IN THE SUPREME COURT
STATE OF GEORGIA

CERTAINTEED CORPORATION, Appellant, v. MARCELLA FLETCHER, Appellee.	CASE NO. S15G1903

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

I. INTRODUCTION

A writ of certiorari was granted in this case to determine whether a product manufacturer can be held liable for negligent failure to warn and negligent design when the injured party had no direct contact with the manufacturer's product itself. Specifically, this Court granted certiorari on the following issue:

> Did the Court of Appeals err in reversing the grant of summary judgment to a manufacturer of asbestos-laden products on the plaintiff's negligent failure-to-warn and negligent design claims where the plaintiff's alleged injury was not caused by use of, or direct contact with, the product but by her exposure to toxic dust brought home on clothing worn by the person actually working with the product?

The answer is "yes."

Merely eleven years ago this Court directly and unanimously held that "Georgia negligence law does not impose any duty on an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace." *CSX Transp., Inc. v. Williams*, 278 Ga. 888, 608 S.E.2d 208 (2005) ("*Williams*"). The Court need look no further than *Williams* to answer the issue on which it has granted certiorari here.

Yet, in a 4-3 decision, a panel of the Court of Appeals refused to apply *Williams*, holding instead that a product manufacturer does owe a duty in circumstances nearly identical to *Williams*. *See Fletcher v. Water Applications Distrib. Grp., Inc.*, 333 Ga. App. 693, 773 S.E.2d 859 (2015) ("*Fletcher*").

Indeed, while *Williams* held that those with direct control over the work environment owe no duty to a party injured by off-the-jobsite exposures to asbestos product residue, the Court of Appeals, nevertheless, held that a manufacturer who has no such control and no relationship with the plaintiff does in fact have such a duty. This holding creates an inexplicable fracture in the way different categories of defendants are treated in the same take-home exposure cases and radically expands tort liability in this state.

In rejecting *Williams* as controlling and reversing summary judgment in favor of CertainTeed, the Court of Appeals erred for four reasons.

First, the court was of the mistaken opinion that foreseeability is the touchstone for determining the existence of a duty under Georgia law. Specifically, the Court of Appeals held that the existence of a duty turned on whether, at the time of Plaintiff's claimed exposure, a product manufacturer knew or should have known that the exposure could cause an asbestos-related disease.[1] The court was simply incorrect. In *Williams*, this Court categorically rejected a foreseeability analysis in determining whether a duty existed under the same circumstances. Instead, the opinion expressly states: "we decline to extend on the basis of ***foreseeability*** the employer's duty beyond the workplace to encompass all

[1]Crucially, Plaintiff sued *solely* on a negligence theory. That is crucial because, had Plaintiff tried to assert a strict liability claim, the claim would have been barred by Georgia's statute of repose.

who might come into contact with an employee or an employee's clothing outside the workplace." *Williams* at 890-91 (emphasis added). Foreseeability played absolutely no role.

Like Plaintiff here, the plaintiffs in *Williams* urged a foreseeability analysis. Yet *Williams* never mentions the date of any plaintiff's asbestos exposure, much less delve into the state of scientific knowledge at the time of those exposures. While these considerations would certainly have been relevant under a foreseeability analysis of duty, they had no bearing in *Williams* because the Supreme Court of Georgia has determined that foreseeability is irrelevant to establishing duty. As the dissent recognized in this case, "policy" considerations drove the result in *Williams* — not foreseeability. *Fletcher* at 702 (dissent: quoting *Williams* at 890). Nevertheless, the majority, focusing on foreseeability, neglected to mention policy even once in reaching its result.

Second, regarding the negligent failure to warn claim, the majority held that Georgia law ***already*** imposed a duty upon manufacturers to warn any person who may be foreseeably injured by a product. *Fletcher* at 700. In fact, this is flatly wrong: no case in Georgia has ever held that a manufacturer owes a duty to warn ***any (and every)*** third party of foreseeable risks. Rather, the duty to warn in our state (like the duty to use reasonable care in designing a product) focuses predominantly on public policy concerns, not foreseeability. As a result, duty is

circumscribed to defined categories of individuals: purchasers, expected users, and bystanders to the use of a product.

Third, in its analysis of the negligent failure to warn claim, the Court of Appeals mistakenly held that "whether CertainTeed ***had a duty to warn*** of the risks of its asbestos-containing water pipe ***remains a question for the jury to resolve***." *Fletcher* at 700 (emphasis added). This statement directly conflicts with the Court's own statement earlier in its opinion that "[t]he existence of a legal duty is a question of law for the court," and represents a complete departure from bedrock principles. *See Fletcher* at 696 (quoting *Rasnick v. Krishna Hospitality, Inc.*, 289 Ga. 565, 567 (2011)).

Fourth, in addressing the design defect theory, the Court of Appeals established a previously unrecognized negligence duty running from product manufacturers to the family members of occupationally exposed workers. The court held that "*Williams* is not controlling when determining whether a manufacturer ***violated*** its duty of care in a design defect case." *Fletcher* at 699 (emphasis added). This analysis is again incorrect. Whether CertainTeed violated a duty to Plaintiff was not the question before the trial court or the Court of Appeals. Instead — as the trial court and dissent recognized — the question was whether the defendant ever owed such a duty to begin with. *See Fletcher* at 702 (dissent: majority's assertion that *Williams* is not controlling concerning whether

manufacturer *violated* duty of care "amounts to question begging given that *Williams* does not address whether a duty was *violated*, but rather is concerned with whether a duty is even owed as an initial matter").[2] The Court of Appeals presupposed a duty, moving straight to whether there was sufficient evidence of breach.

The Court of Appeals' decision should be reversed. "Take-home" asbestos cases against product manufacturers have accelerated, and show no signs of slowing. In tandem, scores of "traditional" asbestos defendants have succumbed to bankruptcy from the deluge of lawsuits. *Williams* settled the duty issue in Georgia, giving finality and certainty to an issue with far-reaching public policy implications. The Court of Appeals unsettled these principles.

CertainTeed is very sympathetic to Mrs. Fletcher's suffering. Every injured plaintiff who brings a cause of action sounding in negligence — whether Plaintiff here, the plaintiffs in *Williams*, or any other plaintiff seeking redress for personal injury — is a sympathetic party. As this Court has explained, even when a case raises "issues of morality and humanity," "a moral or humane obligation does not compel the existence of a legal duty[.]" *Rasnick*, 289 Ga. at 569-70. The issue

[2]This point is clearly illuminated by looking to the certified question in *Williams*: "Whether Georgia negligence law *imposes any duty* on an employer to a third-party, non-employee, who comes into contact with its employee's asbestos-tainted work clothing at locations away from the workplace, such as the employee's home?" *Williams* at 889 (emphasis added).

here is how far tort law extends.

The *Williams* Court, fully aware of its decision's implications, recognized its responsibility: "to consider the larger social consequences of the notion of duty and to correspondingly tailor that notion so that the illegal consequences of wrongs are limited to a controllable degree. The recognition of a common-law cause of action under the circumstances of this case would, in our opinion, expand traditional tort concepts beyond manageable bounds and create an almost infinite universe of potential plaintiffs." *Williams* at 890 (citations omitted).

The duty issue raised in this case concerns a class of plaintiffs identical to that before the Court in *Williams*. Nothing would justify recognizing a duty running from product manufacturers to individuals exposed to product residue brought home on the clothing of family members after explicitly rejecting the same duty on behalf of employers who had more control over the use of the product. *Williams*'s reasoning wholly applies here.

In light of these principles, the Court of Appeals erred in reversing the grant of summary judgment to CertainTeed. To hold otherwise would upend years of settled law in our state and expand the boundaries of tort claims to an unmanageable, unimaginable, limit.

II. STATEMENT OF FACTS

The trial court decided this case in Defendant-Appellant CertainTeed's ("CertainTeed") favor on a motion for summary judgment. After construing the evidence submitted in the light most favorable to Plaintiff-Appellee Marcella Fletcher ("Fletcher"), the trial court granted summary judgment because it found that CertainTeed owed no duty to Fletcher. The Court of Appeals reversed, implicitly finding a duty on the negligent design defect claim and explicitly finding a duty on the negligent failure to warn claim. Without waiving any issue that could arise on a subsequent remand, the following are the uncontested facts for purposes of this appeal.

Marcella Fletcher alleges that she has mesothelioma, a cancer of the lining of the lung often linked to asbestos exposure. She contends that her asbestos exposures were to fibers brought home on her father's clothing when she was living with him and he worked for the City of Thomasville, Georgia. Fletcher sued CertainTeed, along with other defendants, asserting that it should be liable because (a) it sold asbestos cement ("A/C") pipe to Thomasville between 1969 and 1973; (b) her father worked with this pipe and, as a result, was occupationally exposed to asbestos residue; (c) she was secondarily exposed to asbestos residue that her father brought home on his clothing; and (d) this exposure caused her mesothelioma.

III. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Article VI, Section VI, Paragraph V of the Constitution of the State of Georgia, O.C.G.A. § 5-6-15, and Supreme Court of Georgia Rules 38-45. The Court of Appeals issued its opinion on July 16, 2015, and subsequently issued a modified opinion on July 31, 2015, after denying CertainTeed's motion for reconsideration. On August 5, 2015, CertainTeed timely filed a notice with the Court of Appeals of its intention to file a petition for a writ of certiorari. CertainTeed filed its petition for writ of certiorari in this Court on August 20, 2015, and the petition was granted on January 11, 2016.

IV. ISSUE PRESENTED

Did the Court of Appeals err in reversing the grant of summary judgment to a manufacturer of asbestos-laden products on the plaintiff's negligent failure-to-warn and negligent design claims where the plaintiff's alleged injury was not caused by use of, or direct contact with, the product but by her exposure to toxic dust brought home on clothing worn by the person actually working with the product?

V. ARGUMENT

Affirming the Court of Appeals would create an illogical and unfounded asymmetry regarding the treatment of similar classes of defendants and unsettle longstanding principles for determining duty. Affirming would mean that (1) two classes of similarly situated defendants will be treated differently — one absolutely

shielded from liability — without any sound basis for the differential treatment; and (2) settled Georgia law dictating how to determine whether a duty exists in negligence cases will be thrown into disarray, with the touchstone of public policy relied upon by this Court in *Williams* jettisoned in favor of a foreseeability analysis unanimously rejected in the same case just a decade ago. Reversing the Court of Appeals would do neither: similarly situated defendants would be treated similarly and long-standing principles for determining duty would remain intact.

Williams came to this Court on a certified question from the United States Court of Appeals for the Eleventh Circuit, framed in all material respects as the underlying issue in this case. Specifically, the issue in *Williams* was whether Georgia negligence law imposes a duty on an employer to a third-party, non-employee who is exposed to its employee's asbestos-tainted clothing away from the workplace. *Williams* at 889.

In *Williams*, this Court, warning of a potentially limitless class of plaintiffs, articulated the standard for duty analysis and held that foreseeability is ***not*** the touchstone. The Court of Appeals side-stepped that holding, ignoring the policy considerations set forth in *Williams* (in favor of a previously rejected foreseeability analysis) and disregarding the warning, and by its holding potentially created such a class. In *Williams*, this Court warned of a potentially limitless class of plaintiffs. The Court of Appeals disregarded that warning, and by its holding potentially

created such a limitless class. In *Williams*, this Court found that no duty existed to those secondarily exposed to product residue carried away from the site of the initial exposure on clothing of the worker regardless of the specific details of exposures or the state of scientific knowledge at the time of that exposure. The Court of Appeals embraced these irrelevant details in fashioning its holding.

Even beyond the sharp differences in the analytical frameworks employed in *Williams* and *Fletcher*, the true problem is that the Court of Appeals has unsettled that which was settled in *Williams*: under circumstances identical to those here, no duty exists in take-home exposure cases based on negligence. The Court of Appeals created an exception to *Williams* solely for product manufacturers — parties that have an even lesser degree of relationship and control than the class of defendants found to have no duty in *Williams*. Unless this Court reinstates the trial court's grant of summary judgment, a dichotomy will persist under which employers who utilized asbestos-laden products will continue to owe no duty to take-home plaintiffs in negligence cases, but the manufacturers who supplied those products to the employers will. This result is inherently unfair and ultimately arbitrary.

a. Public Policy Is the Touchstone for Duty

The reason that this Court refused to impose a negligence duty on employers in take-home exposure cases applies equally to product manufacturers: it is an

unsound policy. A cursory examination of how this distinction would play out in real life reveals why. If the Court of Appeals' ruling stands, those who are most able to control a workplace and communications to the worker — employers and premises owners —would owe no duty to third parties, while the party furthest removed from a potential plaintiff — product manufacturers — would have a duty. This would be an odd system indeed.

Furthermore, how could a manufacturer conceivably discharge such a duty? It's no answer to suggest that a warning to workers about occupational exposure risks would provide a remedy to those who encounter much lower doses away from the jobsite. Asbestos — like every other harmful substance — is dose-responsive. Accordingly, a warning to workers about higher-dose occupational exposures and one to workers' family members about lower-dose exposures to product residue are warnings about very different risks. The Court of Appeals put in place a new duty to warn family members — persons who are several degrees of separation away from the premises owners, employers, and workers themselves.

This Court reached its result in *Williams* relying in part on persuasive precedence articulated by courts outside of Georgia. In "decline[ing] to extend on the basis of foreseeability" a duty running to those persons who might be exposed outside of the workplace, this Court cited favorably *Widera v. Ettco Wire & Cable Co.*, 204 A.D.2d 306, 307-08, 611 N.Y.S.2d 569 (N.Y. App. Div. 1994). In

Widera, the court cautioned that "[t]he recognition of a common-law cause of action under the circumstances of this case would . . . expand traditional tort concepts beyond manageable bounds and create an almost infinite universe of potential plaintiffs." *Widera*, 204 A.D.2d at 307. This Court adopted that position, finding that "the holding in *Widera* is consistent with negligence law in Georgia" and stating that "the policy enunciated in *Widera* remains valid and [we] choose, therefore, to adhere to the position that an employer's duty to provide a safe workplace does not extend to persons outside the workplace." *Williams* at 890-91. The policy rationale embraced in *Williams* was wholly sound then and now.

Moreover, under the circumstances of this case, the only way CertainTeed could have fulfilled the duty imposed by the Court of Appeals would have been to somehow imagine a way to have warned Plaintiff directly, despite the fact that Plaintiff did not purchase, work with, or even come into contact with CertainTeed's A/C pipe. In practice, this would have been an impossible task. Carving out an exception to impose a duty when there otherwise is none, in circumstances where the duty would be nearly impossible to discharge, serves no public policy end.

In 2013, the Maryland Court of Appeals — Maryland's highest court — was confronted with this very issue and declined to recognize a duty on a manufacturer. Embracing the rationale of *Williams*, the court explained:

> Determining the existence of a duty requires the weighing of policy considerations, among which are whether, in light of the relationship (or lack of relationship) between the party alleged to have the duty and the party to whom the duty is alleged to run, there is *a feasible way of carrying out that duty* and having some reason to believe that a warning will be effective. To impose a duty that either cannot feasibly be implemented or, even if implemented, would have no practical effect would be poor public policy indeed.

Georgia Pac., LLC v. Farrar, 432 Md. 523, 540, 69 A.3d 1028, 1039 (2013) (emphasis added). It was this very consideration that led this Court to articulate the rule in *Williams*. In holding conversely, the Court of Appeals imposed a non-dischargeable duty with no basis in Georgia law or public policy.

b. <u>The Duty to Warn Extends Only to Users and Bystanders to Use</u>

1. The Duty to Warn Holding Is Unprecedented

The Court of Appeals asserted that previous decisions had imposed a duty upon product manufacturers to warn any potential third party who might conceivably be harmed by their product. *Fletcher* at 700. That was simply incorrect.

The court relied principally on *R & R Insulation Servs., Inc. v. Royal Indem. Co.*, 307 Ga. App. 419, 427(3), 705 S.E.2d 223, 233 (2010), but neither *R & R Insulation* nor any of its predecessors imposed the negligence duty that the Court of Appeals imposed here. Indeed, in every case leading up to and including *R & R Insulation* the plaintiffs had purchased the product, used the product, or were

bystanders in the immediate vicinity of the product's use. *See, e.g.*, *R & R Insulation*, 307 Ga. App. at 419 (plaintiff purchased the product).[3]

Instead, Georgia has been guided by the Restatement (Second) of Torts § 388 for at least sixty years. Section 388 limits, on public policy grounds, the class of plaintiffs to whom a duty to warn is owed. *See, e.g.*, *Greenway v. Peabody Int'l Corp.*, 163 Ga. App. 698, 294 S.E.2d 541 (1982); *see also J.C. Lewis*, 85 Ga. App. at 541-42, 69 S.E.2d at 819-20 (relying on Restatement (First) of Torts § 388). Concerning the class of persons to whom a duty is owed, Section 388 provides:

> One who supplies directly or through a third person a chattel for another to use is subject to liability to those whom the supplier should expect to use the chattel with the consent of the other or to be endangered by its probable use, for physical harm[.]

Restatement (Second) of Torts § 388. The comments to Section 388 make clear that this section contemplates that a supplier's duty extends to "not only the person to whom the chattel is turned over by the supplier, but also to those who are

[3]*R & R Insulation* traces directly back fifty years to the Court of Appeals' decision in *J.C. Lewis Motor Co. v. Williams* (adopting Section 388). *See* (i) *R & R Insulation*, 307 Ga. App. at 427 & n.10 (quoting *Dozier Crane & Mach., Inc. v. Gibson*, 284 Ga. App. 486, 499 (2007)); (ii) *Dozier*, 284 Ga. App. at 499 (citing *Camden Oil Co. v. Jackson*, 270 Ga. App. 837, 839-40 (2004)); (iii) *Camden Oil*, 270 Ga. App. at 839-40 (citing *Powell v. Harsco Corp.*, 209 Ga. App. 348, 349-50 (1993)); (iv) *Powell*, 209 Ga. App. at 349-50 (citing *J.C. Lewis Motor Co. v. Williams*, 85 Ga. App. 538, 541-42, 69 S.E.2d 816, 819-20 (1952)). Because each of these cases involved those who purchased, used, or were in the vicinity of use of a product, the cases show that "third party" does not mean anyone and everyone who might foreseeably be affected by the absence of a warning.

members of a class whom the supplier should expect to use it or occupy it or share in its use with the consent of such person[.]" *Id.* at § 388 cmt. a. In other words, only purchasers, users, or bystanders[4] to actual use of the product — no one else.

It is undisputed that Plaintiff was not a purchaser, user, or bystander to the actual use of CertainTeed's A/C pipe. In fact, it is clear that Plaintiff never came into direct contact with or ever was in the presence of a CertainTeed pipe at any point in her life. Nevertheless, in every Georgia case of which we are aware – other than the Court of Appeals' holding below — a manufacturer has been held to owe a common law duty to warn only when the plaintiff has come into ***direct contact*** with the product itself. *See, e.g., Banks v. ICI Am., Inc.*, 264 Ga. 732 (1994) (decedent ate manufacturer's rat poison); *Jones v. NordicTrack, Inc.*, 274 Ga. 115, 116, 550 S.E.2d 101 (2001) (owner of exercise equipment injured while tripping over it). Courts must draw a reasonable line and this Court has done so in these cases.

2. Duty Is Not a Question of Fact for the Jury

The Court of Appeals compounded its erroneous duty analysis by stating that whether CertainTeed actually *owed* a duty to warn — in contrast to whether there was a breach — "remains a question for the jury to resolve." *Fletcher* at 700. This statement is in direct conflict not only with the court's reliance on *R & R*

[4]Those who "share in its use."

Insulation to support the conclusion that CertainTeed owed a duty to warn, but also internally contradicts its own statement earlier in its opinion, which correctly acknowledges well-settled Georgia law: "[t]he existence of a legal duty is a question of law for the court." *Fletcher* at 697 (quoting *Rasnick*, 289 Ga. at 567). The existence of such duty remains a question of law for the court to decide. *Id.* at 697, 702 (acknowledged by both the majority and dissent).

c. <u>The Implicit Negligent Design Defect Holding Is Unprecedented</u>

Regarding Plaintiff's claim of negligent design defect, the Court of Appeals bypassed the issue of duty completely and jumped directly to breach. The Court of Appeals held that *Williams* was not controlling "when determining whether a manufacturer ***violated*** its duty of care in a design defect case," and that CertainTeed was accordingly not entitled to summary judgment on that claim. *Fletcher* at 699 (emphasis added). Yet, the court failed to address whether a duty existed in the first place.

Instead, the court assumed that a duty existed and framed the issue in terms of violation of such duty. *See Fletcher* at 699. The court concluded that *Jones* controls the breach issue (*see Jones*, 274 Ga. at 115-18), stating that "[t]he risk-utility analysis [under *Jones*] . . . is not concerned with protecting only specified classes of people." *Fletcher* at 699. But in so doing, the Court improperly conflated duty and breach.

CertainTeed does not dispute here that if the issue in this case were one of *breach* of a recognized duty, then *Jones* may control. But that is not the question here — the question here, which the Court of Appeals completely disregarded, is whether a duty even exists.

In *Jones*, there was no question as to whether a duty existed—the case turned on whether there had been a breach.[5] Indeed, whether the defendant *owed* a duty simply never arose in *Jones* — and even if it had arisen, the plaintiffs in *Jones* were purchasers of the product. Here, Plaintiff did not purchase CertainTeed A/C pipe, nor did she use it, nor was she a bystander when the pipe was being used.

As the dissent below recognized, the issue in *Williams* was whether "to extend on the basis of foreseeability" traditional tort principles "to encompass all who might come into contact with an employee or an employee's clothing outside the workplace." *See Fletcher* at 702 (dissent: citing *Williams* at 890-91). The Court of Appeals failed to consider this question (a question to which *Williams* had clearly answered "no") — it instead implicitly recognized a duty by jumping to

[5]The issue in *Jones* and here were quite different for another reason. The plaintiffs in *Jones* brought *strict liability* claims along with claims sounding in negligence. Because one of the theories in *Jones* was strict liability, the Court emphasized that manufacturer liability may be extended beyond users of a product to those "who may 'consume' the property or 'reasonably be affected' by it." *Jones*, 274 Ga. at 117. While Plaintiff has at various times in this case attempted to embrace the "reasonably be affected" language, the Court of Appeals recognized that Plaintiff herself had no strict liability claim against CertainTeed.

whether there was sufficient evidence of breach. *See Fletcher* at 702 (dissent: noting that the true issue is "whether a duty is even owed as an initial matter").

d. Other States Rejected a Duty

The Court of Appeals recognized a negligence duty that (1) has never before been acknowledged in Georgia; (2) is inconsistent with *Williams*; and (3) is contrary to the vast majority of courts nationwide. *See, e.g., Farrar*, 69 A.3d at 1030-40 (collecting cases) (citing *Williams*).

Since its publication, *Williams* has helped inform other courts addressing whether to recognize a duty running to those who were not occupationally exposed to asbestos-containing products, and courts across the country continue to look to this Court's guidance in its wake. *See Gillen v. Boeing Co.*, 40 F. Supp. 3d 534, 541 (E.D. Pa. 2014) (no duty under Pennsylvania law); *Farrar*, 69 A.3d at 1034, 1039 (no duty under Maryland law); *Campbell v. Ford Motor Co.*, 206 Cal. App. 4th 15, 34 (2012) (no duty under California law); *Van Fossen v. MidAmerican Energy Co.*, 777 N.W.2d 689, 697 (Iowa 2009) (no duty under Iowa law).

In addition, many other courts have found that the relationship between occupational exposure at the worksite and disease caused by derivative "take home exposure" to asbestos from work clothes does not justify the imposition of a duty independent of this Court's holding in *Williams*. *See, e.g., In re New York City Asbestos Litig.* (*Holdampf v. A.C. & S., Inc.*), 840 N.E.2d 115 (N.Y. 2005)

(employers owe no duty to non-employees); *Brewster v. Colgate-Palmolive Co., et al.*, 279 S.W.3d 142 (Ky. 2009) (no duty by premises owner absent actual knowledge of specific hazards); *Riedel v. ICI Am. Inc.*, 968 A.2d 17 (Del. 2009) (premises owner and manufacturer owed no duty based on lack of relationship with spouse of worker); *Nelson v. Aurora Equip. Co.*, 391 Ill. App. 3d 1036 (2nd Dist. 2009) (premises owner owed no duty based on lack of relationship with spouse and mother of workers); *Price v. E.I. duPont de Nemours & Co.*, 26 A.3d 162 (Del. 2011) (employer owed no duty based on lack of relationship with employee's spouse).

Williams alone answers the duty question currently before the Court. The myriad cases decided in other courts merely provide additional support as to why the Court's holding in *Williams* was correct eleven years ago and continues to be correct today.

VI. CONCLUSION

For the foregoing reasons, CertainTeed respectfully requests that this Court answer the issue presented in the affirmative, hold that the Court of Appeals erred in reversing the grant of summary judgment to CertainTeed, and direct that the judgment be reinstated.

Respectfully submitted this 1st day of February, 2016.

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