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Jun 10 2026

SC Court of Appeals

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June 10, 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**

Dear Mrs. Kitchings:

Appellant Balfour Beatty Construction, LLC submits this letter, as requested in the Court's Order dated May 19, 2026. This is a supplement to Appellant's June 5, 2026, correspondence and constitutes a more detailed and further response to the package of documents filed by Respondent Library Associates, LLC on June 4, 2026. After reviewing Respondent's June 4, 2026, submission to the Court, it is apparent that Respondent failed to comply with the Court's April 29, 2026 Order. Moreover, Respondent's submissions do not enable Appellant to determine and compile a Final Record on Appeal complying with the Court's prior orders.

As an initial matter, it is important to review the events culminating in the June 4 submission by Respondent. Significant events and circumstances include:

1. 1/17/2025 Appellant files Initial Brief and Designation
2. 5/21/2025 Respondent files Initial Brief and Designation
3. 6/5/2025 Appellant files Motion to Strike Respondent's Designation
4. 8/26/2025 The Court issues Order in response to Motion to Strike Appellant's Reply Brief

The Court's Order states, in part:

Further, we direct Respondent to exercise caution to ensure its designation of matter includes only relevant material as required by Rule 209(b), and should Respondent determine that it would like to cull any matter currently designated, Respondent may do so in its amended designation of matter.

5. 9/5/2025 Respondent files its Amended Designation
6. 9/25/2025 Appellant files its Initial Reply Brief
7. 11/17/2025 Appellant files its Final Brief, Final Reply Brief and Record on Appeal
8. 1/6/2026 Respondent files its Final Brief
9. 3/16/2026 The Court issues an Order rejecting the Record on Appeal as filed

The Court's Order stated, in part:

The parties are directed to **review the record, remove unnecessary materials from it, and include only those materials that are critical to the appeal.** We expect counsel to fully cooperate and reach an agreement as to which pages in the record on appeal are unnecessary and, therefore, should be removed. **Only those materials found to be necessary for a decision by this court in its appellate capacity shall be included.**

We implement the following scheduling order:

- (1) The parties shall notify the court of an agreement by April 15, 2026;
- (2) The amended record on appeal shall be prepared and served on Respondents by May 15, 2026;
- (3) The amended record on appeal and final briefs shall be filed with this court by June 4, 2026. No extensions will be granted absent extraordinary circumstances.

(emphasis added).

10. 4/22/2026 Appellant: (a) notifies the Court that Parties could not reach agreement on an Amended Designation complying with Court's Order; and (b) files its Amended Designation.
11. 4/22/2026 Respondent files no Amended Designation

12. 4/29/2026 The Court issues an Order stating:

Appellant is to **prepare an amended record on appeal consisting of the following: (1) the documents in Appellant's amended designation of matter and (2) materials cited in Respondent's final brief. Respondent is directed to provide Appellant with pinpoint citations in instances where Respondent's final brief cites the first page of a document or exhibit.** We amend our previous scheduling order as follows:

(1) Respondent shall notify Appellant of the pinpoint citations by May 4, 2026;

(2) The record on appeal shall be prepared and served on Respondents by May 22, 2026;

(3) The amended record on appeal and final briefs shall be filed with this court by June 11, 2026.

(emphasis added).

13. 5/4/2026 Respondent files its First Motion for Extension of time to comply with the April 29 Order and to notify Appellant of the pinpoint citations for those instances where Respondent's Brief cites only the first page of a document or exhibit.

i. The May 4, 2026, Motion stated, "a filing fee of \$50.00 is enclosed with a copy of this correspondence sent by U.S. Mail."

14. 5/7/2026 Respondent files a Second Motion for Extension of time to comply with the April 29 Order, to notify Appellant of the pinpoint citations for those instances where Respondent's Brief cites only the first page of a document or exhibit.

i. Respondent's email correspondence filing the May 7, 2026, Motion states, "The \$50.00 filing fee will be mailed directly."

15. 5/12/2026 The Court issues Order granting Respondents May 4 and May 7 Motions for extension with an express caveat:

In the Order, the Court stated, "**The Court is considering these motions in reliance upon counsel's assertion that the filing fees have already been placed in the mail.**" "To date, the Clerk's office has not actually received the filing fees for Respondent's **May 4 and May 7, 2026, motions.**"

(emphasis added).

16. 5/14/2026 Respondent files its Third Motion for Extension of time to comply with

the April 29 Order, to notify Appellant of the pinpoint citations for those instances where Respondent's Brief cites only the first page of a document or exhibit.

17. 5/15/2026 The Court's records establish that:
- (1) Three checks, dated May 15, 2026, for the filing fees for the May 4, 7, and 14 Motions for Extension were—upon information and belief—hand delivered to the Court on May 15.
 - (2) According to the Court's records, the "Check/Money Order Date" for the filing fee payment for each of Respondent's Motions for Extension was May 15, 2026. *See* Receipt #108160; Receipt #108161; and Receipt #108162, copies attached hereto.

18. 5/19/2026 The Court issues Order in response to Request for third extension

The Court's Order stated:

The court's April order instructed the Respondent to inform the Appellant of pinpoint citations where Respondent's final brief cited the first page of a document or exhibit. Again, it was not envisioned that this would be a difficult endeavor. As already noted, many lengthy exhibits were designated for inclusion in the record but were not cited with specificity in Respondent's twenty-six-page brief beyond a citation to the first page. The court asked Respondent to notify the Appellant which specific pages of each designated document are necessary for efficient appellate review of this case no later than May 14, 2026. . . .

In the event the Respondent does not provide the Appellant with the information necessary for the Appellant to prepare the amended record by June 4, 2026, the Appellant should inform the court by letter, and the court will issue directions about how to proceed.

19. 6/4/2026 Respondent's filing on June 4 included:

Respondent's Motion to Amend Designation of Matter to Be Included in the Record on Appeal and four exhibits titled:

- a. "Exhibit A – Pinpoint Citations to Respondent's Final Brief"
- b. "Exhibit B – Pinpoint Citations to the Master's Trial Order"
- c. "Exhibit C – Respondent's Amended Designation of Matter to be Included in the Record on Appeal"
- d. "Exhibit D – Orders of the Master-In-Equity"

This history of events and circumstances supports the following conclusions:

First, Respondent's submissions on June 4 were not timely and were not compliant with the various prior orders of the Court. In its March 16, 2026, Order, the Court—in no uncertain terms—rejected the Record on Appeal based upon the excessive and unwarranted designation of voluminous material by Respondent. The Court directed that the Record be reduced and materials not “critical to the appeal” be removed.

When Respondent did not comply with the Court's Order and directions, the Court issued its April 29, 2026, Order. In that Order, the Court decided what was to be included in the Amended Record. The Court said the Record was to include:

- (1) the documents in Appellant's amended designation of matter, and
- (2) materials cited in Respondent's final brief.

The Court further ordered that where Respondent's Final Brief cited to only the first page of a document or exhibit, it was to provide “pinpoint” citations to the specific portions of the document or exhibit that were critical to the appeal. And, Respondent was ordered to provide those pinpoint citations by May 4, 2026. Respondent did not provide the citations as ordered. Rather, on May 4, May 7 and May 14, Respondent filed motions seeking extensions of its deadlines to comply with the Court's Orders.

In responding to the Respondent's Motions for deadline extensions, the Court specifically and expressly observed that there was no record that the Court had received the filing fees that were required in connection with the motions, and which Respondent had expressly represented to the Court it had already submitted. Given the circumstances and the representations by Respondent's counsel the Court granted the extension with an express caveat:

“The Court is considering these motions in reliance upon counsel's assertion that the filing fees have already been placed in the mail.”

The record now establishes that, contrary to Respondent's counsel's assertions, the filing fees for the motions had not already been paid or placed in the mail. The Court's records establish that no filing fee for any of the three motions was put in the mail or paid until checks were delivered to the Court on May 15, 2026. Those checks were dated May 15, 2026.

Therefore, the filing fees for Respondent's First and Second Motions for Extension were not submitted to the Court until eleven (11) days after the filing of the first motion and eight (8) days after the filing of the second motion. Thus, Respondent's representation to the Court in its May 4, 2026, motion that “a filing fee of \$50.00 is enclosed with a copy of this correspondence sent by U.S. Mail” was patently false. And, therefore, the Court considered the extension requests under false pretenses. In light of these facts, and given that the Court previously stated that it was

only considering the requested extensions “in reliance upon counsel’s assertion that the filing fees have been placed the mail,” it is appropriate (and fair) that the extensions be revoked.

Rule 240(d), SCACR, states that “[t]he motion or petition filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court.” Rule 240(g), SCACR, states that if a party fails to pay the filing fee in accordance with the Court’s rules, then the motion may be deemed abandoned. When a motion is filed electronically—as is the case with Respondent’s Motions for Extension—the payment of the filing fee for the electronically filed motion must be mailed or delivered to the Court within five (5) days of the filing. *See Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024).*

Not only did Respondent misstate that the filing fees were placed in the mail. Respondent failed to submit the filing fees for the first and second motions for extension until after the deadline for submitting the filing fees had passed. Accordingly, the Court should deem Respondent’s First and Second Motions for Extension abandoned and strike Respondent’s attempt to submit an untimely proposed amended designation of matter to be included in the Record on Appeal on June 4.

Second, regardless of the fact that Respondent did not submit the Amended Designation ordered by the Court to be submitted by May 4, 2026, until thirty-one (31) days after that deadline, Respondent’s June 4 submissions do not comply with what the Court ordered it to do. Exhibit A to Respondent’s Motion to Amend its Designation of Matter appears to be Respondent’s attempt to Comply with the April 29 Order. However, review of Exhibit A demonstrates that Respondent has again failed to abide by the Court’s prior Orders and directions. Exhibit A still identifies 16 exhibits for inclusion in the Record on Appeal but it does not provide pinpoint cites to the relevant portions of those exhibits. In its earlier designations, Respondent merely cited to the Exhibit by number and by reference to the first page of the Exhibit. In the so-called amended designation, Respondent merely states the exhibit number and then the first page of the exhibit through the last page of the exhibit. In other words, it still designates the entire voluminous exhibit, with no specificity and no “pinpoint” citation. Respondent’s citations to sixteen (16) exhibits all reference the entirety of each exhibit.¹ Thus, Respondent has not provided any pinpoint cites as ordered.

This amended designation by Respondent plainly does not comply with the Court’s April 29 Order. In fact, the June 4 submissions by Respondent do not enable Appellant to determine what to include in a Final Record on Appeal.

Third, Respondent’s Exhibit B, titled “Pinpoint Citations to the Master’s Trial Order,” improperly requests the Court grant Respondent leave to include *more* documents in the Record on Appeal that Respondent did not cite to in its Final Brief and did not include specifically in any prior designation. While the Parties seemingly agreed that the Master’s October 6 Order itself should be included in the Record on Appeal, Respondent never designated all of the material

¹ The only “pinpoint citations” in Exhibit A are in reference to “Balfour’s Exhibit 56.” That exhibit is comprised of two parts. Respondent’s first pin cite references part 1 of that exhibit and Respondent’s second pin cite references part 2 of the exhibit. The subsequent “pincites” all fall within the first two pincites .

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referred to or cited by the Master to be included in the Record. Now, despite never having made such a designation during the entire pendency of this appeal, Respondent requests the Court's leave to add all of the documents and transcript pages referred to or cited by the Master in his Order below. The Court should reject Respondent's request to further expand the Record. Respondent had the opportunity to prepare a proper and timely Designation of Matter but it failed to do so on multiple occasions. As stated in Appellant's June 5 Correspondence, Appellant intends to further supplement its opposition to Respondent's Motion and file a formal Return opposing Library's Motion on or before the June 15, 2026 deadline for filing a Return.

By copy of this correspondence via email, we are providing all counsel of record with a copy of this correspondence.

Should you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

s/James Lynn Werner

James Lynn Werner

cc: Walter Henry Bundy, Jr. (via email - walter@bundymcdonald.com)
M. Brent McDonald (via email - brent@bundymcdonald.com)
Jesse Sanchez (via email - jesse@jessesanchezlaw.com)

Appellant Attorneys of Record (via email):

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SC Court of Appeals

The South Carolina Court of Appeals

Walter Henry Bundy, Jr.
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05/15/2026

RECEIPT #108160

Case No: 2024-000788
Case Short Title: Balfour Beatty Construction, LLC v. Low Country Case & Millwork, Inc. (3)
Event: Motion - Extension of Time (1st)
Fee Type: Motion Fee Filed After 10-15-18
Amount: \$50.00
Payment Type: Check
Reference No: 2024
Check/Money Order Date: 05/15/2026
Comments:



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05/15/2026

RECEIPT #108161

Case No: 2024-000788
Case Short Title: Balfour Beatty Construction, LLC v. Low Country Case & Millwork, Inc. (3)
Event: Motion - Extension of Time (2nd)
Fee Type: Motion Fee Filed After 10-15-18
Amount: \$50.00
Payment Type: Check
Reference No: 2024
Check/Money Order Date: 05/15/2026
Comments:



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05/15/2026

RECEIPT #108162

Case No: 2024-000788
Case Short Title: Balfour Beatty Construction, LLC v. Low Country Case & Millwork, Inc. (3)
Event: Motion - Extension of Time (3rd)
Fee Type: Motion Fee Filed After 10-15-18
Amount: \$50.00
Payment Type: Check
Reference No: 2024
Check/Money Order Date: 05/15/2026
Comments: