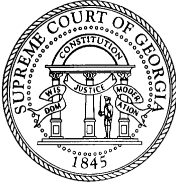

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SUMMARIES OF OPINIONS

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ELLIS V. THE STATE (S16A1246)

The Supreme Court of Georgia has unanimously reversed the attempted extortion and perjury convictions against former **DeKalb County** Chief Executive Officer W. Burrell Ellis, Jr. for his alleged attempts to "shake down" a county contractor for campaign contributions.

In today's opinion, **Justice Harold Melton** writes for the Court that while the evidence was sufficient to convict Ellis, due to significant legal errors that occurred during his trial, the criminal convictions against Ellis, who has already served his time in prison and been released, must be reversed. It will be up to the District attorney whether to retry him.

According to the facts at trial, in an effort to raise money to eliminate his campaign debt, in 2012 Ellis allegedly attempted to extort a campaign contribution from Power and Energy Services, Inc. through its co-owner, Brandon Cummings. Power and Energy Services, an Austell business, had a $250,000 contract with DeKalb County to provide generator repairs for its County Department of Watershed Management. Beginning in June 2012, Ellis made several calls to Power and Energy in an effort to procure a campaign contribution from the company, but apparently the calls were not returned. In a Sept. 27, 2012 recorded telephone conversation later played for the jury between Ellis and Cummings, Ellis asked for a campaign contribution four times and implicitly threatened Cummings that he would cut Power and Energy's contract with DeKalb County if the company did not make a $2,500 contribution to his campaign. Specifically, Ellis said to Cummings: (1) He had already told the DeKalb County Procurement Director, Kelvin Walton, to "just go ahead and cut (Power and Energy's) contract;" (2) "Why are we doing business with this company, that's my thought;" (3) "You know, I could ask the question, why is DeKalb County doing business with a Cobb County business;" and, in response to Cummings'

question asking Ellis why Power and Energy should give to his campaign, (4) "If I've got to answer that for you . . . I'm probably not talking to the right person." Cummings testified at trial that the call made him feel that his contract would be cut if he did not contribute, and that he felt "threatened."

The next day, in another recorded telephone conversation, Ellis told Walton to "let (Power and Energy's contract) expire," and "put a note in their file" so that Power and Energy could never win another contract with DeKalb County. At the time, Walton was working as a confidential informant for the District Attorney's office. Walton later testified that Ellis had encouraged him to put pressure on Power and Energy by letting them know that Walton had the power to cancel contracts. When Power and Energy did not make the requested campaign contribution, consistent with Ellis' earlier threat, the company's contract with the County was put on hold and the company's work with the County ceased. Ellis informed Walton that Power and Energy's contract was cut due to its failure to return his phone calls. Walton testified that it was Ellis' idea for the County to cease doing business with Power and Energy, and that a company's failure to return phone calls did not present a valid reason for the County to terminate its contract with that company.

On Jan. 7, 2013, Ellis was questioned by a Special Purpose Grand Jury impaneled by the Chief Judge of the DeKalb Superior Court to investigate the circumstances surrounding contracts involving the county's Department of Watershed Management from Jan. 1, 2002 through Dec. 31, 2010. Despite the specific time period, Ellis was asked a number of questions related to events that occurred outside that time period, and some of his answers led to the perjury charges. Ellis told the grand jurors, "I don't get involved in who gets work and who doesn't get work," and "I don't make the call to…not give work to people." He specifically answered "no," that he had "never" ordered that a contract be canceled due to a vendor's failure to return calls.

Ellis' first trial ended in a mistrial after the jury was unable to reach a unanimous verdict. He was re-tried on nine counts in the indictment and on July 1, 2015, the jury convicted him of one count of criminal attempt to commit theft by extortion and three counts of perjury. (For sentencing purposes, two of his perjury counts were merged with the third so he was ultimately convicted of one count of perjury.) Ellis was sentenced to five years, with 18 months to be served behind bars. He was released from prison March 1, 2016. Instead of filing a motion for new trial, Ellis appealed his convictions directly to the Georgia Supreme Court.

In today's 30-page opinion, the high court concludes that, "We find that the evidence presented at trial was sufficient to enable a rational trier of fact to find Ellis guilty of the two charges upon which he was ultimately convicted – one count of perjury and one count of attempt to commit theft by extortion – beyond a reasonable doubt."

However, although the high court agrees with the trial court that Ellis' constitutional rights to due process and equal protection were not violated, and it has upheld that part of the trial court's ruling, "we must nevertheless reverse Ellis' convictions based on certain evidentiary errors that occurred at his trial. Accordingly, we affirm in part and reverse in part to allow for a retrial on the charges of criminal attempt to commit theft by extortion and perjury."

In today's opinion, the high court finds that the trial judge made a harmful error in allowing a Special Purpose Grand Juror to testify at Ellis' trial. The State introduced the grand juror's testimony in an effort to prove that Ellis' false statements to the special grand jury were "material" – or essential and key – to the grand jury's investigation. However, whether a false

statement was material "is normally an issue for the jury," the opinion says. "Such testimony went directly to the issues being investigated by the Special Purpose Grand Jury, and served as a direct invitation for the jurors at Ellis' trial to resolve the issue of materiality consistent with the 'opinion' of the individual Special Grand Juror. This was inappropriate."

"We must therefore reverse Ellis' conviction for perjury to allow for a new trial on the perjury counts against him," the opinion says.

The trial court also committed reversible error by prohibiting Ellis from presenting any evidence of his interactions with several other vendors who were not named in the indictment. At trial, the defense wanted to call several other vendors to testify that there was no retribution from the County or Ellis for not contributing to his campaign. In today's opinion, the high court concludes that the evidence should have been admitted because "the State opened the door to the admission of this evidence."

During questioning of Walton, the prosecutor asked him about a recorded conversation he had with Ellis, in which Ellis had said, "You know me. I'm not pressuring anybody….I've never once said, 'don't do business with somebody because they won't contribute to my [campaign]." Asked by the prosecutor whether "that general comment" that Ellis "doesn't pressure people" was consistent with his experience, Walton responded, "No it was not."

Because the defense had been limited to speaking only about the vendors who were the subject of the indictment against Ellis, "we conclude that the State went beyond the boundaries that had been imposed on the defense," the opinion says. "By doing so, the State created an implication that Ellis had a general policy of pressuring vendors to contribute to his campaign and that Ellis was being dishonest when he stated in one of the recordings that he did not have a problem with, or seek retaliation against, vendors who did not contribute to his campaign." As a result, "the State opened the door for Ellis to defend himself against that implication by presenting evidence of his own about his interactions with other vendors besides those listed in the indictment."

"We must therefore reverse Ellis' conviction for attempt to commit theft by extortion to allow for a new trial on this charge as well," today's opinion concludes.

Attorneys for Appellant (Ellis): Anthony Lake, Craig Gillen, Dwight Thomas, Kemay Jackson
Attorneys for Appellee (State): Robert James, District Attorney, Christopher Timmons, Dep. Chief Asst. D.A., Gerald Mason, Asst. D.A., Lenny Krick, Asst. D.A.

IN RE: JUDICIAL QUALIFICATIONS COMMISSION'S FORMAL ADVISORY OPINION NO. 239 (S15Z1633)

Under an opinion today, the Supreme Court of Georgia has ordered the Judicial Qualifications Commission to reconsider an advisory opinion that prohibits judges from restricting access to their courtrooms.

With today's unanimous opinion, the Council of State Court Judges has won its request for the JQC to reconsider Formal Advisory Opinion No. 239.

The Judicial Qualifications Commission – or JQC – is the disciplinary agency that investigates complaints of ethical misconduct by judges and issues Advisory Opinions regarding appropriate judicial conduct. In response to the Council's petition, the JQC argued that the high court did not even have the authority to review the Commission's formal advisory opinions. In today's opinion, the high court disagrees.

"Having carefully considered the arguments of the Commission and the Council, we now conclude that this Court has authority to review formal advisory opinions rendered by the Commission, and we conclude as well that Opinion No. 239 reflects some misunderstandings about the extent to which the scope of the right of public access to judicial proceedings is clear and settled in the decisional law," the opinion states. "Accordingly, pursuant to JQC Rule 22 (b), we direct the Commission to reconsider Opinion No. 239 consistent with the opinion of this Court."

The JQC issued Advisory Opinion No. 239 in August 2013 in the wake of complaints about court closures around the state. The advisory opinion concerns Canon 2 (A) of the former Code of Judicial Conduct, which states that judges must "respect and comply with the law." The advisory opinion addresses judges' obligations to comply with the constitutional guarantee of the right of public access to judicial proceedings. According to the JQC, some of the complaints involved court staff or sheriffs' deputies excluding the public or asking people to state their business prior to being allowed to enter a courtroom. Other complaints involved signs on courtroom doors such as "no children," "attorneys and defendants only," or "no guests or family permitted."

"All of the above practices are, generally, improper," Opinion No. 239 says. "We recognize, however, the authority of the judge to maintain the integrity and decorum of the courtroom, and in no way expect a judge to permit loud or unruly children or adults to disrupt court proceedings. Yet the law requires that such disruptions to public proceedings be dealt with on a case-by-case basis." Judges who do not adhere to the open courtroom principles laid out in the U.S. Supreme Court's 2010 decision in *Presley v. Georgia* "may be in violation of the Code of Judicial Conduct, as well as the Constitution of the United States and the Constitution of the State of Georgia," Opinion No. 239 states. "In general, there are rare circumstances when court proceedings may legally occur outside the presence of the public." When they do occur, "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced [if the hearing remains open], the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure," the JQC opinion says, citing the precedent of the U.S Supreme Court's 1984 decision in *Waller v. Georgia.*

In July 2015, the Council of State Court Judges wrote a letter to the JQC asking it to revise Opinion No. 239 regarding minor children, inquiries from court personnel about the purpose of a person's visit, and partial court closures in general. When the JQC declined to reconsider its advisory opinion, the Council asked the state Supreme Court to review it. The high court agreed to consider the matter to determine whether the law is "clear and settled" that a trial court may not exclude from court all children under a certain age and may not allow court personnel to demand that members of the public "state their business" before being permitted into the courtroom.

In today's opinion, the Supreme Court first addresses the Commission's contention that the high court does not have the authority to review the Commission's formal advisory opinions. The JQC argued in part that the Court's review would interfere with the Commission's constitutional right to discipline judges. "These contentions are without merit," the Court's 22-page opinion says.

"Our Constitution establishes the Commission and vests it with the power to discipline judges, but the constitutional authority of the Commission does not put its advisory opinions beyond the review of this Court."

Georgia's Constitution "expressly vests this Court with the authority to adopt rules for the Commission, and pursuant to that authority, we have adopted JQC Rule 22, subsection (a) of which gives the Commission the power 'to render official formal advisory opinions concerning a proper interpretation of the Code of Judicial Conduct." However, under Rule 22, "the Commission does not have the final word on a proper interpretation of the Code of Judicial Conduct." Indeed, another subsection of Rule 22 states: "The Supreme Court's determination of the propriety of particular conduct shall supersede any conflicting advisory opinion of the Commission."

The opinion next addresses whether Opinion No. 239 should be considered on the merits. The law "is not always easily discernable, and when the law is unclear or unsettled, an honest misunderstanding or misapplication of the law ordinarily does not implicate" an infraction of the Code of Judicial Conduct," the opinion says. "Absent bad faith, errors in the judicial discernment and application of the law implicate Cannon 2 (A) only to the extent that the pertinent law is clear and settled."

"But to the extent that a principle of constitutional, statutory, or common law is unclear or unsettled, it is beyond the purview of the Commission to render a formal advisory opinion that endeavors to discern a correct understanding of the law," today's opinion says. "The Commission is not vested with any judicial power."

The Council of State Court Judges argued that the law is not clear and settled that the constitutional guarantee of the right of public access extends to young children, nor is the law settled that inquiries by security personnel necessarily amount to a court closure. "With respect to these aspects of Opinion No. 239, we agree that the Commission has gone beyond a mere interpretation of Canon 2 (A) and has wandered into unclear and unsettled areas of constitutional law," the opinion says.

"Given the current state of the law, fair-minded jurists may reasonably disagree about the extent to which the constitutional guarantee of the right of public access to judicial proceedings requires the admittance of children of tender years," the decision says. Furthermore, "Neither this Court nor the United States Supreme Court has decided that no questions ever may be asked of persons seeking admittance to the courthouse or a courtroom, and we note that a number of federal courts have held that requiring such persons to produce photo identification prior to their admittance does not violate the constitutional guarantee of the right of public access."

"Until it is clear and settled in the decisional law whether and to what extent the practices at issue are unconstitutional, it is not for the Commission to opine about what the Constitution means," today's opinion says.

Attorney for Council of State Court Judges: Nathan Gaffney
Attorneys for JQC: Norman Fletcher, Lee Carter

YELVERTON V. THE STATE (S16A1043)

In a 5-to-2 decision, the Georgia Supreme Court has reversed a **Tift County** judge's refusal to remove a man convicted of sexually molesting his young daughter from the state's sex offender registry.

In today's majority opinion, **Justice Keith Blackwell** writes the high court agrees with the man that the trial court misinterpreted the statutes detailing under what conditions a sex offender may be released from the registration requirement, "and we reverse the judgment below and remand for further proceedings consistent with this opinion." At issue in this case is what qualifies as "similar transaction evidence."

According to the facts of the case, between Aug. 1, 1984 and July 31, 1987, Raymond Yelverton fondled and had oral sex with his daughter, who was then between 9 and 13 years old. In 1990, he was convicted of child molestation and two counts of aggravated child molestation, and he was sentenced to serve 20 years in prison. At his trial, a young woman testified that she had lived in Yelverton's home when she was 19 or 20 years old, and that in 1985, Yelverton attempted to have sexual relations with her. She testified that one night she awoke suddenly as Yelverton, who had entered her bedroom, was touching her vagina. She said he left when she told him "no." The Georgia Court of Appeals later upheld Yelverton's convictions and ruled the evidence of nonconsensual sex involving the adult female was admissible as "similar transaction evidence" in his child molestation trial to show "motive, intent, plan or scheme, or course of conduct."

In 1996, the General Assembly enacted Georgia's sexual offender registration law, which required anyone to register who was convicted of a sexual offense against a minor and placed on parole after July 1, 1996. In 2002, Yelverton was released from prison on parole and he registered as a sex offender.

In 2006 and again in 2010, the Georgia enacted statutes that became Georgia Code § 42-1-19 and that authorized sex offenders to petition a trial court for removal from the sex offender registry and for relief from the related residency and employment restrictions. Yelverton completed his 20-year sentence in February 2010. In March 2015, he filed a petition for release from the sex offender registry in Tift County Superior Court, arguing he was eligible under § 42-1-19 (a) (4). The law states that an individual may file such a petition if he has "completed all prison, parole, supervised release, and probation for the offense which required registration pursuant to Code Section 42-1-12 and meets the criteria set forth in subparagraphs (c) (1) (A) through (c) (1) (F) of Code Section 17-10-6.2." Among the criteria listed in Code Section 17-10-6.2 is one that states that a sex offender may only be considered for removal from the registration requirements if the "court has not found evidence of a relevant similar transaction."

A trial court must first determine whether the petitioner meets the conditions and is eligible for release. It must then consider the likelihood that the petitioner will commit additional sexual offenses. Following a hearing, the trial court denied Yelverton's petition, finding it was not necessary to consider whether he posed a future threat of reoffending because he did not meet the initial criteria for relief under the law "due to the similar transaction evidence admitted in the trial of his case…." Yelverton eventually appealed to the Georgia Supreme Court.

In his appeal, Yelverton argued that a decision to admit evidence of an independent act against the accused in a criminal trial does not necessarily require a finding that there is "evidence of a relevant similar transaction" for the purposes of Code Sections 17-10-6.2 (c) (1) (C) and 42-1-19 (a) (4). For that reason, Yelverton argues, a court considering a petition for release from the sex offender registry requirements must decide for itself whether the evidence presented against the petitioner at his criminal trial amounts to "evidence of a relevant similar transaction."

"About these things, Yelverton is correct," today's majority opinion says. The term, "relevant similar transaction" is not defined in 17-10-6.2. But in its recent opinion in *Evans v. State,* the Georgia Supreme Court explained that as used in the statute, the term "is most naturally and reasonably understood to mean an independent but similar sexual offense that shows the defendant to be a repeat sexual offender…." The evidence against Yelverton involving the 19-year-old at his 1990 trial "potentially demonstrates an independent and similar sexual offense, inasmuch as the woman testified that Yelverton touched her sexually and without her consent," the majority opinion says. "Nevertheless, Yelverton claimed that the encounter was consensual, and we do not know how the jury assessed that evidence, if at all. Nor do we know what the criminal trial court thought of the evidence."

Given these circumstances, it was up to the trial court hearing Yelverton's petition "to determine for itself whether there is 'evidence of a relevant similar transaction' that would render Yelverton ineligible for release," the 15-page majority opinion says. "The court below erred when it failed to make such a determination, and so, we must reverse its judgment. We remand the case to the court below for further proceedings consistent with this opinion."

Justice Harold Melton dissents. "Because the majority's interpretation of Georgia Code 17-10-6.2 (c) (1) (C) runs contrary to the plain meaning of the statute as expressed by the Legislature, I must respectfully dissent from the majority's erroneous conclusion that the removal court erred by concluding that it could not remove Yelverton from the sex offender registry due to the existence of evidence of a relevant similar transaction that had been properly admitted into evidence at Yelverton's 1990 child molestation trial," Justice Melton writes for the dissent, which is joined by Chief Justice Hugh Thompson. The trial court properly denied Yelverton's petition, finding that because similar transaction evidence had been properly introduced at Yelverton's original 1990 trial, the court could not "now second guess the admissibility or relevance" of that similar transaction "for purposes of releasing Yelverton from the registration requirements," the dissent argues. At the time of his 1990 trial, for similar transaction evidence to be admissible, the State had to prove two things: There had to be evidence that Yelverton was the perpetrator of the independent crime, and there had to be sufficient similarity between the independent crime and the offense charged such that "proof of the former tends to prove the latter." The State made these showings, "and the admission into evidence of this separate offense as a similar transaction at trial was upheld on appeal," the dissent argues. "Therefore, there can be no dispute that 'evidence' of a relevant similar transaction existed in connection with the child molestation case against Yelverton in 1990 that led to his conviction and his need to register as a sexual offender." The Legislature "has revealed an intent for the reviewing court to accept the circumstances as they existed at the time of the sexual offender's conviction when considering its determination as to whether the sexual offender may be appropriately removed from the sex offender registry."

"I therefore believe that the trial court properly interpreted Georgia Code 42-1-19 (a) (4) and 17-10-6.2 (c) (1) (C), and would find no error in the trial court's denial of Yelverton's petition for removal from the sex offender registration requirements," the 14-page dissent concludes.

Attorney for Appellant (Yelverton): Gerald Williams
Attorneys for Appellee (State): Clifford Paul Bowden, District Attorney, Jennifer Hart, Asst. D.A.

<u>CERTAINTEED CORPORATION V. FLETCHER</u> (S15G1903)

Under an opinion today by the Georgia Supreme Court, a lawsuit may go forward against a manufacturer of asbestos-containing water pipes that was brought by a woman who claimed she contracted malignant mesothelioma from washing the clothes of her father who worked for the company.

With today's unanimous opinion, written by **Justice Carol Hunstein**, the high court has partially reversed a ruling by the Georgia Court of Appeals, finding that the company was not responsible for warning the woman about the asbestos dust from its products but she did have a legitimate claim related to the products' design.

"Consequently, we affirm the judgment of the Court of Appeals in part and reverse in part," the opinion says.

According to briefs filed in the case, CertainTeed is a Pennsylvania company that has been manufacturing and selling asbestos-containing products since 1930. In 1962, it began manufacturing asbestos pipe for use in municipal water and sewer systems. James Fletcher was an employee of the City of Thomasville Waterville Water & Light Department from 1948 until he retired in 1983. Fletcher became the "pipe specialist" whose primary duty from 1971 to 1977 was handling, cutting, installing, and repairing asbestos-containing cement pipe that was manufactured by CertainTeed. When he cut and beveled the pipes, dust containing asbestos was deposited on his work clothing. At the end of the work day, he wore those clothes home. Marcella Fletcher, Fletcher's daughter, began washing her family's clothing three days a week in 1959 when she was 8 years old and continued until she was 26. During the years her father worked with the asbestos pipe, she said there was always a grayish dust on his work clothes that became a "mist" in the air when she shook them out before washing.

After she contracted mesothelioma, a cancer of the lung usually linked to asbestos exposure, she sued CertainTeed in **Thomas County** State Court, claiming she got the disease, which is often fatal, as a result of her exposure to the asbestos fibers on her father's clothing. CertainTeed filed a motion for "summary judgment," asking the judge to rule in its favor on the ground that the manufacturer owed no "duty of care" to Ms. Fletcher "because she was neither a user nor a consumer of the product" and because CertainTeed "could not have reasonably foreseen that [she] would be affected by their product." (A judge grants summary judgment after determining a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties.)

Following a hearing, the trial judge ruled in CertainTeed's favor and granted it summary judgment. Fletcher then appealed to the Georgia Court of Appeals, which partially reversed the state court's decision, ruling that her claims of defective design of its products and its failure to warn her about the dangers of asbestos dust should go before a jury. CertainTeed then appealed to the Georgia Supreme Court, which agreed to review the case to determine whether the Court of Appeals was wrong in reversing summary judgment to a manufacturer of asbestos-laden products where the plaintiff's alleged injury was not caused by her direct contact with the product but by her exposure to toxic dust brought home on the clothing worn by the person who did have direct contact.

"While we conclude that CertainTeed owed no duty to warn Fletcher of the possible hazards of asbestos dust from its products, the Court of Appeals correctly reversed the trial court's judgment with respect to Fletcher's defective design claim," today's opinion says.

In its appeal, CertainTeed – whose attorneys include former state Supreme Court Chief Justice Leah Ward Sears – argued that under a 2005 decision in *CSX Transportation, Inc. v. Williams,* this Court ruled 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. The Court of Appeals ruled, however, that Ms. Fletcher's design-defect claim was governed by the "risk-utility" test adopted by this Court in its 1994 ruling in *Banks v. ICI Americas, Inc.* and not *CSX Transportation.*

"The Court of Appeals was correct," today's opinion says.

In *CSX,* the Supreme Court "addressed the duty owed by an employer to a third-party, non-employee with respect to asbestos-tainted work clothing in the unique context of the employer-employee relationship," the opinion says. "This case, however, presents an entirely different question. [Ms.] Fletcher claims…that CertainTeed, as a manufacturer, negligently designed its asbestos-laden products. In such a case, 'the risk-utility analysis applies to determine whether the manufacturer is liable."

Such an analysis considers "whether the manufacturer acted reasonably in choosing a particular *product design*, given the probability and seriousness of the risk posed by the design, the usefulness of the product in that condition, and the burden on the manufacturer to take the necessary steps to eliminate the risk."

"In determining whether a product was defectively designed, the trier of fact may consider evidence establishing that at the time the product was manufactured, an alternative design would have made the product safer than the original design and was a marketable reality and technologically feasible," the opinion says. "As the Court of Appeals correctly recognized, it is the risk-utility analysis announced in *Banks* – and not *CSX* – that is controlling here."

But in response to the Court of Appeals' ruling that CertainTeed owed a duty to Fletcher to warn her about the dangers of asbestos dust that allegedly covered her father's clothing, "we disagree with the Court of Appeals' conclusion," today's opinion says.

The Court of Appeals concluded that while Ms. Fletcher would not have seen any warning label placed on CertainTeed's products, such a warning would have allowed her father to take steps to protect her from any danger.

However, "We are disinclined to conclude that CertainTeed owed a duty to warn third parties based on the fact that, in *this* case, such a warning *may* have been effective," the opinion says. "It is not difficult to envision that while some workers might have taken steps to protect or warn family members or other individuals with whom they came in contact, other workers might not have taken such steps."

"Therefore, we think it unreasonable to impose a duty on CertainTeed to warn all individuals in [Ms.] Fletcher's position, whether those individuals be family members or simply members of the public who were exposed to asbestos-laden clothing, as the mechanism and scope of such warnings would be endless," the opinion says. "Accordingly, we hold that CertainTeed owed no duty to warn Fletcher regarding the dangers of the asbestos dust and thus, that the Court of Appeals erroneously reversed the trial court's grant of summary judgment to CertainTeed with respect to [Ms.] Fletcher's duty to warn claim."

In a special concurrence, **Justice Harold Melton** agrees with the overall judgment, but disagrees with the majority's analysis of Ms. Fletcher's duty to warn claim. "Our analysis in this case does not and should not reach or analyze the issue of CertainTeed's duty to warn [Ms.] Fletcher's father or the ramifications of any failure to warn [Ms.] Fletcher's father," he writes. The analysis "must be limited to the issues relating to the failure to warn [Ms.] Fletcher, not her father in this case."

"I also write separately to emphasize that our opinion likewise does not address whether [Ms.] Fletcher might have a claim as an alleged injured party resulting from the failure to warn [her] father, which is different from a claim that [Ms.] Fletcher, herself, should have been warned."

Attorneys for Appellant (CertainTeed): Leah Ward Sears, David Marshall, E. Elaine Shofner, Hawkins Parnell

Attorney for Appellee (Fletcher): Robert Buck