

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-32-815
Appellate Case No. 2020-001693

State Farm Mutual Automobile Insurance CompanyAppellant.

vs.

Myra M. WindhamRespondent.

RETURN TO MOTION FOR COSTS

Pursuant to Rule 240, Rule 222 and 242 of the South Carolina Appellate Court Rules, Petitioner State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”) hereby submits this Return in Opposition to Myra Windham’s Motion for Costs.

The Supreme Court’s Opinion “Affirmed as Modified” the Court of Appeals’ Opinion, which reversed the Circuit Court’s Order. Such effect necessarily falls within Rule 242(j)(1)’s provision that states “[w]hen the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.”

Here, the Court has discretion with respect to the award of costs. State Farm prevailed in the trial court. The Court of Appeals reversed the trial court and the Supreme Court modified the

trial court's opinion in a 3-2 decision. This matter was altered in part at every stage of the proceedings, and as contemplated by Rule 242(j)(1), SCACR, costs should not be granted in such an instance.

If the Court determines that awarding costs is appropriate, State Farm asserts that Windham's request is excessive in light of the foregoing. Windham's Motion seeks to recover costs twice – related to both the Court of Appeals and the Supreme Court. If the Court decides to award costs at all, State Farm respectfully requests that costs be reduced and that Windham not receive two attorneys' fees awards of \$2,500.

Based upon the foregoing, State Farm request that Windham's Motion for Costs be denied.

Respectfully submitted,

/s/ A. Johnston Cox
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