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January 2, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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SC Court of Appeals

Re: *Team IA, Inc. v. Cicero Lucas, et. al.*
Appellate Case No.: 2017-001497
Bruner Powell File No.: 11-2795.100

Dear Ms. Kitchings:

I write pursuant to Rule 208(b)(7) of the Appellate Court Rules to advise the Court of the pertinence and significance of the recent opinion issued in Rayner v. Byers, Op. No. 5527 (S.C. Ct. App. filed December 20, 2017), which this Court filed after Team IA submitted its final briefs in the above-referenced case. As in Rayner, this appeal involves a party's contract claim for post-judgment attorney's fees and costs. The trial court in this case held—and the Respondent argues—the doctrine of merger bars Team IA's right to recover post-judgment fees and costs. Pertinent to this appeal, the Raynor Court held,

South Carolina has not adopted the merger doctrine from the Restatement. Thus, we find post-judgment attorney's fees can be awarded if a statute or contract provides for such fees. Because no statutory authority exists to grant attorney's fees in this case, we must look to the language of the note itself to determine whether the parties intended for post-judgment attorney's fees to be recoverable. See McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) (“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language.”). The note provided:

“In the event of default in the payment of this note, and if it is placed in the hands of an attorney for collection, the undersigned hereby agrees to pay all costs of collection, including a reasonable attorney's fee.” The contract between the parties clearly provided for the recovery of reasonable attorney's fees for necessary litigation in the event of default. There is no limitation in the contract for only fees

The Honorable Jenny Abbott Kitchings
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incurred prior to or in the process of obtaining the judgment. Instead, the parties intended for Appellants to be responsible for all costs of collection.

Id. (emphasis added).

With my kindest regards, I am

Sincerely,



Benjamin C. Bruner

BCB/gh

cc: Julio E. Mendoza, Esq.

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SC Court of Appeals

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