chairman 1997- present  
Pharmacy Committee Sacred Heart Hospital 1985-1997  
Pharmacy Committee The Regional Medical Center 1997-2005, 2007—2011  
Chief of Medical Staff , The Regional Medical Center 2020-2021

### **Teaching**

Teaching attending in Infectious Diseases Lehigh Valley Hospital 1985-1997  
Top 20 teaching attending in Internal Medicine 1992-1995  
Clinical Assistant Professor of Medicine in College of Medicine of the Pennsylvania State University- Milton S, Hershey School of Medicine 1995-1997  
Lecturer, Via College of Osteopathic Medicine, South Carolina Campus 2011-2012  
Host Committee Member – Symposium on Advanced Wound Care 2006-2019  
Assistant Professor, Clinical Track , Via College of Osteopathic Medicine ,SC Campus 2013-present

### **Community Activities**

Alpha Phi Omega National Service Fraternity, Chapter President 1975-1976  
Coordinating Council of Muhlenburg College Volunteer Services 1975-1976  
Troop 24/Pack 24 Scoutmaster Boy Scouts of America 1974-1976  
Pack 431 Cubscouts Den Leader 1995-1997  
Troop 45 Committee 2000-2007 Chairman 2005-2007  
Eagle Scout/Order of the Arrow  
Critical Incident Group – Orangeburg County Emergency Management Services 2001-2003  
Orangeburg-Calhoun Technical College Associate Degree in Nursing Advisory Committee 2009-2020  
South Carolina State Health Planning Committee 2012-2013  
Consultant with Carolinas Center for Medical Excellence in CMS Pressure Ulcer Initiative

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**Jan 24 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable T. Scott Beck, Commissioner

Appellate Case No. 2024-001935

S.C. W.C.C. File No. 2118696

Serge Wandji, Claimant,.....Appellant,

v.


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

**PROOF OF SERVICE**

The undersigned hereby certifies that she served the above-named Appellant, Serge Wandji, with a copy of the attached REPLY TO RETURN TO MOTION TO EXCLUDE CERTAIN MATTERS DESIGNATED BY THE APPELLANT FROM THE RECORD ON APPEAL, this 24<sup>th</sup> day of January 2025, by emailing and depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to his attorney of record, as follows:

Serge Wandji  
579 Folly Road, P.O. Box 12112  
Charleston, SC 29422  
sergewandji@gmail.com

January 24, 2025

  
Roy A. Howell, III, S.C. Bar #11888  
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TRASK  
HOWELL  
WORKERS' COMPENSATION DEFENSE

*Reply to*  
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January 24, 2025

*Via Regular Mail and Email-ctappfilings@sccourts.org*

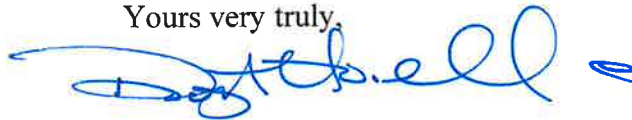
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

Re: Serge Wandji v. The Regional Medical Center  
W.C.C. File No.: 2118696  
**Appellate Case No. 2024-001935**  
Carrier File No.: WC2021098080  
Date of Accident: August 27, 2021

Dear Ms. Kitchings:

Enclosed for filing, please find the Respondents' Reply to Return to Motion to Exclude Certain Matters Designated by the Appellant from the Record on Appeal, along with our Proof of Service serving the Appellant with the same. As always, thank you for your time and consideration of this matter.

Yours very truly,



Roy A. Howell, III

RAHIII/mbm/les

Enc.

cc: Sandra Axson, Antum Risk (w/enc.) (email/upload)  
Tiffany Kirby, MUSC Health-Orangeburg (w/enc.) (email only)  
Mr. Serge Wandji (w/enc.) (email and regular mail)

