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Apr 22 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000788

Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Library Associates, LLC is the Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that on April 22, 2026, copies of **Appellant's Correspondence to the Court and Amended Designation of Matter to be Included in the Record on Appeal** were served on all counsel of record via email containing the above referenced documents to counsels' individual AIS email addresses:

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April 22, 2026
Columbia, South Carolina



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SC Court of Appeals

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April 22, 2026

VIA EMAIL

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

**Re: *Balfour Beatty Construction, LLC v. Library Associates, LLC, et al.*
Appellate Case No.: 2024-000788; Trial Court Case No.: 2019-CP-10-01108**

Dear Mrs. Kitchings:

Appellant Balfour Beatty Construction, LLC and Respondent Library Associates, LLC have not been able to reach an agreement on an Amended Designation of Matter to be Included in the Record on Appeal in the above-referenced matter. This letter presents Appellant's position on why it cannot agree to the Amended Designation of Matter to be Included in the Record on Appeal prepared by Respondent. Appellant's Amended Designation is attached. We understand that Respondent will be submitting its Designation under separate correspondence.

The issue of the over Designation of Matter to be Included in the Record on Appeal by Respondent was first raised by Appellant in its Notice and Motion filed with the Court on June 5, 2025, and its Reply to Respondent's opposition filed with the Court on July 3, 2025. The Court issued its Order dated August 26, 2025, in which it "grant[ed] Appellant's motion in part" and, among other things, directed "Respondent to exercise caution to ensure its designation of matter includes only relevant material as required by Rule 209(b)...."

In response to the Court's August Order, Respondent amended its Designation only eliminating limited portions of designated deposition testimony of witnesses other than George Michael Baumbach, and providing Timestamp references to the portions of his deposition testimony still included in Respondent's Designation.

Thus, Appellant was required to prepare, copy and file the Record on Appeal consisting of fifty-one (51) volumes and more than 25,000 pages (as had been summarized in Appellant's prior filed Notice and Motion).

On March 16, 2026, the Court issued a new Order directing the parties "to review the record, remove unnecessary materials from it, and include only those materials that are critical to the appeal." Clearly this direction was issued by the Court based on the explanations in the Order that: (1) the previously filed record on appeal included 25,000 pages and consisted of 51 volumes; (2) the previously filed record contained "roughly 14,000 pages" that "do not appear to be cited by any party"; "roughly 4500 pages of transcript are included in the record but not cited"; and "many lengthy exhibits are included in the record but are not cited with specificity beyond citation to the first page." The Court's Order expressly concluded that, "Given the thousands of pages of transcripts, exhibits, and additional documents not cited in any brief, we cannot accept the record as filed."

Thereafter, the Parties engaged in discussions regarding potential revisions to their respective Designations of Matter to be Included in the Record on Appeal. In the course of those discussions, Appellant proposed reducing the number of pages it designated from the trial transcript, the post-trial hearing transcripts, and certain exhibits. Respondent only proposed removing limited pages from its trial transcript designations. Therefore, Appellant informed Respondent that it could not notify the Court that it agreed with Respondent regarding the contents of Respondent's Amended Designation and of an Amended Record on Appeal.

When the parties were unable to reach an agreement by April 15th, Respondent proposed requesting a one-week extension of the deadline to file an Amended Designation addressing the directions in the Court's March 16 Order. Despite Respondent having proposed a one-week extension of the deadline to file an Amended Designation, and Appellant requesting a new or revised proposal from Respondent on multiple occasions thereafter, Respondent did not provide any new proposal or revised designation. Instead—after having an additional week to contemplate further reduction of its Designation—Respondent informed Appellant late this morning that its position remained the same as it was on April 15 and still designated more than 17,000 pages to be included in the Record. Thus, the parties are unable to reach an agreement as to the contents of the Record on Appeal and Appellant hereby submits its Amended Designation (copy attached).

Appellant's Amended Designation reduces its prior Designation by 1,479 pages. There is nothing in Appellant's Amended Designation which is not directly related to material cited in Appellant's Brief and Reply Brief. The total of the Record pages derived from Appellant's Amended Designation is 7,791. Of this total, 613 pages involve orders and pleadings involved in the appeal and required to be included in their entirety by Rule. Also, 591 pages of Appellant's Amended Designation overlap with material included in Respondent's Designation.

Respondent's Amended Designation still includes 3,574 pages of trial transcript (reduced from 5,054 pages in the prior Designation), 14,113 pages of trial exhibits (Respondent did not propose removing any previously designated exhibits or removing pages from previously

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designated exhibits), and 397 pages of post-trial transcripts (Respondent did not propose removing any pages from the post-trial hearing transcripts).

Despite what appears to be clear conclusions and directions by the Court in the March 16 Order, Respondent's proposed Amended Designation does little to address the Court's findings and directions. Respondent's proposed Amended Designation still includes all 155 exhibits Respondent introduced during trial despite the fact that Respondent only cites to 15 of those exhibits in its brief. Those exhibits total 14,113 pages, but 10,490 of those pages are not cited by either party in the Briefs. Respondent's Amended Designation also contains 3,255 pages of the trial transcript, and 383 pages of post-trial hearing transcripts that are not cited by either party in the Briefs.

Before Appellant continues with the time consuming, burdensome and costly effort to prepare, serve and file the Amended Record by the Court established deadline of May 15, 2026, we respectfully seek confirmation from the Court regarding its willingness to accept an Amended Record on Appeal still reflecting the contents summarized above.

Sincerely,

s/James Lynn Werner

James Lynn Werner

JLW

cc: Walter Henry Bundy, Jr. (via email - walter@bundymcdonald.com)
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