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SC Court of Appeals

**THE 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.

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

v.

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

REPLY BRIEF OF THE APPELLANT

Appellate Case No. 2024-001935

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I. INTRODUCTION

This Reply Brief addresses the fundamental deficiencies in the Respondents' Initial Brief. Instead of responding to the serious legal and factual issues raised in this appeal, the Respondents have relied on procedural diversions, misstatements, and selective omissions. Their brief fails to rebut the core arguments presented by Appellant and instead ignores or mischaracterizes critical evidence and procedural history. Specifically, the Respondents:

- Fail to dispute the disqualifying conflict of interest affecting their primary expert witness, Dr. John H. Samies;
- Rely on testimony that was later discredited under oath;
- Ignore newly discovered evidence that substantially undermines their defense;
- Attempt to downplay clear violations of due process and ethical obligations;
- Provide no witness testimony to support their central claim of non-work-related COVID-19 exposure;
- Remain silent on allegations of retaliation and HIPAA violations;
- Misrepresent the procedural record in an effort to shield unexamined expert opinion from scrutiny.

This Court should not be misled by these tactics. The record, as supplemented by Dr. Samies' deposition and other unrebutted facts, shows that the underlying decision was based on unreliable evidence and warrants reversal and remand for a fair adjudication.

II. THE MOTION TO REOPEN WAS TIMELY AND SUPPORTED BY NEWLY DISCOVERED EVIDENCE

Respondents assert that the conflict-of-interest evidence related to Dr. John H. Samies was or should have been known during the initial proceedings. This is incorrect. The following material facts only came to light during Dr. Samies' deposition, taken in September 2024 in separate civil litigation: Key Post-Hearing Admissions:

1. **Board Membership:** Dr. Samies confirmed he was a sitting member of TRMC's Board of Trustees when authoring the expert letter (Tr. p. 5, ll. 11–16).
2. **Department Leadership:** He chaired TRMC's Infection Control Department—the very unit that commissioned his “expert” letter (Tr. p. 6, ll. 16–25).
3. **Speculative Opinion:** He speculated about non-employment COVID-19 exposure without factual support (Tr. p. 14, l. 5).
4. **Lack of Personal Knowledge:** He conceded he lacked key facts and relied on assumptions rather than direct knowledge (Tr. pp. 26–27).
5. **No Compensation or Retainer:** He admitted to receiving no payment for the report and was never retained as an independent expert (Tr. p. 7, ll. 3–5).
6. **Regret and Ambiguity:** He testified he wasn't sure he would agree to serve as a witness again in such a matter (Tr. p. 28, l. 23).
7. **Conceded Exposure:** He acknowledged that Appellant, as a hospital nurse, was indeed exposed to COVID-19 during the relevant time period (Tr. p. 31, ll. 22–23).

These facts were absent from the written opinion of Dr. Samies and were not disclosed in his CV or other submitted documentation, --with the exception of the first two ones which were subtly embedded in Dr. Samies' three pages CV, which listed numerous affiliations without disclosing governance or fiduciary roles relevant to impartiality. Thus, these facts meet the criteria for "newly discovered evidence" under Rule 60(b)(2). See *Lanier v. Lanier*, 364 S.C. 211, 612 S.E.2d 456 (Ct. App. 2005).

Mr. Howell's Concession in the Record:

- In footnote 18 of page 20 in Respondents' Initial Response Brief, Mr. Howell acknowledges that the Court denied the Motion to Strike references to Dr. Samies' deposition. He nevertheless refuses to address the substance of the deposition, asserting it does not alter Dr. Samies' prior written opinion.

However, this position is directly refuted by the record:

- The deposition was included in Appellant's Designation of Matter #6, which was accepted by the Commission.
- The November 1, 2024 Motion Order by Commissioner T. Scott Beck explicitly lists the deposition as Exhibit #1 titled: "**Dr. Samies Deposition Excerpts (Newly Discovered Evidence).**"

This conduct highlights a troubling contradiction: Mr. Howell and the Respondents relied heavily on Dr. Samies' written opinion while seeking to exclude or ignore testimony that undermines its reliability. This selective engagement with the evidentiary record—embracing written 'expert' opinion while evading sworn deposition testimony from the same witness—raises substantial due process concerns and reveals a defense strategy intent on avoiding full and fair evaluation of the facts. The deposition testimony is not only relevant but essential to a just outcome in this case.

III. SUMMARY OF THE ARGUMENT

Respondents' brief largely sidesteps the merits of this appeal and instead relies on procedural distractions and unfounded criticisms of Appellant's format and citations. This deflection tactic fails to engage with the substance of the claims and highlights the weakness of their position.

Notably, Respondents cannot contest the following material points:

1. **False and misleading expert testimony:** Dr. Samies' statements in his written opinion are directly contradicted by his own deposition testimony.
2. **Disqualifying conflict of interest:** Dr. Samies served in key leadership roles within TRMC at the time he authored the expert letter, including as Chair of Infection Control and a member of the Board of Trustees.
3. **Lack of evidence supporting alternative exposure:** No fact or expert witness confirmed Appellant was exposed to COVID-19 outside the workplace.

4. **Unaddressed unlawful conduct:** TRMC engaged in coercive and retaliatory actions, including HIPAA violations, none of which are rebutted by Respondents.
5. **Newly discovered evidence:** Dr. Samies' sworn testimony includes material admissions not previously disclosed to the Commission.

By failing to address these core facts, Respondents implicitly concede their validity. The absence of any substantive rebuttal from Respondents confirms the necessity of appellate intervention and a remand for full and fair proceedings.

IV. RESPONDENTS FAILED TO ADDRESS THE CORE ISSUES ON APPEAL

Appellant's Initial Brief presented six well-supported Issues on Appeal, each grounded in evidence and applicable law. The Respondents' brief fails to meaningfully respond to any of them, instead resorting to vague denials and procedural distractions.

For clarity, the Appellant reasserts the unresolved Issues on Appeal:

1. **Denial of Motion to Reopen**

The Commission erred in denying reopening of the case despite the emergence of newly discovered, material evidence that contradicts core findings.

2. **Fraud and Misrepresentation**

Respondents relied on a manufactured expert opinion while concealing material conflicts of interest involving Dr. Samies.

3. **Improper Reliance on a Conflicted Expert**

Dr. Samies held leadership positions within TRMC and was not an independent, qualified expert under South Carolina law.

4. **Due Process Violations**

The Commission permitted speculative, untested expert opinion without giving Appellant a meaningful opportunity to cross-examine the witness.

5. Retaliatory and Unlawful Conduct

TRMC engaged in coercive and unlawful practices, including HIPAA violations, aimed at undermining Appellant's claim and employment.

6. Erroneous Application of Rule 60(b) and S.C. Code Ann. § 42-17-90

The Commission failed to apply equitable relief standards appropriately despite clear justification under newly discovered evidence and procedural misconduct.

Respondents failed to substantively rebut any of these claims. Their silence or generalized denials serve as implicit concessions. These unresolved issues go to the heart of procedural fairness and the integrity of the Commission's ruling, and they demand correction through appellate review.

V. LACK OF CANDOR

Respondents' representation to this Court that:

"The Commission never received Dr. Samies's September 2024 deposition testimony into evidence and never considered the substance of this testimony for any purpose" (Resp. Br. at 5),

is demonstrably false and directly contradicted by the record.

Evidence of Commission's Consideration

1. The Commission's **Motion Order dated November 1, 2024**, signed by Commissioner T. Scott Beck, **explicitly lists Dr. Samies' deposition excerpts as Exhibit #1**, labeled: "Dr. Samies Deposition Excerpts (Newly Discovered Evidence)."
2. This filing was part of Appellant's **Designation of Matter #6**, which was **accepted and reviewed** by the Commission.

Additionally, on November 4, 2024—just three days after Commissioner Beck issued his Motion Order—Respondents, in a transparent attempt to suppress the sworn testimony of their own expert witness, filed a Motion to Strike with the Commission (Designated as Matter #7 in this

appeal). The very next day, Appellant filed his Return to Respondents' Motion, which included as an exhibit the full deposition of Dr. John Samies. This filing, designated as Matter #8, was received, accepted, and reviewed by the Commission.

Moreover, in footnote 7 on page 19 of the Respondents' Brief filed before the Commission's Appellate Panel (Designated as Matter #11), Mr. Howell asserted that "*Dr. Samies' report was based upon [nothing] other than the facts.*" However, Dr. Samies' own sworn deposition testimony contradicts this assertion. Under oath, he admitted that his opinion was based on speculation and his personal "*understanding,*" not on verified or complete factual information.

Ethical Implications

- Mr. Howell's denial of this evidence—despite receiving the Motion Order and accompanying exhibits, and the Appellant Return to his Motion to Strike with exhibits—reflects a **knowing misrepresentation.**
- This conduct **violates Rule 3.3 of the South Carolina Rules of Professional Conduct**, which prohibits: 1. Knowingly making false statements of fact or law to a tribunal; 2. Failing to correct a false statement of material fact or law previously made.
- It also violates **Rule 208(b)(1)(B) of the South Carolina Appellate Court Rules**, requiring accurate citation and barring misrepresentation of the Record on Appeal.

Concealment of Conflict

Further, Mr. Howell:

- Solicited and submitted an "expert" opinion from Dr. Samies while knowing he was: 1. Chair of TRMC's Infection Control Department; 2. A sitting member of TRMC's Board of Trustees; 3. A member of TRMC's financial oversight committee; Thus, a conflicted and unqualified 'expert' witness in this case.
- Represented Dr. Samies in pre-hearing filings as an **independent physician** affiliated solely with Palmetto Infectious Disease Physicians, (Pg.15 of Designated Matter #11).

- Omitted all fiduciary affiliations of Dr. Samies with TRMC from filings and evidence. Mr. Howell is eager to present Dr. Samies as affiliated with **Palmetto Infectious Disease Physicians LLC**, but conveniently omits in the same filings that Dr. Samies is an Executive at TRMC (Defendants) and a Board of trustees' member in good standing.

This omission constitutes **intentional concealment of a material conflict of interest** and misleads the tribunal in violation of Rule 3.3. Presenting a **conflicted witness as independent** without full disclosure distorts the evidentiary record and undermines the fairness of the proceedings.

These ethical breaches, both procedural and substantive, warrant close scrutiny by this Court and support reversal and remand.

VI. REPLY TO RESPONDENTS' ATTEMPT TO DOWNPLAY NEWLY DISCOVERED EVIDENCE

Respondents argue that Dr. Samies' affiliations with TRMC were not "newly discovered" because some were noted in his curriculum vitae. This argument misrepresents the nature and significance of the newly uncovered facts.

Key Points of Newly Discovered Evidence

The following admissions were made under oath in Dr. Samies' September 2024 deposition and were not previously disclosed to the Commission:

1. **Board Membership:** Dr. Samies confirmed he was a sitting member of TRMC's Board of Trustees when authoring the expert letter (Tr. p. 5, ll. 11–16).
2. **Department Leadership:** He chaired TRMC's Infection Control Department—the very unit that commissioned his "expert" letter (Tr. p. 6, ll. 16–25).
3. **Speculative Opinion:** He speculated about non-employment COVID-19 exposure without factual support (Tr. p. 14, l. 5).
4. **Lack of Personal Knowledge:** He conceded he lacked key facts and relied on assumptions rather than direct knowledge (Tr. pp. 26–27).

5. **No Compensation or Retainer:** He admitted to receiving no payment for the report and was never retained as an independent expert (Tr. p. 7, ll. 3–5).
6. **Regret and Ambiguity:** He testified he ‘*doesn’t know*’ he would agree to serve as a witness again in such a matter (Tr. p. 28, l. 23).
7. **Conceded Exposure:** He acknowledged that Appellant, as a hospital nurse, was indeed exposed to COVID-19 during the relevant time period (Tr. p. 31, ll. 22–23).

Significance of the Evidence

These facts:

- Were not present in Dr. Samies’ expert letter or disclosed in any pre-hearing documents.
- Reveal substantial bias and conflict of interest.
- Contradict the foundation of Respondents’ defense.

Legal Standard

Under Rule 60(b)(2), this constitutes **newly discovered evidence** because it:

- Could not have been obtained through reasonable diligence before the hearing;
- Is material and not cumulative;
- Would likely produce a different result.

Conclusion

Respondents have failed to meaningfully refute the substance or legal weight of this newly discovered evidence. Their effort to minimize its impact only highlights the need for this Court to grant relief and remand for proceedings that include full and fair consideration of Dr. Samies’ sworn admissions.

VII. RESPONDENTS FAILED TO PRODUCE A SINGLE WITNESS TO SUPPORT THEIR CENTRAL DEFENSE AND THE RIGHT TO CROSS-EXAMINE WITNESS

Respondents' central defense—that Appellant contracted COVID-19 from a non-work-related source—was unsupported by any witness testimony.

Failed Promise of Witnesses

In their pre-hearing filings (Designated Matter # 10) , Respondents claimed they would present witnesses from Employee Health who will testify that Appellant reported a possible out-of-hospital exposure. That promise collapsed at hearing:

1. **Kelci Caruso** (Employee Health): “No sir, I don’t recall you telling me where you were exposed.” (Tr. 108:1–4; Designated matter # 9)
2. **Kellie Evans** (Employee Health): “I stated that you were exposed. I did not say that you stated you were exposed outside of the hospital.” (Tr. 115:6–8; Designated Matter # 9)
3. **Commissioner Beck** acknowledged the lack of evidence for alternative exposure: “Mr. Wandji, we’ve already made the point clear.” (Tr. 115:20–116:16)

Ethical and Strategic Failures

Instead of calling credible witnesses, Respondents:

- **Relied solely on the written opinion of Dr. Samies**, whose deposition later discredited his conclusions.
- **Listed Dr. Samies as a hearing witness** in their pre-hearing brief but then failed to notify or produce him (Dr. Samies’Tr. 31:2–8).

This maneuver deprived Appellant of his due process right to cross-examine the witness forming the backbone of the defense.

Obstruction of Deposition

- Appellant later pursued a civil court order to depose Dr. Samies.
- Respondents **retained separate counsel to oppose this deposition**—a clear effort to prevent further scrutiny.

- It took **over a year of litigation** to obtain a court order compelling the deposition.

Legal Significance of Cross-Examination

The right to cross-examine is fundamental:

- “Due process requires that a party be given an opportunity to be heard in a meaningful way, which includes the right to cross-examine adverse witnesses.” *Sanders v. MeadWestvaco Corp.*, 371 S.C. 284, 296, 638 S.E.2d 66, 72 (Ct. App. 2006).
- Rulings based on unchallenged testimony are subject to reversal. *Mills v. Spartanburg Cty.*, 264 S.C. 458, 215 S.E.2d 152 (1975).
- Procedural obstruction of testimony may constitute bad faith. *Austin v. Specialty Transp. Servs., Inc.*, 394 S.C. 164, 714 S.E.2d 298 (Ct. App. 2011).

Final Consideration

As emphasized in *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108 (2014), courts must scrutinize evidence where credibility is untested or compromised by conflict. Here, Respondents presented no credible, live witness and instead relied on testimony they actively sought to shield from scrutiny.

Their continued reliance on a discredited expert—and their refusal to allow cross-examination—violates both due process and the standards of fair adjudication. This Court should not reward such conduct.

VIII. PATTERN OF RETALIATION, HIPAA VIOLATIONS, AND COERCIVE CONDUCT IGNORED

Respondents completely ignore multiple, well-documented acts of retaliation, coercion, and privacy violations—each of which directly impacts the fairness and integrity of the proceedings.

Unrefuted Acts by Respondents:

1. COVID-19 Billing Misconduct:

- TRMC billed Appellant for treatment related to a COVID-19 infection likely acquired while on duty.
- These charges were impermissible under the CARES Act.

2. Coercive Settlement Offer:

Respondents offered to waive these charges only if Appellant agreed to release all claims—a practice that violates public policy.

3. HIPAA Violations:

Appellant’s personal health information (PHI) was sent via unencrypted email to unauthorized recipients, without consent.

4. Fabricated Leave Documentation:

TRMC generated and ‘*approved*’ a backdated leave of absence not requested or submitted by Appellant, attempting to undermine his claim (Designated Matter # 17).

5. Retaliatory Termination:

Despite medical clearance to return to work, TRMC refused to reinstate Appellant and ultimately terminated him.

Legal Support for Relief

These actions are not only unethical but **actionable** under South Carolina law:

- *Clark v. Aiken County Hospital*, 366 S.C. 102, 620 S.E.2d 99 (2005) (recognizing the viability of retaliatory discharge claims).
- *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 767 S.E.2d 362 (2014) (establishing scrutiny over tainted and unsupported defenses).

Conclusion

The Respondents' silence in their Initial Response Brief on each of these points amounts to implicit admission. This pattern of misconduct underscores the need for appellate correction and equitable relief.

IX. RESPONDENTS' RELIANCE ON PROCEDURAL EVASION IS INSUFFICIENT

Rather than directly addressing the legal and factual issues raised on appeal, Respondents rely on procedural technicalities to avoid accountability.

Procedural Tactics Employed by Respondents:

1. Timeliness Argument:

Claiming Appellant waived appeal rights based on timing, despite clear grounds for equitable tolling due to newly discovered evidence.

2. Rule 60(b) Inapplicability Argument:

Asserting Rule 60(b) does not apply in workers' compensation cases, even though equitable principles are regularly invoked by South Carolina courts in such matters.

3. Form over Substance:

Criticizing Appellant's formatting and citations rather than addressing the underlying merits of the claim.

Legal Rebuttal

- South Carolina courts have consistently held that **procedural rules must not be used as a shield for injustice.**
- In *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 536 S.E.2d 698 (Ct. App. 2000), the court made clear that substantive rights take precedence over procedural form.
- *Ledford v. Dep't of Public Safety*, 341 S.C. 89, 533 S.E.2d 314 (2000) reaffirmed that equitable considerations may override rigid procedural constraints when fairness so demands.

Conclusion

The Respondents' arguments are a transparent attempt to avoid scrutiny. None of these procedural defenses address the un rebutted evidence of conflict, misrepresentation, or ethical misconduct. They are insufficient to sustain the Commission's ruling and should be rejected in favor of substantive review and correction.

X. THE COMMISSION'S RULING RELIED ON BIASED TESTIMONY AND VIOLATED EXPERT EVIDENCE STANDARDS

The Commission's ruling was largely based on the written opinion of Dr. John Samies—an opinion later discredited by his own sworn deposition testimony.

Flawed Reliance on Written Opinion

1. The Commission cited Dr. Samies' conclusion that Claimant's COVID-19 infection was "unlikely" work-related (APA #58, p. 144).
2. However, this opinion was based on speculation and incomplete information.
3. Furthermore, in footnote 7 on page 19 of the Respondents' Brief submitted to the Commission's Appellate Panel (designated as Matter #11), Mr. Howell claimed that "*Dr. Samies' report was based upon [nothing] other than the facts.*" This claim, however, is directly contradicted by Dr. Samies' own sworn deposition testimony. Under oath, Dr. Samies acknowledged that his opinion was not grounded in verified or complete factual information, but rather in speculation and his personal "understanding." (Tr. pp. 11, 14).

Key Deposition Concessions by Dr. Samies

- **Lack of Knowledge:**

Admitted he lacked specific knowledge of Appellant's exposure circumstances (Tr. pp. 26–27).

- **Speculation and Assumptions:**

Claimed his conclusion was based on his “understanding” and “what [he] gleaned from Employee Health records” (Tr. pp. 11, 14).

- **Confirmed Workplace Exposure:**

Acknowledged that Appellant was exposed to COVID-19 at the hospital while treating COVID-positive patients (Tr. p. 31, ll. 22–23).

Legal Standards for Expert Testimony

Under South Carolina law and federal evidentiary principles:

- Expert testimony must be grounded in facts and reliable methodology—not speculation.
- *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *State v. Galbreath*, 359 S.C. 398, 597 S.E.2d 845 (2004) establish that unsupported expert conclusions are inadmissible.

Evidentiary Gap

- No alternative source of exposure was ever identified by Respondents.
- No other expert or fact witness corroborated Dr. Samies’ opinion.

Conclusion

The Commission’s reliance on Dr. Samies’ unsupported, conflicted, and untested opinion violates basic standards for admissibility and reliability of expert evidence. That reliance—without the benefit of cross-examination or disclosure of bias—renders the ruling fundamentally unfair and unsupported by substantial evidence. This Court should reverse and remand for proceedings based on credible and independent testimony.

XI. RULE 60(b) PROVIDES AN EQUITABLE REMEDY FOR INJUSTICE

Respondents argue that Rule 60(b) is inapplicable in this case, but this ignores the equitable discretion available to both the Commission and this Court.

Applicability in Workers’ Compensation Context

1. While the South Carolina Rules of Civil Procedure do not strictly bind the Workers' Compensation Commission, **Rule 60(b)'s equitable principles** are regularly referenced in appellate review.
2. *Frame v. Resort Servs., Inc.*, 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004) supports applying Rule 60(b) standards where fairness and justice demand review.

Grounds Satisfied Under Rule 60(b)

Appellant meets the criteria for relief under Rule 60(b)(2) and 60(b)(3):

- **Newly Discovered Evidence (60(b)(2)):**

Dr. Samies' deposition reveals critical information that was unavailable at the time of the original hearing. These facts are material, non-cumulative, and would likely change the outcome.

- **Fraud, Misrepresentation, or Misconduct (60(b)(3)):**

Concealing Dr. Samies' conflicts as an Executive and a Board of Trustees member at the Defendant (TRMC) and presenting him as an independent expert from *Palmetto Infectious Disease Physicians* in his filings (Pg. 15 of Matter# 11) constitutes misrepresentation.

Statutory Support for Reopening

- **S.C. Code Ann. § 42-17-90** permits reopening where there is a "change in condition."

Here, the change is **evidentiary**, not physical—the deposition testimony materially alters the evidentiary landscape.

Conclusion

Equity demands a remedy. The denial of Appellant's motion to reopen—despite new, discrediting testimony and procedural misconduct—conflicts with the principles of justice embedded in Rule 60(b) and § 42-17-90. The record now compels appellate intervention.

XII. CONCLUSION AND PRAYER FOR RELIEF

The Respondents' failure to rebut the material facts, their reliance on discredited and conflicted testimony, and their procedural and ethical misconduct all demonstrate that the Commission's ruling cannot stand. This appeal is not based on mere disagreement with the outcome—it is based on procedural unfairness, misleading evidence, and a denial of due process.

Appellant Respectfully Requests the Following Relief:

1. **Reversal** of the Workers' Compensation Commission's denial of the Motion to Reopen;
2. **Remand** for a full and fair hearing that includes Dr. Samies' deposition and other newly discovered evidence;
3. **Sanctions or equitable relief** for the retaliatory conduct, HIPAA violations, and procedural misconduct perpetrated by the Respondents;
4. **Any further relief** this Honorable Court deems just and appropriate under the circumstances.

Respectfully submitted this 10th day of April, 2025.

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April 10, 2025

South Carolina Court of Appeals

The Honorable Jenny Abbott Kitchings

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

Dear Mrs. Kitchings,

Enclosed herewith for filing, please find the **Reply Brief of the Appellant** with accompany Proof of Service, in the above-referenced matter. By copy of this letter, I am serving the Defendants Attorney Mr. Roy A. Howell, III, with a copy of these documents via email and regular mail. If you should have any questions, please do not hesitate to contact me.

Yours very truly,

s/Serge Wandji
Appellant (Pro Se)

Enc.

cc. Roy A. Howell, III (w/enc.) (email/mail)