22-CV-438

In the

District of Columbia

Court of Appeals

JO ANN ALLEN,

Appellant,

v.

AC & R INSULATION COMPANY, *et al.,*

Appellees.

Appeal from the Superior Court of the District of Columbia,
Civil Division No. CAA3862-20 (Hon. Alfred S. Irving, Jr., Judge)

BRIEF FOR APPELLEE

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OCTOBER 31, 2022

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1, Appellee General Electric Company states that it is a corporation formed under the laws of the State of New York. General Electric Company does not have a parent corporation and no publicly held company owns ten percent (10%) or more of General Electric Company's stock.

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STATEMENT OF APPEAL FROM FINAL ORDER

Appellee General Electric Company ("General Electric") acknowledges that this is an appeal from a final order granting summary judgment in its favor.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

General Electric accepts Appellant's Statement of the Issues Presented for Review.

APPELLEE'S STATEMENT OF THE CASE

On September 2, 2020, Ms. Jo Ann Allen instituted this asbestos-related products liability action against numerous defendants. (A19). On November 15, 2021, following Ms. Allen's death, Ms. Robin B. Quinn, the personal representative of the Estate of Jo Ann Allen was substituted as Plaintiff and she is now the Appellant. (A11) (Appellant will be referred to as "Plaintiff").

On January 19, 2022, following discovery, General Electric filed a Motion for Summary Judgment as to All Claims ("the All Claims Motion") seeking dismissal of all claims against it. (A34–A348). General Electric argued that Maryland substantive law applied to Plaintiff's claims and that it was entitled to judgment as a matter of law on Plaintiff's negligence, strict liability, and breach of warranty claims.

Plaintiff filed an Opposition to the All Claims Motion on February 20, 2022. (A349-A504). General Electric consented to Plaintiff's request to exceed the 20-page limit for her memorandum of law and the trial court granted that request.

(A565–A566). Plaintiff did not contest the application of Maryland law. In her Opposition, she did not identify the factual and legal basis for any design defect claim. Instead, she took the position that the All Claims Motion failed to challenge that claim. General Electric filed a Reply Brief on February 23, 2022 (A505–A550) and Plaintiff unsuccessfully sought leave to file a surreply on March 8, 2022 (A551–A553, A566).

On April 27, 2022, the trial court granted the All Claims Motion as to each of Plaintiff's claims against General Electric. (A563–A573). Plaintiff subsequently filed a Motion to Alter or Amend Judgment requesting that the trial court alter its judgment to exclude her design defect claim and provide an opportunity for further briefing on the legal and factual basis for that claim. (A574–A580). The trial court agreed with General Electric that Plaintiff was required to support her design defect claim in her Opposition to the All Claims Motion and, having failed to do so, Plaintiff was not entitled to an additional opportunity. (A591-A594). In this appeal, Plaintiff challenges the entry of summary judgment as to her strict liability design defect claim only.

APPELLEE'S STATEMENT OF FACTS

In this asbestos-related personal injury and wrongful death lawsuit, Appellant Robin B. Quinn, personal representative of the Estate of Jo Ann Allen ("Plaintiff") alleges that her decedent, Ms. Jo Ann Allen ("Ms. Allen") developed

mesothelioma and lung cancer because of exposure to asbestos from dust brought home on the work clothes of her former husband, Mr. Willard Phillips. (A25). Plaintiff's claims against General Electric relate to asbestos-containing thermal insulation applied to two General Electric power generation turbines during their construction at Chalk Point power plant in Lusby, Maryland ("Chalk Point"). (A38, A293–A294). Mr. Phillips was a union insulator who worked for contractor Walter E. Campbell Company ("WECCO") at the construction of Chalk Point in 1963 and 1964 and was one of the workers who installed the thermal insulation on the turbines. (A39, A316–A317, A326)

Chalk Point was owned by PEPCO and the insulators working on site were employed by WECCO. (A39, A316–A317, A326). Although General Electric supplied the thermal insulation for the turbines under the terms of its contract with PEPCO, the insulation was manufactured and installed on the General Electric turbines by other companies. (A512, A413, A455, A475–A483). Neither PEPCO nor Walter E. Campbell Company provided showers or locker room facilities for the insulators. (A325).

Ms. Allen never visited Chalk Point. (A164). Accordingly, she was never present when any thermal insulation was applied to the General Electric turbines at that site. Nor did she ever come in contact with the thermal insulation itself; only debris and dust on her husband's clothes.

SUMMARY OF THE ARGUMENT

General Electric's All Claims Motion sought summary judgment as to each of Plaintiff's claims against it, including her strict liability design defect claim. As to design defect, General Electric asserted that Plaintiff lacked evidence to support the elements of a design defect claim under applicable Maryland law. For reasons known only to Plaintiff, she pledged in her Opposition to the All Claims Motion to set forth support for her design defect claim, but then made no attempt to do so. The arguments she belatedly asserts in this appeal are not only unavailing, but are also waived for not having been raised in her Opposition to the All Claims Motion.

The trial court's ruling granting summary judgment in General Electric's favor as to Plaintiff's design defect claim was not a *sua sponte* order. Plaintiff's Opposition reveals that she understood her design defect claim to be challenged by the All Claims Motion. Moreover, the trial court granted the motion on the very grounds General Electric asserted—that Plaintiff lacked evidence of a design defect. As the trial court determined in denying Plaintiff's Motion to Alter or Amend Judgment, Plaintiff was on notice that she needed to provide factual and legal support for her design defect claim, but failed to do so.

It is not clear that Plaintiff's design defect claims are governed by the consumer expectation test (as she argues on appeal, but failed to argue in her Opposition to the All Claims Motion). General Electric contends that the risk-

utility test should apply. Regardless of which test applies, Plaintiff lacks evidence to satisfy the elements of a design defect claim under Maryland law.

Finally, in this take-home exposure case, Ms. Allen was never present when the thermal insulation for the General Electric turbines at Chalk Point was used or installed. Instead, Plaintiff claims that Ms. Allen's former husband worked with those thermal insulation products on a job site that Ms. Allen never visited and then carried dust from those products home to Ms. Allen on his work clothes. Maryland law does not extend a manufacturer's or seller's tort duty under any product liability theory—including strict liability for design defect—to household members of persons who use their products on a job site. Although the trial court did not grant summary judgment as to design defect on this basis, it independently supports the result. For the foregoing reasons, the trial court's judgment should be affirmed.

STANDARD OF REVIEW

The Court of Appeals reviews the grant of a motion for summary judgment de novo, applying the same standard utilized by the trial court. *Grant v. May Department Stores Co.*, 786 A.2d 580 (D.C. 2001). However, "[i]t is a well-established rule that a party who fails to raise an issue at trial generally waives the right to raise that issue on appeal." *Gillespie v. Washington*, 395 A.2d 18, 21 (D.C. 1978). "This rule applies specifically in a case of summary judgment." *Id.*; *see also*

Dorsky Hodgson & Partners, Inc. v. Nat'l Council of Sr. Citizens, 766 A.2d 54, 58 (D.C. 2001) (a plaintiff's failure to explain the basis for her claim "in opposing summary judgment constitutes a waiver of that claim").

Summary judgment is appropriate where the moving party shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." D.C. Super. Ct. R. Civ. P. 56(c); *see also Weakley v. Burnham Corp.*, 871 A.2d 1167, 1173 (D.C. 2005) (citing *Clyburn v. 1411 K Street Ltd. P'ship*, 628 A.2d 1015, 1017 (D.C. 1993)). The record is viewed in the light most favorable to the non-moving party and the court does not make credibility determinations or weigh the evidence presented at the summary judgment stage. *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

The moving party satisfies its burden on a summary judgment motion by demonstrating that there is a lack of evidence to support the non-moving party's claims. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A moving party need only demonstrate that the plaintiff failed to "make a showing sufficient to establish the existence of an element essential" for the non-moving party to prove its case. *Id.* If the moving party satisfies its burden of demonstrating the absence of supporting evidence, the non-moving party must then establish from the available evidence the existence of a genuine dispute of material fact.

ARGUMENT

I. The Trial Court Properly Granted Summary Judgment as to Plaintiff's Design Defect Claim.

A. GE's Motion for Summary Judgment as to All Claims Sought Summary Judgment as to All Claims.

Plaintiff's first contention—that General Electric's Motion for Summary Judgment as to All Claims (the "All Claims Motion") did not seek summary judgment as to her strict liability design defect claim—is false. As its title indicates, the All Claims Motion expressly stated that General Electric sought "summary judgment as to ***all claims*** asserted against it" in this case. (A34) (emphasis added). General Electric went on to identify the claims on which it sought summary judgment with specificity:

> Plaintiff asserts survival claims based upon negligence (Count I), ***strict liability (Count II)***, and breach of Warranty (Count III) and seeks compensatory and punitive damages. Defendant/Cross-Plaintiffs seek contribution. As set forth below, General Electric is entitled to summary judgment with regard to ***all claims asserted against it***.

(A37–38) (emphasis added).

The design defect claim at issue here is part of Plaintiff's strict liability claim (Count II) on which General Electric expressly sought summary judgment as set forth above. (A27–28). The All Claims Motion unambiguously asserted that Plaintiff had not "proffered any evidence to support a ***design defect*** or

manufacturing defect claim."[1] (A40) (emphasis added). Contrary to Plaintiff's argument, it is clear that the All Claims Motion sought summary judgment on her strict liability design defect claims along with all of her other claims.

B. Plaintiff Expressly Understood that She Must Proffer Evidence of Design Defect in Her Summary Judgment Opposition, But She Did Not and Her Belated Arguments are Waived.

Not only is it clear from the face of the All Claims Motion that it applies to Plaintiff's design defect claims, but Plaintiff also expressly acknowledged that fact in her Opposition. Specifically, she observed that "GE has moved for summary judgment ***seeking a dismissal of the entirety of Count 2*** [Plaintiff's strict liability claim] based on its argument that it had no duty to warn." (A354) (emphasis added). Although Plaintiff mischaracterized General Electric's basis for summary judgment as to design defect, which included not only lack of duty but also lack of any evidence to support a design defect claim, Plaintiff clearly understood the scope of the relief sought—summary judgment as to all claims, including "the entirety" of her strict liability claim. (*Id.*).

[1] In her brief and in her papers below, Plaintiff devotes considerable attention to the statement in the All Claims Motion that Plaintiff had not "pleaded" a design defect claim. The All Claims Motion is a summary judgment motion; not a motion to dismiss. Moreover, the trial court did not grant judgment based upon inadequate pleading but based upon Plaintiff's failure to proffer evidence. The adequacy of Plaintiff's pleadings is not relevant to this appeal.

Fully on notice that ***all*** her claims against General Electric were in peril, Plaintiff promised in her Opposition to "set forth in detail" the evidence to support a design defect theory. (A354). Despite obtaining General Electric's consent to exceed the page limitations for her Opposition (A565–A566) however, Plaintiff made no attempt to demonstrate a genuine issue of material fact as to the elements of a design defect claim. Instead, she argued that the Maryland Court of Appeals holding in *Georgia-Pacific v. Farrar,* 69 A.3d 1028 (Md. 2013) is not dispositive of her design defect claims (A355) and disputed General Electric's statement that Plaintiff had not ***pleaded*** a design defect claim by quoting certain allegations in the Complaint (A366).[2]

In her Opposition, Plaintiff listed the following legal elements of a design defect claim:

> (1) the seller was engaged in the business of selling the product that caused the harm; (2) the existence of a design defect in the product rendering it unreasonably dangerous to the consumer or user, (3) the product was expected to reach the user without any substantial change from the condition in which it was sold; [and] (4) proof that the defect was a proximate cause of the injury.

(A355). In a footnote, Plaintiff cited evidence as to the first element. (*Id.* at n.4). Plaintiff cited no evidence in her Opposition, however, to support the other three elements. She did not identify a defect in any General Electric product or cite any

[2] *See*, Footnote 1, *supra.*

facts demonstrating that any General Electric product was unreasonably dangerous. She did not provide any legal or factual basis to conclude that Ms. Allen, who never visited Chalk Point and never encountered the General Electric turbines there or the thermal insulation installed on those turbines, was a "user" or "consumer" of any General Electric product. She did not reference evidence that any General Electric product was expected to and did reach Ms. Allen "without substantial change from the condition in which it was sold." Finally, she pointed to no evidence that a defect in a General Electric product was a proximate cause of Ms. Allen's injuries. Plaintiff's Opposition is silent on these points.[3]

Although Plaintiff later argued in her Motion to Alter or Amend Judgment, (and now argues on appeal), that she has sufficient evidence to create a genuine issue of fact as to design defect under the "consumer expectations test," that argument is absent from Plaintiff's Opposition to the All Claims Motion and she cannot raise it now.[4] *See Gillespie*, 395 A.2d at 21 (citing the "well established

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[3] Perhaps belatedly realizing some of the fatal omissions in her Opposition, Plaintiff unsuccessfully sought leave to file a surreply. (A551–552). The trial court rightly denied Plaintiff's motion to file a surreply as she provided no justification in her motion for leave beyond the conclusory and insufficient statement that General Electric "raised issues in its Reply Brief that require further discussion." (A566). It does not appear that Plaintiff challenges the trial court's refusal to consider her proposed surreply in this appeal.

[4] As set forth in the following sections of this brief, it is not clear that the consumer expectation test applies and, even if considered, Plaintiff's belated arguments are unavailing.

rule" that a party who fails to raise an argument at trial, including at summary judgment, generally waives the right to raise it on appeal); *see also Dorsky Hodgson & Partners, Inc.*, 766 A.2d at 58 (a plaintiff's failure to explain the basis for her claim "in opposing summary judgment constitutes a waiver of that claim").

In denying Plaintiff's Motion to Alter or Amend Judgment, the trial court succinctly and accurately dispensed with the very same arguments that Plaintiff urges in this appeal. After examining the record, it concluded that Plaintiff's assertion that the All Claims Motion did not seek summary judgment on her design defect claims was "wrong." (A592-593). It further observed that Plaintiff had "adequate notice that summary judgment could be granted as to her strict liability design defect claim" and that Plaintiff "even indicated that she intended to provide a legal and factual basis for her [design defect claim], but failed to do so." (A593).

Each argument raised in Plaintiff's Motion to Alter or Amend Judgment (and, by extension, each argument Plaintiff raises in this appeal) could have been—and should have been—raised in Plaintiff's Opposition to the All Claims Motion, but was not. Accordingly, these arguments are waived and the trial court did not err in granting summary judgment as to Plaintiff's strict liability design defect claim.

C. The Court Granted Summary Judgment as to Plaintiff's Design Defect Claim on the Very Basis Raised in GE's Motion—No Evidence of a Defective Design.

Far from a *sua sponte* order, the trial court's decision to grant summary judgment as to Plaintiff's strict liability design defect claim was based upon the very argument raised in the All Claims Motion—that Plaintiff had failed to produce any evidence to support a design defect claim. (A568). The trial court observed that a design defect claim requires evidence that the product at issue was defective and unreasonably dangerous at the time it was placed on the market. (A567). It found, correctly, that Plaintiff had proffered "no facts from which a jury could conclude that [the insulation material at issue] was, at the time it left Defendant's hands, in a condition not contemplated by the ultimate consumer." (A568).

Plaintiff's argument on appeal that the consumer expectation test applies and that she has evidence to satisfy that test is nowhere to be found in her Opposition to the All Claims Motion. The phrase "consumer expectation" does not appear in her Opposition. Moreover, Plaintiff has not cited a single case applying the consumer expectation test to an asbestos-containing product under Maryland law. Even if the consumer expectation test applies, Plaintiff has supplied no evidence (on appeal or, critically, in her Opposition to the All Claims Motion) that: (1) Ms. Allen is a "user" of the thermal insulation that she never encountered; or (2) the

thermal insulation at issue "was expected to and did reach [Ms. Allen] without substantial change in its condition." *Phipps*, 363 A.2d at 958. Quite the contrary, Plaintiff's claims are based on exposure to dust carried home from the worksite on Ms. Allen's husband's clothes, not any contact with the thermal insulation.

It is far from clear that Maryland courts would apply the consumer expectation test, rather than the risk-utility test, to a power generation turbine built in the 1960s with a design incorporating asbestos-containing thermal insulation. In arguing for the application of the consumer expectation test, Plaintiff cites *Halliday v. Sturm, Ruger & Co., Inc.*, 792 A.2d 1145 (Md. 2002), a case involving a young child who accidentally shot and killed himself with a handgun. The plaintiff in that case contended that the gun was defective in that its design did not include a child safety device. *Id.* at 1148. The Maryland Court of Appeals applied the consumer expectation test and determined that a handgun that performs its intended function of firing a bullet is not defective. *Id.* at 1158. *Halliday* is distinguishable from cases such as this one. *See Lloyd v. General Motors Corp.*, 275 F.R.D. 224 (D. Md. 2011). In *Lloyd*, the United States District Court for the District of Maryland considered a design defect case, under Maryland law, involving motor vehicle seats that were allegedly "prone to collapse rearward in moderate speed rear-impact collisions." *Id.* at 226. The seats in question did not malfunction and the plaintiff, citing *Halliday*, argued that the court should apply

the consumer expectation test. *Id.* at 229. The *Lloyd* court rejected that argument and distinguished *Halliday*. First, it found that a product designed to inflict harm on humans, such as a handgun, has "no application to motor vehicles." Second, it noted that *Halliday*, unlike *Lloyd*, was a safety device case. It reasoned that "it would be pointless to ask whether a reasonable consumer would or would not expect a seatback to deform backwards in a moderate speed rear-impact collision" without evidence of the "safety tradeoffs involved in making the seatbacks more rigid" or "whether potentially safer alternative designs were technologically feasible, cost-effective, and available when the vehicles were manufactured." *Id.* at 230. Accordingly, the *Lloyd* court concluded that Maryland courts would apply the risk-utility test to such claims. *Id.*

The instant case, like *Lloyd* and unlike *Halliday*, does not involve a weapon. The General Electric turbines did not cause injury through their intended function of producing electricity and, similarly, the thermal insulation applied to those turbines did not cause injury by reducing the flow of heat. Moreover, unlike *Halliday*, the alleged design defect here is not the lack of a safety device. As the *Lloyd* court reasoned, it would be pointless to ask a reasonable consumer's expections in this case without evidence as to whether it was even possible, in 1963 and 1964, to design and build power generation turbines like those at issue in this case without asbestos-containing thermal insulation. To determine

defectiveness without such evidence would transform strict liability into absolute liability. Plaintiff provided no evidence in her Opposition to the All Claims Motion, or here, to satisfy the elements of the risk-utility test.[5]

As discussed in the previous section, Plaintiff was admittedly on notice that the All Claims Motion encompassed her design defect claims, pledged to provide evidence to support such claims, and then failed to do so. Summary judgment on that basis was not *sua sponte*. Plaintiff was not deprived of an opportunity to raise evidence of a design defect claim, but rather squandered that opportunity on her own. Accordingly, Plaintiff's reliance on *Radbod v. Moghim*, 269 A.3d 1035 (2022) is misplaced.

In *Radbod*, the plaintiff sued two defendants for breach of contract, fraud, and other claims. *Radbod*, 269 A.3d at 1038. One defendant moved for summary judgment based on lack of subject matter jurisdiction, the statute of limitations, and the statute of frauds. *Id.* at 1038–39. The other defendant did not move for summary judgment. *Id.* After the plaintiff filed an opposition, the trial court entered summary judgment for both defendants based on lack of personal jurisdiction. The order was *sua sponte* for two independent reasons: (1) it granted

[5] Under the risk-utility test, "[a] product is defective in design when the foreseeable risk of harm could have been reduced or avoided by the adoption of a reasonable alternative design. It is the omission of the reasonable alternative design that renders the product not reasonably safe." *Lloyd*, 275 F.R.D. at 229.

summary judgment for a party that never moved for it; and (2) it granted summary judgment based upon an affirmative defense (lack of personal jurisdiction) not raised by the moving party. The Court of Appeals reversed because the trial court did not satisfy the Rule 56(f) requirement to provide the plaintiff with notice and an opportunity to be heard before granting summary judgment *sua sponte*.

This case is nothing like *Radbod*. From the beginning, General Electric expressly asserted that Plaintiff lacked any evidence of a design defect. Plaintiff specifically noted that statement in her Opposition and attempted, unsuccessfully, to demonstrate a genuine issue of fact as to design defect. The Court granted summary judgment as to Plaintiff's design claim on the very ground raised in the All Claims Motion and which Plaintiff failed to address in her Opposition: lack of evidence to support the elements of a design defect claim. *Radbod* does not provide a basis to overturn the trial court's judgment.

D. The Trial Court Did Not Rely on the *Farrar* Case in Granting Summary Judgment as to Plaintiff's Design Defect Claim, but the *Farrar* Holding Does Bar Such Claims.

In its All Claims Motion, General Electric successfully argued that, under *Farrar*, its lack of relationship to Ms. Allen, who never worked with or around any General Electric product, precluded any tort duty to provide her with a warning. (A568–A571). Plaintiff does not challenge that ruling. She contends, however, that the *Farrar* holding should be limited to failure-to-warn claims and have no impact

on design defect claims. Plaintiff cites no authority for the proposition that a manufacturer or seller's tort duty in the context of a design defect claim is broader than in the warning context.

Farrar has broader application than Plaintiff allows. *Farrar* and its progeny decline to extend a seller's product liability under Maryland law, whether sounding in negligence or in strict liability, to household members of persons exposed to a product in the course of their employment. The *Farrar* court focused on failure-to-warn because there, like here, the plaintiff offered no evidence of any defect in the asbestos-containing products at issue other than the alleged lack of an adequate warning. Nonetheless, the *Farrar* court did not limit its analysis to the context of failure-to-warn. Relying upon precedent that "neither focused on nor excluded any particular tort, including product liability" the *Farrar* court determined that the appropriate framework for its analysis was to determine "whether a tort duty exists, in particular a duty to warn" and, if so, "to whom does that duty extend?" *Id.*, 432 Md. at 530, 69 A.3d at 1033 (emphasis added). The *Farrar* court looked to Maryland jurisprudence regarding the scope of tort duties in general, and not merely the duty to warn. Specifically, it noted that most courts have declined to extend an employer's duty to provide a safe workplace to employees' household members and, similarly, have determined that an owner's duty to visitors to their premises does not extend to the visitors' household members. *Id.*, 432 Md. at 532–

33, 69 A.3d at 1034. Section 402A of the Restatement (Second) of Torts, which the Maryland Court of Appeals adopted in *Phipps*, 363 A.2d at 963, extends a manufacturer or supplier's liability to "users" and "consumers" of defective and unreasonably dangerous products where certain elements are established. The *Farrar* court found that a household member exposed to dust carried home from a product used on a worksite has "no connection to the product." *Farrar*, 363 A.2d at 958. Accordingly, it declined to extend a manufacturer or supplier's product liability to household members of "users" and "consumers" just as prior courts had declined to extend the scope of potential liability of an employer or premises owner. Plaintiffs' design defect claims, like her failure-to-warn claims, fail as a matter of law under *Farrar*.

CONCLUSION

For all the reasons set forth above, General Electric Company requests that this Court affirm the decision of the trial court granting summary judgment as to Plaintiff's strict liability design defect claim.

Respectfully submitted,

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I hereby certify that, on November 1, 2022, a copy of the foregoing was served on the following via the methods indicated:

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/s/ Donald S. Meringer
Donald S. Meringer

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Donald S. Meringer	22-cv-438
Signature	Case Number(s)
Donald S. Meringer	10/31/2022
Name	Date
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Email Address	