IN THE
Supreme Court of Virginia

RECORD NO. _____

WILLIAM H. GORDON ASSOCIATES, INC.,

Petitioner - Appellant,

v.

HERITAGE FELLOWSHIP, UNITED CHURCH OF CHRIST,
a/k/a HERITAGE FELLOWSHIP CHURCH
and
WHITENER & JACKSON, INC.,

Respondents - Appellees.

BRIEF FOR AMERICAN COUNCIL OF ENGINEERING COMPANIES OF METROPOLITAN WASHINGTON, AMERICAN COUNCIL OF ENGINEERING COMPANIES OF VIRGINIA, AMERICAN COUNCIL OF ENGINEERING COMPANIES, NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS, VIRGINIA SECTION OF THE AMERICAN SOCIETY OF CIVIL ENGINEERS, VIRGINIA ASSOCIATION OF SURVEYORS, INC., AND ENGINEERS AND SURVEYORS INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Amici curiae respectfully submit this brief pursuant to Rule 5:30 of the Rules of this Court in support of Petitioner, William H. Gordon Associate's, Inc. ("Gordon").[1]

STATEMENT OF INTEREST

Amici are comprised of two national and five regional associations that represent the interests of thousands of design professionals from across the nation. The professionals these associations represent design the plans and specifications used in the construction of private homes, churches, offices, hospitals, laboratories, schools, shopping centers, factories, and warehouses. They also design plans needed for the construction of public and private infrastructure that serves as the critical starting point for nearly all other economic activity, including highways, bridges, tunnels, airports, power lines, power plants, clean and waste water facilities, and the utilities necessary for housing development.

The American Council of Engineering Companies of Metropolitan Washington ("ACEC-MW") serves as the voice of Metropolitan Washington's engineering community. Since 1958, the ACEC-MW has

[1] *Amici curiae* state that no counsel for any party authored this brief in whole or in part and that no party made any monetary contribution toward the preparation or submission of this brief. *Amici* requested and received consent of the parties to the filing of this brief *amicus curiae*, pursuant to Rule 5:30, Rule of Supreme Court of Virginia.

served the needs of professional member firms from Washington, DC, Fairfax County, Arlington County, and the City of Alexandria in Virginia, and Montgomery and Prince George's Counties in Maryland. Presently, ACEC-MW represents the interests of more than 100 consulting engineering firms with almost 3,500 employees.

The American Council of Engineering Companies of Virginia ("ACEC-VA") is the largest engineering firm association in the Commonwealth. It represents the interests of more than 85 engineering firms that employ more than 4,000 employees. ACEC-VA actively advocates on behalf of its membership, and is a leader in promoting industry excellence and professionalism.

The American Council of Engineering Companies ("ACEC") is the national non-profit trade association of the engineering industry, representing more than 5,000 firms throughout the country. Founded in 1909, the Council's mission is to advance America's prosperity, health, safety and welfare through legislative advocacy and business education services on behalf of the engineering industry. ACEC is organized into 51 state and regional member organizations, including ACEC-MW and ACEC-VA. Member firms employ more than 500,000 engineers, architects, surveyors, scientists, and other specialists, responsible for more than $200 billion of private and public works annually.

The National Society of Professional Engineers ("NSPE") is a multi-disciplinary individual membership association of more than 35,000 professional engineers and engineering interns working in construction, government, education, industry, and private practice. NSPE, in partnership with its state and territorial societies, serves as the recognized and authoritative expert in engineering licensure, ethics, and professional practice; promotes engineering licensure and assists individuals in becoming licensed; and protects and enhances the value of licensure and the opportunities for the licensed engineer. Among NSPE's many activities include the publication of standard contract documents and other forms, along with the ACEC and ASCE, under the umbrella of the Engineers Joint Contract Documents Committee ("EJCDC"). Those standard contract documents and forms are widely used in the design and construction of engineered facilities and structures throughout the Commonwealth of Virginia and the United States.

The Virginia Section of the American Society of Civil Engineers ("ASCE-VA") is the Virginia chapter of the ASCE—the nation's oldest engineering society. ASCE-VA and its many members stand at the forefront of a profession that plans, designs, constructs, and operates Virginia's economic and social engine—the built environment—while protecting and restoring the state's natural environment.

The Virginia Association of Surveyors ("VAS") was established in 1948 to promote the interests and professional development of surveyors licensed in the Commonwealth. VAS accomplishes this goal by participating in a wide range of activities, from continuing education and scholarship funding to lobbying and advocacy efforts.

The Engineers and Surveyor's Institute ("ESI") is a nonprofit Virginia corporation formed in 1987 to promote a public/private partnership devoted to improving the quality of engineering plans and the process by which they are approved. The Institute provides programs designed to improve the design and approval process, to maintain current practice education for private and public professionals, and to improve communication throughout the land development industry. ESI's membership consists of engineering and surveying firms practicing land development in Virginia, local jurisdictions, the Virginia Department of Transportation, public utility agencies, and organizations producing products for the industry.

Amici curiae and their members have a great interest and an enormous stake in this case. First, through its use of a novel rule that requires design professionals to independently test and verify the accuracy of product manufacturers' representations to satisfy the standard of care, the circuit court shifted the risk of liability for product defects from those who manufacture and sell products to those who implement them into

designs. This risk allocation threatens to increase the costs of professional design services and discourage the use of newer innovative products and designs. Second, the trial court's finding that the statute of limitations for design defect claims against design professionals is tolled where there is a continuing relationship between the design professional and owner undermines basic procedural protections afforded to design professionals. Finally, the trial court's failure to enforce against the contractor obligations clearly defined in the contract documents and instead impose liability on the design professional undermines the commercial expectations of the parties and frustrates public policy interests that encourage commercial parties to assign risks and duties prospectively.

SUMMARY OF THE ARGUMENT

1. The Petition for Appeal should be granted because this case involves an issue of substantial importance. The circuit court ruled that Gordon breached its duty of care by relying on the representations made by the manufacturer of the Rain Tank system regarding the product's suitability for the project. According to the circuit court, Gordon had an independent duty to test the product to ensure the manufacturer's specifications were accurate. Neither Virginia nor any other state has through legislation or the common law imposed such a duty on design professionals.

Design professionals use an array of products in their designs and necessarily rely on the representations of product manufacturers to assess whether a product is suitable to integrate into a design. To impose on design professionals a duty to verify the accuracy of these representations will have a number of deleterious effects. It will force design professionals to—if possible—test any cutting edge products before incorporating them into designs or forego entirely the use of state-of-the-art products. The end result will be greater costs to project owners and developers.

2. Additionally, the Petition for Appeal should be granted because the circuit court clearly erred in its application of the statute of limitations. This Court has held that a cause of action for defective plans accrues when the plans are tendered by the engineer and accepted by the owner. Such a clear rule polices against stale claims and provides stability to the market for construction design by protecting design professionals from liability related to latent defects in the design. The Court has expressly rejected the notion that a cause of action does not accrue until the relationship between the design professional and owner ends. Nonetheless, the circuit court accepted this very argument and concluded the statute did not run during the pendency of Heritage and Gordon's commercial relationship. This ruling lacks legal support and threatens to expose engineers and other design professionals to stale damages claims. This will have the unfortunate effect

of undermining the important interests of predictability and finality so important to the design professional industry.

3. Finally, the Petition for Appeal should be granted because the circuit court clearly erred in its application of Virginia contract law. Virginia law requires a court to enforce a contract in accordance with its express terms. This objective approach to contract fosters stable commercial relationships based on the expectations of the parties as made manifest by the words used in the contract documents. The contract expressly provides that Gordon cannot be held liable for defects in the overall project design. Whitener & Jackson ("W&J), as general contractor and the party best able to guard against risks, warranted that it would accept liability for all damages relating to design defects. W&J also agreed to comply strictly with the terms of the contract. In assigning blame to Gordon, the Court interfered with the bargain struck by the parties. This ruling undermines the significant policy interests of efficiency and predictability Virginia's law of contract seeks to advance.

ASSIGNMENTS OF ERROR

Amici take no position regarding the substance of the assignments of error presented by Petitioner. *Amici curiae* cabin their arguments to those issues addressed below.

STATEMENT OF FACTS

Amici take no position regarding the accuracy or sufficiency of the statement of facts presented in the parties' briefs.

ARGUMENT

I. Engineers Act with Due Care When Reasonably Relying on Product Manufacturers' Representations.

An engineer (or other design professional, *i.e.*, architect or surveyor) "owes to his employer the duty to exercise his skill and ability, his judgment and taste reasonably and without neglect." *Id.*; *see Nelson v. Com.*, 235 Va. 228, 239, 368 S.E.2d 239, 245 (1988). Put simply, engineers must exercise the reasonable care, technical skill, ability, and diligence ordinarily required of an engineer in the same or similar circumstances. *See Surf Realty Corp. v. Standing*, 195 Va. 431, 78 S.E.2d 901, 907 (1953). In its ruling, the circuit court concluded that Gordon breached its duty of care by relying on the accuracy of the technical specifications provided by the manufacturer of the Rain Tank system. Gordon's reliance however was entirely reasonable and consistent with industry standards and practices.[2]

[2] In fact, Heritage agreed that Gordon was "entitled to rely on the accuracy and completeness of work and information supplied by third parties." (Heritage Ex. 15.) This necessarily includes information provided by product manufacturers.

When drafting specifications for a construction project, an engineer must choose from an array of products to integrate into the design. It is industry practice for engineers to rely on manufacturers' literature and industry publications when choosing products to specify. Engineers are not expected to "reinvent the wheel" and evaluate the accuracy of the technical information supplied by a manufacturer. *Vill. of Cross Keys, Inc. v. U.S. Gypsum Co.*, 556 A.2d 1126, 1134 (Md. 1989). In short, so long as an engineer reasonably relies on the representations of a product manufacturer he satisfies the standard of care.

The circuit court's ruling, however, implies a novel rule under which engineers may no longer rely on a product manufacturer's representations, but must instead take steps to verify that the information provided is accurate. This rule is unworkable and will lead to greater costs for engineers and other design professionals; especially those wishing to incorporate state-of-the-art products into their designs.

The fear of liability for defective products will require engineers to focus time and energy verifying the accuracy of information provided by manufacturers, which will in many cases require the engineer to actually perform field tests on products to assess their suitability and reliability. The result of this "defensive engineering" will be redundancy of effort that will

drive-up costs for professional services with no net increase in safety or reliability. This concern is not a mere product of speculation. Empirical evidence from the medical industry has demonstrated a direct link between higher risks of professional liability and an increase in overall costs due to ordering unnecessary testing. *See Arpin v. United States*, 521 F.3d 769, 775 (7th Cir. 2008) (Posner, J.) (noting that excessive verdicts for noneconomic damages in health care cases "drive up liability insurance premiums and, what may be the greater cost, promote defensive medicine that costs a lot but may do patients little good.") (internal quotations and citation omitted)).

Moreover, requiring engineers to independently investigate the accuracy of a product manufacturer's specifications will deter engineers from incorporating cutting edge products into their designs. The fear of liability will create a strong incentive for engineers to specify products with which they are personally familiar and avoid new products or variations on older products. State-of-the-art products come into existence in light of experiential observations by experts in the industry. These products embody cost-effective solutions to modern industry problems. Engineers and other design professionals should be encouraged to utilize products that promise better results for existing designs and facilitate the

development of newer structural designs and concepts. The circuit court's ruling, however, cuts the other way and promises to stifle rather than encourage industry innovation.

Any rule regarding the standard of care applicable to design professionals should be based on the practical understanding that there are thousands of products and variations of products in the market. And it is impossible for any design professional to be familiar with all of them. A design professional acts with due care by examining whether a product is adequate for the intended application. He does not deviate from this standard by relying on the representations of product manufacturers who are in a superior position to test the properties of the products they develop and fabricate. Unless the information provided by the manufacturer contains or omits information that might call a typical design professional's attention to a potential problem with the product in a particular application, or it is widely known within the profession that a product may be deficient for its designed purpose, the design professional should not be held liable in the event a properly installed product fails.

The trial court applied a rule under which an engineer breaches his duty of care by relying on the technical information provided by the product's manufacturer. The trial court made no finding that in reviewing the

product specifications Gordon should have noticed a material issue as to the suitability of the product for the particular application. Nor did the trial court make a finding that Gordon ignored widely known and accepted industry information indicating the specified Rain Tank system was unsuitable for the particular application. Accordingly, the trial court's ruling should be reversed.

II. The Circuit Court Erred in Failing to Tie the Statute of Limitations Accrual Date to the Date the Plans Were Tendered By Gordon and Accepted By Heritage.

Statutes of limitations "are found and approved in all systems of enlightened jurisprudence" and represent a pervasive legislative judgment that it is unjust to require a party to answer a claim after the passage of a specified period of time, and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (citations and internal quotations omitted). While affording plaintiffs with what the legislature deems a reasonable time to present their claims, statutes of limitations "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *Id.* (citations omitted). Vigorous application of

statutes of limitations and repose advance many important social policies, including "certainty of liability, finality, predictability, uniformity and efficiency in commercial transactions." *Rodrigue v. Olin Employees Credit Union*, 406 F.3d 434, 446–7 (3d Cir. 2005).

The question here is when does a cause of action accrue against a design professional for errors in the design documents?[3] Courts, including this one, have consistently held that "a cause of action for defective plans ar[ises] upon tender of the plans by the architect to the owner." *VMI v. King*, 217 Va. 751, 759, 232 S.E.2d 895, 900 (1977) (citing with approval *Federal Reserve Bank of Richmond v. Wright*, 392 F. Supp. 1126 (E.D. Va. 1975) ("[A] cause of action arising from faulty plans accrues upon tender of such plans.") and *McCloskey & Co. v. Wright*, 363 F. Supp. 223, 226 (E.D. Va. 1973) ("[T]he breach of warranty occurred at the time the architects tendered allegedly defective plans to the government.")). Applying this rule to the facts in *King*, the plans were "tendered" when "the architects had a right to demand and received payment" for their design services. *King*, 217 Va. at 900, 232 S.E.2d at 900. The Court reiterated this rule in *Nelson v. Commonwealth*, 235 Va. 228, 243, 368 S.E.2d 239, 248 (1988), when it

[3] Professional malpractice claims against design professionals are governed by the statute of limitations applicable to contracts. *See King*, 217 Va. at 758–59, 232 S.E.2d at 900.

found the statute of limitations against a design professional accrued upon the owner's "acceptance of the working drawings." *Id.* at 243, 368 S.E.2d at 248.

Below, Heritage claimed the statute of limitations was tolled because there was a "continuing relationship" between Gordon and Heritage. (Tr. of Nov. 14, 2014 Hearing; 28:20–30:4.)[4] Noting that the existence of a continuing relationship tolls the statute of limitations in accountant and attorney malpractice actions, the circuit court accepted Heritage's erroneous argument. It is true that in malpractice cases against accountants and attorneys the existence of a continuing relationship tolls the statute. *See Boone v. C. Arthur Weaver Co.*, 235 Va. 157, 365 S.E.2d 764 (1988) (accountant); *McCormick v. Romans*, 214 Va. 144, 198 S.E.2d 651 (1973) (attorney). But application of the exception in design professional cases collides directly with the reasoning of *King* and *Nelson*.

[4] Heritage also argued that the statute of limitations did not accrue when the plans were tendered because there was some back-and-forth with Gordon and the County over the construction drawings and between Gordon and W&J regarding design specifications. (Tr. of Nov. 14, 2014; 29:1–20.) These factual claims do not constitute distinct legal theories and are little more than representations of record facts to support the claim that the statute was tolled during the pendency of the continuing relationship between Gordon and Heritage.

In *King*, this Court recognized in a malpractice case brought against an architect that "the applicable period of limitation begins to run from the moment the cause of action arises." *Id.* at 759, 232 S.E.2d at 900. And the moment the cause of action arises is the moment the defective plans are tendered by the design professional and accepted by the owner. *Id.* Moreover, the Court expressly rejected application of the continuing services exception applied to attorneys in *McCormick*. *Id.* at 760, 232 S.E.2d at 900. Eleven years later, this Court in *Nelson* reaffirmed the principles articulated in *King* and again explained that the continuing relationship doctrine would not apply to a design defect claim where the evidence showed the owner had accepted the plans. *Nelson*, 235 Va. at 242, 368 S.E.2d at 247.

Consistent with *King* and *Nelson*, the Fourth Circuit in *Lone Mountain Processing, Inc. v. Bowser Morner, Inc.*, 94 F. App'x 149, 156 (4th Cir. 2004), found a "continuation of services" exception inapplicable to design defect claims. The court reasoned that "[u]nlike the patient or client relationships created in the medical, legal, and accounting professions, architectural design professionals do not routinely create confidential or fiduciary client relationships entailing inherent, ongoing duties of care." *Id.* at 156. Additionally, the court pointed out that the statute of limitations clock

does not reset where the design professional later provides "remedial measures or advice" regarding design plans. *Id.* "Indeed, to hold otherwise would contravene the purpose of the statute of limitations, in that any remedial work or advice subsequent to design acceptance automatically would re-start the limitations clock in design-defect cases." *Id.*

The circuit court failed to apply *King* and *Nelson*, and therefore its ruling is untenable. This Court should grant review and reverse this ruling. Doing so will give effect to the purposes for which the statute of limitations was designed: "to compel the exercise of a right to sue within a reasonable time; to suppress fraudulent and stale claims; to prevent surprise; to guard against lost evidence; to keep facts from becoming obscure; and to prevent witnesses from disappearing." *Lavery v. Automation Mgmt. Consultants, Inc.*, 234 Va. 145, 148, 360 S.E.2d 336, 338 (1987).

III. The Trial Court's Ruling Is Contrary to Settled Contract Law and Upsets the Commercial Expectations of the Parties.

The cardinal goal of contract interpretation is to give effect to the intent of the parties as expressed through the language they chose to use. *Bender-Miller Co. v. Thomwood Farms, Inc.*, 211 Va. 585, 588, 179 S.E.2d 636, 639 (1971). "Where an agreement is complete on its face, is plain and unambiguous in its terms, the court is not at liberty to search for its meaning beyond the instrument itself. This is so because the writing is the

repository of the final agreement of the parties." *Berry v. Klinger*, 225 Va. 201, 208, 300 S.E.2d 792, 796 (1983) (alterations and citation omitted). This objective standard to discern intent based on the four corners of the contract document is described as the "plain meaning rule." *Vienna Metro LLC v. Pulte Home Corp.*, 786 F. Supp. 2d 1076, 1083 (E.D. Va. 2011).

The contract documents provide that W&J agreed to perform the work in conformance with the contract. (Mot. for Recon. Ex. 2, art. 3, § 3.1.2.) Made part of the contract were the drawings and specifications provided by Gordon. (*Id.* art. 1, § 1.1.1.) By signing the document, W&J represented that it "reviewed the drawings and specifications provided by the [engineering firm]" and "correlated personal observations with requirements" of the contract. (*Id.*, art. 3, § 3.2.1.) And W&J agreed that:

> The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the [Engineer's] approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the [Engineer] in writing of such deviation at the time of submittal and (1) the [Engineer] has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the [Engineer's] approval thereof.

(*Id.*, art. 3, § 3.12.8.) W&J also assumed responsibility for all costs associated with its failure to strictly comply with the contract, including costs of removal and replacement. (*Id.*, art.12, § 12.2.1; art. 13, § 13.5.3.)

This language created a warranty similar to that at issue in *D.C. McClain, Inc. v. Arlington County*, 249 Va. 131, 452 S.E.2d 659 (1995). There, due to language in the contract that made the contractor responsible for errors in the shop drawings, the contractor was unable to recover against the county and a design professional firm for providing a flawed design that failed to prescribe a workable method for post-tensioning a bridge. *Id.* at 136–37, 452 S.E.2d at 662–63. Like here, by contract the contractor in *D.C. McClain* alone bore the responsibility for the defective shop drawings and all subsequent losses and delays. *Id.* at 138–39, 452 S.E.2d at 663.

The trial court's failure to enforce the warranty created by the parties' agreement is inconsistent with Virginia law and inimical to the values of commercial efficiency and predictability so important to commercial relationships. Heritage and W&J negotiated the contract as sophisticated commercial parties well positioned to understand the foreseeable risks inherent in constructing the project and executing the designs provided by

Gordon. From this vantage, Heritage and W&J agreed that W&J would bear the risk for any errors or defects in the design plans.

The evidence at trial also demonstrated that in installing the Rain Tank system W&J breached the contract's terms by failing to comply with the specifications for proper installment of the Rain Tank system. For instance, (1) W&J used oversized rock in the subgrade below the water system, (Mot. for Recon. Ex. C), (2) W&J used an improper soil type when backfilling the excavated site where the system was placed, (*id.* Ex. D), and (3) used a 17 ton vibrating compactor when the contract documents specified the use of a compactor weighing no more than 6 tons, (Trial Tr. (Day 3) 71:21-72:11; Heritage Ex. 171). W&J adduced no evidence that Gordon provided written approval of any specific deviation from the specifications, nor was there any evidence that a change order or directive approving the deviation had issued. This absence of proof is critical as the contract contained no provision permitting W&J to unilaterally deviate from its terms.

Due to W&J's unilateral variances from the contract specifications, the trial court concluded W&J did not comply with the contract. (*Id.* Ex. B at 6:15–20.) Still, the trial court excused W&J's noncompliance, viewing the variations as "minor" and "not contribut[ing] to the collapse." (*Id.* at 6:21–

7:1.) Even assuming W&J's use of a compactor approximately three times heavier than that prescribed by the contract and its failure to use proper soil and stone in installing the system were mere "minor" variances from the contract's terms, the contract's language places liability for the Rain Tank system's collapse squarely on W&J where it failed to strictly comply with the terms of the contract.

W&J agreed to assume responsibility for all losses where it failed to satisfy the terms of the contract documents. Through its ruling, the trial court materially modified the contract to reallocate the risk of loss from W&J—the party best positioned to anticipate and guard against the risks associated with installing the Rain Tank system—to Gordon. This ruling is incongruent with this Court's admonition that courts are not free to rewrite a contract and reallocate risks originally assigned by the parties. *See Berry*, 225 Va. at 208, 300 S.E.2d at 796; *see also East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 873 (1986) ("Since a commercial situation generally does not involve large disparities in bargaining power we see no reason to intrude into the parties' allocation of the risk.") (internal citation omitted)).

At bottom, the contract issues in this case implicate vital interests in commercial stability and efficiency. These interests are best served through

legal rules and standards that incentivize parties to prospectively allocate risks and define remedies in their agreements. *See Indianapolis-Marion Cnty. Pub. Library v. Charlier Clark & Linard, P.C.*, 929 N.E.2d 722, 736 (Ind. 2010). Apportioning risk prospectively in construction contracts is particularly important. Construction projects often involve multiple parties who are not parties to the same document; rather, the participants are enmeshed in a network of two-party contracts. The contracts in this network envisage an elaborate set of interrelationships that in turn implicate a number of rights and duties. For instance, and most relevant to this case, within the chain of contracts a contractor may be asked to accept risks relating to the accuracy and suitability of plans provided by an engineer or architect. The contractor may not have the opportunity to negotiate directly with the design professional; nevertheless, he may choose to accept the risks, negotiate to reallocate them, or decline to enter the contract relationship. *See generally BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66, 72 (Colo. 2004).

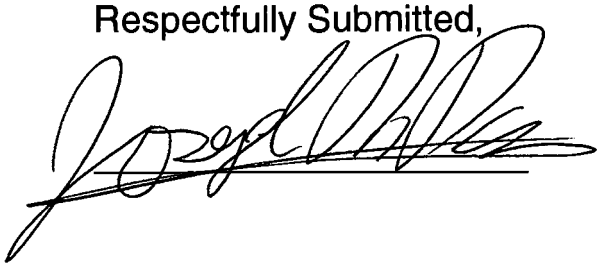
Through its contract with Heritage, W&J chose to accept the risks associated with following the design drawings. And thus W&J should have been required to shoulder the responsibility for the Rain Tank collapse. The trial court's failure to enforce the contract upsets the contractual

expectations of the parties in this case and injects uncertainty in the construction industry generally. This Court should grant the petition for appeal and reiterate the importance of adherence to the plain meaning rule of contract interpretation and reassure commercial parties that their contractual choices will be enforced.

CONCLUSION

This Court should grant Petitioner's appeal and reverse the trial court because (1) the circuit court erroneously adopted and applied a new rule finding a design professional breaches his duty of care by relying on product manufacturer specifications, (2) the circuit court mistakenly imported from attorney and accountant malpractice cases a continuing relationship exception to toll the statute of limitations in a design defect case, and (3) the trial court clearly erred in interpreting the relevant contract. If left in place, the trial court's ruling threatens great harm to engineers and design professionals throughout the Commonwealth.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 18th day of February 2015, seven paper copies of this Brief *Amicus Curiae* were hand-delivered to the Clerk of the Supreme Court of Virginia. This same day, paper copies of this Brief Amicus Curiae were mailed, via first-class U.S. mail, postage prepaid, to the following:

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