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May 14, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Ex Parte: Trustgard Insurance Company
Appellate Case No.: 2019-001506

Dear Ms. Kitchings:

The undersigned counsel for Respondent-Appellant, Terence Graham, submits this letter pursuant to Rule 208(b)(7), SCACR, to advise the Court of pertinent supplemental citations in support of Graham's Motion to Dismiss filed April 30, 2020, and Respondent-Appellant's issues on appeal relating to the trial court's decision to grant Trustgard's Motion to Intervene. On May 13, 2020, the South Carolina Supreme Court issued an opinion in *Ex parte Builders Mutual Insurance Company*, Opinion No. 27970 (May 13, 2020). *Ex parte Builders Mutual* involved insurance companies seeking to intervene for the purposes of submitting special interrogatories to the jury in a construction defect case. The Supreme Court, relying on *Ex parte GEICO*, 373 S.C. 136, 138-39, 644 S.E.2d 701, 702-03 (2007), noted that "our precedent makes clear [that] the Insurers are not 'real parties in interest' to the construction defect action and thus, cannot satisfy the four-part test espoused in *Berkeley Electric*" for intervention as a matter of right.

The Supreme Court also affirmed the trial court's denial of the motion for permissive intervention. In doing so, the Supreme Court highlighted a conflict of interest between the insurer and insured's counsel retained by the insurer: "We conclude there are facts in the record that support the trial court's decision that permissive intervention here **would present conflict of interest concerns and likely cause undue delay and prejudice to the Association and the Insureds.**" (emphasis added).

Ex parte Builders Mutual supports Graham's motion to dismiss Trustgard's appeal and also the arguments regarding the trial court's decision on Trustgard's motion to intervene, which are contained in section I. of Respondent-Appellant's Initial Appellant's Brief and sections I and II of Respondent-Appellant's Initial Reply Brief.

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By copy of this letter, I am serving all counsel of record with a copy of the same. If you have any questions, please do not hesitate to contact me. Thank you.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: Michael Reid Burchstead, Esquire
Brian T. Smith, Esquire
Dorothy H. Hogg, Esquire
Shelley Montague, Esquire
Janice Holmes, Esquire

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