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**SC Court of Appeals**

**FORM 13  
BRIEF OF APPELLANT\***

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

APPEAL FROM ORANGEBURG COUNTY in the Court of Common Pleas  
Judge Maite Murphy

Case No.: 2023-CP-38-00331

**Serge R. Wandji, Plaintiff/Appellant  
v.  
The Regional Medical Center, Defendant/Respondent**

FINAL BRIEF OF APPELLANT  
Appellate Case No.2025-000108

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## INTRODUCTION

This appeal arises from the trial court's erroneous grant of summary judgment in favor of The Regional Medical Center (TRMC) in a retaliation claim brought under the South Carolina Workers' Compensation Act by Plaintiff-Appellant Serge R. Wandji. The lower court concluded there was no genuine issue of material fact, despite a robust record demonstrating that TRMC engaged in sustained retaliatory conduct after Appellant filed a workers' compensation claim for a workplace-acquired COVID-19 infection.

Appellant presented substantial evidence showing that TRMC:

- pressured him to return to work a week after a positive COVID test and medically removed;
- placed him on retroactive, involuntary leave without his consent;
- refused to accommodate medical restrictions supported by multiple clearances;
- disclosed protected health information in violation of federal law;
- offered coercive and improper settlements in exchange for waiving legal rights;
- relied on a conflicted and discredited "expert" witness; and
- secretly consulted labor attorneys to plan his termination while falsely denying such actions under oath.

These cumulative actions demonstrate clear retaliatory intent and raise significant factual disputes regarding TRMC's motive, credibility, and pattern of conduct. The trial court failed to draw all reasonable inferences in Appellant's favor—as required under **Rule 56, SCRC**P—and instead accepted TRMC's justifications without considering substantial countervailing evidence.

Because the record reveals genuine disputes of material fact that should be resolved by a jury, the lower court's grant of summary judgment was legally improper. Appellant respectfully requests that this Court reverse the judgment and remand the matter for trial.

#### STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in granting summary judgment despite substantial evidence establishing a causal connection between Appellant's filing of a workers' compensation claim and the subsequent adverse employment actions, including termination.
2. Whether the trial court failed to properly evaluate evidence of pretext, including TRMC's reliance on a conflicted and non-independent expert witness whose testimony was later contradicted under oath.
3. Whether the trial court erred in overlooking TRMC's pattern of retaliatory conduct, including coercive and improper settlement offers, fraudulent leave misclassifications, and unauthorized disclosures of Appellant's protected health information (PHI).
4. Whether TRMC's refusal to accommodate Appellant's medically prescribed work restrictions—despite multiple clearances—constituted actionable retaliation, and whether the trial court erred in failing to address this as a material fact issue.
5. Whether TRMC's manipulation of internal leave policies and undisclosed consultations with labor attorneys—paired with false sworn statements—demonstrate pretext sufficient to survive summary judgment.
6. Whether the cumulative evidence of retaliation, bad faith, and procedural misconduct created genuine disputes of material fact that require resolution by a jury under South Carolina law.

## STATEMENT OF THE CASE

Appellant, a licensed staff nurse, was employed by The Regional Medical Center (TRMC) in Orangeburg, South Carolina, beginning in March 2021. In August 2021, amid a documented COVID-19 outbreak at the hospital, Appellant contracted the virus while performing his duties and was subsequently medically removed from work. Shortly thereafter, he filed a workers' compensation claim. In response, TRMC engaged in a sustained pattern of retaliatory conduct that included: pressuring him to return to work while seriously ill, placing him on involuntary and retroactive leave, refusing to accommodate his medically supported work restrictions, mishandling his protected health information, using improper and conflicted expert testimony, and ultimately terminating his employment in March 2022.

Despite Appellant's repeated efforts to return to work, including personal visits, written correspondence, and medical clearances, TRMC denied reinstatement and secretly consulted labor counsel to develop a strategy for his dismissal. TRMC's justification for termination was pretextually framed as "leave exhaustion" and an inability to perform 12-hour shifts, while ignoring its own role in imposing administrative leave and rejecting Appellant's requests for reasonable accommodations.

The trial court nevertheless granted summary judgment in TRMC's favor, relying on TRMC's version of events while failing to address material factual disputes, including conflicting evidence regarding Appellant's work readiness, TRMC's internal decision-making, and retaliatory motive. The court also failed to consider the cumulative pattern of adverse actions in light of **S.C. Code Ann. § 41-1-80**, which prohibits retaliation against employees who file workers' compensation claims.

Appellant now seeks appellate review of the lower tribunal's decision, asserting that genuine issues of material fact remain and that the grant of summary judgment was in error. This appeal challenges not only the legal sufficiency of TRMC's defense, but also the procedural fairness and integrity of the proceedings below.

#### STANDARD OF REVIEW

Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In reviewing a grant of summary judgment, the appellate court applies a de novo standard of review, considering the entire record and all reasonable inferences in the light most favorable to the non-moving party. See *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119, 767 S.E.2d 362, 369 (2014); *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). While the court does not weigh evidence or make credibility determinations at the summary judgment stage, it must ensure that the lower tribunal correctly applied the law and did not resolve factual disputes that are properly reserved for a jury. See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

This standard is particularly critical in retaliation cases brought under S.C. Code Ann. § 41-1-80, where intent, motive, and pretext are often central issues. See *Stewart v. Beaufort County*, 481 S.E.2d 168, 170 (S.C. Ct. App. 1997); *Miller v. State Workers' Comp. Fund*, 379 S.C. 129, 137, 665 S.E.2d 612, 616 (2008). Because these claims are rarely susceptible to resolution as a matter of law, summary judgment is typically inappropriate where material facts are in dispute or where competing inferences may be drawn.

## FACTS RELEVANT TO ARGUMENTS

Appellant Serge R. Wandji began working as a staff nurse at The Regional Medical Center (TRMC) in Orangeburg, South Carolina, on March 8, 2021. His job description acknowledged regular exposure to infectious diseases (R.p.414 under ‘Work Environment’). In August 2021, amid a hospital-wide COVID- 19 outbreak, Appellant was exposed (R.p.416; R.p.418) and tested positive on August 27, 2021 (R. p. 420). He was immediately medically removed from duty by his employer (TRMC).

While isolating at home with severe symptoms, Appellant filed a workers’ compensation claim on August 31, 2021, and submitted an incident report on September 2, 2021 (R. p. 422), both of which were acknowledged by TRMC (R. p. 424). On September 3, 2021—while on medical leave, alone, and struggling with COVID-19—he received text messages from TRMC pressuring him to return to work (R. pp. 426- 429). This emotional distress led to his hospitalization on September 6, 2021, where he was diagnosed with COVID-19 pneumonia and acute stress disorder (R. pp. 431- 432).

The retaliatory conduct continued during his hospitalization. On September 7, 2021, TRMC mailed a demand that Appellant must submit Family and Medical Leave Act (FMLA) paperwork within 15 days (R. p. 434), despite knowing that he was incapacitated, had never requested FMLA, and was not eligible. On September 24, 2021, TRMC retroactively “*approved*” a leave of absence that Appellant never requested, backdated to August 28, 2021—when he was medically removed due to occupational COVID-19 exposure (R. p. 436).

Following discharge, Appellant remained on workers’ compensation leave and was required by TRMC to make monthly premium payments to retain health insurance, which he did (R. pp. 438- 442). His repeated inquiries about his claim went unanswered (R. pp. 444- 445; R. p. 447),

prompting him to file formal Form 50 on November 29, 2021, with the South Carolina Workers' Compensation Commission (R. p. 449). In response, TRMC's attorney Mr. Roy Howell III offered a \$100 settlement in exchange for a broad release of claims, including retaliation (R. p. 451); an offer Appellant rejected. He renewed his Form 50 on September 9, 2022 (R. pp. 453-456), which marked the beginning of intensified retaliatory behavior.

Among the most serious of TRMC's actions was the unauthorized disclosure of Appellant's protected health information (PHI). Multiple unencrypted emails revealed sensitive medical, identifying, and insurance information in violation of federal privacy law (R. pp. 592-593). This conduct is detailed under Argument Section E.

Throughout this time, Appellant remained under medical supervision and submitted updates to TRMC (R. pp. 458-462). On January 17, 2022, he was medically cleared to return to work with temporary restrictions (R. p. 464). Despite notifying TRMC and his attorney's direct outreach (R. p. 466), he received no response. Appellant personally visited TRMC on January 26, 2022, and followed up with emails on February 25 and March 9 (R. pp. 468-469; R. p. 471), but was never reinstated. On March 11, 2022, his psychologist also cleared him to return to duty (R. p. 473). Meanwhile, TRMC secretly consulted two labor attorneys to develop strategies to end Appellant's employment (R. p. 475)—an effort concealed during deposition testimony. These undisclosed consultations, coupled with false testimony from TRMC's CEO denying such discussions (R. p. 577; lines: 16-24), raise serious questions of pretext and bad faith.

On March 15, 2022, TRMC terminated Appellant's employment citing "leave exhaustion," despite medical clearance and documented willingness to return (R. p. 477). This termination, following a sustained pattern of retaliation, coercion, misrepresentation, and obstruction, lies at the heart of this

appeal.

## ARGUMENTS

### A. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT DESPITE SUBSTANTIAL EVIDENCE OF RETALIATION

Under South Carolina law, an employee establishes a prima facie case of retaliation for filing a workers' compensation claim by demonstrating: (1) participation in a protected activity; (2) the occurrence of an adverse employment action; and (3) a causal connection between the two. S.C. Code Ann. § 41-1-80; see also *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 119, 417 S.E.2d 527, 529 (1992). Once a prima facie case is established, the burden shifts to the employer to articulate a legitimate, non-retaliatory reason for the adverse action. If such a reason is given, the burden returns to the employee to show that the stated reason was merely a pretext for retaliation. See *Hines v. Blue Cross Blue Shield of S.C.*, 411 S.C. 108, 119, 767 S.E.2d 362, 368–69 (2014).

Here, the Appellant provided clear and compelling evidence of each required element:

1. Protected Activity: It is undisputed that the Appellant filed a workers' compensation claim with TRMC following his workplace exposure to COVID-19 in August 2021 (R. p.418). He submitted a formal incident report on September 2, 2021 (R. p. 422), and subsequently filed a Form 50 with the South Carolina Workers' Compensation Commission on November 29, 2021 (R. p. 449). This activity is squarely protected under S.C. Code Ann. § 41-1-80.
2. Adverse Employment Action: Appellant's employment was terminated by TRMC on March 15, 2022, as documented in his termination letter (R. p.477). Termination is the

quintessential adverse action for purposes of retaliation claims. See *Layman v. State Workers' Comp. Fund*, 366 S.C. 37, 620 S.E.2d 86 (2005).

3. Causal Connection: The causal link between the protected activity and the adverse employment action is supported by temporal proximity and evidence of a broader pattern of retaliatory conduct. Courts have consistently held that a close temporal relationship between the exercise of a protected right and termination may support an inference of retaliation. See *Hines*, 411 S.C. at 119 (holding that proximity between protected activity and termination “strengthens the inference” of retaliation). Here, Appellant was terminated just six months after submitting his renewed Form 50 in September 2022 (R. pp. 452- 456), after settlement negotiations failed. This timing alone supports an inference of causation. But the record also includes a sustained pattern of retaliatory behavior: TRMC’s refusal to reinstate Appellant (R. pp. 465 -471) despite medical clearance (R. p. 464), its imposition of retroactive leave (R. p.436), the mishandling of his protected health information (R. p. 593), coercive settlement tactics (R. p. 451), and the use of a conflicted “expert” witness all indicate that the termination was not an isolated event, but the culmination of a calculated effort to retaliate.

South Carolina law does not require direct evidence of motive; retaliatory intent may be inferred from circumstantial evidence, including employer conduct and inconsistencies in the employer’s stated rationale. See *Miller v. State Workers' Compensation Fund*, 379 S.C. 129, 137, 665 S.E.2d 612, 616 (2008). In this case, TRMC's evolving explanations, contradictory conduct, and secret legal consultations (R. p. 475) all support a finding of pretext.

In sum, Appellant presented a robust factual record showing that his termination followed closely

after, and in response to, his protected activity, supported by numerous retaliatory actions taken in the interim. These factual disputes are not appropriate for summary judgment. Rather, they are questions of motive, credibility, and pretext that must be resolved by a jury. See *McCall v. Batson*, 285 S.C. 243, 247, 329 S.E.2d 741, 743–44 (1985).

Accordingly, the trial court erred in granting summary judgment, and this matter should be reversed and remanded for trial.

#### B. PROCEDURAL ERRORS AND DUE PROCESS CONCERNS WARRANT REVERSAL

The procedural history leading to the trial court's grant of summary judgment reflects a series of substantial irregularities that deprived the pro se Appellant of a fair opportunity to oppose the motion and present essential evidence. The lower court's failure to provide due process protections, particularly to a self-represented litigant, raises significant concerns under both South Carolina law and well-established constitutional principles.

First and foremost, the trial court never ruled on or acknowledged the Appellant's duly filed Motion in Opposition to Summary Judgment, submitted on November 4, 2024 (R. pp. 98-106).

This filing directly contested the procedural propriety of granting summary judgment in light of incomplete discovery and material factual disputes. The court's complete silence on this motion, despite its clear presence in the record (R. pp. 98 -106) constitutes a denial of the Appellant's right to be heard on a dispositive matter. South Carolina courts have held that summary judgment is improper where discovery remains incomplete or where a litigant has not had a fair opportunity to present essential facts. See *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

Compounding this fundamental error, the record shows that the Appellant was provided only a

partial production of his long-requested critical discovery materials on the eve of the hearing November 13, 2024 (R. pp. 232- 234; following Court Order: R. pp. 229- 231) and Defendants’ production: (R. pp. 373- 383) . These documents were essential to mounting a substantive opposition to summary judgment and were received less than 24 hours before the hearing. While the court did not formally issue its ruling until December 16, 2024, it allowed the hearing to proceed on November 14 despite the fact that discovery was still actively unfolding. This effectively forced the Appellant to defend against a dispositive motion without adequate time to review, analyze, or respond to newly produced evidence—evidence the defense had withheld for months.

At the November 14 hearing, the asymmetry of procedure became more pronounced. Although defense counsel, Mrs. Amanda Williams, was permitted to orally argue the motion in open court, the pro se Appellant was explicitly barred from presenting oral argument after he told the judge about receiving critical discovery materials on the eve of the hearing—November 13, 2024. Pro se Appellant was instead instructed to file a memorandum in writing within one week (R. p. 194, lines: 23-25; p.195 lines: 1-8). While the Appellant complied with that directive—filing a detailed opposition on November 21, 2024—the court later granted summary judgment without any subsequent hearing, and without affording the Appellant an opportunity to rebut the Defendant’s arguments orally. Such one-sided presentation violates foundational norms of due process. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process... is notice and the opportunity to present objections.”). Adding further prejudice, the Defendants’ posture throughout these proceedings reflects a strategic circumvention of procedural fairness. Back on April 24, 2024, Defendants categorically rejected both

court-annexed mediation (required by South Carolina ADR rules) (R. pp. 200- 201) and a good-faith settlement offer extended by Appellant more than a month earlier (R. p. 197). In their written response, they stated that “[t]hey are not interested in responding at this time. They feel strongly about their defenses and their ability to succeed on a Motion for Summary Judgment” (R. p. 198). This response, dismissing mandatory mediation (R. p. 200) under Rule 3(b), SCRCR and Rule 19, SCADR, illustrates the extent to which the Defendants placed all reliance on prevailing by procedural default, rather than on a full evidentiary record or fair negotiation. This response also reflects not only an absence of good-faith negotiation but also a disregard for procedural requirements and judicial economy.

The procedural timeline below reflects a pattern of judicial and litigant conduct that deprived Appellant of due process:

- **September 24, 2024** – Defense counsel filed a Motion for Summary Judgment while discovery was still ongoing (R. pp. 90- 92).
- **September 26, 2024** – Appellant submitted a preliminary response, indicating that a complete opposition memorandum would follow once discovery concluded (R. pp. 93- 97).
- **November 4, 2024** – Appellant filed a formal Motion in Opposition, objecting to premature adjudication due to ongoing discovery. The trial court never issued a ruling or acknowledgment of this filing (R. pp. 98- 106).
- **November 13, 2024** – Defendants produced incomplete critical discovery materials, less than 24 hours before the scheduled hearing (R. pp. 373- 383).
- **November 14, 2024** – At the hearing, defense counsel was permitted oral argument (R. pp. 185- 191). Appellant was denied the same opportunity. The court instructed

Appellant to submit a memorandum instead (R. p.194, lines: 23-25; R. p. 195, lines: 1-8), which he filed on **November 21, 2024** (R. pp. 384- 412).

- **December 16, 2024** – Without further hearing or opportunity for rebuttal, the court granted summary judgment via a sentence email from Judge Murphy’s law clerk. No legal reasoning or factual findings were provided (R. pp. 202- 204). Appellant was not afforded a hearing where both sides were heard following the full exchange of memoranda.

This denial of a meaningful opportunity to be heard—especially in the form of live oral rebuttal to arguments made in open court—runs afoul of fundamental principles of due process, which require that each party be given an equal and fair opportunity to present objections prior to the entry of adverse judgment. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding... is notice reasonably calculated... and the opportunity to present objections.”).

Moreover, and because no record documents oral argument from both sides after final briefing (memorandum) was complete, the record is devoid of any adversarial engagement—undermining the fairness and integrity of the process.

Further exacerbating these concerns, the court’s ruling was issued via a one-line email from Judge Murphy’s law clerk on December 16, 2024, with no findings of fact or legal analysis (R. p. 202).

The court then directed defense counsel Mrs. Amanda C. Williams to draft the proposed order (R. p. 203). That proposed Order was submitted on December 30, 2024 (R. pp. 205- 215) and was adopted verbatim on January 15, 2025 by the Judge (R. pp. 216- 228). The signed ORDER preserved the tone, structure, and factual narratives advanced by the Defendants, including disputed and misleading assertions that has been directly challenged by the Appellant throughout

the record and in his Memorandum. South Carolina appellate courts have repeatedly cautioned against the wholesale adoption of one party's proposed order, especially where material facts are disputed and where the non-moving party has raised viable legal objections. *See Pirayesh v. Pirayesh*, 359 S.C. 284, 289, 596 S.E.2d 469, 472 (Ct. App. 2004); Also, this "rubber-stamping" of the Defendants' 'proposed' ORDER by the trial court has been cautioned against in South Carolina Court, see *Smith-Cooper v. Cooper*, 344 S.C. 289, 291, 543 S.E.2d 271, 272 (Ct. App. 2001) ("[T]he trial court's verbatim adoption of Wife's proposed order... raises legitimate concerns about whether the judge exercised independent judgment").

In summary, the procedural mishandling of the summary judgment motion in this case—the court's refusal to acknowledge or rule on the Appellant's Opposition Motion due to ongoing discovery, the eleventh-hour and incomplete discovery production, the denial of oral argument to a pro se litigant, and the court's wholesale adoption of the Defendant's proposed order—amounts to a denial of due process and a breach of the fundamental requirements for fair adjudication. These irregularities taken together with the unresolved material factual disputes compel this Honorable Appeal Court to reverse the summary judgment order and remand for trial.

#### C. ONGOING PATTERN OF RETALIATION AND MISREPRESENTATION BY TRMC IN RESPONSE TO APPELLANT'S LAWFUL EXERCISE OF WORKERS' COMPENSATION RIGHTS FOLLOWING OCCUPATIONAL COVID-19 EXPOSURE

Following his confirmed positive COVID-19 test on August 27, 2021 (R. p. 420), the Appellant—who had been working in direct patient care as a staff nurse at The Regional Medical Center (TRMC), was immediately and involuntarily removed from duty pursuant to employer-initiated medical removal protocols. This action was consistent with CDC-recommended workplace

guidance for healthcare personnel exposed to COVID-19 and exhibiting symptoms (see *CDC Interim Guidance for Managing Healthcare Personnel with SARS-CoV-2 Infection or Exposure*, 2021).

While isolating at home alone, as mandated, and in compliance with TRMC's reporting procedures, Appellant filed a workers' compensation claim through the employer's online system (R. p. 424: ESREO) and, upon request, submitted an Incident Report to TRMC's Employee Health Department on September 2, 2021 (R. p. 422). Both submissions were formally received and acknowledged by TRMC (R. p. 424).

Shockingly, the very next day—on September 3, 2021—while Appellant remained in medical isolation under workers' compensation leave and in deteriorating health, he received a text message from TRMC management pressuring him to return to work (R. pp. 426- 429). This request occurred less than one week after his positive COVID-19 diagnosis and constituted a retaliatory act in violation of S.C. Code Ann. § 41-1-80, which prohibits an employer from retaliating against an employee who files a workers' compensation claim. Courts have consistently held that adverse actions taken in temporal proximity to protected activity may serve as compelling evidence of retaliatory motive. See *Hines v. United Parcel Serv., Inc.*, 736 F. Supp. 2d 1139, 1153 (S.D. Fla. 2010) (holding that retaliatory conduct close in time to the filing of a claim supports an inference of retaliation).

TRMC's inappropriate and untimely demand for Appellant's return to work, despite knowledge of his active COVID-19 infection, not only contravened public health guidance but also materially exacerbated his medical condition. As a result of the stress and physical decline triggered by this retaliatory communication, Appellant was emergently hospitalized at TRMC (the Defendant) on

September 6, 2021. During his admission, he was officially diagnosed with COVID-19 pneumonia and acute stress disorder, as clearly documented in the hospital's own medical records (R. p. 431). This sequence of events establishes a direct link between TRMC's retaliatory conduct and the deterioration of Appellant's health, further underscoring the employer's liability. Moreover, while the Appellant lay hospitalized in the Intensive Care Unit at TRMC, fighting for his life, TRMC continued to engage in a pattern of retaliatory conduct. On September 7, 2021, just one day after his emergency admission for COVID-19 pneumonia and acute stress disorder, TRMC sent a letter to Appellant's residence **demanding** that he complete and submit Family and Medical Leave Act (FMLA) documentation within fifteen (15) days (R. p. 434). This demand was not only unreasonable—it was fundamentally improper and retaliatory for several legally significant reasons:

1. **The Appellant never applied for FMLA leave.** Nowhere in the record does the Appellant request FMLA protection. The imposition of this process absent a request constitutes an unwarranted administrative burden and is inconsistent with the requirements under the FMLA itself. See *29 U.S.C. § 2612*; *29 C.F.R. § 825.303(a)*.
2. **TRMC knew, or should have known, that the Appellant was ineligible for FMLA coverage.** Under federal law, an employee is not eligible for FMLA leave unless they have been employed for at least 12 months and have worked at least 1,250 hours in the preceding year (*29 U.S.C. § 2611(2)(A)*). At the time of his medical removal, Appellant had only been employed at TRMC for approximately six months. Thus, any invocation of FMLA procedures was both inapplicable and a red herring intended to obscure the legitimacy of his ongoing workers' compensation leave.

3. **TRMC was fully aware that the Appellant was incapacitated and hospitalized in their own facility at the time of the request.** The demand to complete bureaucratic paperwork while he remained under acute medical care was not only unreasonable but a knowing attempt to create a procedural pretext for undermining his rights under the South Carolina Workers' Compensation Act.

The retaliatory intent became even more evident on September 24, 2021, when TRMC, without any prior request or consent from the Appellant, retroactively “*approved*” a fictitious leave of absence (R. p. 436). This unilateral and deceptive action falsely characterized the Appellant’s absence from work—necessitated by an occupational illness and already under workers’ compensation leave—as a voluntary leave request. To add further injury, TRMC backdated this fabricated ‘*approval*’ to August 28, 2021—the day following Appellant’s confirmed positive COVID-19 test and involuntary medical removal from duty.

This retroactive maneuver was a transparent attempt to reframe the Appellant’s medically necessitated absence as a discretionary leave unrelated to a workplace injury, thereby undermining his valid workers’ compensation claim and retaliating against him for exercising his statutory rights. Such conduct, if allowed to stand, would run afoul of the anti-retaliation protections codified in *S.C. Code Ann. § 41-1-80*, which explicitly prohibits any adverse employment action taken in response to the filing of a workers’ compensation claim. See also *Stewart v. Beaufort Cty.*, 481 S.E.2d 168, 170 (S.C. Ct. App. 1997) (holding that “retaliation need not be the sole motive behind an adverse employment action”).

In sum, TRMC’s actions during the period of the Appellant’s medical crisis—issuing administrative demands to an incapacitated employee, misrepresenting his employment status, and

retroactively applying fictitious leave designations—amount to a calculated campaign of retaliation and misrepresentation designed to thwart the Appellant’s lawful claim and discredit his workplace injury.

#### D. CONTINUED POST-HOSPITALIZATION RETALIATION AND UNLAWFUL COERCION IN VIOLATION OF SOUTH CAROLINA’S ANTI-RETALIATION STATUTE

Following his discharge from the hospital, the Appellant’s ordeal did not end. Despite being medically excused and officially on workers’ compensation leave, TRMC persisted in its retaliatory campaign. One such retaliatory measure involved the improper demand that Appellant personally pay monthly premiums to maintain his health insurance coverage during his medical leave—a financial burden imposed at a time when he was recovering from a serious occupational illness and facing significant physical and economic hardship. Demonstrating continued good faith, Appellant nonetheless complied, submitting multiple payments to TRMC (R. pp. 438- 442), even as his employer offered no communication or support.

Further compounding this hardship was TRMC’s complete silence in response to Appellant’s repeated inquiries about the status of his workers’ compensation claim. These communications—made in good faith and documented in the record (R. pp. 444- 447)—were ignored, creating a clear pattern of deliberate obstruction and isolation following the Appellant’s lawful exercise of his statutory rights.

On November 29, 2021, after months of employer inaction, Appellant was forced to formally file a Form 50 with the South Carolina Workers’ Compensation Commission to seek benefits for an occupational disease stemming from his documented COVID-19 exposure at work (R. p. 449). However, TRMC’s retaliatory conduct only escalated.

During subsequent settlement discussions, counsel for the Defendant, Mr. Roy Howell III, extended a coercive and improper settlement proposal that offered Appellant a mere \$100 in exchange for signing a broad release agreement—one that would have waived his right to pursue a retaliation claim under S.C. Code Ann. § 41-1-80 (R. p. 451). Such conduct is not only ethically questionable but runs afoul of the protections afforded to employees under South Carolina law. It is well established that the prohibition on retaliation extends beyond outright termination. Retaliation includes any materially adverse employment action that could dissuade a reasonable worker from engaging in protected activity. See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006); see also *Stewart v. Beaufort Cty.*, 481 S.E.2d 168, 170 (S.C. Ct. App. 1997) (retaliation under § 41-1-80 “need not be the sole motive behind an adverse employment action”).

South Carolina’s anti-retaliation statute explicitly prohibits an employer from “discharging or demoting, or threatening to discharge or demote, any employee because the employee has instituted or caused to be instituted...any proceeding under the South Carolina Workers’ Compensation Law.” (*S.C. Code Ann. § 41-1-80*). Courts have interpreted this provision broadly to cover retaliatory harassment, obstruction, coercion, and other adverse conduct beyond termination alone. See also *Stevenson v. Precision Standard, Inc.*, 762 So. 2d 820, 826 (La. 2000) (noting that retaliation can occur through efforts to discourage or punish an employee for asserting legal rights, even absent termination).

Appellant, refusing to be coerced into surrendering his legal claims, declined the settlement offer and instead reaffirmed his commitment to lawful recourse by filing a **renewed Form 50** on September 9, 2022 (R. p. 453). This second filing underscored not only the legitimacy of his occupational disease claim but also his resolve in the face of sustained and escalating retaliatory

tactics.

#### E. ESCALATION OF RETALIATORY CONDUCT THROUGH UNLAWFUL DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) IN VIOLATION OF FEDERAL PRIVACY LAWS

The Appellant's submission of a renewed Form 50 on September 9, 2022 (R. p. 453), signaled a renewed and lawful effort to assert his rights under the South Carolina Workers' Compensation Act. However, rather than responding in accordance with legal norms, the Defendant escalated its pattern of retaliatory behavior—this time engaging in conduct that violated federal law and further compounded the harm already inflicted upon the Appellant.

Among the most egregious of these retaliatory acts was the Defendant's repeated and unauthorized disclosure of the Appellant's Protected Health Information (PHI). Specifically, Mr. Roy A. Howell III, a practicing lawyer (who should have known better) and attorney for TRMC disseminated multiple unencrypted emails in the open internet that exposed sensitive and confidential health data, including the Appellant's full name, date of birth, home address, medical insurance details, laboratory results, diagnostic findings, and other protected medical information (R. p. 593). These emails were distributed to multiple recipients, some of whom had no lawful basis or medical need-to-know, thereby grossly violating federal privacy protections. Such disclosures constitute a flagrant breach of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified at 42 U.S.C. § 1320d et seq. HIPAA and its implementing regulations at 45 C.F.R. §§ 160 and 164 establish stringent requirements for safeguarding individuals' health information and prohibit the unauthorized disclosure of PHI without the patient's explicit consent, except in very limited circumstances. See *45 C.F.R. § 164.502(a)* (general rule prohibiting disclosure without

valid authorization) and *45 C.F.R. § 164.530(c)* (requiring safeguards to prevent intentional or unintentional use or disclosure of PHI).

The Defendant's conduct not only violated these federal privacy regulations but also reflects retaliatory intent when considered in the broader context of Appellant's pending workers' compensation claim. Courts have recognized that disclosure of confidential medical information, when motivated by retaliatory animus, may serve as both an independent violation of law and a form of unlawful workplace retaliation. See *Doe v. Southeastern Pa. Transp. Auth.*, 72 F.3d 1133, 1138–39 (3d Cir. 1995) (recognizing that the disclosure of private medical information may form the basis for a civil rights or privacy violation).

Furthermore, the U.S. Department of Health and Human Services (HHS), which enforces HIPAA, classifies unauthorized disclosures of PHI as serious infractions, subject to civil and potentially criminal penalties. See *45 C.F.R. § 160.404* (civil money penalties), and *42 U.S.C. § 1320d-6(b)* (criminal penalties for wrongful disclosure of identifiable health information).

In this case, the repeated exposure of the Appellant's PHI—occurring in the wake of his renewed legal action—was not a mere clerical oversight. It was a reckless and retaliatory act that demonstrated TRMC's continuing pattern of indifference toward legal obligations and hostility toward the Appellant's lawful pursuit of redress. The unlawful disclosure of sensitive medical information not only violated federal privacy law but also exacerbated Appellant's emotional distress, further compounding the injuries inflicted by TRMC's prior retaliatory conduct.

F. TRMC'S FAILURE TO REINSTATE OR ACCOMMODATE THE APPELLANT'S MEDICAL RESTRICTIONS VIOLATED STATE AND FEDERAL LAW AND REVEALS RETALIATORY PRETEXT

During the period following his hospitalization and while still under active medical supervision by his primary care physician, the Appellant consistently complied with TRMC's expectations by providing timely medical updates regarding his condition and recovery status (R. pp. 458- 459). These updates were documented and acknowledged by TRMC (R. pp. 461- 462), confirming the employer's awareness of Appellant's continuing treatment and progress.

On January 17, 2022, the Appellant's primary care physician formally cleared him to return to work, albeit with temporary, physician-prescribed restrictions (R. p. 464). In accordance with his duty to mitigate damages and demonstrate fitness for reinstatement, the Appellant promptly notified TRMC of his availability and medical clearance. Yet, TRMC refused to reinstate him. This refusal was not an isolated miscommunication—it was part of a continued pattern of retaliatory conduct and unjustifiable obstruction.

Eight days later, on January 25, 2022, Appellant's then legal counsel also reached out to TRMC's counsel to reiterate the Appellant's readiness and ability to return to work (R. p. 466). That correspondence too was ignored compounding the employer's failure to respond in good faith and reinforcing the inference of deliberate retaliatory intent.

Determined to resume his employment and fulfill his professional obligations, the Appellant took further steps to demonstrate his commitment. On January 26, 2022, he physically traveled to TRMC in person to request reinstatement, where he met with the Human Recourses manager (R. p. 468). When that approach failed, he followed up with formal emails to TRMC's senior leadership on February 25 (R. p. 469) and again on March 9, 2022 (R. p. 471), respectfully requesting to be reinstated in accordance with his physician's clearance.

Despite these persistent and good-faith efforts, TRMC maintained its position of silence and

inaction. Even when the Appellant's treating psychologist issued an additional clearance on March 11, 2022, confirming that the Appellant was mentally fit to return to duty (R. p. 473), TRMC refused to allow him to resume work.

Such conduct is not merely administrative neglect—it constitutes a continuation of unlawful retaliation in violation of S.C. Code Ann. § 41-1-80, which prohibits any form of adverse employment action resulting from an employee's filing of a workers' compensation claim. Courts have consistently held that retaliation includes not only termination, but also the refusal to reinstate an employee following medical leave when the employee is medically cleared and has expressed a clear and repeated willingness to return. See *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (retaliation includes actions that would "dissuade a reasonable worker from making or supporting a charge of discrimination"); see also *Stewart v. Beaufort Cty.*, 481 S.E.2d 168, 170 (S.C. Ct. App. 1997) (noting that § 41-1-80 covers adverse actions beyond termination).

Moreover, federal courts interpreting analogous retaliation provisions under Title VII and the ADA have recognized that refusing to reinstate an employee after medical leave—especially when medically cleared—can constitute a materially adverse action when linked to protected activity. See *Hernandez v. Compass Group USA, Inc.*, No. 2:18-cv-03594, 2020 WL 1067614, at \*6 (D.S.C. Mar. 5, 2020) (denial of reinstatement following protected leave and medical clearance constituted evidence of retaliation).

In this context, TRMC's repeated refusal to reinstate the Appellant—despite clearances from both a primary care physician and a psychologist, and numerous documented requests from the Appellant himself—reveals an unmistakable pattern of ongoing retaliation. It also deprived the Appellant of his rightful opportunity to return to employment, violating both state and federal protections

against discriminatory and retaliatory employment practices.

#### G. UNLAWFUL TERMINATION BASED ON PRETEXT OF LEAVE EXHAUSTION IN VIOLATION OF THE SOUTH CAROLINA WORKERS' COMPENSATION ACT AND THE ADA

On March 15, 2022, TRMC formally terminated the Appellant's employment, citing "leave exhaustion" as the stated justification (R. p. 477). However, the circumstances surrounding this termination, coupled with the employer's prior pattern of retaliatory behavior, reveal that the stated reason was a pretext designed to mask unlawful discrimination and retaliation for the Appellant's lawful exercise of his rights under both state and federal law.

At the time of termination, the Appellant had been cleared by both his primary care physician and a licensed psychologist to return to work with reasonable, temporary restrictions (R. p. 464; p. 473). TRMC's refusal to provide even basic accommodations—such as temporary assignment to light duty or a part-time administrative position—violated clear statutory mandates.

Under the South Carolina Workers' Compensation Act, employers are prohibited from retaliating against employees for work-related injuries or disabilities, and must accommodate the temporary limitations resulting from such injuries when doing so does not pose an undue hardship. See *S.C. Code Ann. § 42-9-10*; *Layman v. State Workers' Compensation Fund*, 366 S.C. 37, 620 S.E.2d 86 (2005) (holding that termination following a work-related injury can constitute actionable retaliation if not based on legitimate grounds).

Similarly, under the Americans with Disabilities Act (ADA), it is unlawful for an employer to fail to make "reasonable accommodations to the known physical or mental limitations of an otherwise

qualified individual with a disability” unless such accommodation would impose an undue hardship. See 42 U.S.C. § 12112(b)(5)(A). The ADA also prohibits employers from using an employee’s physical limitations—particularly when they are the direct result of workplace injury— as justification for adverse employment actions. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000) (recognizing that disparate treatment motivated by pretext constitutes unlawful discrimination).

TRMC’s reliance on “*leave exhaustion*” is unpersuasive and undermined by the factual record. The termination letter (R. P. 477) failed to reference any performance deficiencies or workplace misconduct.

Instead, it cited the unavailability of a part-time administrative role and the expiration of leave— despite the Appellant’s ongoing medical clearance and his repeated requests for reinstatement.

This factual backdrop supports a strong inference of retaliatory motive and discriminatory intent.

South Carolina courts have held that an employer’s failure to accommodate a recovering employee’s medically documented restrictions can constitute strong evidence of unlawful retaliation. In *Horn v. Davis Elec. Constructors, Inc.*, 307 S.C. 559, 416 S.E.2d 634 (1992), the South Carolina Supreme Court made clear that such failure—when linked to adverse employment actions—may justify a claim of retaliation under workers’ compensation law.

Moreover, employers may not penalize employees for temporary limitations caused by occupational illness or injury. Terminating an employee for being unable to perform full-duty work, while refusing to explore reasonable alternatives, contradicts both the spirit and letter of the law. See *Layman*, 366 S.C. at 47; see also *EEOC v. Wal-Mart Stores, Inc.*, 477 F.3d 561, 568 (8th Cir. 2007) (employer’s refusal to engage in interactive process or provide modified duty was

actionable under ADA).

Accordingly, TRMC's failure to accommodate the Appellant's medically necessary restrictions—followed by a termination citing logistical and administrative convenience—gives rise to a **genuine issue of material fact** that warrants resolution by a jury. When viewed in the context of the employer's ongoing retaliatory behavior, false leave designations, ignored reinstatement requests, and HIPAA violations, the termination becomes part of a broader pattern of discriminatory and unlawful conduct.

#### H. IMPROPER USE OF A CONFLICTED “EXPERT” WITNESS FURTHER TAINTED THE PROCEEDINGS AND UNDERMINES TRMC’S JUSTIFICATIONS

As part of its broader campaign of retaliation and procedural abuse, TRMC engaged in a serious ethical breach by presenting a conflicted and non-independent witness as an “expert” in the underlying workers’ compensation proceedings. Specifically, defense counsel with the Workers Compensation Commission, Mr. Roy A. Howell III submitted a purported expert opinion authored by Dr. Samies, who was misleadingly introduced in his pre-hearing Briefs as an independent infectious disease specialist affiliated with Palmetto Infectious Physicians, LLC (R. p. 512: letter head).

Critically, Mr. Howell omitted in his Briefs any mention of Dr. Samies’s substantial fiduciary and leadership roles within TRMC—the same institution that stood to benefit from his testimony. Dr. Samies’s own sworn deposition testimony (R. pp. 315- 372) revealed multiple facts that collectively destroy the credibility of his purportedly “independent” opinion and establish a direct conflict of interest:

1. The ‘expert’ report was generated from within TRMC’s own Infectious Disease

Department, which is chaired by Dr. Samies himself. This internal origin contradicts the claim that the report was independently developed (R. p. 321, lines: 1-25).

2. Dr. Samies admitted to factual inaccuracies in the report, including his prior claim that the Appellant's COVID-19 exposure at work was "*unlikely*." Under oath, he retracted this statement, acknowledging the absence of evidentiary support and conceding the speculative nature of his opinion (R. pp. 324- 325).
3. He confirmed that he was not compensated (R. p. 321, lines: 3-11), was never retained as an expert under Rule 702, SCRE, and was not acting in a neutral, third-party capacity. His lack of formal engagement further disqualifies his testimony as expert evidence.
4. He testified that he "*don't know*" whether he would serve in such a role again, (R. p. 342; lines: 19-23) expressing ambiguity and discomfort—further signaling that his participation was irregular and not based on established professional standards.
5. He directly acknowledged that Appellant, as a nurse treating COVID-19 patients, was indeed exposed to the virus at TRMC (R. p.345, lines: 3-11) a critical fact that flatly contradicts his original '*expert*' opinion and supports Appellant's underlying claim.
6. He conceded that his conclusions were based on assumptions "*his understanding*" and speculation (R. p. 328; lines: 1-13 rather than firsthand knowledge or clinical review of the facts, especially when he falsely stated in his so-called expert letter "*Given that he (Appellant) had concern about non-employment exposure*".

Moreover, Dr. Samies confirmed that he holds executive positions within TRMC, including serving on the Board of Trustees and the Medical Executive Committee—positions that confer fiduciary

obligations to the Defendant (R. p. 319, Lines 11–16). None of these affiliations were disclosed in the expert letter nor in the Defendants Briefs submitted to the Commission, constituting a material omission and clear conflict of interest.

Significantly, Dr. Samies also testified that TRMC’s Infection Control Department—under his leadership—requested the expert letter specifically for use in labor litigation (R. p. 320; lines: Lines 15–19; p.321, lines 1–2). This admission confirms that the report was not independently generated but strategically crafted at the employer’s request, further undermining its admissibility and weight.

Under both federal and state standards, expert witnesses must be impartial, qualified, and basing their opinions on reliable methodology. The U.S. Supreme Court in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), emphasized that expert testimony must be grounded in scientific reliability and impartiality. South Carolina courts have similarly rejected expert testimony that is demonstrably biased or tainted by conflicts. See *State v. Galbreath*, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004) (excluding compromised expert testimony); see also *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 767 S.E.2d 362, 369 (2014) (noting that credibility concerns and undisclosed conflicts may render expert testimony inadmissible or indicative of pretext).

In the context of retaliation claims, the use of conflicted testimony may be further viewed as a pretextual tactic to shield the employer’s adverse actions from scrutiny. The South Carolina appellate courts have recognized that employer efforts to bolster their defense with biased or misleading evidence can support an inference of retaliatory motive. See *Hines*, 411 S.C. at 119 (evidence of pretext can include shifting explanations or reliance on untrustworthy sources).

Here, TRMC’s presentation of Dr. Samies as a neutral expert—while concealing his institutional leadership roles, involvement in internal litigation strategy, and lack of independence—constitutes a deliberate effort to mislead the Commission and prejudice the Appellant’s right to a fair adjudication. His own admissions under oath confirm that his testimony cannot serve as reliable or impartial evidence and that its inclusion in the record was both improper and part of a broader retaliatory strategy.

#### I. DEFENSE MISREPRESENTATIONS AND PROCEDURAL OBSTRUCTION FURTHER UNDERMINE THE LEGITIMACY OF THE SUMMARY JUDGMENT ORDER

In addition, the Defendant’s conduct during the underlying workers’ compensation proceedings and subsequent civil litigation demonstrates a broader pattern of procedural obstruction and misrepresentation that further supports a finding of retaliation and pretext.

In his Pre-Hearing Brief before the South Carolina Workers’ Compensation Commission, defense counsel Mr. Roy A. Howell III asserted that TRMC would present witnesses—specifically employees of the hospital—who would testify that the “*Claimant reported a non-workplace source of COVID-19 exposure*” (R. p. 527: 2<sup>nd</sup> paragraph). However, this claim was squarely contradicted by the testimony of the only two TRMC employees—Mrs. Caruso and Mrs. Evans. Both testified under oath that the Claimant never stated he was exposed outside the hospital (R. p. 355 lines 1–5; p. 362, lines 6–8). This contradiction directly undermines the credibility of the defense’s stated narrative.

Further due process violations occurred when the defense deliberately withheld a key witness from the hearing. Dr. Samies, who authored the so-called “expert” letter (R. p. 511) that TRMC relied upon to deny workplace exposure, was listed as a witness for the Workers’ Compensation hearing

but was never notified by Mr. Howell to appear. This deprived the Claimant of his right to cross-examine a critical and adverse ‘expert’ witness, in violation of basic procedural fairness (R. p. 345; lines: 2-8). The obstruction continued into the civil phase of the case. Repeated efforts to depose Dr. Samies—who ultimately admitted under oath that his opinion was speculative and unsupported by factual evidence but his “*understanding*”—were met with prolonged resistance from defense counsel in the civil matter, Mrs. Amanda Williams, who opposed and delayed discovery for over a year. The trial court ultimately overruled these objections, exposing the improper discovery tactics employed by the defense. Such conduct stands in direct conflict with South Carolina’s jurisprudence on fair litigation practices. See *In re Evans*, 410 S.C. 614, 620, 765 S.E.2d 67, 70 (2014) (holding that obstructive conduct in the course of litigation may justify sanctions and demonstrates bad faith).

South Carolina law demands transparency, good faith, and adherence to procedural fairness in all phases of litigation, particularly in retaliation cases. See *Hines v. Blue Cross Blue Shield of South Carolina*, 411 S.C. 108, 119, 767 S.E.2d 362, 369 (2014). The defense’s misleading representations, strategic suppression of critical testimony, and extended discovery delays collectively point to a concerted effort to undermine the Appellant’s claims and shield retaliatory conduct from judicial review.

These cumulative procedural violations—when viewed in the context of TRMC’s overall treatment of the Appellant—further reinforce the conclusion that summary judgment was not only legally erroneous, but procedurally unjust. The integrity of both the workers’ compensation and civil proceedings has been compromised, and for that reason, the judgment below must be reversed.

J. COERCION AND IMPROPER SETTLEMENT OFFERS UNDERMINE TRMC’S DEFENSE

## AND DEMONSTRATE BAD FAITH RETALIATION

The record further reflects that The Regional Medical Center (TRMC) engaged in coercive and unethical settlement tactics in a continued effort to suppress the Appellant's lawful claims. After contracting COVID-19 while performing his duties as a staff nurse in August 2021—and following subsequent hospitalization at TRMC—Appellant was billed directly by TRMC for treatment costs that exceeded his health insurance coverage. This billing occurred despite the undisputed fact that Appellant's illness arose directly from workplace exposure and should have been fully covered under the South Carolina Workers' Compensation Act.

Making matters worse, TRMC had already received federal funding under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, specifically earmarked to cover COVID-19-related treatment costs and prevent direct billing to patients for such expenses beyond their health insurance coverage. During sworn testimony, TRMC's Chief Executive Officer, Mr. David Sutherland, confirmed that the institution had indeed received such CARES Act funding (R. p. 558, lines 2–25). However, when questioned as to why the Appellant was nevertheless billed, Mr. Sutherland repeatedly responded, "*I can't answer that question*" (R. p. 564, lines 19–24; p. 565, lines 1–4). This failure to provide a legitimate justification underscores a serious lapse in compliance and supports an inference of retaliatory motivation. Importantly, such actions may also violate federal protections under the CARES Act, which prohibits providers from billing patients for COVID-19 treatment when they have accepted federal reimbursement. See *Public Health and Social Services Emergency Fund (Provider Relief Fund) Terms and Conditions*, U.S. Department of Health and Human Services, which prohibit "balance billing" for COVID-19 treatment by recipients of federal funds.

Rather than resolve the matter appropriately, TRMC leveraged these unauthorized medical charges as a bargaining tool in settlement negotiations. In a letter from defense counsel, the Appellant was offered a paltry sum of \$100 and the waiver of outstanding COVID-19 medical bills, contingent upon signing a broad general release that would extinguish his right to pursue any claims of retaliation under South Carolina law (R. p. 451). Such coercive tactics—exploiting financial distress caused by TRMC’s own misconduct—constitute bad faith and violate both statutory and ethical standards.

Under South Carolina law, settlement agreements must be voluntary, free from coercion, and entered into in good faith. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 618, 518 S.E.2d 591, 601 (1999) (“A settlement procured through undue influence, misrepresentation, or unfair pressure may be voidable.”). TRMC’s conduct—pressuring an injured and financially burdened employee to relinquish critical legal claims in exchange for waiving charges it never should have imposed—falls squarely within the realm of impermissible coercion.

Further compounding the harm, TRMC reported these unauthorized charges to debt collectors, resulting in significant damage to the Appellant’s credit (R. pp. 585-588). This action, taken without legal justification and while settlement negotiations were ongoing, inflicted additional economic injury and emotional distress, and amplified the retaliatory impact of TRMC’s prior conduct.

Moreover, South Carolina courts have recognized that coercive conduct in the context of a workers’ compensation claim—including financial manipulation and improper settlement pressure—may constitute actionable retaliation. In *Clark v. Aiken County Hospital*, the court held that adverse employer conduct, even short of termination, can amount to unlawful retaliation when

it is designed to chill or punish the exercise of statutory rights.

Taken together, TRMC's decision to (1) improperly bill the Appellant for a work-related illness; (2) offer to waive those charges only in exchange for waiving legal rights; and (3) report those charges to debt collectors while attempting to settle the matter—demonstrates a pattern of bad faith, retaliatory motive, and procedural abuse. These actions raise genuine issues of material fact regarding both liability and damages and are properly reserved for resolution by a jury.

#### K. TRMC'S SECRET CONSULTATION WITH LABOR ATTORNEYS SUPPORTS A FINDING OF PRETEXT AND BAD FAITH

Further evidence of The Regional Medical Center's retaliatory intent is found in its covert consultation with outside labor counsels, conducted during the period in which it was actively resisting the Appellant's efforts to return to work and attempting to manufacture a pretext for termination. These undisclosed legal consultations, captured in internal email correspondence (R. p. 475), see also (R. p. 381) and corroborated by attorney profiles (R. pp. 590-591), reveal that TRMC was simultaneously pursuing legal strategies aimed at minimizing its liability while concealing these efforts from the Appellant and from the Commission.

While the act of seeking legal advice is not itself unlawful, courts have recognized that when such consultations are undertaken secretly, contemporaneously with adverse employment actions, and then denied under oath, they may be indicative of pretext, retaliatory motive, and bad faith conduct. This concern is heightened in cases involving statutorily protected activity such as workers' compensation claims.

Indeed, TRMC's concealment is evidenced by sworn deposition testimony from its own Chief Executive Officer, Mr. David Sutherland, who falsely stated repeatedly that no legal consultations

had occurred in relation to the Appellant's termination (R. p. 577, lines 16–24). This is plainly contradicted by documentary evidence in the record (R. p. 475). Such misrepresentation under oath erodes the credibility of TRMC's defense and suggests that the termination process was preordained and informed by legal risk mitigation, rather than grounded in legitimate business necessity.

This type of strategic concealment, especially in a retaliation case, is legally significant. The South Carolina Supreme Court has expressly acknowledged that secretive legal maneuvers and internal planning designed to insulate employers from liability—particularly where, followed by adverse action—can be evidence of retaliatory intent. In *Miller v. State Workers' Compensation Fund*, 379 S.C. 129, 665 S.E.2d 612 (2008), the court held that circumstantial evidence—including internal communications, timing, and deviation from standard procedures—could support an inference of unlawful retaliation and overcome summary judgment.

Additionally, the U.S. Supreme Court has emphasized that while attorney-client privilege protects the content of legal advice, the mere existence and timing of legal consultation can be probative of intent, especially where it is concealed and later denied. See *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (noting the importance of transparency in corporate legal matters and acknowledging that courts may inquire into the circumstances of legal advice without breaching privilege).

TRMC's clandestine legal consultations—paired with the false denials from its CEO—further reinforce the conclusion that its actions were not taken in good faith. Rather, they were part of a coordinated campaign to suppress the Appellant's workers' compensation rights, minimize legal exposure, and ultimately justify a retaliatory discharge.

Such conduct conflicts with fundamental principles of fair dealing, transparency, and employer accountability under South Carolina employment and workers' compensation law. The existence of these undisclosed consultations, and the corresponding false testimony provided to conceal them, raise serious factual disputes regarding the legitimacy of the Defendant's stated motives. These are precisely the type of credibility and intent issues that warrant resolution by a jury, not dismissal as a matter of law.

#### L. TOTALITY OF RETALIATORY CONDUCT WARRANTS REVERSAL AND JURY TRIAL

When considered in isolation, any one of the Defendant's adverse actions may raise concern; however, when examined collectively, the evidence reveals a coherent and escalating pattern of unlawful retaliation by The Regional Medical Center (TRMC) in response to the Appellant's lawful exercise of his rights under the South Carolina Workers' Compensation Act.

From the moment the Appellant filed his workers' compensation claim after contracting COVID-19 in the line of duty, TRMC embarked on a multi-pronged campaign of retribution. This included:

- pressuring him to return to work while he was isolating and severely ill;
- misrepresenting his protected medical leave as "voluntary" to undermine his claim;
- refusing to reinstate him despite multiple medical clearances and repeated efforts;
- disclosing his Protected Health Information (PHI) in violation of federal law;
- exploiting his financial vulnerability by coercively offering to waive unauthorized COVID-related bills—billed despite federal CARES Act funding—in exchange for a release of retaliation claims;
- secretly consulting labor counsel to plan termination strategies while publicly denying such

involvement under oath; and

- relying on a conflicted and non-independent “expert witness” whose testimony was procured from within TRMC and whose opinion was later retracted under oath.

This sustained pattern of retaliation violated S.C. Code Ann. § 41-1-80, which broadly prohibits employers from discharging, threatening, or harassing employees who lawfully pursue workers’ compensation benefits. South Carolina courts have long held that retaliatory motive may be inferred from a sequence of adverse actions taken shortly after protected activity, especially where supported by circumstantial evidence, internal inconsistencies, or shifting justifications. See *Stewart v. Beaufort County*, 481 S.E.2d 168, 170 (S.C. Ct. App. 1997); *Miller v. State Workers’ Compensation Fund*, 379 S.C. 129, 665 S.E.2d 612 (2008).

Further, the refusal to reinstate the Appellant—despite clear medical approval—coupled with the use of financial coercion, HIPAA violations, and improper expert testimony, clearly raise **genuine issues of material fact**. These issues go to the heart of credibility, intent, and pretext—matters that must be resolved by a jury, not on summary dismissal.

In sum, the totality of TRMC’s conduct—when viewed in its full legal and factual context—demonstrates not only **retaliatory motive**, but also a conscious effort to mislead the tribunal, obstruct the Appellant’s statutory rights, and suppress legitimate claims through improper pressure and pretextual reasoning.

Accordingly, this Court should reverse the lower tribunal’s decision and remand the matter for **jury trial and full evidentiary proceedings**, consistent with both South Carolina’s public policy favoring employee protection and the fundamental right to a fair adjudication of contested facts.

#### CONCLUSION AND PRAYER FOR RELIEF

The record in this case reveals a sustained and multifaceted pattern of retaliatory conduct by The Regional Medical Center (TRMC) against the Appellant following his lawful exercise of rights under the South Carolina Workers' Compensation Act. TRMC's actions—ranging from denial of reinstatement and coercive settlement tactics to improper medical billing, HIPAA violations, reliance on conflicted testimony, and concealment of legal strategy—collectively constitute a violation of both statutory protections and principles of fairness under South Carolina law. The Appellant provided substantial evidence demonstrating that he was terminated not for legitimate business reasons, but as a direct consequence of asserting his right to compensation for a work-related illness. These facts raise serious and unresolved questions of credibility, intent, and motive—all of which fall squarely within the province of a jury.

Accordingly, and for the foregoing reasons, the Appellant respectfully requests that this Honorable Appeal Court:

1. Reverse the decision of the lower tribunal to the extent it dismissed or denied the Appellant's claims under the South Carolina Workers' Compensation Act and S.C. Code Ann. § 41-1-80;
2. Vacate any findings based upon the fabricated and illegally backdated Leave of absence as well as the improper admission of tainted or conflicted expert testimony that failed to comply with Rule 702, SCRE, and which materially prejudiced the Appellant's case.
3. Remand this matter for trial by jury or further evidentiary proceedings before the appropriate lower tribunal, to allow full and fair resolution of the following contested issues of material fact:

- whether the Appellant was retaliated against in violation of South Carolina law;
  - whether TRMC unlawfully failed to accommodate his return to work;
  - whether improper disclosures of protected health information occurred;
  - whether coercive and bad-faith settlement tactics were employed; and
  - whether pretextual justifications were used to conceal discriminatory motives;
4. Award any other relief this Court deems just and proper, including costs associated with this appeal, and any other remedy necessary to uphold the integrity of the workers' compensation system and South Carolina's anti-retaliation protections.

Respectfully submitted,

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Date: November 3, 2025