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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2026-002092
Circuit Court Case No. 2025-CP-40-04961

Richard E. Robinson,

Plaintiff,

v.

3M Company f/k/a Minnesota Mining and Manufacturing Company; 4520 Corp., Inc.; AO Smith Corporation; ABB Inc.; Abex Corporation; AECOM Energy & Construction, Inc.; Air & Liquid Systems Corporation; Alfa Laval Inc.; Amentum Environment & Energy Inc.; American Steel & Wire Company; Ameron International Corporation; Anchor Darling Valve Company; Aqua-Chem Inc.; Armstrong International Inc.; Atlas Asbestos Company Ltd.; Atlas Turner Inc.; Atwood & Morrill Co. Inc.; Babcock Borsig Power Inc.; Bahnson Inc.; Beaty Investments Inc.; Bell & Gossett Company; Bendix; Benjamin F. Shaw Company; Bonitz Company; Bonitz Insulation Company; Brand Insulation Inc.; Buffalo Forge Company; Buffalo Pumps Inc.; Burnham Commercial; Burnham Corporation; Burnham LLC; BWIP Inc.; CR Hipp Construction Inc.; Canvas CT LLC; Canvas MW LLC; Canvas SX LLC; Carbo-line Company; Carolina Industrial Insulating Co.; Carrier Corporation; Carver Pump Company; CBS Corporation a Delaware Corporation; CBS Corporation a Pennsylvania Corporation; Celanese Corporation; CIRCOR Instrumentation Technologies Inc.; Clean Harbors Industrial Services Inc.; Cleaver-Brooks Division; Cleaver-Brooks Inc.; Clyde Union Inc.; CNA Holdings LLC; Compudyne Corporation; Compudyne LLC; Cooper Industries LLC; Copeland Corporation LLC; Copes-Vulcan; Copes-Vulcan Inc.; Covil Corporation; Crane Co.; Crane Instrumentation & Sampling Inc.; Crane Instrumentation & Sampling PFT Corp.; Crosby Valve LLC; Crown Boiler Co.; Crown Boiler Co. LLC; CRSS Inc.; CSK Auto Inc.; Daniel International Corporation; Davis Mechanical Contractors Inc.; DB Riley Inc.; DCO LLC; Dean Pump Division; Dezurik Inc.; Durez Corporation; EI Du Pont De Nemours and Company; Eaton Corporation; Ecodyne Corporation; Edward Valves Inc.; EIDP Inc.; Electrolux Home Products Inc.; Electrolux Home Products LLC;

Erie City Iron Works; Fiber Insulation Inc.; Fisher Controls International LLC; Flowserve Corporation; Flowserve US Company; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International Inc.; Fluor Corporation; Fluor Daniel Services Corporation; Fluor Enterprises Inc.; FMC Corporation; Foster Wheeler Energy Corporation; G Denver and Co LLC; Gardner Denver Inc.; Gardner Denver Industrial Machinery; Gardner Denver Nash LLC; General Boiler Casing Company Inc.; General Dynamics Corporation; General Electric Company; Genuine Parts Company; Goodyear Tire & Rubber Company; Gorman-Rupp Company; Gould Electronics Inc.; Goulds Pumps Inc.; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell Corporation; Grinnell LLC; Griscom-Russel Company; Guy M Beaty & Co.; Heat & Frost Insulation Company Inc.; Henry Pratt Company LLC; Hoffman Specialty Mfg. Corp.; Hoke Inc.; Hollingsworth & Vose Company; Honeywell International Inc.; Howden Buffalo Inc.; HPC Industrial Services LLC; IMO Industries Inc.; Impac Inc.; International Paper Company; ITE Circuit Breaker Co.; ITT Corporation; ITT Fluid Products Corp.; ITT Industries Inc.; ITT LLC; ITT Marlow; J & L Insulation Inc.; K-Mac Services Inc.; Kennedy Valve Company; Kennedy Valve Division; Kirby-Cundiff Insulation and Firestop of Virginia; Kirby-Vass Insulation Inc.; Kragen Auto Supply Co.; Marley Cooling Tower Company; McCord Corporation; McWane Inc.; Met-Pro Technologies LLC; MetLife Inc.; Metropolitan Life Insurance Company; Michelin Corporation; Michelin North America Inc.; Michelin Tire Corporation Minnesota Mining and Manufacturing Company; Mueller Co. LLC; NAPA; National Automotive Parts Associates; Nibco Inc.; O'Reilly Auto Enterprises LLC; O'Reilly Automotive Stores Inc.; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Peerless Pump; Pfizer Inc.; Piedmont Insulation Inc.; Pipe & Boiler Insulation Inc.; Plastics Engineering Company; Plenco; Pneumo Abex LLC; Presnell Insulation Co. Inc.; Pursuit Attractions and Hospitality Inc.; Redco Corporation; Rentavla LLC; Riley Power Inc.; Riley Stoker Corporation; Rust Engineering & Construction Inc.; Rust International Inc.; Schneider Electric USA Inc.; Sherwin-Williams Company; Siemens Energy & Automation Inc.; Siemens Industry Inc.; Sitrine Environmental Consultants Inc.; Spirax Sarco Inc.; SPX Cooling Technologies LLC; SPX LLC; Square D. Company; Standard Insulating Company Inc.; Standard Insulation Company of NC Inc.; Starr Davis Company Inc.; Star Davis Company of SC Inc.; Sterling Gludi Systems USA LLC; Sterling Wander LLP; Taco Inc.; The Dial Corporation; The Duriron Company, Inc.; The Marley-Wylain Company LLC; TopBuild Corp.; Union Carbide Corporation; Union Pump Company; Uniroyal Holding Inc.; United Conveyor

Corporation; United States Steel Corporation; United Subcontractors Inc.; US Rubber Company Inc.; Valves and Controls US Inc.; Velan Valve Corp.; Viacom Inc.; Viad Corp.; Victor Gasket Manufacturing Company; Viking Pump Inc.; Walworth Company; Warren Pumps LLC; Watts Regulators Co.; Watts Water Technologies Inc.; Weil-McLain; Weir Valves & Controls USA Inc.; Westinghouse Electric Corporation; William Powell Company; Wind Up Ltd.; Yeargin Construction Company Inc.; York International Corporation; York-Shipley Inc.; Zurn Industries Inc.; Zurn Industries LLC,

Defendants,

of which

TopBuild Corporation is the..... Appellant.

APPELLANT’S MEMORANDUM ON APPEALABILITY UNDER SOUTH CAROLINA
CODE § 14-3-330(2)(C)

A defendant ordinarily may not appeal until the case is over. But South Carolina Code § 14-3-330(2)(c) makes an exception for an order that ends a party’s case before trial by striking its pleadings, and the reason is practical. Once an issue is struck, it leaves no trace in the record, and what never reaches the record can never be reviewed. This appeal presents that situation in an unfamiliar form.

In its August 21, 2026, order granting Richard Robinson’s motion for sanctions (the Sanctions Order), the circuit court never used the word “strike.” Yet it did something with the same effect. Despite the absence of evidentiary support, the order (A) directs the jury to presume that Robinson was exposed to asbestos insulation supplied, installed, or removed by Standard Insulating Company, Inc. (Standard); and (B) it forbids TopBuild Corporation (TopBuild), Standard’s corporate successor, from offering any evidence to the contrary. The Sanctions Order, therefore, fully resolves the points on which TopBuild’s defense turns.

Under subsection (2)(c), this Court has long looked past the label of an order to its actual effect, and the effect here is to place TopBuild in default in all but name. Trial would add nothing to the sanctions record, which the parties have already developed. Accordingly, TopBuild respectfully requests that this Court allow immediate appeal of the Sanctions Order under subsection (2)(c).

FACTUAL AND PROCEDURAL BACKGROUND

In July 2025, Robinson sued TopBuild, individually and as successor-in-interest to United Subcontractors, Inc. (United), successor-by-merger to Standard, along with dozens of other entities. **Ex. 1 at 15–19, 142; Ex. 2 at 15–19.** He seeks compensatory and punitive damages for injuries he attributes to asbestos exposure during his career as a mechanical worker in North and South Carolina. **Ex. 2 at 10–21, 141.** TopBuild answered that neither it nor its predecessors had manufactured, sold, supplied, or installed asbestos or asbestos-containing products, and that it had no tie to any jobsite where Robinson worked as an insulator. **Ex. 3 at 34–48; Ex. 4 at 15.**

After Robinson deposed TopBuild’s Rule 30(b)(6), SCRCF, representative, Fredrick Judson, Robinson moved to compel and for sanctions. **Ex. 5 at 16.** The motion pointed to conflicts among Judson’s testimony in this case, testimony TopBuild’s representatives gave in three earlier cases, and documents produced by another defendant here. **Ex. 5 at 2–12.** Robinson asked the circuit court to admit evidence of conflicting testimony between Judson’s testimony in this case and that given by prior TopBuild representatives in other cases, to allow an adverse inference from that conflict, to instruct the jury to presume that Robinson was exposed to asbestos insulation “supplied, installed, and/or removed by Standard,” to bar TopBuild from rebutting that presumption of liability, and to impose monetary sanctions. **Ex. 5 at 16–17.** TopBuild responded

that the motion, in substance, asked the circuit court to “strike Standard’s central ‘no exposure’ defense” and place TopBuild in default. **Ex. 6 at 1.**

The circuit court held two hearings on Robinson’s motion. At the first, on July 9, 2026, TopBuild described for the circuit court what Robinson’s motion would do. **Ex. 7 at 15–16.** TopBuild explained that it would strike TopBuild’s affirmative defenses 16, 27, 29, 30, 55, and 62, and it would convert roughly two dozen paragraphs of TopBuild’s Answer “from denied to admitted.” **Ex. 7 at 15–16.** Describing the relief it intended to grant, the circuit court stated that it would “strike the requested portions of [TopBuild’s] pleadings.” **Ex. 7 at 38.**

Between the hearings, discovery continued and the effect of the relief Robinson requested was made clear. As the parties prepared to depose an expert witness, Kyle Dotson, Robinson’s counsel described how far the coming sanctions would reach, writing that Dotson’s opinion was no longer relevant because “TopBuild’s liability and causation as to Robinson has already been established, and this is now just a damages proceeding as to TopBuild.” **Ex. 8.**

The circuit court held its second hearing on July 22, 2026, primarily to re-examine Judson before the court. **Ex. 9 at 25–53.** The parties undertook that examination, and little argument followed on the substance of Robinson’s motion. **Ex. 9.** On August 21, 2026, the circuit court issued the Sanctions Order, granting the relief requested at the July 9th hearing. **Ex. 10 at 20.**

As Robinson requested and the circuit court previewed during the first hearing, the Sanctions Order permits Robinson to offer evidence of the inconsistent testimony, directs the jury to draw adverse inferences from it, directs that the court will instruct the jury to presume that Robinson “was exposed to asbestos insulation supplied, installed, and/or removed by Standard . . . during his time as an insulator from 1966–1983” (despite the lack of actual evidence that would support that position), and precludes TopBuild from “introducing any opinions, testimony, or

evidence suggesting that it did not sell, install, or remove asbestos-containing insulation at any worksite of Plaintiff.” **Ex. 10 at 18–19.** This appeal followed.

ARGUMENT

Section 14-3-330 of the South Carolina Code governs when a party may appeal an order entered before or during trial. The default rule is “immediate appeal of various orders issued before or during trial generally has not been allowed,” requiring parties to wait for final judgment before seeking review. *Hagood v. Sommerville*, 362 S.C. 191, 196, 607 S.E.2d 707, 709 (2005). Section 14-3-330 marks the exceptions, including subsection (2)(c).

Subsection (2)(c) reaches an order that affects a “substantial right” by striking “an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(2)(c). An older decision read that language to reach only an order expressly striking a pleading. *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 317–18, 368 S.E.2d 456, 456 (1988) (finding an order denying a party’s Rule 6(b), SCRPC, motion was not immediately appealable under subsection (2)(c) because that order did not strike an answer). This Court has since rejected that strict construction of subsection (2)(c), focusing not on what an order is called, but on what it does. *See, e.g., Thornton v. SCE&G*, 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011) (“We believe a narrow construction of section 14-3-330(2)(c) requires us to focus on the effect of the order, not the label given to the motion or to the order granting it.”). An order comes within subsection (2)(c) when it “removes a material issue from the case, [] preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.” *Id.* at 304, 705 S.E.2d at 479. That two-part inquiry controls here.

This Court has taken up the immediate appealability of Rule 37(b)(2), SCRCP, sanctions under section 14-3-330 in only a few cases, none like this one. A discovery order that directs a party to do or refrain from something in the discovery process is interlocutory and must await final judgment, because it leaves the party free to defend on the merits and to build a record for review. *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) (“[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right.”). A sanction that strikes, or has the effect of striking, a pleading is different in kind, because it removes the defense itself and leaves nothing to try. This Court’s decisions sort along that line. At one end is *Jones v. Robinson*, where this Court, in an unpublished opinion, allowed an appeal from a Rule 37(b)(2)(C), SCRCP, sanction that formally struck a party’s pleadings and left it unable to defend at trial. Op. No. 2023-UP-369, 2023 WL 7685902, at *5 (Ct. App. Nov. 15, 2023). At the other is *Richardson v. Halcyon Real Est. Servs., LLP*, where this Court held that a Rule 37(b)(2) order requiring reconvened depositions, awarding attorney’s fees, and limiting a witness’s conduct at deposition was not immediately appealable. 439 S.C. 419, 424–27, 887 S.E.2d 153, 155–57 (Ct. App. 2023). That order regulated how discovery would proceed and left the defense intact; the sanction in *Jones* ended it. Neither answers whether the sanctions in between these two poles, imposed under Rules 37(b)(2)(A) and (B), may be immediately appealed. *Thornton*’s effects test does.

Here, the Sanctions Order does not announce that it is striking TopBuild’s Answer, though the circuit court indicated that was its intent during the first hearing, and Robinson’s counsel subsequently confirmed that is also how the plaintiff understood the effect of the Sanctions Order. But the Sanctions Order directs the jury to presume that Robinson was exposed to asbestos through

Standard and then forbids TopBuild from rebutting that presumption, erasing TopBuild’s central defenses: no connection between TopBuild and any of Robinson’s jobsites, and no exposure to asbestos from any product sold, installed, or removed by TopBuild. **Ex. 10 at 19.** Under the Sanctions Order, TopBuild cannot defend itself at trial, and trial would not develop the record needed to review that ruling. That is enough to bring the order within subsection (2)(c).

I. The Effects Test Reaches Orders that Effectively Default a Party

The effects test is best understood by the problem it solves. It does not reach every order that dims a party’s chances at trial. The test reaches only an order that removes material from the case before trial, so that no appellate court can later repair the error. *Thornton*, 391 S.C. at 303–05, 705 S.E.2d at 478–80. The test is concerned not with “ordinary” prejudice, but with a record that will never be made. *Harbert v. Atlanta & C. Air Line Ry. Co.*, 74 S.C. 13, 16, 53 S.E. 1001, 1002 (1906).

Thornton set the test by which the at-issue order must be analyzed. There, the Thorntons brought a class action against South Carolina Electric and Gas for harm caused by blasting at the Lake Murray Dam, and the circuit court struck their class allegations for failing Rule 23, SCRCP. *Thornton*, 391 S.C. at 300, 705 S.E.2d at 477. This Court held the order was not immediately appealable because “its effect was not to strike a pleading, as its label suggests, but rather to deny class certification on the merits of Rule 23(a), SCRCP,” and Rule 23 allows the class claim to be reshaped before any merits decision. *Id.* at 304–05, 705 S.E.2d at 479. The Thorntons still had options at trial, and the normal appeals process could still do its work. *Id.* From that reasoning came the two-part test. The order must keep a key issue from being decided on the merits, and it must leave the party no way to correct the error at trial or on appeal from final judgment. *Id.* at 304, 705 S.E.2d at 479.

Two older cases supplied the foundation for this rule. In *Miles v. Charleston Light & Water Co.*, the Supreme Court considered a challenge to an order requiring the plaintiff to make its complaint more definite. 87 S.C. 254, 255–56, 69 S.E. 292, 293 (1910). That order was not immediately appealable on its own. *Id.* at 257, 69 S.E. at 293. But the *Miles* Court took up the appeal because the defendant had also challenged a ruling that effectively cut part of the complaint from the case, with no chance of it returning at trial. *Id.* Prejudice alone, *Miles* made clear, does not open the appellate court’s doors; instead, the order must permanently remove material from the proceedings.

Bowden v. Powell gave the clearest explanation of why. 194 S.C. 482, 484–85, 10 S.E.2d 8, 9–10 (1940). Citing *Harbert*, the *Bowden* Court explained that, when a court refuses to strike, the disputed material stays in the case and in the record, allowing a reviewing court to correct any error on appeal from final judgment. *Id.* at 484, 10 S.E.2d at 9–10 (citing *Harbert*, 74 S.C. at 16, 53 S.E. at 1002). When material is struck, however, it will not appear in the evidence, the jury charge, or anywhere else in the record. *Id.* at 484, 10 S.E.2d at 9 (citing *Harbert*, 74 S.C. at 16, 53 S.E. at 1002). An appellate court cannot fix what the record does not contain.

That reasoning bites hardest when the order strikes an answer, because striking an answer produces default. *Burkhalter v. Townsend*, 139 S.C. 324, 335, 138 S.E. 34, 37 (1927). A defaulted defendant cannot put on a case. Its part in the trial shrinks to cross-examining the plaintiff’s witnesses and objecting to the plaintiff’s evidence. *Limehouse v. Hulsey*, 404 S.C. 93, 114, 744 S.E.2d 566, 578 (2013) (holding that the proper role of a defendant in a default hearing is “limited to cross-examination and objection to plaintiff’s evidence”). A one-sided trial like that leaves no record for review on appeal. And here, the trial would be even more one-sided, as TopBuild has been forbidden from even cross-examining witnesses on the key facts underlying its core

defense—namely, the lack of any evidence putting TopBuild at a jobsite with Robinson and the complete absence of any evidence of exposure by Robinson to any asbestos-containing product from TopBuild.

South Carolina’s courts have applied the same reasoning to orders that never say “strike” yet work the same result. *See Wetzel v. Woodside Dev. Ltd. P’ship*, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005) (holding an order granting a motion to set aside default was immediately appealable because that particular order had “the effect of . . . granting a motion to dismiss under Rule 12(b)(5), SCRCPP, since it ends the action as to [one party]”). In each case, the inquiry is functional: did the order, whatever its label, end a party’s ability to litigate and build a record? The Sanctions Order does.

II. The Sanctions Order Defaults TopBuild in All but Name—A Position the Plaintiff Himself Has Taken Below

TopBuild answers for Standard as its successor, so the Sanctions Order’s commands about Standard bind TopBuild. Two of the Sanctions Order’s provisions end TopBuild’s defense. The first directs the circuit court to instruct the jury to presume that Robinson “was exposed to asbestos insulation supplied, installed, and/or removed by Standard.” **Ex. 10 at 19**. The second bars TopBuild from “introducing any opinions, testimony, or evidence suggesting that it did not sell, install, or remove asbestos-containing insulation at any worksite of [Robinson].” **Ex. 10 at 19**.

One supplies the finding Robinson otherwise would have to prove on liability and causation. The other prevents TopBuild from answering it. Taken together, they do not resolve one issue among several; they remove TopBuild’s defense altogether, establishing its central fact and closing off any attempt to contest it. Before the first witness is sworn, the central dispute will already have been resolved. All that TopBuild could do is cross-examine Robinson’s witnesses and object to his evidence—but it is unable to suggest through examination or objections (or, if

permitted, an affirmative evidentiary presentation) that Robinson was never exposed to any asbestos for which TopBuild is responsible.¹ The order never writes the words “strike” or “default,” but after *Thornton*, it need not. 391 S.C. at 303, 705 S.E.2d at 478.

The record confirms the effect. At the July 9 hearing, TopBuild identified for the court the defenses the motion would strike, including its affirmative defenses 16, 27, 29, 30, 55, and 62, along with the two dozen paragraphs of its Answer the motion would turn “from denied to admitted.” **Ex. 7 at 15–16.** The circuit court described the relief in the same terms, announcing that it would “strike the requested portions of [TopBuild’s] pleadings.” **Ex. 7 at 38.** Robinson’s counsel did as well. As discovery went forward, counsel explained that an expert’s opinion no longer mattered because “TopBuild’s liability and causation as to Robinson has already been established.” **Ex. 8.** The relevant actors thus understood the Sanctions Order to decide TopBuild’s liability before trial. Thus, it is immediately appealable accordingly under Section 14-3-330(2)(c).

CONCLUSION

Subsection (2)(c) looks to effect, not label. The Sanctions Order has the effect of striking TopBuild’s central defense. It tells the jury to presume exposure through Standard and bars TopBuild from proving otherwise. That leaves TopBuild in the position of a default defendant on the central issue of the case, as it has been forbidden from developing an evidentiary record before the jury on the questions of liability or causation. Because the order affects a substantial right and has the effect of striking TopBuild’s essential defenses, the Sanctions Order is immediately appealable pursuant to South Carolina Code § 14-3-330(2)(c). Accordingly, TopBuild respectfully requests that the Court allow this appeal to move forward to the briefing stage.

¹ Of course, because of the presumptions and prohibitions of the Sanctions Order, Robinson has no need to prove liability or causation before the jury, as those have already been established by the circuit court’s ruling.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll

S.C. Bar No. 74000

todd.carroll@wbd-us.com

M. Elizabeth O'Neill

S.C. Bar No. 104013

elizabeth.oneill@wbd-us.com

1221 Main Street, Suite 1600

Columbia, SC 29201

(803) 454-6504

Brent H. Glasgow

S.C. Bar No. 106915

brent.glasgow@wbd-us.com

5 Exchange Street

Charleston, SC 29401

(843) 722-3400

Attorneys for Appellant TopBuild Corporation

October 5, 2026

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant TopBuild Corporation, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Appellant's Memorandum on Appealability Under South Carolina Code § 14-3-330(2)(c)

Parties Served:

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiff

By: /s/ M. Todd Carroll
Attorneys for Appellant

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