

3

# HARRIS & LEONARD, P.A.

ATTORNEYS AT LAW  
4615 OLEANDER DRIVE, SUITE 202  
MYRTLE BEACH, SC 29577

FREDERICK L. HARRIS  
CHARLES V. LEONARD

TELEPHONE: (843) 497-0202  
FACSIMILE: (843) 449-1946

Charles V. Leonard, Esq.  
leonard@harrisandleonard.com

Amanda J. Amos, Senior Paralegal  
amos@harrisandleonard.com

May 27, 2015

The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
1205 Pendleton Street  
Columbia SC 29201

RECEIVED

MAY 28 2015

Re: Stephanie A. Smith vs. Progressive Halcyon Insurance  
Appellate Case No.: 2013-002133  
Lower Court Case No.: 2010-CP-26-10502

SC Court of Appeals

Dear Ms. Kitchings:

This matter is scheduled for oral argument on June 2, 2015. While reviewing the Appellant's Final Brief, it came to my attention that page ii of the Table of Contents is missing. Therefore, I have enclosed 15 copies for placement into the Appellant's Final Brief (should you deem it necessary). The attorney for the Respondents, Jeffrey S. Cashden, does not object to inserting the missing page into the Brief. I also note, the Table of Contents was presented to the Respondents in the Appellant's Initial Brief, so they have been aware of its content.

Please let me know if I need a formal motion, or if you desire anything else. I apologize for any imposition.

With kindest regards, I am

Sincerely,



---

Charles V. Leonard (64072)  
HARRIS & LEONARD, P.A.  
4615 Oleander Drive, Suite 202  
Myrtle Beach SC 29577  
(843) 497-0202  
Attorney for Appellant

Letter to Clerk  
Re: Smith v. Progressive  
May 27, 2015  
Page 2 of 2

CVL/aja

Enclosure(s)

cc: Nate Fata, Esq.  
Thomas C. Brittain, Esq.  
A. Preston Brittain, Esq.  
Jeffrey S. Cashdan, Esq.  
Zachary A. McEntrye, Esq.

D.	The Court Erred In Determining Progressive Direct Is Not Smith's Insurer. ....	29
II.	AS A MATTER OF LAW THE COURT ERRED IN VACATING THE CERTIFICATION ORDER BY MISAPPLYING RULE 23. ....	30
A.	There Are Common Questions Under Rule 23. ....	31
1.	Commonality Is An Easy Hurdle Where There Is A Uniform Written Policy. ....	34
2.	Progressives' Defense Can Only Reduce Damages. ....	37
3.	The Court Improperly Ignored The Common Questions. ....	42
B.	Smith Is A Typical And Adequate Representative. ....	43
1.	The Court Acknowledged At The Hearing And In The Class Certification Order That Smith Is A Typical Plaintiff. ....	43
2.	Smith Is An Adequate Class Representative. ....	44
C.	The Class Definition Meets Rule 23. ....	46
1.	The Class Is Objectively Ascertainable. ....	46
2.	A Court Confronted With A Purportedly Overbroad Class Should Narrow The Class Definition, Not Decertify The Class. ....	48
D.	The Unjust Enrichment, Bad Faith And Tortious Interference Claims Are Well Suited For Class Treatment As They Are Grounded In The Common Issue Of Progressive's Written SOP.....	48
	Conclusion. ....	49

**RECEIVED**

MAY 28 2015

**SC Court of Appeals**



Express

fedex.com 1.800.GoFedEx 1.800.463.3339

**FedEx Package Express US Airbill** Tracking Number **8043 4962 3975**

**1 From**  
 Date 5/27/15  
 Sender's Name Charles V. Leonard Phone 843 447-0202  
 Company HARRIS AND HANNA P A  
 Address 4615 OLEANDER DR STE 202  
 City MYRTLE BEACH State SC ZIP 29577-5741

**2 Your Internal Billing Reference**  
51114 MAY 28 2015

**3 To**  
 Recipient's Name Jenny Abbott Kitchens Phone 843 734-1890  
 Company SC Court of Appeals  
 Address 1205 Pendleton St.  
 City Columbia State SC ZIP 29201



8043 4962 3975

FedEx TRK# 0215 8043 4962 3975

THU - 28 MAY AA STANDARD OVERNIGHT

28 USCA

29201 SC-US CAE



FD 245427 27MAY15 MYRA 522C1/25E2/65DD

Form ID No. 0215

Recipient's Copy

**4 Express Package Service** \* To most locations. Packages up to 150 lbs. For packages over 150 lbs., use the FedEx Express Freight US Airbill.

NOTE: Service order has changed. Please select carefully.

Next Business Day  
 FedEx First Overnight  
 FedEx Priority Overnight  
 FedEx Standard Overnight

2 or 3 Business Days  
 FedEx 2Day A.M.  
 FedEx 2Day  
 FedEx Express Saver

**5 Packaging** \* Declared value limit \$500.

FedEx Envelope\*  FedEx Pak\*  FedEx Box

**6 Special Handling and Delivery Signature Options**

SATURDAY Delivery  
 No Signature Required  
 Direct Signature  
 Indirect Signature

**Does this shipment contain dangerous goods?**  
 No  Yes  Yes  
 Dry Ice  Cargo Aircraft Only

**7 Payment Bill to:**

Sender  Recipient  Third Party  Credit Card  Cash/Check

Total Packages 1 Total Weight 1 lbs. Credit Card Auth. 611

\*Our liability is limited to US\$100 unless you declare a higher value. See the current FedEx Service Guide for details.

RT 104 6 15:00

1.800.FedEx 1.800.463.3339