

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2013-002133

**RECEIVED**  
SEP 21 2015  
SC Court of Appeals

Stephanie A. Smith, on behalf of herself and all others similarly situated . . . . . Appellant

v.

Progressive Halcyon Insurance Company, n/k/a Progressive Direct Insurance Co., Progressive Max, and Progressive Casualty Insurance . . . . . Respondents

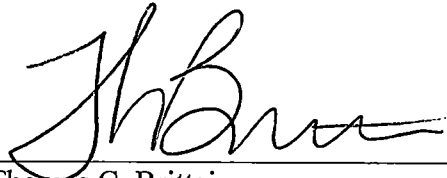
RESPONDENTS' OPPOSITION TO MOTION FOR COSTS

Appellant Stephanie Smith's Motion for Costs should be denied. The South Carolina Court of Appeals affirmed the order of the trial court to deny class certification, vacating only one ground the trial court had offered for its ruling. SCACR Rule 222(a) provides that "[w]hen an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court." Here, the Court did not allow in its decision for any costs to be taxed on either party. Thus, Appellant is not a party entitled to recover costs under Rule 222.

Moreover, an award of costs would not be justified here. In a real sense, the prevailing parties on appeal are Respondents, as the denial of class certification that was appealed remains the operative outcome. It would not be appropriate to require Respondents to pay Appellant's

costs simply because one ground for the decision below was vacated, where the Court of Appeals denied the ultimate relief the Appellant requested. Respondents think that each of the parties should bear their own costs associated with this appeal.

Respectfully submitted, this 17th day of September, 2015.



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Insurance Company n/k/a Progressive Direct  
Insurance Co., Progressive Max, and Progressive  
Casualty Insurance Company*

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PROOF OF SERVICE

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I certify that I have served Respondents' Opposition to Motion for Costs on Appellant Stephanie A. Smith by depositing a copy of same in the United States Mail, postage prepaid, on September 17, 2015, addressed to Appellant's attorneys of record, Nate Fata, Esq., Nate Fata, P.A., P.O. Box 16620, Surfside Beach, SC 29587 and Charles V. Leonard, Esq., Harris & Leonard, P.A., 4615 Oleander Drive, Suite 202, Myrtle Beach, SC 29577.



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September 17, 2015

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September 17, 2015

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SC Court of Appeals

Via U.S. First Class Mail

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

**RE: Stephanie A. Smith, on behalf of herself and all others similarly situated v.  
Progressive Halcyon Insurance Company, et al  
Appellate Case No. 2013-002133**


Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced matter please find the original and seven (7) copies of Respondents' Opposition to Motion for Costs together with the Proof of Service.

Please return one clocked-in copy of this Response to our office in the enclosed envelope.

With warm regards, I am  
Yours truly,

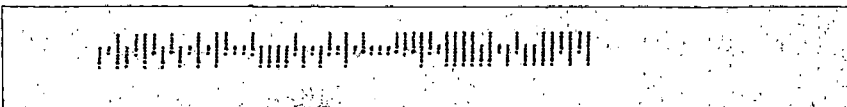
THE BRITTAIN LAW FIRM, P.A.

  
Thomas C. Brittain

TCB/all

Enclosure

cc: Charles V. Leonard, Esq.  
Nate Fata, Esq.  
Jeffrey Cashdan, Esq.  
Zachary McEntyre, Esq.



COLUMBIA SC 292

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TO:

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