

**RECEIVED**

**Sep 16 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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**MOTION TO DISMISS APPEAL**

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Daniel L. Draisen, Esq.  
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Steven M. Krause, Esq.  
Law Offices of Steven M. Krause, P.A.  
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Attorneys for Respondents

## TABLE OF AUTHORITIES

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SC Appellate Court Rules	
SCACR, Rule 203	01
SCACR, Rule 260	01
SCACR, Rule 262	01

**COME NOW** the Respondents in the above-captioned matter and respectfully move the Court for an Order Dismissing the appeal in this matter on the following grounds:

**I. Appellant failed to properly perfect his Appeal.**

Appellant failed to properly perfect his appeal in this matter. Pursuant to South Carolina Appellate Court Rule 203(a):

**(a) Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

Further, pursuant to Appellate Court Rule 203(d), Notice of Appeal:

(1) Appeals from the Circuit Court, Family Court and Probate Court.

(A) Where to File. **The notice of appeal shall be filed with the clerk of the lower court** and with the Clerk of the Supreme Court in the following cases:

**...In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.**

(B) When and What to File. **The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.** (emphasis added)

(2) **Effect of Failure to Timely File.** If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.

Pursuant to Appellate Court Rule 260:

**(a) Involuntary Dismissal and Reinstatement.** *Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.* A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded). (emphasis added)

Appellant did not (and has not to date) file the Notice of Appeal with the clerk of the lower court, the Anderson County Clerk of Court, as required by SCACR, Rule 203.

Attached hereto is the Affidavit of Richard A. Shirley, Anderson County Clerk of Court, attesting that the clerk of the lower court was not served with the Notice of Appeal along with the SC Judicial Department Case History E-Filing Log which shows that the last document filed with the Anderson County Clerk of Court in this matter was the Order of December 16, 2019 (see Affidavit and SC Judicial Department E-Filing Log attached hereto and incorporated by reference thereto).

Appellant was first notified of the deficiency with his filing on or about April 23, 2021 when Respondents filed their first Motion to Dismiss in this matter. Despite having been notified of same in April, Appellant has yet, as of this date, to serve the Notice of Appeal on the Clerk of Court for Anderson County.

Having failed to properly file and serve the Notice of Appeal in accordance with the South Carolina Appellate Court Rules, Appellant's filing is procedurally defective, the appeal was not properly perfected, the Appellate Court lacks jurisdiction, the time within which to properly perfect an appeal has run, and the appeal should be dismissed.

Respectfully submitted,

s/Daniel L. Draisen

**DANIEL L. DRAISEN (SC Bar# 13536)**

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(864) 888-8887

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and

s/Steven M. Krause (w/permission)

**STEVEN M. KRAUSE (SC Bar# 3571)**

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**ATTORNEYS FOR THE RESPONDENTS**

September 16, 2021

Anderson, South Carolina

# EXHIBITS


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

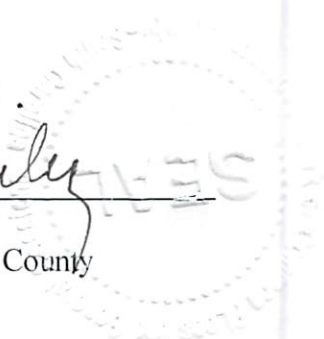
**AFFIDAVIT OF RICHARD A. SHIRLEY,  
ANDERSON COUNTY CLERK OF COURT**

PERSONALLY APPEARED BEFORE ME, **RICHARD A. SHIRLEY**, the duly elected Clerk of Court for Anderson County, South Carolina, who, being first duly sworn, states that he was first appointed in 2010 to finish the unexpired term of the late Ms. Cathy Phillips, and won re-election as Anderson County Clerk of Court in 2012, 2016, and 2020. Previously, Mr. Shirley served the City of Anderson for nearly thirty years, first as City Councilman from July 1, 1978 to June 30, 1998 and later as Mayor from July 1, 1998 to June 30, 2006, and he freely and voluntarily gives the following statement:

With regard to Anderson County Case No. 2015-CP-04-00667, Greg Battersby vs. J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity Company, I do not have any independent recollection of ever being served with a Notice of Appeal in the matter. I have made a diligent search of the documents, records and files maintained in my office, as well as the electronic filing database, and I do not find that that I was ever served with a Notice of Appeal or that any Notice of Appeal was filed with my office in either paper or electronic format regarding the referenced case or the Order of the Circuit Court dated December 16, 2019. I only recently became aware that Donald L. Smith, Esq. had filed an appeal in the matter when Mr. Draisen contacted my office to ask if I had ever been served with a Notice of Appeal.

**FURTHER AFFIANT SAYETH NOT.**

  
\_\_\_\_\_  
**RICHARD A. SHIRLEY,**  
Clerk of Court for Anderson County



Richard A. Shirley personally appeared before me, stated that he has read the foregoing Affidavit, and that all matters alleged therein are true and correct to the best of his knowledge

SWORN TO AND SUBSCRIBED BEFORE  
ME THIS 16<sup>th</sup> day of September, 2021.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 5/6/2031

**Case Number** 2015CPU400667**Case Subtype** Use 370 or 380**Filed Date** 03-20-2015**Status** Dismissed[Show/Hide Participants](#)

<b>Plaintiff</b>	Gregg Battersby
<b>Defendant</b>	J Kirkman Moorhead et al
<b>Assigned Judge</b>	Clerk Of Court C P, G S, And Family Court
<b>File Type</b>	Jury

Name	Description	Type	File Date
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Timothy Alan Nowacki	Judgment/Judgment	Judgment	12-16-2019 04:16:38 PM
Donald Loren Smith	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
Steven M. Krause	Judgment/Judgment	Judgment	12-16-2019 04:16:06 PM
J Kirkman Moorhead	NEF(12-16-2019 04:15:42 PM) Order/Other	Filing	12-16-2019 04:15:49 PM
J Kirkman Moorhead	Order/Other	Order	12-16-2019 04:15:42 PM
J Kirkman Moorhead	NEF(12-10-2019 11:28:11 AM) Order/Order Cover Sheet \$25....	Filing	12-10-2019 11:40:20 AM
J Kirkman Moorhead	Order/Order Cover Sheet \$25.00	Filing	12-10-2019 11:28:11 AM
J Kirkman Moorhead	NEF(12-06-2019 01:06:21 PM) Order/Form 4	Filing	12-06-2019 01:06:31 PM
J Kirkman Moorhead	Order/Form 4	Order	12-06-2019 01:06:21 PM
J Kirkman Moorhead	NEF(12-04-2019 02:04:29 PM) Affidavit/Affidavit of	Filing	12-04-2019 02:21:31 PM
J Kirkman Moorhead	Affidavit/Affidavit of	Filing	12-04-2019 02:04:29 PM
Gregg Battersby	Notice/Notice of Hearing	Filing	11-01-2019 03:58:59 PM
Donald Loren Smith	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Alfred Johnston Cox	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Steven M. Krause	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Timothy Alan Nowacki	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
Gregg Battersby	12/5/2019_MOTION_Roster/Notice of Motions Roster Publication	Action	11-01-2019 03:42:11 PM
J Kirkman Moorhead	NEF(10-15-2019 04:19:31 PM) Motion/Other	Filing	10-15-2019 04:24:43 PM
J Kirkman Moorhead	Motion/Other	Motion	10-15-2019 04:19:31 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	04-22-2016 11:16:53 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:21:42 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	02-22-2016 11:20:41 AM
Alfred Johnston Cox	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Steven M. Krause	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
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Gregg Battersby	4/21/2016_MOTIONS_Roster/Notice of Motions Roster Publicatio	Action	02-19-2016 08:57:17 AM
Gregg Battersby	Motion/Reconsider	Motion	02-18-2016 04:10:49 PM
Gregg Battersby	Filing Motion and Order Information Form and Coversheet	Filing	02-18-2016 04:10:00 PM
J Kirkman Moorhead	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Order/Order	Order	02-04-2016 11:36:05 AM
Krause Moorhead & Draisen PA	Verification/Verified	Filing	01-29-2016 10:28:02 AM
J Kirkman Moorhead	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Krause Moorhead & Draisen PA	Memo/Memo in Support of Court's Proper Exercise of	Filing	01-29-2016 10:26:06 AM
Gregg Battersby	Notice/Lack of Jurisdiction over Defs' Motion for Sanctions	Filing	01-27-2016 09:41:12 AM
Gregg Battersby	ADR/Alternative Dispute Resolution (Workflow)	Action	10-16-2015 11:10:03 AM
Gregg Battersby	Order/Form 4	Order	10-08-2015 03:02:55 PM
J Kirkman Moorhead	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Krause Moorhead & Draisen PA	Memo/Memorandum in Support	Filing	10-08-2015 03:01:52 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Memo/Memorandum in Opposition	Filing	10-08-2015 02:13:00 PM
Gregg Battersby	Letter/Letter	Filing	10-07-2015 02:12:04 PM
Gregg Battersby	Memo/Memorandum in Opposition To Request For Sanctions	Filing	09-23-2015 04:36:00 PM
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Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-04-2015 10:44:15 AM
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Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015 04:57:19 PM

Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Steven M. Krause	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
Timothy Alan Nowacki	Roster/Notice of Motions Roster Publication Sent	Action	09-02-2015	04:57:19 PM
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J Kirkman Moorhead	Order for Substitution Of Counsel	Order	08-27-2015	04:20:13 PM
J Kirkman Moorhead	Filing of Motion Coversheet	Filing	08-25-2015	04:24:00 PM
J Kirkman Moorhead	Motion Filing Fee Motion and Order Substitution Of Counsel	Filing	08-25-2015	09:31:00 AM
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Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	07-17-2015	12:15:15 PM
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Krause Moorhead & Draisen PA	Order/Order	Order	07-10-2015	02:19:18 PM
Gregg Battersby	Order/Form 4	Order	07-10-2015	02:16:46 PM
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Allstate Northbrook Indemnity Company	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:46:15 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	07-02-2015	01:44:21 PM
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Alfred Johnston Cox	Service/Certificate Of Service	Filing	07-01-2015	02:56:38 PM
Gregg Battersby	Service/Certificate Of Service	Filing	07-01-2015	02:52:58 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Motion/Motion to Be Relieved as Counsel	Motion	07-01-2015	02:44:29 PM
Gregg Battersby	Filing/Filing Response to Defendant's Motion for Sanctions	Filing	06-30-2015	02:45:54 PM
Gregg Battersby	Motion/Motion For Motion to Withdraw Pleading	Motion	06-30-2015	02:45:07 PM
Donald Loren Smith	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
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Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	06-29-2015	09:55:29 AM
J Kirkman Moorhead	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:19:52 AM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-29-2015	09:18:53 AM
Allstate Northbrook Indemnity Company	Affidavit/Affidavit of A. Johnston Cox	Filing	06-29-2015	09:14:13 AM
Allstate Northbrook Indemnity Company	Motion/Sanctions	Motion	06-25-2015	02:56:00 PM
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Gregg Battersby	Service/Certificate Of Service	Filing	06-25-2015	02:55:00 PM
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Krause Moorhead & Draisen PA	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:25:39 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-22-2015	03:24:07 PM
J Kirkman Moorhead	Order/Order	Order	06-12-2015	03:55:12 PM
Gregg Battersby	Order/Form 4 Decision by Court	Order	06-05-2015	01:33:20 PM
Gregg Battersby	Memo in Opposition to Moorhead and KMD's Motion to Dismiss	Filing	06-04-2015	01:32:07 PM
Gregg Battersby	Service/Certificate Of Service by Mailing	Filing	06-04-2015	01:30:45 PM
J Kirkman Moorhead	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM

Krause Moorhead & Draisen PA	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:30:08 PM
Allstate Insurance Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Allstate Northbrook Indemnity Company	Memo/Memo in Support of Motion to Dismiss	Filing	06-04-2015	01:29:22 PM
Gregg Battersby	Memo/Memo in Opposition to Def. Allstate Ins. Co.'s Motion	Filing	06-04-2015	01:24:17 PM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
J Kirkman Moorhead	Letter/Letter with attachments re: hearing 6-4-15	Filing	06-02-2015	10:07:47 AM
Gregg Battersby	Service/Certificate Of Hand Delivery	Filing	06-02-2015	10:05:28 AM
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Case Party Inactive	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Alfred Johnston Cox	Roster/Notice of Motions Roster Publication Sent	Action	05-01-2015	12:45:49 PM
Allstate Insurance Company	Motion/Dismiss	Motion	04-30-2015	01:12:00 PM
Allstate Northbrook Indemnity Company	Filing Motion To Dismiss	Filing	04-30-2015	01:12:00 PM
Gregg Battersby	Service/Certificate Of Service	Filing	04-30-2015	01:11:00 PM
J Kirkman Moorhead	Notice/Notice of Presentation	Filing	04-23-2015	03:54:06 PM
Gregg Battersby	Letter Re: Motion to Dismiss for Second Amended Complaint	Filing	04-06-2015	04:15:10 PM
Gregg Battersby	Second Amended Complaint	Filing	03-31-2015	01:23:43 PM
Gregg Battersby	Second Amended Summons	Filing	03-31-2015	01:19:55 PM
Gregg Battersby	Service/Certificate Of Service	Filing	03-31-2015	09:49:04 AM
J Kirkman Moorhead	Motion/Dismiss	Motion	03-31-2015	09:34:01 AM
Gregg Battersby	Amended/Amended Summons And Complaint	Filing	03-31-2015	09:32:02 AM
Gregg Battersby	Summons & Complaint	Filing	03-20-2015	10:58:00 AM

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

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,

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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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**PROOF OF SERVICE**

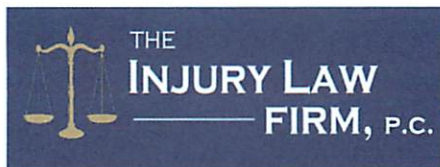
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I hereby certify that I have served Respondents' Motion to Dismiss Appeal (second) on Donald L. Smith, Esq., Appellant (and attorney for the Appellant), by depositing a copy of same in the United States Mail, postage prepaid, on September 16, 2021 addressed to Donald L. Smith, Esq., 122 North Main Street, Anderson, South Carolina, 29621.

s/Daniel L. Draisen  

---

**DANIEL L. DRAISEN** (SC Bar# 13536)  
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Anderson, South Carolina 29621  
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daniel@injuredSC.com  
**ATTORNEY FOR THE RESPONDENTS**



**RECEIVED**

**Sep 16 2021**

**SC Court of Appeals**

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www.injuredSC.com

DANIEL L. DRAISEN, ESQ.  
\*Licensed in SC and OK

September 16, 2021

Hon. Jenny Abbott Kitchings,  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: Ex Parte: Donald L. Smith  
In Re: Greg Battersby v. J. Kirkman Moorhead, et al.  
Appellate Case No. 2020-000070

Dear Mrs. Kitchings:

Enclosed please find a copy of the cover letter and the original Proof of Service for the following documents served on the Appellant and attorney for the Appellant, Donald L. Smith, Esq. in the referenced matter, along with our Motion filing fee in the amount of \$50.00:

1. Motion to Dismiss Appeal (second)
2. Proof of Service

Please let me know if you need anything else.

With kind regards,

**THE INJURY LAW FIRM, P.C.**

  
Daniel L. Draisen

DLD  
Enclosures



LIFE MEMBER  
MILLION DOLLAR ADVOCATES FORUM  
The Top Trial Lawyers In America™



cc: Donald L. Smith, Esq.  
Steven M. Krause, Esq.  
J. Kirkman Moorhead, Esq.