OPINION ON REHEARING

ATTORNEYS FOR APPELLANT

Margaret M. Christensen
Karl L. Mulvaney
Dentons Bingham Greenebaum LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE
GREGORY SMITH

Ann Marie Waldron
Waldron Law, LLC
Indianapolis, Indiana

Michael E. Simmons
Hume Smith Geddes
Green & Simmons, LLP
Indianapolis, Indiana

Robert P. Thomas
Thomas Law Office
Indianapolis, Indiana

ATTORNEY FOR APPELLEE
NOLAN CLAYTON

William D. Beyers
Buchanan &
Bruggenschmidt, P.C.
Zionsville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Progressive Southeastern Insurance Co., *Appellant-Plaintiff,* v. Gregory Smith and Nolan Clayton, *Appellees-Defendants* and Erie Insurance Group, Brackett Restaurant Group, LLC, d/b/a Stacked Pickle, and Allstate Insurance Company *Defendants*	March 4, 2020 Court of Appeals Case No. 19A-PL-1094 Appeal from the Marion Superior Court The Honorable Timothy W. Oakes, Judge Trial Court Cause No. 49D02-1701-PL-2865

Baker, Judge.

[1] We grant the petition for rehearing filed by Gregory Smith for the limited purpose of correcting a factual error on page 7 of our opinion. We stated that "Progressive filed a motion to consolidate the appeals," but, in fact, it was Smith who filed the motion to consolidate. *Progressive S.E. Ins. Co. v. Smith*, No. 19A-PL-1094, slip op. p. 7 (Ind. Ct. App. Jan. 2, 2020).

[2] As to the other issue raised by Smith in his petition for rehearing, we decline to grant his requested relief because his concern—that even if Progressive did not have a duty to defend Clayton, if it undertook his defense, it had a duty to do so

competently and in good faith—is addressed in footnote 7 of our original opinion:

> The fact that Progressive did not have a duty to defend Clayton is not relevant to the questions at issue in the Malpractice or Bad Faith Actions related to the quality of the defense provided.

Id. at 10 n.7. Therefore, aside from the factual correction described above, we deny the petition for rehearing.

Bailey, J., and Tavitas, J., concur.