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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.

FINAL BRIEF OF THE RESPONDENTS

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Table of Contents

Table of Authorities

Cases

Statutes

Regulations

Court Rules

Other Authorities

Issues on Appeal

I. Did the Appellant effectively abandon all of his arguments on appeal and does the Appellant's Brief otherwise fail to comply with the Appellate Court Rules?

II. Was the Appellant's Motion to Reopen his claim properly denied by the Workers' Compensation Commission pursuant to S.C. Code Reg. 67-215(B)?

III. Did the Appellant fail to present any "newly discovered" evidence or legal authority to support the Motion to Reopen his claim?

IV. Are the Appellant's arguments regarding the admissibility, reliability, and weight accorded to the expert opinions of Dr. Samies properly before the Court of Appeals?

V. Did the Appellant fail to present any evidence of fraud, misrepresentation, or "bad faith" and are his legal arguments with respect to these issues otherwise without merit?

Statement of the Case

The Appellant, Serge Wandji, seeks appellate review of the Workers' Compensation Commission's Order dated November 1, 2024 (R. p.52), denying the Appellant's "Motion to reopen case or request for modification based on extraordinary circumstances" dated October 4, 2024 (R. pp.54—55). The Respondents, the Regional Medical Center and Antum Risk, contend that the Commission committed no legal error in denying the Appellant's Motion and respectfully request affirmation by the Court of Appeals.

The Appellant filed a Form 50 with the Workers' Compensation Commission on September 9, 2022, alleging an "infection of whole body" (COVID-19) due to an alleged injury

on August 27, 2021, in Orangeburg, South Carolina. (R. p.383). The Respondents filed a Form 51 on October 7, 2022, denying the claim and raising affirmative defenses under S.C. Code Ann. § 42-11-10, *et seq.*. (R. p.388). Specifically, the Respondents denied that the Appellant suffered any injury or illness arising out of or in the course of his employment and denied that he is entitled to any medical or compensation benefits based on the Appellant's failure to meet his statutory burdens of proof. (R. p.329; p.194). The Respondents further contended that COVID-19 is one of the ordinary diseases of life for which more than 32% of the population of South Carolina has tested positive; therefore, the Appellant bore the burden of proving that he was infected with COVID-19 "naturally and unavoidably" from an accident arising out of and in the course of his employment and that his employment, which required him to wear an N-95 mask while working with a population subject to stringent COVID testing protocols, placed him at an increased risk of such infection. (R. p.329; p.194). In addition, the Respondents specifically argued that the Appellant failed to meet his burden of proving his entitlement to medical benefits with expert medical evidence stated to a reasonable degree of medical certainty as required by S.C. Code Ann. § 42-15-60, and he otherwise failed to meet his burden of proving any loss of wage earnings capacity after reaching maximum medical improvement by January 14, 2022, or at the latest May 14, 2022, when the Appellant began working for a new employer.[1] (R. p.330; p.195; p.197 lines 6—13).

Following a hearing on February 16, 2023, Commissioner T. Scott Beck concluded by Order dated May 31, 2023, that the Appellant's alleged injuries (a COVID-19 infection and related symptoms) were not caused naturally or unavoidably by any alleged accident on or about

[1] The Appellant also earned his Ph.D. from the University of South Carolina during the pendency of this workers' compensation claim. (*See* R. p.377, para.4).

August 27, 2022, and that his alleged injuries did not otherwise arise out of or in the course of his employment as required by S.C. Code Ann. § 42-1-160. (R. p.32). Commissioner Beck further concluded that, pursuant to S.C. Code Ann. § 42-11-10, the Appellant's employment did not subject him to hazards in excess to those ordinarily incident to employment, that COVID-19 was not peculiar to the Appellant's occupation, and that the disease was neither directly caused by, nor especially incident to, nor the natural consequence of the Appellant's work. (R. pp.32—33). Accordingly, the Appellant's claim for benefits related to COVID-19 was denied. (R. p.33).

The Appellant subsequently filed a Form 30 seeking review by the Commission's Appellate Panel raising four grounds for appeal. (R. pp.373—381). After receiving briefs and oral arguments, the Commission's Appellate Panel affirmed Commissioner Beck by final Decision and Order dated March 8, 2024. (R. pp.34—50). The Appellant did not file a Motion to Reconsider the Appellate Panel's final Decision and Order within five days, as permitted by S.C. Code Reg. 67-215(B), and he did not file any appeal to the Court of Appeals within 30 days, as was his right under S.C. Code Ann. § 42-17-60. Therefore, the findings of fact and conclusions of law contained in the Commission's March 8, 2024, Decision and Order are the law of the case and not subject to review by the Court of Appeals.

On October 4, 2024 -- seven months after the Commission issued its final Decision and Order -- the Appellant filed a Motion to "reopen claim or request for modification" (R. pp.53-- by which he attempted to improperly re-argue the merits of his claim, particularly the weight to be accorded to the written opinions of Dr. John H. Samies, which the Appellant, himself, had submitted into evidence at the February 16, 2023, hearing before Commissioner Beck. (R. p.42 at fn. 1, p.529). The Appellant's October 4, 2024, Motion cited only Rule 60(b), SCRCP, and

S.C. Code Ann. § 42-17-90,[2] but contained no exhibits or supporting affidavits. The Appellant's Motion to Reopen his claim raised only three grounds. First, the Appellant alleged that the fact that Dr. Samies served on the board of the Regional Medical Center was "newly discovered" by the Appellant in September 2024 during the course of civil litigation. (R. p.54; *contra* R. p.378, p.580), Second, the Appellant argued that he was previously unaware of Dr. Samies's affiliation with the Regional Medical Center because of some unspecified fraud or misrepresentation. (R. p.54; *contra* R. p.378, p.580). Third, the Appellant claims that the Commission was also previously unaware of this affiliation and potential bias and that this may have affected the Commission's prior decision. (R. p.54; *contra* R. p.378, p.580, p.42 at fn.1).

The Respondents filed a Return to the Appellant's Motion to Reopen his claim on October 11, 2024, arguing that the Appellant's Motion was untimely, improper, and without merit. (R. pp.58—64). Specifically, the Respondents pointed to the fact that Dr. Samies's *curriculum vitae*, which was admitted into evidence at the time of the original hearing before Commissioner Beck as Respondents' APA 12 (R. p.580), clearly documents Dr. Samies's affiliations with the Regional Medical Center. (R. p.64). Therefore, this information was not "newly discovered" in October 2024, or even "new" to the Appellant (or the Commission) at that time, and this information certainly was never misrepresented by the Respondents or concealed from the Appellant. (R. p.378, p.580, p.42 at fn.1). In addition, the Respondents' Return argued that the Appellant's Motion was contrary to the applicable legal authorities; including S.C. Code

[2] S.C. Code Ann. § 42-17-90 governs changes in a claimant's physical condition after an award is made. There is no allegation (much less proof) of a physical change of condition for the worse in this claim and S.C. Code Ann. § 42-17-90 is wholly inapplicable. *See* Causby v. Rock Hill Printing & Finishing Co., 249 S.C. 225, 227, 153 S.E.2d 697, 698 (1967).

Ann. § 42-17-60, which mandates that the Commission's March 8, 2024, Decision and Order is conclusive and binding because it was not appealed, and S.C. Code Reg. 67-215(B), which provides that the "Commission will not address a motion involving the merits of the claim." (R. pp.60—63).

On October 23, 2024, the Appellant belatedly attempted to file a Reply to the Respondent's Return in which he raised the same three arguments, but also repeatedly referenced, quoted, and exhibited excerpts from a deposition of Dr. Samies taken on September 17, 2024. (R. pp.66-77). This deposition was never timely or properly submitted into evidence before the Workers' Compensation Commission. Instead, the deposition of Dr. Samies was taken by the Appellant during the course of independent civil litigation he initiated the Orangeburg County Court of Common Pleas (2023-CP-38-00331) some 19 months after the record closed in his workers' compensation claim. (R. p.79). The deposition of Dr. Samies is not part of the record in his workers' compensation claim because the Appellant made no attempt to depose Dr. Samies in his workers' compensation claim and made no attempt submit the deposition at any time prior the Commission issuing the final Decision and Order on March 8, 2024. (R. p.42 at fn.1). This deposition would not have been admissible even if it had been timely proffered in accordance with S.C. Code Reg. 67-612 because the deposition was taken without notice to the undersigned counsel for the Respondents. Accordingly, on October 31, 2024, the Respondents filed a Motion to Strike the Appellant's October 23, 2024, Reply, including the exhibited portions of the transcript of Dr. Samies's deposition, which the Commission granted by Order dated December 23, 2024. (R. pp.141—144; *see also* January 16, 2025, Motion to Strike Ex.7 & 8). The Commission never received Dr. Samies's September

2024 deposition testimony into evidence and never considered the substance of this testimony for any purpose.[3]

On November 1, 2024, the Workers' Compensation Commission issued an Order denying the Appellant's Motion to "reopen claim or request for modification" on the basis that it goes to merits of the claim, which is expressly prohibited by S.C. Code Reg. 67-215(B). (R. p.52). The present appeal ensued.

Arguments

I. The Appellant has effectively abandoned all of his arguments on appeal and the Appellant's Brief otherwise fails comply with the Appellate Court Rules.

The Respondents respectfully contend that none of the arguments raised in the Appellant's Brief are supported by citation to competent legal authority and the Appellant's

[3] The Appellant's Brief makes extensive references to the alleged deposition testimony of Dr. Samies. By Order dated February 26, 2025, the Court of Appeals ruled that the transcript of Dr. Samies's deposition -- designated by the Appellant as matter "9" -- should be excluded from the Record on Appeal. (R. p.565, p.555). However, the Court denied the Respondents' Motion to Strike references to and purported quotations from this deposition transcript contained the Appellant's Brief, as well as references to other evidence that is not part of the Record on Appeal, including the substance of confidential settlement negotiations. [*Note*: After the Respondents' Initial Brief was filed, the Court of Appeals ruled by Order dated June 3, 2025, that "although this court struck the transcript of the deposition of Dr. Samies from Appellant's designation of matter on February 26, 2025, ... [a]fter careful consideration, we deny Respondent's [sic] motion to exclude the deposition of Dr. Samies from the record on appeal."]

Brief otherwise fails to comply with the Appellate Court Rules.[4] While the Appellant's Brief does contain citations, careful inspection of these citations reveals that the cases do not actually stand for the propositions for which they are cited. In fact, several citations are fabricated from whole cloth. Respectfully, this means that not only are the Appellant's arguments unsupported by legal authority, but they are rendered frivolous under Rule 269, SCACR, which alone warrants denial of the appeal.[5] Indeed, all of the Appellant's arguments should be deemed abandoned. *See* Bryson v. Bryson, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) (holding an issue is deemed abandoned and will not be considered on appeal if the argument in the brief is unsupported by authority).

The Appellant's repeated and material misrepresentations to the Court not only indicate a lack of candor, but they represent a failure to comply with the Appellate Court Rules themselves, which require citation to actual legal authority. *See* Rule 208(b)(1)(E) and Rule 268, SCACR. In addition, the Respondents respectfully contend that the Appellants' multiple

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[4] The sole exception is the Appellant's citation of Frame v. Resort Services, Inc., 357 S.C. 524, 593 S.E.2d 491, 493 (Ct. App. 2004), which can reasonably be cited for the definition of the "substantial evidence" standard of review. With respect to the standard of review, the Appellant also improperly cites Shatto v. McLeod Regional Medical Center, 406 S.C. 470, 753 S.E.2d 416 (2013) for the proposition that the Commission's "legal conclusions are reviewed de novo." However, Shatto does not address the standard of review applicable to legal conclusions of the Commission but instead involves the review of jurisdictional questions of fact, which is irrelevant to the case *sub judice*.

[5] The Respondents respectfully contend that the South Carolina Supreme Court's Interim Policy on the Use of Generative Artificial Intelligence, which reminds litigants "that they are responsible to ensure the accuracy of all work product," may also be implicated in the present case. *See* Appellate Case No. 2025-000043.

misrepresentations[6] render the Appellant's Brief frivolous under Rule 269, SCACR. As explained in Mata v. Avianca, Inc., 678 F. Supp. 3d 443, 448–49 (S.D.N.Y. 2023),

> "Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors ... There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity."[7]

All of these harms elucidated by the Mata court are equally implicated in the present case. Other courts that have faced similar issues with erroneous or "fake" citations have indicated that they constitute violations of legal citation requirements,[8] as well as ethical rules, and may merit "the

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[6] The Appellant also makes numerous misrepresentations about the substance of the exhibited deposition testimony of Dr. Samies, which was not part of the evidentiary record below and which otherwise does not qualify as "newly discovered evidence," even to the extent that this concept, or Rule 60, applies in the workers' compensation context.

[7] *Accord* Park v. Kim, 91 F.4th 610, 615 (2d Cir. 2024) (holding that "[a]n attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system") (quoting Mata v. Avianca, Inc., *supra*).

[8] *Pro se* litigants, like the Appellant, "are subject to the same procedural requirements as other litigants." *See* Muñoz v. United States, 28 F.4th 973, 978 (9th Cir. 2022); s*ee also* Cohen v. Cohen, 438 S.C. 9, 19, 881 S.E.2d 650, 655 (Ct. App. 2022) (holding that "the court will not

imposition of sanctions, including but not limited to dismissal." *See* Seyedkhashayar Mojtabavi v. Antony Blinken, et al. Additional Party Names: Merrick B. Garland, Nat'l Visa Ctr., United States Dep't of State, No. SA CV 24-1359 PA (ASX), 2024 WL 5316832, at *5 (C.D. Cal. Oct. 22, 2024);[9] Mescall v. Renaissance at Antiquity, No. 3:23-CV-00332-RJC-SCR, 2023 WL 7490841, at *1 n.1 (W.D.N.C. Nov. 13, 2023) (stating that "the use of artificial intelligence ... may result in sanctions or penalties when used inappropriately"); Moshrif v. King Cnty. Prosecution Off., No. 2:24-CV-01306-LK, 2024 WL 4494879, at *4 (W.D. Wash. Oct. 15, 2024) (holding that "[v]iolations of applicable law or rules may result in sanctions, even when such violations result from use of artificial intelligence"). The Respondents respectfully contend that the imposition of such sanctions, including dismissal of the appeal, are warranted in this case because of the Appellant's repeated false and misleading citations throughout his Brief, as well as the Appellant's repeated references to fake legal opinions with the intent to deceive the Respondents and the Court.

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hold a layman to any lesser standard than is applied to an attorney") (internal citations omitted); McCall v. A-T-O, Inc., 276 S.C. 143, 146, 276 S.E.2d 529, 530 (1981) (stating that the S.C. Supreme Court "has never held a layman to a lesser standard than attorneys").

[9] Seyedkhashayar Mojtabavi explains that "Local Rule 11-3.9.3 sets forth the requirements for citations to cases. Plaintiff's Opposition fails to comply with these requirements and … to the extent that Plaintiff has used a text-generative artificial intelligence tool (*e.g.*, ChatGPT) that has generated fake case citations, this is unacceptable. Plaintiff is warned that any violation of Local Rule 11-3.9 in the future may result in the imposition of sanctions, including but not limited to dismissal of this action."

II. The Appellant's Motion to Reopen his claim was properly denied by the Workers' Compensation Commission pursuant to S.C. Code Reg. 67-215(B).

Pursuant to S.C. Code Ann. § 42-17-60, an award of the Commission "is conclusive and binding as to all questions of fact." Because the Appellant did not appeal the Commission's March 8, 2024, Decision and Order to the Court of Appeals, the Commission's finding that that the Appellant's alleged injuries (a COVID-19 infection and related symptoms) were not caused naturally or unavoidably by any alleged accident on or about August 27, 2022, and the finding that his alleged injuries did not otherwise arise out of or in the course of his employment as required by S.C. Code Ann. § 42-1-160, are the conclusive and binding law of the case and not subject to review. (R. pp.34—51). According to the South Carolina Supreme Court, S.C. Code Ann. § 42-17-60 is a statute of repose. *See* Lloyd v. AT & T Nassau Metals Corp., 299 S.C. 207, 209, 383 S.E.2d 257, 259 (Ct.App.1989) (holding that the proper remedy for an error in a Commission order is a timely appeal to the courts and explaining that the time limit for administrative remedies under S.C. Code Ann. § 42-17-10 promotes the finality and certainty of Commission decisions and is "a rule of repose"). Accordingly, the Appellant forfeited the right to request review or reconsideration of the Commission's March 8, 2024, by failing to perfect a timely appeal in accordance with S.C. Code Ann. § 42-17-60, which alone warrants affirmation of the Commission's decision to deny the Appellant's Motion to Reopen his claim.

Sound policy supports the enforcement of time limits on the Appellant's administrative remedies. As explained by the Supreme Court in Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 411 S.C. 557, 560, 769 S.E.2d 847, 848–49 (2015), a "statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time." Capco of Summerville,

Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citing Langley v. Pierce, 313 S.C. 401, 403–04, 438 S.E.2d 242, 243 (1993)). "A statute of repose is typically an *absolute time limit* beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Id.* (emphasis added) (citing Langley, 313 S.C. at 404, 438 S.E.2d at 243). Thus, "[s]tatutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists.'" *Id.* (quoting Camacho v. Todd & Leiser Homes, 706 N.W.2d 49, 54 n. 6 (Minn.2005)). Respectfully, S.C. Code Ann. § 42-17-60 imposes an absolute time limit for review of the March 8, 2024, Decision and Order of the Commission and absolutely mandated denial of the Appellant's Motion to Reopen his claim for "modification" of this final Decision and Order, which was not appealed.

Consistent with S.C. Code Ann. § 42-17-60, the Commission promulgated S.C. Code Reg. 67-215(B), which states that the "Commission will not address a motion involving the merits of the claim." While the regulation provides 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," the Appellant's October 4, 2024, Motion was a clear attempt to reargue the merits of the claim, particularly the weight to be accorded the opinions of Dr. Samies, which were properly submitted into evidence by the Appellant, himself. (R. p.42 at fn.1, p.378, p.54, p.529). Therefore, the Commission properly denied the Appellant's Motion to "reopen claim or request for modification" as a matter of law pursuant to the plain terms of S.C. Code Reg. 67-215(B).

Additionally, S.C. Code Reg. 67-215(B), clearly and unequivocally states that "[a]ny motion for reconsideration must be made within five (5) days of the date that the order, opinion,

or award is served." (emphasis added). *See generally*, Strickland v. Richland Cnty. Legislative Delegation, 440 S.C. 438, 442, 892 S.E.2d 288, 290 (2023) (explaining "the prevailing rule of statutory interpretation is that the "use of words such as '*shall*' or 'must' indicates the legislature's intent to enact a *mandatory* requirement." (internal citations omitted; emphasis original). Here, the Appellant's Motion to Reopen his claim or to modify the Commission's March 8, 2024, Decision and Order was filed 210 days after the final Decision and Order was served upon the Appellant, which likewise mandated denial of his Motion. (R. p.34, p.56).

To the extent that the Appellant relies on S.C. Code Ann. § 42-17-90 because that statute empowers the Commission to review an award on the ground of "a change in condition," such reliance is misplaced. Firstly, a "change of condition," as the term is used in § 42-17-90, "means a change in the claimant's *physical condition* as a result of the original injury, occurring after the first award." Causby v. Rock Hill Printing & Finishing Co., 249 S.C. 225, 227, 153 S.E.2d 697, 698 (1967) (citing Cromer v. Newberry Cotton Mills, 201 S.C. 349, 23 S.E.2d 19) (emphasis added). The Appellant does not make any claim of a physical change of condition. In addition, review under § 42-17-90 is not available as an alternative to, or substitute for, an appeal under S.C. Code Ann. § 42-17-60. *Id.*

Therefore, the Respondents respectfully contend that the Workers' Compensation committed no legal error in denying the Appellant's Motion to "reopen claim or request for modification" pursuant to S.C. Code Reg. 67-215(B) and consistent with S.C. Code Ann. § 42-17-60. Accordingly, the Respondents respectfully request that the Commission's Order dated November 1, 2024, denying the Appellant's Motion to Reopen his claim, be affirmed.

III. The Appellant failed to present any "newly discovered" evidence in support of his Motion to Reopen his claim, which is otherwise not supported by the applicable law.

The Appellant argues that the Workers' Compensation Commission should have granted his Motion to "reopen claim or request for modification" of the Commission's final Decision and Order dated March 8, 2024, because he claims that when he deposed Dr. Samies in September 2024 during the course of civil litigation, he recognized 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. (R. p.54). However, these facts were clearly evidenced at the time of the February 16, 2023, hearing before Commissioner Beck. Indeed, the Respondents' APA p. 60, which the Respondents served upon the Appellant 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

Infection Control Committee The Regional Medical Center Chairman 1997- present

(R. p.580). 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 worker's compensation claim and that he could not have discovered this information "through reasonable diligence during the original proceedings," is wholly untenable. (*See, e.g.*, R. p.373 Appellant's Informal Brief dated August 14, 2023, at Question 3, and R. p.378 Appellant's Brief to the Commission's Appellate Panel dated August 14, 2023, at para. 2; *cf.* R. p.42 Appellate Panel Decision and Order dated March 8, 2024, at fn.1). The Appellant discovered this information by simply

reading the documents that were served upon him on January 12, 2024, and admitted into evidence on February 16, 2023. *See generally,* Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 21, 594 S.E.2d 478, 484 (2004) (holding that where a litigant could have discovered the new evidence prior to trial, he is not entitled to relief under Rule 60(b)(2)) (citing Bowman v. Bowman, 357 S.C. 146, 591 S.E.2d 654, (Ct.App.2004)); *see also* Lanier v. Lanier, 364 S.C. 211, 219, 612 S.E.2d 456, 460 (Ct. App. 2005) (explaining that evidence "in the possession of the party before the judgment was rendered is not newly discovered evidence that affords relief" and evidence that is "in possession of a party at the time of trial may not be 'discovered'") (internal citations omitted).

A. Due Process

The Appellant did not raise any due process argument in his October 4, 2024, Motion to Reopen his claim, with respect to the taking of Dr. Samies's deposition or any other issue that he now attempts to raise in his Brief to the Court of Appeals. (R. pp.53—55). Even if the Appellant had raised such an argument before the Commission, it would have failed because the Appellant made no attempt to depose or cross-examine Dr. Samies prior to the Commission issuing its final Decision and Order, or at any time during the course of his workers' compensation claim.[10] (*See* R. p.42 at fn.1). The Appellant's alleged failure to read or comprehend the evidence submitted and his concomitant failure to exercise the right to cross-examination does not render information already contained in the record "newly discovered," does not permit the Appellant to

[10] The Appellant did take the deposition of the Regional Medical Center's CEO during his workers' compensation claim, but he never raised the issue of deposing or cross-examining Dr. Samies despite his demonstrated knowledge of the process. (R. p.394; R. p.42 at fn.1)

reopen a final, unappealed Decision and Order, and certainly does not entitle the Appellant to submit new deposition testimony of Dr. Samies taken in the civil case (without notice to the Respondents' workers' compensation attorneys) under any legal theory, including Rule 60(b)(2), SCRCP, because there has been no exercise of due diligence.[11] As recognized by this Court in Bowman v. Bowman, 357 S.C. 146, 152, 591 S.E.2d 654, 657(Ct.App.2004), "South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where … the party could have discovered the evidence prior to trial." This "strong policy" also supports the Commission's denial of the Appellant's Motion to "reopen claim or request for modification."

Here, the Appellant further argues, without any basis in fact or law, that his right to due process was violated by the Respondents' alleged "misconduct, including "obstructing" the Appellant's attempts to depose Dr. Samies,[12] improperly influencing expert testimony, and

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[11] In Lanier v. Lanier, 364 S.C. 211, 220, 612 S.E.2d 456, 460 (Ct. App. 2005), this Court explained that

> "Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial. *Black's Law Dictionary* defines 'due diligence' as '[t]he diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.' *Id.* at 468 (7th ed.1999). 'Diligence looks not to what the litigant actually discovered, but what he or she *could* have discovered.' 12 *Moore's Federal Practice* § 60.42[5] (Matthew Bender 3rd ed.)."

[12] Again, the Appellant never raised the issue of deposing or cross-examining Dr. Samies at any time prior to the conclusion of his workers' compensation claim and at no time did the Respondents "obstruct" the Appellant. (R. p.42 at fn.1).

withholding critical information." Not only do the Respondents vehemently deny these allegations, but the Record is utterly devoid of any evidence to support them.[13] (R. p.42 at fn.1).

Additionally, the Appellant's Brief baselessly cites "*State v. Fletcher*, 354 S.C. 555, 562 (2003)" in support of this due process argument and claims that this case emphasizes "the importance of cross-examination in ensuring due process"[14] However, 354 S.C. 555 is actually the case of Trancik v. USAA Insurance, Co., 354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003), and 354 S.C. 562 is the case of *In re* Key, 354 S.C. 557, 582 S.E.2d 400 (2003). Neither Trancik, nor Key, mention due process or cross-examination whatsoever. While cases titled State v. Fletcher do exist in South Carolina, not a single one (published or unpublished) could be properly cited in support of an evidentiary due process claim.[15]

Most importantly, the Appellant had notice and opportunity to be heard at a full evidentiary hearing before Hearing Commissioner Beck on February 16, 2023, at which time he presented 155 pages of documentary evidence and testified on his own behalf for over two and a half hours, a fulsome process that was followed by a *de novo* review by the Commission's Appellate Panel with additional opportunities for the Appellant to present briefs and oral arguments. (R. pp.189—327; R. pp.395—541; R. pp.372—381; R. p.34). Therefore, there can

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[13] The Respondents deny that they ever influenced any "testimony" or withheld any information about Dr. Samies and there is no evidence to the contrary contained in the Record. (R. p.580).

[14] The Appellant had a full evidentiary hearing before Hearing Commissioner Beck on February 16, 2023, at which time he presented 155 pages of documentary evidence and testified on his own behalf for over two and a half hours, followed by a *de novo* review by the Commission's Appellate Panel.

[15] State v. Fletcher, 322 S.C. 256, 471 S.E.2d 702 (Ct. App. 1996), is the only "*State v. Fletcher*" case to mention "due process," but it concerns punishment for exercising a protected right and is not relevant to the argument for which it is cited by the Appellant.

be no serious argument that the Appellant's right to due process was violated.[16] Even if the Commission infringed upon Appellant's right to notice and opportunity to be heard in February 2023, his remedy would have been to seek review by the Commission's Appellate Panel and then appeal the Appellate Panel's March 8, 2024, Decision and Order to the Court of Appeals in accordance with S.C. Code Ann. § 42-17-60.

Having failed to exercise the right to object to documentary evidence and the right to cross-examine witnesses and having also failed to exercise the right to judicial review, the Appellant's "due process" arguments are not properly before the Court of Appeals at this juncture. (*See* R. p.42 at fn.1). This is especially true because the Appellant did not raise any such argument in his Motion to Reopen his claim. (R. pp.53—55). "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." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *see also* Rummage v. BGF Indus., 434 S.C. 441, 455–56, 865 S.E.2d 380, 388 (Ct. App. 2021) (holding that "[t]o successfully preserve an issue for appellate review, the issue must be: "(1) raised and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity.") (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002) (internal citations omitted). Accordingly, the due process argument raised in the Appellant's Brief is not preserved

[16] *See* Stono River Env't Prot. Ass'n v. S.C. Dep't of Health & Env't Control, 305 S.C. 90, 93–94, 406 S.E.2d 340, 342 (1991) (holding that "[a]dministrative agencies are required to meet minimum standards of due process … In our view, constitutional due process provisions … are sufficient to confer the rights to notice and for an opportunity to be heard") (internal citations omitted).

for appeal and the argument otherwise fails on the merits. Therefore, the Respondents respectfully request that the final Decision and Order of the Commission be affirmed.

B. Rule 60, SCRCP

The Appellant's Brief is also replete with arguments suggesting that Rule 60, SCRCP, supported his Motion to Reopen his workers' compensation claim after it was finally decided by the Workers' Compensation Commission, and he failed to appeal. Of course, neither Rule 60(b)(2), nor any other provision of the South Carolina Rules of Civil Procedure, applies to administrative proceedings before the South Carolina Workers' Compensation Commission. *See* Rule 1, SCRCP., Rule 81, SCRCP; *see also* Stone v. Roadway Express, 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, SCRCP). Instead, procedure before the Workers' Compensation Commission is governed exclusively by Title 42 and Regulation 67 and neither permits the Appellant to relitigate his claim or modify an order under the present circumstances. Accordingly, the Commission committed no legal error in denying the Appellant's Motion to "reopen claim or request for modification" and the Respondents respectfully request affirmation.

In addition, the case law cited by the Appellant on this issue is hardly persuasive. For example, the Appellant cites Hawkins v. Bruno Yacht Sales, 342 S.C. 356, 536 S.E.2d 698 (Ct. App. 2000) in support of his argument about newly discovered evidence and the applicability of Rule 60, SCRCP. However, the Hawkins decision does not even mention either newly discovered evidence, or Rule 60. While this could be a simple mistake by the Appellant, the

sheer number of similar (and even more egregious) errors throughout the Appellant's Brief strains credulity and suggests a lack of candor or an attempt to intentionally mislead the Court.

For example, the Appellant twice improperly cites "*Ledford v. Dep't of Pub. Safety*, 341 S.C. 89, 95, 533 S.E.2d 314, 316 (2000)" -- ostensibly in support of an "abuse of discretion" standard of review in the first instance and in support of admitting newly discovered evidence under Rule 60, SCRCP, in the second instance. However, the case of Ledford v. Department of Public Safety is not found at 341 S.C. 89, or 341 S.C. 95, or 533 S.E.2d 314, or even 533 S.E.2d 316, and the Supreme Court did not decide that case until 2019, though the Appellant suggests the case was decided in the year 2000. *See* Ledford v. Dep't of Pub. Safety, 428 S.C. 387, 835 S.E.2d 509 (2019). In addition, 341 S.C. 89, 95 is a citation for the case of Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000), and Simmons v. Tuomey Reg'l Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000), is found at both 533 S.E.2d 314, 316. Neither Ledford, nor Hodges, nor Simmons, mention of Rule 60, or newly discovered evidence, or the abuse of discretion standard and these cases do not otherwise remotely support the legal propositions for which they are cited by the Appellant.

Respectfully, neither the Appellant's unsupported claims about the applicability of Rule 60, nor his baseless and timely allegations of due process violations entitle him to reopen his workers' compensation claim. Not only is Rule 60 not applicable, not only is the due process claim not preserved, but there exists no evidence that was not known to the Appellant prior to the Commission's final Decision and Order. (*See* R. p.42 at fn.1, R. p.54, R. p.580). Therefore, the Respondents respectfully request that the Commission's Order dated November 1, 2024, be affirmed by the Court of Appeals.

IV. The Appellant's arguments regarding the admissibility, reliability, and weight accorded to the expert opinions of Dr. Samies are not properly before the Court of Appeals and the Appellant's legal arguments relative to these issues are otherwise without merit.

The Workers' Compensation Commission issued a final Decision and Order in this claim on March 8, 2024, which was not appealed. (R. pp.34—51). Therefore, the findings of fact and conclusions of law contained therein are the law of the case and not subject to review.[17] The only Order subject to review by the Court of Appeals is the November 1, 2024, Order by which the Commission denied the Appellant's Motion to "reopen claim or request for modification" of the Commission's Decision and Order that became final seven months earlier. (R. p.52, R. pp.53—55). Respectfully, the appellate court's authority to review the November 1, 2024, Order does not extend jurisdiction to review *prior* Decisions of the Commission, or to otherwise weigh evidence as the Appellant now requests. The Respondents request that the Court of Appeals disregard the arguments contained in the Appellant's Brief regarding the weight and credibility of the evidence and other matters outside of the Record, including the testimony of Dr. Samies.

The deposition testimony of Dr. Samies was not properly presented to or considered by the Workers' Compensation Commission, is not properly part of the Record, and not a proper

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[17] *See* ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d (1997) (holding that an unchallenged ruling, right or wrong, is the law of the case); Continental Ins. Co. v. Shives, 328 S.C. 470, 492 S.E.2d 808 (Ct. App. 1997) (stating that a lower court's unappealed ruling becomes the law of the case, and the appellate court must assume the ruling was correct).

subject for the present appeal.[18] The Appellant did not challenge the opinions of Dr. Samies by cross-examination at the time of the evidentiary hearing in February 2023 or at any time prior to the issuance of the Commission's final Decision and Order in March 2024 or even in the six months thereafter. (R. p.42 at fn.1).

Even now, the Appellant has failed to cite any evidence or legal authority to support his arguments regarding the weight or admissibility of the opinions of Dr. Samies. While the Appellant's Brief suggests that Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), supports his argument that "[u]nder South Carolina law, expert testimony must be impartial and free from bias," Daubert does not mention bias, or impartiality, or even South Carolina law. In addition, South Carolina "has not adopted *Daubert* ... by name, nor has it revised Rule 702, SCRE, to incorporate the *Daubert* framework...." State v. Galloway, 443 S.C. 229, 238, 904 S.E.2d 866, 871 (2024) (internal citations omitted). Of course, the South Carolina

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[18] The Court of Appeals denied the Respondents' Motion to Strike arguments and references to the deposition testimony of Dr. Samies contained in the Appellant's Brief, but the Court excluded Dr. Samies's deposition from the Record on Appeal. (R. p.565). Accordingly, the Respondents will not address Dr. Samies's deposition testimony specifically, other than to submit to the Court that this deposition does not substantially or materially alter Dr. Samies's written opinions that were submitted into evidence by the Appellant and properly considered by the Commission prior to issuing a final and binding Decision and Order on March 8, 2024. (*See* R. p.104 lines 17-19, R. p.529). [*Note*: After the Respondents' Initial Brief was filed, the Court of Appeals ruled by Order dated June 3, 2025, that "although this court struck the transcript of the deposition of Dr. Samies from Appellant's designation of matter on February 26, 2025, ... [a]fter careful consideration, we deny Respondent's [sic] motion to exclude the deposition of Dr. Samies from the record on appeal." The Court's June 3, 2025, Order denied the Respondents' request for leave to file a Sur-reply Brief addressing the substance of the newly admitted deposition testimony of Dr. Samies.]

Rules of Evidence do not apply to proceedings before the South Carolina Workers' Compensation Commission. *See* Hamilton v. Bob Bennett Ford, 339 S.C. 68, 70, 528 S.E.2d 667, 668 (2000) (holding that "the South Carolina Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission"); Rummage v. BGF Indus., 434 S.C. 441, 456, 865 S.E.2d 380, 388 (Ct. App. 2021) (explaining that "the Rules of Evidence are not controlling in workers' compensation hearings"); S.C. Code Ann. § 1-23-330(1) (2005) (stating that "*[e]xcept* in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed." (emphasis added)). Therefore, even if issues regarding the weight or admissibility of expert opinions relied upon by the Commission in issuing the final and binding Decision and Order on March 8, 2024, were properly before the Court of Appeals at this time, the Appellant's reliance on Daubert is entirely misplaced.

The Appellant also improperly cites Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981) in support of a similar argument:

> "...Dr. Samies has a direct financial[19] and professional interest in the outcome of the [Appellant's] case. These affiliations rendered him incapable of providing the

[19] The Respondents are unaware of any "direct financial" (or even vague professional) interest Dr. Samies could have in the outcome of the Appellant's workers' compensation claim, the Appellant failed to elucidate any alleged interest in his Brief, and there is no such evidence contained in the Record to support these allegations. (*See also* R. pp.138—139; R. p.83; R. p.99 lines 18—22; R. pp.102—104; p.107 line 14 through p.108 line 1).

> independent and unbiased testimony required under South Carolina law. See *Lark v. Bi-Lo, Inc.*"[20]

While Lark is the seminal case establishing the substantial evidence standard of review, Lark does not support the proposition for which it is cited in the Appellant's Brief. In fact, the Supreme Court did not require "independent and unbiased testimony" in Lark, but instead held that Lark's own testimony, which was undeniably biased in his own favor,

> "was credible and substantial within the meaning of the relevant standard of review. It was, therefore, sufficient to establish liability." 276 S.C. 130, 137, 276 S.E.2d 304, 307.

Accordingly, not only does the Appellant's citation to Lark suggest a lack of candor towards the tribunal, but actual review of the Lark opinion underscores the fact that testimonial evidence alone may constitute substantial evidence in support of the findings of the Workers' Compensation Commission even where there is a suggestion of bias. Indeed, Lark explains that

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[20] The Appellant also cites "*State v. Galbreath*, 359 S.C. 398 (2004)" in support of this argument, suggesting it holds that "expert witnesses must be impartial and independent, particularly in administrative hearings." No good faith argument could be made that Galbreath stands for this proposition, as it involves a criminal conviction for assault and battery for which no administrative hearing and no expert witness was involved. Likewise, St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993), which was also cited by the Appellant, is a federal civil rights case involving allegations of racial discrimination and it is not relevant to the issue of the admissibility of expert opinions in a claim under the South Carolina Workers' Compensation Act.

the Administrative Procedures Act "...specifically states: 'The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact'" and otherwise exempts the Commission "from the requirement that rules of evidence in the circuit court be followed in contested cases before regulatory agencies." 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981). As such, the Respondents respectfully request that the Commission's Order dated November 1, 2024, be affirmed.

V. The Appellant did not present any evidence of fraud, misrepresentation, or "bad faith" and his legal arguments regarding these issues is otherwise without merit.

The Appellant claims, without evidence, that the Respondents "engaged in fraudulent and deceptive practices to mislead the proceedings" and "deliberately concealed" Dr. Samies's affiliations with the Regional Medical Center. This is not true. As stated above, the Respondents were absolutely forthright about Dr. Samies's affiliations with the Regional Medical Center. In fact, the Respondents produced Dr. Samies's *curriculum vitae* to the Appellant on January 12, 2023, more than a month prior to the evidentiary hearing in his workers' compensation claim. (R. pp.578—580). This *curriculum vitae*, which fully elucidated Dr. Samies's affiliations with the Regional Medical Center, was then submitted into evidence by the Respondents at the hearing before Commissioner Beck on February 16, 2023, without objection from the Appellant. (R. p.191 line 23 through p.192 line 5; R. p.16 at no.12). At no time did the Respondents make any misrepresentation about Dr. Samies, his affiliations, or his opinions. (R. p.42 at fn.1). Therefore, even if Rule 60(b)(3), SCRCP, applied to administrative

proceedings before the Workers' Compensation Commission, which it does not,[21] the Appellant has failed to produce any evidence of fraud[22], misrepresentation, or "bad faith.[23]" *See* Curry v. Carolina Ins. Grp. of SC, Inc., 428 S.C. 60, 77, 832 S.E.2d 760, 769 (Ct. App. 2019) ("a party may not prevail on a Rule 60(b)(3) motion on the basis of fraud whe[n] he or she has access to disputed information … at the time of the alleged misconduct.") (internal citations omitted).

On these issues, the pattern of fictious legal citations continues with the Appellant's reference to "*Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119 (2014)," "*Clark v. Aiken County Hospital*, 361 S.C. 143, 603 S.E.2d 814 (2004)," and "*Lauderdale v. Dixon.*[24]" It does not appear that any South Carolina case captioned "*Hines v. Blue Cross Blue*

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[21] *See* Rule 1, SCRCP, Rule 81, SCRCP; *see also* Stone v. Roadway Express, 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, SCRCP). .

[22] The Appellant does not appear to allege extrinsic fraud, which is the only type of fraud for which relief may be granted under Rule 60(b)(3), SCRCP. Raby Const., L.L.P., 358 S.C. at 20, 594 S.E.2d at 483; Jamison v. Ford Motor Co., 373 S.C. 248, 273, 644 S.E.2d 755, 768 (Ct.App.2007). Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Hilton Head Ctr. of S.C. v. Public Serv. Commn., 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). Here, the Appellant was not deprived of the opportunity to be heard, but he actually presented more than two and a half hours of testimony, in addition to 155 pages of documentary evidence, at the hearing before Commissioner Beck on February 16, 2023. (R. pp.189—327; R. pp.395—541).

[23] The Respondents reject the Appellant's allegations of "HIPAA violations and retaliatory tactics," or any other assignments of "bad faith" or "misrepresentation," as these allegations lack any evidentiary support in the Record.

[24] The Respondents can find no case entitled "*Lauderdale v. Dixon*" in South Carolina reporters. The Appellant's Brief fails to give a citation for this case.

Shield of South Carolina," even exists. Instead, the case of Brock v. Town of Mount Pleasant, not "*Hines,*" is found at "411 S.C. 108, 119" and Brock concerns allegations of Freedom of Information Act violations, without discussion of bad faith or retaliation. *See* 411 S.C. 106, 767 S.E.2d 203 (2014). The Respondents are not aware of any case requiring the Workers' Compensation Commission to "account for all evidence of bad faith" or "retaliation,"[25] as the Appellant boldly suggests.

As for the Appellant's citation of "*Clark v. Aiken County Hospital*, 361 S.C. 143, 603 S.E.2d 814 (2004)," this citation is also fabricated. According to the Appellant's Brief, "*Clark v. Aiken County Hospital*" holds "that retaliatory actions designed to frustrate an employee's legal claims constitute evidence of bad faith." The Respondents can find no published case involving "Aiken County *Hospital*." While there is a 2005 decision by the Court of Appeals in Clark v. Aiken County *Government*, that decision does not in any way involve claims of bad faith or retaliation and that decision is found at 366 S.C. 102, 620 S.E.2d 99. The citation used by the Appellant, 361 S.C. 143, is actually the case of State v. Dunn, a death penalty case; and 603 S.E.2d 814 is actually First Union National Bank v. Brown, a North Carolina case involving loan default. Neither of these cases concern bad faith or retaliation. *See* Dunn, 361 S.C. 141, 604 S.E.2d 377 (2004), and First Union Natn'l Bank, 603 S.E.2d 808 (N.C. App. 2004). Because the Appellant did not present any evidence of fraud, misrepresentation, or "bad faith" and because his legal arguments regarding these issues are otherwise without merit, the Respondents respectfully request a full affirmation.

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[25] The Appellant's allegations with respect to retaliation are the subject of a pending appeal from the Court of Common Pleas. *See* Appellate Case No. 2025-000108. The Workers' Compensation Commission has no jurisdiction over these claims.

Conclusion

The Respondents, the Regional Medical Center and Antrum Risk, respectfully request that the Court of Appeals affirm the South Carolina Workers' Compensation Commission's Order dated November 1, 2024, denying the Appellant's "Motion to reopen case or request for modification based on extraordinary circumstances" dated October 4, 2024. As stated herein above, the Respondents contend that the Commission committed no legal error in denying the Appellant's Motion and respectfully request affirmation by the Court of Appeals based upon the established facts in the Record and the applicable law.

Respectfully submitted,

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Attorneys for the Respondents

July 15, 2025
Mount Pleasant, South Carolina

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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 the Respondents served the above-named Appellant, Serge Wandji, with a copy of the attached Final Brief of the Respondents this 15th day of July 2025, by emailing and depositing a copy of the same in the United States Mail, first class postage prepaid, addressed as follows:

Serge Wandji
579 Folly Road P.O. Box 12112
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July 15, 2025

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July 15, 2025

Via Email-Only-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 herewith for filing, please find the Final Brief of the Respondents, with accompanying Proof of Service, in the above-referenced matter. By copy of this letter, I am serving the Appellant, Serge Wandji, 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,

Roy A. Howell, III

RAHIII/mkb/les
Enc.
cc: Sandra Axson, Antum Risk (w/enc.) (email/upload)
Tiffany Kirby, MUSC Health-Orangeburg (w/enc.) (email only)
Serge Wandji (w/enc.) (email/mail)