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March 27, 2015

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SC Court of Appeals

Jenny Kitchings  
South Carolina Court of Appeals  
Clerk of Court  
1015 Sumter Street  
Columbia, SC 29201

Re: Otterbacher v. Jeremy and Tamara Snyder, et al.  
Case No. 2011-CP-40-1022  
Appeal Tracking No. 2013-000821

Dear Ms. Kitchings:

Please find enclosed Appellant's Memorandum in response to the Court's request for a memorandum on whether there is a justiciable controversy in this matter. I will also email you a copy of the Memorandum per your instruction. Thank you in advance for your attention to this matter and please do not hesitate to contact should you need anything further.

Sincerely,

Brad D. Hewett  
Attorney

cc: Andrew Lindemann, Esq.  
Jeremy Snyder  
Tamara Snyder  
Blaze Snyder

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Alison Renee Lee, Circuit Court Judge

Case No.: 2011-CP-40-1022  
(Appeal Tracking No.:2013-000821)

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SC Court of Appeals

Robin E. Otterbacher,

Appellant,

v.

Jeremy and Tamara Snyder, individually and as guardians and parents of Blaze Kendall Snyder,  
Blaze Kendall Snyder individually, and Selective Insurance Company of America and Auto  
Owners Insurance Company,

Respondents.

MEMORANDUM


Appellant hereby responds to this Court's request for a memorandum addressing whether there is a justiciable controversy presented in this lawsuit. After reviewing *Auto Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 748 S.E.2d 781 (2013) and *Park v. Safeco Ins. Co. of Am.*, 251 S.C. 410, 162 S.E.2d 709 (1968), it does not appear that there is a justiciable controversy at this juncture of the lawsuit. In *Rhodes*, a judgment had already been rendered against the insured and the insurer was adverse to the insured on the issue of indemnification and whether there was a duty to defend. However, there has not yet been a determination of liability or damages in this

matter nor have Respondent Jeremy, Tamara, or Blaze Snyder initiated proceedings against Respondent Selective for a determination of any duty to defend or indemnify.

Unlike *Rhodes*, there are no concrete issues existing between Respondent Jeremy, Tamara or Blaze Snyder and Respondent Selective as there has not yet been a determination of liability and damages in favor of Appellant. Moreover, the *Park* decision appears to militate that Appellant does not have standing until she establishes liability against Respondent Blaze or Jeremy Snyder. Should the Court find that there is not a justiciable controversy, Appellant respectfully requests that a remittitur be issued in this case such that liability may be established by the parties.

Respectfully Submitted,

MIKE KELLY LAW GROUP, LLC

By:   
Brad D. Hewett  
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Attorney for Appellant

March 27, 2015



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SC Court of Appeals

**FACSIMILE COVER SHEET**

To: **Jenny Kitchens**

From: **Greta M. Edwards**

Fax: **803. 734.1839**

Pages: 4, Including Cover Sheet.

RE: **Otterbacher v. Snder et.al**

Date: **March 27, 2015**

Copies:        Will Follow   x   Will Not Follow

Comments:

**Greta M. Edwards**  
Litigation Paralegal

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