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**May 24 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge

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Case No.: 2015-CP-02-00667  
Appellate Case No. 2020-000070

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Ex Parte: Donald L. Smith,.....Appellant,

In Re: Greg Battersby,.....Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead  
& Draisen, P.A., Allstate Insurance Company,  
and Allstate Northbrook Indemnity Company,.....Defendants

of whom:

J. Kirkman Moorhead and Krause, Moorhead  
& Draisen, P.A. are,.....Respondents.

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**REPLY TO MOTION TO HOLD APPEAL IN ABEYANCE**

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Attorneys for Respondents

**COME NOW** the Respondents in the above-captioned matter and reply to Appellant's Motion to Hold Appeal in Abeyance as follows:

Respondents incorporate, as if fully set forth herein, all of the allegations and arguments made in their Motion to Dismiss Appeal and in the Initial Brief of Respondent previously filed in this matter.

**I. Respondents assert that Appellant's Motion is Improper.**

Respondents assert that Appellant's Motion requesting the Court of Appeals to hold the appeal in abeyance is not properly before the Court. Respondents find no authority to support Appellant's assertions that this matter should or can be held in abeyance pending further adjudication by the Circuit Court. In fact, once the Notice of Appeal was filed (assuming that it was timely filed and properly perfected, which is denied), the Circuit Court is divested of jurisdiction over the matter until and unless same is remanded to the lower court.

Accordingly, Appellant's Motion should be denied as improper.

**II. Even if Appellant's Motion is proper, it should be denied.**

Appellant essentially argues that because no formal order was issued by the Circuit Court (when the Form 4 Order mentions that a formal order is to follow) there has not been a final adjudication by the lower court on the issue of sanctions, and that as a result this appeal should be "held in abeyance" pending the issuance of a formal order. Respondents respectfully disagree with Appellant's assertions, but would state, *arguendo*, that if as Appellant asserts there has not been a final adjudication of the matter in the lower court then the matter is simply "not ripe" for appeal and, in such event, Appellant's appeal should be dismissed (rather than held in abeyance). As such, Appellant's Motion should be denied.

Respectfully submitted,

s/Daniel L. Draisen

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May 24, 2021

Anderson, South Carolina