

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Judge

Appellate Case No. 2019-000816
Case No. 2013-CP-42-3915

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SC Court of Appeals

Angie Keene, Individually and as Personal
Representative of the Estate of Dennis Seay, Deceased,
and Linda Seay,..... Respondents,

v.

CNA Holdings, LLC..... Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Petitioner CNA Holdings, LLC (“Celanese”) petitions this Court to issue a writ of certiorari¹ to review the controlling issue in the decision of the Court of Appeals in the matter styled *Keene v. CNA Holdings, LLC*, Op. No. 5625 (S.C. Ct. App. filed Feb. 13, 2019) (Shearouse Adv. Sh. No. 7 at 16) (“the Opinion”). This Court should grant Celanese’s petition and reverse the Court of Appeals’ erroneous opinion.

QUESTION PRESENTED FOR REVIEW

Celanese raised several trial court errors for the Court of Appeals to consider, and Celanese believes the Court of Appeals mistakenly affirmed the trial court with respect to those errors. However, this Court need only consider one transcendent error of the Court of Appeals which is an important legal question that only this Court is suited to answer with finality:

Did the Court of Appeals err in affirming the trial court’s ruling that Dennis Seay was not a statutory employee of Celanese where his maintenance work was an important, necessary, essential, and integral part of Celanese’s manufacturing business?

The Court of Appeals, erroneously interpreting the effect of this Court’s precedent, agreed with Mr. Seay that this Court in recent opinions had fundamentally changed the statutory employer test in all areas of employment. Celanese argues otherwise. Only this Court can and should ultimately pronounce the effect of its precedents with respect to this critical and important statutory test issue. Clarity for the bar as well as all employers is necessary regarding the scope and nature of the statutory employee test in light of the Court of Appeals’ decision below, and thus certiorari should be granted and the Court of Appeals should be reversed.

¹ The undersigned hereby certifies that a rehearing petition was made and ruled on by the Court of Appeals on May 13, 2019.

STATEMENT OF THE CASE

Respondents brought this suit asserting that Dennis Seay (“Seay”) was negligently exposed to asbestos in connection with his work as a millwright at Daniel Construction Company (“Daniel”), resulting in him contracting mesothelioma. (Compl.; A. 77-95.) Celanese moved to dismiss and/or for summary judgment contending that Seay was its statutory employee and, therefore, the South Carolina Workers’ Compensation Act (“the Act”) provided the exclusive remedy for his claims. (Mot. to Dismiss and Memo. in Supp. of Mot. to Dismiss; A. 2648-62.) Celanese’s motions relied on the many South Carolina authorities supporting the proposition that maintenance workers like Seay are typically found to be statutory employees of a manufacturing facility’s owner (here, Celanese). (*See id.* at 7-12; A. 2656-61.) The trial court, however, denied Celanese’s motions and declined to follow the numerous factually analogous maintenance worker cases of this Court. Importantly, as discussed further below, the trial court concluded that two decisions from this Court involving transportation workers employed by common carriers—*Abbott* and *Olmstead*—were controlling, and that those two cases represented a significant change of the prior controlling law. (Order at 3-6; A. 56-59.) Celanese again raised the statutory employee argument in its directed verdict and renewed directed verdict motions, which also were denied. (*See* Trial Transcript (“Tr.”) at 1327:5-1332:6; A. 1539-43.)

The matter proceeded to trial on Respondents’ negligence claim. At the conclusion of the trial, the jury rendered a verdict finding Celanese liable and awarding a total of \$14 million dollars for survival, wrongful death, and punitive damages. (Verdict Form; Judgment; A. 73-76.) Celanese filed several post-trial motions, again raising the statutory employee issue. (Mot. for JNOV; Mot. for New Trial; Mot. for New Trial Nisi Remittitur; A. 2110-27.) The trial court once again denied the post-trial motions in their entirety. (Order; A. 8-53.)

Celanese timely appealed. Celanese raised the controlling issue to the Court of Appeals of whether the trial court erred in finding that Seay was not Celanese's statutory employee. But the Court of Appeals affirmed the trial court and relied on the same erroneous legal analysis as that of the trial judge, which violates and conflicts with the governing decisions of this Court. After the Court of Appeals denied rehearing, Celanese now petitions this Court for a writ of certiorari.

STATEMENT OF THE FACTS

Dennis Seay worked as an employee of Daniel Construction Company ("Daniel") from 1969 to 1978. (D. Seay, Tr. 359:8-24; A. 557.) During this time, Daniel was the exclusive maintenance provider at the Celanese facility, which included maintenance on the manufacturing equipment/process lines. (See D. Seay, Tr. 362:12-24; Court's Ex. 1, D. Seay Video Dep. at 67:2-7; A. 560, 1822-23.) Although Celanese did not have its own maintenance division at this facility when Seay worked there, it provided all supplies for Daniel's maintenance work. (See D. Seay, Tr. 366:3-10; A. 564.) Seay worked on various elements of the equipment such as pumps, valves, and gear boxes, all of which were key components of the process lines used in the facility's manufacturing operations. (See D. Seay, Tr. 382:20-383:23, 416:19-21, 418:3-11, 419:2-420:10; A. 580-81, 614, 616-18.)

Seay worked as a millwright with Daniel, with job duties including making repairs and performing preventative maintenance work on Celanese's manufacturing equipment. (See D. Seay, Tr. 427:22-428:9; Court's Ex. 1 at 24:20-25, 26:25-27:6, 61:9-62:19, 67:17-21; A. 625-66, 1806-07, 1823.) A Celanese employee, referred to as the "lead man," would provide instructions to Seay's supervisor at Daniel, who would then assign Seay his daily job duties. (See D. Seay, Tr. 374:23-375:9; Court's Ex. 1 at 66:1-67:1; A. 572-73, 1822-23.)

The Celanese facility where Seay worked manufactured synthetic fibers. (D. Seay, Tr. 360:16-21; Court's Ex. 1 at 25:3-8; A. 558, 1807.) As Seay testified, his work on steam lines was

vital to the operation of Celanese's manufacturing business because all of the manufacturing equipment he maintained was critical to the successful operation of the process lines at the facility.

(See D. Seay, Tr. 382:20-383:23, 416:19-21, 418:3-11; 419:2-420:10; A. 580-81, 614, 616-18.)

Seay testified as follows:

Q: So it sounds like the lines were fairly important to the operation of the business; is that fair?

A: Very important. If they didn't operate, they wouldn't run.

(*Id.* at 416:22-25; A. 614.) Further, Seay admitted:

Q: So you would – so would you agree that these lines were important to the operation of Hoechst Celanese?

A: Very important.

Q: If a line went down and there was a failure, was it important for you to repair the line quickly?

A: Yes.

Q: And that would be the case no matter where the repair was made in the facility; right?

A: Yes.

Q: You, also, mentioned repairing some equipment last time during your deposition. When you made a repair, was it because there was something wrong with the equipment?

A: Right.

(*Id.* at 418:3-15; A. 616.) Seay also testified as to the importance of each piece of equipment at the facility:

Q: Would you agree that each piece of equipment in the factory then was essential to the manufacturing operation?

A: Correct.

(*Id.* at 423:24-424:1; A. 621-22.) Finally, Seay testified that the repairs and preventative maintenance he performed were important, necessary, and essential to the continued manufacturing operations of the Celanese facility:

Q: Okay. So the preventative maintenance was done to ensure the plant would continue operating?

A: Right.

Q: Would you say that preventative maintenance is essential to the operation of the plant?

- A: Very important.
- Q: And then in terms of the repairs, the repairs were done either – like some particular type of equipment. I know you talked a lot about the equipment last time. But when one of those pieces of equipment failed, then you would perform a repair; is that fair?
- A: Yeah.
- Q: Okay. And when there's – the repairs were made, basically, to get the machinery or equipment back up and running so the plant could continue operating; right?
- A: Right.
- Q: And then you made those repairs, the factory workers could keep doing their jobs; right?
- A: Correct.

(*Id.* at 420:5-23; A. 618.) Likewise, Seay testified:

- Q: And the repairs that you made, were those important to the continued operation of Hoechst?
- A: Yes, it was.
- Q: And you talked about some preventative maintenance. Was that preventative maintenance necessary to the continued operation of the plant?
- A: Very much so.

(Court's Ex. 1 at 76:23-77:6; A. 1826.)

Ronnie Thompson also worked for Daniel with Seay at the Celanese facility from 1973 to 1975. (Court's Ex. 2, R. Thompson Video Dep. at 17:4-24, 98:5-12; A. 1829, 1850.) He likewise testified that the purpose of Daniel's work was to ensure Celanese's production lines remained operational, and that keeping the production lines operating was important and integral to Celanese's manufacturing business, as production could not proceed if the valves, pumps, and other equipment were not working properly. (*Id.* at 97:6-25; A. 1850.)

Finally, Celanese's corporate representative—Bruce Bowyer—also echoed this point, stating that the maintenance work performed by Daniel was a necessary, essential, and integral part of Celanese's business. (B. Bowyer, Tr. 1077:11-15; Aff. of B. Bowyer, Ex. G to Mem. in Supp. of Am. Mot. to Dismiss at ¶ 7; A. 1282, 2451.) It was essential for Celanese to have

maintenance workers on site to maintain, repair, and replace equipment. (Aff. of B. Bowyer at ¶¶ 5, 7; Dep. of B. Bowyer, Ex. H to Mem. in Supp. of Am. Mot. to Dismiss at 314:18-315:17; A. 2451, 2561.) Furthermore, the maintenance of equipment and upkeep of production lines was a regular, ongoing part of Celanese's operations. (See Aff. of B. Bowyer at ¶ 7; A. 2451.) Without the ongoing maintenance provided by Daniel workers like Seay, the Celanese facility would not have been able to properly function and consistently produce product for sale. (B. Bowyer, Tr. 1077:11-15; Aff. of B. Bowyer at ¶ 7; Dep. of B. Bowyer at 314:18-315:17; A. 1282, 2451, 2561.)

SUMMARY OF REASONS TO GRANT CERTIORARI

The Court should grant certiorari because the trial court and Court of Appeals erred in refusing to follow the settled and governing decisions of this Court regarding the definition, nature and scope of a statutory employee, and because the lower courts also erroneously found that long-standing South Carolina statutory employee precedent was fundamentally altered by this Court in *Abbott v. The Limited, Inc.*, 338 S.C. 161, 526 S.E.2d 513 (2000) and *Olmstead v. Shakespeare*, 354 S.C. 421, 581 S.E.2d 483 (2003). The Court of Appeals affirmed and adopted the trial court's rationale that after *Abbott* and *Olmstead*, the tests for determining whether a worker is a statutory employee are: (1) whether the activity was "part or process" of the business of the defendant company as declared, and (2) whether the company's own workers ever conducted the activities completed by the worker. The Court of Appeals' opinion misapprehended settled law and is in direct conflict with precedent of this Court predating *and post-dating* *Abbott* and *Olmstead*.

The Court of Appeals' opinion, quite simply, violates and conflicts with governing South Carolina precedent. Under the decades old test articulated and reiterated time and again by this Court and the Court of Appeals, Seay was Celanese's statutory employee because his maintenance work was an important, necessary, essential, and integral part of Celanese's manufacturing business, as the Celanese factory could not continue producing product—its entire purpose (*raison*

d'etre) for existing—without his work. This Court should grant certiorari to correct this error and clarify that the three factor test detailed in *Ost v. Integrated Prod., Inc.*, 296 S.C. 241, 245, 371 S.E.2d 796, 799 (1988) remains the applicable standard and that, under the *Ost* test, Seay was Celanese's statutory employee. This is not a question of disputed fact, but instead, a pure question of law—specifically, does the *Ost* test still govern or has it been replaced by the newer, and different test followed the courts below.

ARGUMENT

I. The Court of Appeals' decision violates and conflicts with numerous prior decisions of this Court.

A. The Court of Appeals' opinion conflicts with the established legislative and judicial policy favoring inclusion under the Workers' Compensation Act.

The Act is the *exclusive remedy* against an employer for an employee's work-related accident or injury, and "precludes an employee from maintaining a tort action against an employer where the employee sustains a work-related injury." *Edens v. Bellini*, 359 S.C. 433, 441-42, 597 S.E.2d 863, 867 (Ct. App. 2004). The Act provides that this exclusive remedy extends to where an "owner" undertakes to perform work which is "part of his trade, business or occupation" through a subcontractor. *See* S.C. Code Ann. § 42-10-40. As the Court of Appeals has explained, this means that, "depending on the nature of the work performed by the subcontractor, an employee of a subcontractor may be considered a statutory employee of the owner or upstream employer." *Voss v. Ramco, Inc.*, 325 S.C. 560, 566, 482 S.E.2d 582, 585 (Ct. App. 1997).

"Coverage under the Workers' Compensation Act depends on the existence of an employment relationship." *Id.* at 439, 597 S.E.2d 863, 866. Because the determination of whether a worker is a statutory employee is jurisdictional, "the question on appeal is one of law." *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999). "As a result, this court has the *power and duty* to review the entire record and decide the jurisdictional facts in

accord with its view of the preponderance of the evidence.” *Id.* at 320, 523 S.E.2d at 769 (emphasis added); *see also Glass v. Dow Chem. Co.*, 325 S.C. 198, 202, 482 S.E.2d 49, 51 (1997).

The key question in determining whether a worker is a statutory employee is whether the activity of the subcontractor’s employee “is a part of [the owner’s] trade, business or occupation.” *See Olmstead*, 354 S.C. at 424, 581 S.E.2d at 485. In determining whether an employee is engaged in such an activity, this Court has established a three factor test. This test provides that activity is considered “part of [the owner’s] trade, business, or occupation” for purposes of the statute if it “(1) is an important part of the owner’s business or trade; (2) is a necessary, essential, and integral part of the owner’s business; *or* (3) has previously been performed by the owner’s employees.” *Olmstead*, 354 S.C. at 424, 581 S.E.2d at 485 (quoting *Glass*, 325 S.C. 198, 482 S.E.2d 49).

As this Court has long acknowledged, in examining workers’ compensation issues, courts must “keep in mind the established rule that the Act should be given a *liberal construction* in furtherance of the purposes for which it was designed,” and that the “basic purpose of the Act ‘is the *inclusion of employers and employees, and not their exclusion.*’” *Alewine v. Tobin Quarries*, 206 S.C. 103, 110-11, 33 S.E.2d 81, 83-84 (1945) (quoting *Yeomans v. Anheuser-Busch, Inc.*, 198 S.C. 65, 15 S.E.2d 833, 835 (1941)) (emphasis added). This policy serves the legislative goal of providing broad protection to workers. *See Crosby v. Prysmian Commc’ns Cables & Sys. USA, LLC*, 397 S.C. 101, 117, 723 S.E.2d 813, 821 (Ct. App. 2012) (“[T]he purpose of our workers’ compensation scheme is to protect workers who have suffered injuries arising out of and in the course of their employment.”); *see also Parker v. Williams & Madjanik, Inc.*, 275 S.C. 65, 70, 267 S.E.2d 524, 526 (1980) (explaining “[t]he employee receives the right to swift and sure compensation,” “the employer receives immunity from tort actions by the employee,” and this “quid pro quo” has “worked to the advantage of society as well as the employee and employer”).

As a result, where a question arises as to whether a worker is a statutory employee, “[a]ny doubts as to a worker’s status should be resolved in favor of including him or her” under the Act *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 367, 747 S.E.2d 757, 761 (2013). The broad construction in favor of inclusion applies equally where the Act is used as a shield to liability under another theory. *Olmstead*, 354 S.C. at 427, 581 S.E.2d at 486.

The Court of Appeals’ opinion casts these policy considerations aside. The Court of Appeals should have undertaken its analysis cognizant of the overarching legislative and judicial policy that *any doubts* about the worker’s status must be resolved in favor of inclusion. Instead, it did not even acknowledge this underlying policy.

The Court of Appeals’ assertion that this was not a clear-cut case conflicts with the policy favoring inclusion. The Court of Appeals recognized that there are many South Carolina cases involving maintenance workers, but held that although Seay’s work was “important to the manufacturing process,” it was not “part of” that process and thus the facts here were “unique.” (Op. No. 5625, Shearouse Adv. Sh. No. 7 at 27.) Thus, rather than resolving all doubts in favor of *inclusion*, the Court of Appeals did just the opposite by resolving its doubts in favor of *exclusion*. This is out of line with longstanding South Carolina policy—reflected in many decisions from this Court—and warrants granting certiorari to correct this error of law.

B. The standard applied by the Court of Appeals directly conflicts with prior decisions of this Court.

The Court of Appeals also affirmed and adopted the trial court’s rationale that after *Abbott* and *Olmstead*, the tests for determining whether a worker is a statutory employee are: (1) whether the activity was “part or process” of the business of the defendant company as declared, and (2) whether the company’s own workers ever conducted the activities completed by the worker. This conflicts with this Court’s prior rulings, and the Court should grant certiorari to correct this error.

1. The “part of” language has been in the Act for many years and the three factor test was developed to provide direction to the lower courts as to how to apply this language.

Since enactment, the Act has contained essentially the same language regarding statutory employment. *See* 1936 S.C. Act No. 610, § 19 (explaining that the doctrine applies where a person “undertakes to perform or execute any work which is *part of his trade, business or occupation*” by contracting with another for execution of that work (emphasis added)). Over the years, this Court developed the three factor test to be used by lower courts to make this determination.

Most recently, this Court addressed a statutory employment question in *Collins v. Charlotte*, 412 S.C. 283, 288, 772 S.E.2d 510, 513 (2015).² *Collins* reaffirmed the three factor *Ost* test, stating that the statutory employee relationship depends on the “**nature of the work** performed by the subcontractor.” *Id.* (quoting *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1997)) (emphasis in original). The Court quoted the traditional three part test and explicitly highlighted the words “important,” “necessary, essential, and integral,” and “identical activity.” Quoted verbatim, the Court said:

To determine whether the work performed by a subcontractor is a part of the owner’s business, this Court must consider whether (1) the activity of the subcontractor is an *important* part of the owner’s trade or business; (2) the activity performed by the subcontractor is a *necessary, essential, and integral* part of the owner’s business; or (3) the *identical activity* performed by the subcontractor has been performed by employees of the owner.

Id. (emphasis in original). *Collins* is the law—as it has been for decades—and confirms that these three factors are, and remain still, the components to examine when reviewing the nature of the work. Moreover, they are alternative factors, meaning that if any one factor is satisfied, the result should be a finding of statutory employment.

² Notably, despite being a transportation case, the *Collins* court did not even mention *Abbott* or *Olmstead*, much less suggest that they overruled, or even modified, long-standing South Carolina law with regard to the three factor test.

The Court of Appeals, however, departed from this settled three factor test and its decision to do so directly conflicts with the established precedent of this Court. The Court of Appeals' analysis began and ended with a simplistic, cabined examination of whether the work activity met the narrow confines of the defendant company's declared trade or business—without regard to the whether the work is important or essential—and whether the defendant company had in the past used its own employees for the activity at issue. This approach fundamentally differs from the controlling three factor test, as it renders the degree of importance of the work to the business involved irrelevant as long as the worker's activities meet the declared trade or business. Moreover, it ignores the governing policy of inclusion, and compounds that mistake by discarding the long-established principle that the nature of the work drives the inquiry as to whether that work was truly to be considered a “part of” the business involved.

The statutory employment doctrine developed in large measure because the courts sought to implement the policy of inclusion by avoiding an overly narrow, technical analysis of competing arguments about what the company's declared trade or business is. The three factor test examines the work itself in an effort to avoid such disputes by focusing on the tangible question of *what the worker actually did for the company*. In this manner, the three factor test ensures implementation of the policy favoring inclusivity and resolves doubts in favor of finding that the employee was a statutory employee.

Seay was a maintenance worker, but, critically, his work was important, indeed vital, to Celanese's *manufacturing* operations, as he maintained the very manufacturing machinery Celanese depended upon to produce its goods. While routine maintenance of, for example, office space might not be an integral or necessary part of selling a vehicle in a car dealership, for a manufacturing business, maintenance of the manufacturing equipment is essential to—indeed, part and parcel of—the business of producing goods. For Celanese, if the manufacturing line

machinery was not maintained, no goods would have been produced. Seay himself agreed with this straightforward proposition. *See supra* Statement of the Facts.

Despite agreeing that Seay's work was "important" to Celanese's manufacturing operation,³ the Court of Appeals nevertheless found his work was not "part of" the business because maintenance was not its corporate purpose. (Op. No. 5625, Shearouse Adv. Sh. No. 7 at 27.) If this is now the new law of this state, it will lead to undesirable, unworkable, and inconsistent judicial outcomes contrary to the governing legislative and judicial policy favoring inclusion of workers within the workers' compensation system.

In this regard, consider the following illustration of the problems and confusion created by the Opinion. Under the Court of Appeals' standard: 1) if Celanese declared that maintenance was a part of its business, Seay would be a statutory employee; 2) if Celanese did not declare maintenance to be part of its business but Celanese employees sometimes did maintenance, Seay would be a statutory employee; yet 3) if Celanese did not declare maintenance to be part of its business and its workers did not do maintenance, Seay would not be a statutory employee. The facts about the nature of the work never changed, yet his status would vary. This is precisely the type of result this Court sought to preclude when it articulated the three factor test focusing the analysis on an examination of the nature of the work.

Under the Court of Appeals' standard, a company could start a new business, narrowly describe the type of business, and then principally use independent contractors. In this situation, workers' compensation coverage would be largely, if not entirely, avoided. The new business would never have had any employees performing any work, and the narrowly declared definition of the business would exclude everyone not engaged in that narrow activity. For example, assume

³ In their Return to Celanese's Petition for Rehearing, Respondents also admitted that Seay's work was necessary to Celanese's manufacturing operation.

Celanese was a new business and labeled its business “sale and distribution of fibers.” Further, assume Celanese used independent contractors to manufacture all of the fibers it sold and distributed and to maintain and repair the manufacturing equipment. Under the Court of Appeals’ holding, no independent contractor involved in the manufacturing of fibers or maintenance and repairs of manufacturing equipment could be a statutory employee because: 1) those persons are not in sales or distribution; and 2) Celanese had no former employees doing the manufacturing, maintenance, or repair jobs. This cannot be the correct result in light of the *Ost* test, which implements the statute’s policy favoring inclusion and the resolution of all doubts in favor of it. Under *Ost*, such manufacturing, maintenance, and repair workers would be covered.

2. The type of work engaged in by Celanese employees is only relevant to the third factor of the *Ost* test.

As courts have repeatedly acknowledged, the three factor test is an “or” test, meaning the subject activity need only satisfy “one of” the “three criteria” for the worker to qualify as a statutory employee. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 368, 747 S.E.2d 757, 762 (2013). Nevertheless, the Court of Appeals found that Seay’s work was not “part of” Celanese’s manufacturing process because only Daniel employees performed maintenance and repair on the manufacturing equipment. (Op. No. 5625, Shearouse Adv. Sh. No. 7 at 27.) The opinion repeats the trial court’s finding that Seay’s maintenance work was “significantly different” from the work performed by Celanese employees. (*Id.*) This was error because such a finding bears *only* on the third factor of the test. *See Collins v. Charlotte*, 412 S.C. 283, 289, 772 S.E.2d 510, 514 (2015) (noting that the third factor is whether “the identical activity performed by the subcontractor has been performed by employees of the owner”).

The Court of Appeals supported this proposition by citing to a statement in a 1999 case that: “[e]mployees who work for the subcontractor but are not employed to do the work that the

owner would normally do would not have a statutory employment relationship with the owner.” See *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 323, 523 S.E.2d 766, 771 (1999)). This sentence had no supporting citation in *Harrell* and does not appear to have been repeated or followed in any subsequent decisions. Moreover, the *Harrell* court never stated, much less suggested, that it was changing the analysis or converting the three factor test into one.

Furthermore, a close review of *Harrell* reveals that it, in fact, supports Celanese’s position. In evaluating whether the worker’s activity satisfied any of the test’s three factors, the *Harrell* court, “**focusing on the responsibilities**” that the worker had, found that the work was both “important” and “necessary, essential, and integral.” *Harrell*, 337 S.C. at 325, 523 S.E.2d at 772 (emphasis added). The Court reasoned that without the work of the subject worker, the company “would have had to hire direct employees to complete those duties” and that this “relationship **is exactly the type** that the statutory employer theory is meant to cover.” *Id.* (emphasis added). *Harrell* cited *Carter v. Florentine Corp.* to support this point, which held that “an **absentee landlord** that hired a management company to run its only property was a statutory employer.” *Id.* (emphasis added) (citing *Carter*, 310 S.C. 228, 230, 423 S.E.2d 112, 113 (1992), *overruled on other grounds by Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995)).

Further, the Court of Appeals previously held that a company need not have had its own employees engage in the same activity in order for that activity to meet the statutory employer test. See *Raines v. Gould, Inc.*, 288 S.C. 541, 546, 343 S.E.2d 655, 658 (Ct. App. 1986) (“[E]ven work which a business might never perform with its own employees may be considered a part of its trade or business if the work is an integral part of its operations without which it cannot function.”).

Here, however, the Court of Appeals rendered employee engagement in the same activity a **requirement** in order to find inclusion as a statutory employee. This simply cannot be squared with the numerous prior cases recognizing that the three part test is an “or” test, and only one factor

needs to be met. Celanese needed to maintain its manufacturing machinery in order to produce its goods, and it would have had to use its own employees to perform that maintenance absent the retention of subcontractor Daniel employees like Seay. *Harrell, Carter, and Raines* all support the conclusion that this is sufficient to find that Seay was Celanese's statutory employee. The Court should grant certiorari to correct the Court of Appeals' erroneous decision.

C. *Abbott and Olmstead* were not some fundamental change in law.

1. The questions presented in those matters were narrow in scope.

Citing to *Abbott and Olmstead*, the Court of Appeals found these decisions "brought new clarity" to the statutory employment case law and that their logic was "binding in the present case." (Op. No. 5625, Shearouse Adv. Sh. No. 7 at 27.) Not so, as a careful examination of both cases reveals that their holdings were confined to the transportation worker context and *not* intended to have the broad scope or reading that the Court of Appeals gave them.

Significantly, in the worker's Brief of Petitioner to the Supreme Court in *Abbott*, the worker argued that the work of common carriers falls into a *unique category*, and thus they should not be considered statutory employees absent the owner's control over the common carrier's work or an exclusive relationship. See Br. of Pet'r at 2-3, *Abbott v. The Limited*, No. 94-CP-21-1430 (S.C. S. Ct. Apr. 15, 1999). Likewise, in *Olmstead*, the appellant argued that after *Abbott*, "South Carolina law is now clear that the delivery of products by truck to a company or place of business does not render the truck-driver delivering the products a statutory employee of the company or business." Br. of Appellant at 4, *Olmstead v. Shakespeare*, No. 99-CP-36-186 (S.C. Ct. App. Feb. 28, 2001). The worker's argument for expanding *Abbott* was solely limited to asserting that "[t]here should be no distinction between the *receipt* of products or goods and the *delivery* of them" for determining whether the transportation worker is a statutory employee. *Id.* at 5 (emphasis added).

The questions presented in *Abbott* and *Olmstead*, therefore, did not seek (nor brief) a sweeping change in the statutory employment analysis under South Carolina law. Nor did either decision announce or recognize some fundamental change in the three factor test or the law.

2. The limited context of the “overruling” discussion in the *Abbott* and *Olmstead* decisions did not announce a broad change in the three factor test.

The Court of Appeals also failed to account for precisely what cases were overruled by *Abbott* and *Olmstead*. *Abbott* held that “the mere *recipient of goods* delivered by a common carrier is not the statutory employer of the common carrier’s employee,” and explicitly overruled two other cases involving the activities of employees of common carriers to the extent they could be read to hold otherwise. *Abbott v. The Limited, Inc.*, 338 S.C. 161, 164 & n.1, 526 S.E.2d 513, 514 & n.1 (2000) (emphasis added). The Court went no further than that, and nowhere overruled or suggested it was modifying the traditional three factor test.

In its appellate briefing in *Olmstead*, the defendant company raised the meaning of *Abbott*’s overruling language to the court. The company argued that because *Abbott* only explicitly overruled two prior decisions involving *receipt of goods* from a common carrier, while declining to overrule cases involving other types of activities of common carrier workers, it meant that *Abbott* was limited to cases involving *receipt of goods* by a common carrier. See Pet. for Writ of Cert. at 7-8, *Olmstead v. Shakespeare*, No. 99-CP-36-186 (S.C. S. Ct. Mar. 21, 2002); Br. of Pet’r at 9-10, *Olmstead v. Shakespeare*, No. 99-CP-36-186 (S.C. S. Ct. July 1, 2002).

The *Olmstead* court responded by clarifying that *Abbott* was not limited to the mere receipt of goods, but rather stood for the proposition that “*transportation of goods by a common carrier alone, without something more*, does not qualify as ‘part of [the owner’s] trade, business, or occupation’ under any of the three established tests for statutory employment.” 354 S.C. at 425, 581 S.E.2d at 485 (emphasis added). In light of this finding and the company’s argument about

other transportation cases, the *Olmstead* court overruled all prior cases “*to the extent they conflicted*” with *Abbott* and *Olmstead*. *Id.* at 426, 581 S.E.2d at 486 (emphasis added). But, again, nothing suggested that the *Olmstead* court was overruling or modifying the long-standing three part statutory employee test.

The context of the briefing, arguments, and opinions in both cases makes clear that the “overruling” language was limited to prior common carrier cases, and they were not intended to discard or fundamentally alter the three factor test under South Carolina law. The *Abbott* Court’s explicit focus upon and reference to common carrier cases has to mean something, and the *Olmstead* Court’s clarification that *Abbott* concerned “transportation” has to mean something. If this Court intended to discard or change the three factor test for all types of workers to what the Court of Appeals articulates here, it would have made that pronouncement expressly and by overruling or abrogating *Ost*—the prior Supreme Court decision that was the genesis of the three factor test.⁴

D. No South Carolina cases issued after *Abbott* and *Olmstead* have held, as the Court of Appeals did here, that the statutory employee test has been changed.

Aside from the present case, two cases from this Court and ten Court of Appeals cases have been decided since *Abbott* and *Olmstead* and *none* reached the sweeping conclusion that the trial court and Court of Appeals did here. In fact, most of these decisions hardly mention *Abbott* or *Olmstead*, much less suggest that they represented a broad, revolutionary change in the law. In fact, when these post-*Abbott* and *Olmstead* cases cite to these decisions, it is typically for very general propositions such as *Olmstead*’s repeating of the same three factor test from *Ost*.

The cases without substantive analysis of *Abbott* and *Olmstead* are:

⁴ Both *Abbott* and *Olmstead* cite to the three factor test first formulated in *Ost*. Although the cases cite to *Glass v. Dow Chemical*, 325 S.C. 198, 482 S.E.2d 49 (1997) in reciting the factors, substantively *Glass* sets forth the same standard as *Ost*.

1. *Collins v. Charlotte*, 412 S.C. 283, 772 S.E.2d 510 (2015) (transportation worker case that does not cite either *Abbott* or *Olmstead*)
2. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 405 S.C. 359, 747 S.E.2d 757 (2013) (cites *Olmstead* only for the broad proposition that the court applies the three factor test in examining whether a worker is a statutory employee)
3. *Ferguson v. New Hampshire Ins. Co.*, 412 S.C. 203, 771 S.E.2d 851 (Ct. App. 2015) (cites *Olmstead* solely for its recitation of the three factors)
4. *Fortner v. Thomas M. Evans Const. & Dev., LLC*, 402 S.C. 421, 741 S.E.2d 538, (Ct. App. 2013) (does not cite to either *Abbott* or *Olmstead*)
5. *Collins v. Charlotte*, 400 S.C. 50, 732 S.E.2d 630 (Ct. App. 2012) (transportation worker case that only cites *Olmstead* for the recitation of the three factor test)
6. *Poch v. Bayshore Concrete Prod./S.C., Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009) (cites *Olmstead* solely to support the point that if the activity at issue satisfies even one of the three factors, the injured worker qualifies as a statutory employee)
7. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 647 S.E.2d 691 (Ct. App. 2007) (extensively discussing the origin of the statutory employee three factor test and the *Ost* court's analysis, but citing *Olmstead* solely for the proposition that each case must be decided on its own facts)
8. *Edens v. Bellini*, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004) (cites to the Court of Appeals' opinion in *Abbott* solely to support the point that if a worker is a statutory employee he may not maintain a direct negligence cause of action against the employer, and *Olmstead* solely to support that the activity need only meet one of the three tests)
9. *Hancock v. Wal-Mart Stores, Inc.*, 355 S.C. 168, 172, 584 S.E.2d 398, 400 (Ct. App. 2003) (same as *Edens* regarding *Abbott*)⁵

Three Court of Appeals cases examined *Abbott* and *Olmstead* in greater detail, but none support the Court of Appeals' conclusion here that the three part test was altered by these decisions. Moreover, all three concerned whether *transportation* was an important part of the defendant company's trade or business. None involved maintenance on manufacturing lines work, and none

⁵ It's noteworthy that the first three decisions following *Abbott* and *Olmstead* barely discussed those decisions.

suggested that *Abbott* and *Olmstead* were intended to apply beyond the narrow context of common carrier transportation.

First was *Johnson v. Jackson*, 401 S.C. 152, 156, 735 S.E.2d 664, 665 (Ct. App. 2012), which involved a transportation worker engaged in the delivery of goods. The court cited to *Abbott*, explaining that it and other transportation cases found that “**transportation** was not a main and integral part of the defendant’s business.” *Id.* at 164, 735 S.E.2d 664, 670 (Ct. App. 2012) (emphasis added). However, in *Johnson*, the defendant’s business was transportation of equipment, which would include the related tasks of “packing, loading, and unloading, that equipment,” and thus the worker was the defendant’s statutory employee there. *Id.* *Johnson*, therefore, merely reaffirmed *Abbott* and *Olmstead*’s applicability in the transportation context.

Next was *Posey v. Proper Mold & Eng’g, Inc.*, 378 S.C. 210, 219, 661 S.E.2d 395, 400 (Ct. App. 2008). *Posey* extensively discussed *Abbott* and *Olmstead* but did not find that either decision modified the general statutory employment test. Rather, the court recognized that they “addressed statutory employment **in the common carrier context.**” *Id.* at 219, 661 S.E.2d at 400 (emphasis added). *Posey* focused solely on whether the third factor of the test was met, and determined that the transportation worker in question was a statutory employee because the owner’s employees previously had conducted similar activities. *Id.* at 221-22, 661 S.E.2d at 401.

Finally, *Cooke v. Palmetto Health All.*, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005) examined whether airlifting patients was part of a hospital’s trade or business. In examining *Abbott* and *Olmstead*, the court again did not suggest that they had changed the long-standing three factor test. The court cited to *Olmstead* solely for its articulation of the test. *Id.* at 174-75, 624 S.E.2d at 442. Moreover, it cited *Abbott* to support the narrow point that although transportation helped facilitate the hospital’s treatment of patients, that fact alone did not make “**transportation** an important or essential part of the hospital’s general business.” *Id.* (emphasis added).

In short, *none* of the other cases issued after *Abbott* and *Olmstead* support the Court of Appeals' formulation of the standard here or its determination that those cases represented a drastic change in the law. The Court should grant certiorari to correct this fundamental error.

E. A long line of South Carolina decisions have held that maintenance workers are statutory employees of manufacturing businesses.

The Court of Appeals dismissed as factually distinguishable the numerous maintenance worker cases cited by Celanese. Many South Carolina cases, dating back eight decades, have found maintenance to be an important and/or necessary part of a manufacturing business. The Court of Appeals' holding departs from, and indeed conflicts with, all of these precedents.

The first maintenance worker case appears to have been *Marchbanks v. Duke Power Co.*, 190 S.C. 336, 2 S.E.2d 825 (1939). In *Marchbanks*, the Supreme Court held that a contractor "hired to paint telephone poles on behalf of Duke Power was a statutory employee" because he was "engaged in part of the defendant's business, because the maintenance of utility poles was necessary to the distribution of electricity." *Singleton v. J.P. Stevens & Co.*, 533 F. Supp. 887, 888 (D.S.C. 1982), *aff'd*, 726 F.2d 1011 (4th Cir. 1984).

Next, in *Boseman v. Pac. Mills*, 193 S.C. 479, 8 S.E.2d 878 (1940), the Supreme Court ruled that the maintenance of a water tank was an *integral* part of the defendant mill's business for fire prevention purposes. *See id.* at 483, 8 S.E.2d at 880. As the court explained, the mill needed to have work done on the inside of the tank "so that its every day, ordinary service, that of fire protection, could be resumed," since "the mill depended upon this tank for such protection." *Id.* The "very nature" of the mill's work, manufacturing "cotton into cloth, especially required the best of protection against fire." *Id.* Thus, the tank in question "was particularly necessary and essential in the operation and carrying on of the business of the mill." *Id.* Given these facts, the

court concluded that it necessarily followed that painting of the tank was “part of the trade, business or occupation” of the mill, and accordingly, the worker was a statutory employer. *Id.*

Bell v. S.C. Elec. & Gas Co., 234 S.C. 577, 579, 109 S.E.2d 441, 441 (1959) applied *Marchbanks* under similar facts. In *Bell*, the injured worker was employed by a construction company to repair power lines belonging to the defendant power company. *See id.* The court found that the power company was a “public utility engaged in the manufacture and transmission of electricity,” which “uses poles and wires in its business.” *Id.* at 580, 109 S.E.2d at 442. “[R]epair and maintenance of such poles and wires or the transferring of such from one set of poles to another” was thus “part of its business, trade and occupation.” *Id.* at 580-81, 109 S.E.2d at 442.

In *Bridges v. Wyandotte Worsted Co.*, 243 S.C. 1, 132 S.E.2d 18 (1963), *overruled on other grounds by Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002), the Supreme Court again found that maintenance was part of the trade, business, or occupation of the defendant woolen goods manufacturer. *See id.* at 23. The defendant’s machinery was operated by electricity derived from its own hydro-electric plant and through power purchased from Duke Power. *See id.* The worker’s job was to repair and/or replace the electrical transmission line owned by the defendant company, which the court found was “necessary for the operation of [the] business.” *See id.* The *Bridges* court also found that the test’s third factor was satisfied because the defendant’s employees customarily completed such maintenance work. *See id.*

Bailey v. Owen Elec. Steel Co. of S.C., 298 S.C. 36, 37, 378 S.E.2d 63, 64 (Ct. App. 1989), *rev’d on other grounds*, 301 S.C. 399, 392 S.E.2d 186 (1990) reached the same conclusion. In *Bailey*, the defendant company was “in the business of manufacturing steel” by acquiring scrap metal to fabricate it. *Id.* The contractor was injured while connecting an exhaust system to a furnace at the plant. *See id.* at 38, 378 S.E.2d at 64. The court nevertheless found that all three factors of the *Ost* test were met. The worker was assigned to replace duct work that was beyond

repair and, although the furnace could operate without it, law and regulation required the duct system for ventilation. *See id.* at 39, 378 S.E.2d at 64. Therefore, the important and necessary/essential tests were met. *See id.* Moreover, the third prong also was satisfied because the company's employees previously had engaged in this activity. *See id.*

In *Smith v. T.H. Snipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991), the worker in question was a self-employed welder and sole proprietor of a contracting company. *Id.* at 290, 411 S.E.2d at 439. The defendant manufacturer hired his company "to repair a metal shearing machine used in the [company's] business operations." *Id.* at 290, 411 S.E.2d at 440. The trial court granted summary judgment in the defendant's favor, finding that the worker was engaging in "work which was an essential part of the trade, business or occupation of the respondent" and that the nature of the work "was an integral part of the [defendant's] operations, **without which respondent's operation could not function.**" *Id.* at 291, 411 S.E.2d at 440 (emphasis added). The worker's estate appealed, but the Supreme Court affirmed, agreeing that the worker was the defendant's statutory employee. *See id.* at 292, 411 S.E.2d at 442.

In *Gentry v. Milliken & Co.*, 307 S.C. 235, 414 S.E.2d 180 (Ct. App. 1992), the contractor was injured while installing scouring machinery at a Milliken plant. *Id.* at 236, 414 S.E.2d at 181. The court found that the machinery was "essential to the plant's manufacture of certain materials," *id.* at 237, 414 S.E.2d at 181, and therefore the "integral" factor of the test was met, *see id.* Additionally, the test's third factor was also met because Milliken's workers previously engaged in the activity. *See id.*

Likewise, in *Wheeler v. Morrison Machinery Co.*, 313 S.C. 441, 438 S.E.2d 264 (Ct. App. 1993), the court determined that a worker hired to remove asbestos insulation was a statutory employee of a textile manufacturer. The court explained that the "evidence reveal[ed] that as part of an ongoing maintenance program, it was necessary for [the worker] to remove and dispose of

asbestos.” *Id.* at 443, 438 S.E.2d at 266. As the court explained, “[p]reventive maintenance, including the removal and reinstallation of insulation, has always been and always will be an ongoing process.” *Id.* at 443, 438 S.E.2d at 266. This, coupled with the fact that some of the manufacturer’s employees previously worked in removing asbestos, could “only lead to the conclusion that [the worker] was engaged in work which was part of the ‘trade, business, or occupation’ of the [manufacturer].” *Id.*

Finally, in an opinion that was subsequently vacated on procedural grounds, the Court of Appeals examined the operations of a paper manufacturer to determine the types of activities that would be considered part of the business. *See Woodard v. Westvaco Corp.*, 315 S.C. 329, 433 S.E.2d 890 (Ct. App. 1993), *vacated and dismissed by* 319 S.C. 240, 460 S.E.2d 392 (1995). The worker at issue drove tanker trucks full of chemicals to the manufacturer’s facility, and was injured when a hose disengaged and sprayed him with hot liquid. *Id.* at 331, 433 S.E.2d at 891. Although transportation workers are sometimes found to not be statutory employees, in this situation the court determined that the truck driver was a statutory employee. The court explained that it was “undisputed that recovery, storage, and reprocessing” of the chemical was an “ordinary and necessary part of Westvaco’s paper manufacturing business.” *Id.* at 338, 433 S.E.2d at 895. Importantly, the Court also stated that “[t]he *maintenance and repair of manufacturing equipment* is also a necessary part of Westvaco’s business.” *Id.* (emphasis added).

In rendering its Opinion here, the Court of Appeals cast aside all of these cases, which provide significant, direct support for Celanese’s position that Seay’s maintenance work was an important, necessary, integral, and essential part of its manufacturing business.⁶ Although each

⁶ A number of federal district court and Fourth Circuit opinions applying South Carolina law have also found maintenance workers to be statutory employees. *See Smith v. FCX, Inc.*, 744 F.2d 1378 (4th Cir. 1984); *Matthews v. E. I. du Pont de Nemours & Co.*, No. 4:16-CV-02934-RBH, 2018 WL 5978111 (D.S.C. Nov. 13, 2018); *Zeigler v. Eastman Chem. Co.*, No. 5:17-CV-01010-JMC, 2018 WL 5266620 (D.S.C. Oct. 23, 2018) (and its companion cases: *Vann v. Eastman Chem. Co.*, No. 5:17-CV-01013-JMC, 2018 WL

case is fact dependent and a maintenance worker may not be a statutory employee in every case, the common carrier transportation worker cases do represent a separate category with a specialized standard governed by *Abbott* and *Olmsted*. Here, Seay's work was an important, necessary, essential, and integral part of Celanese's manufacturing business given that he performed critical maintenance work on the production lines that enabled Celanese to continue operating its factory and producing product. The Court of Appeals holding to the contrary was error, in direct conflict with this Court's prior rulings, and this Court should grant certiorari to correct it.

F. The Court of Appeals' reliance on the contractual language between Celanese and Daniel, rather than the evidence and testimony, was misplaced.

The Court of Appeals also erred by giving an unwarranted degree of import to the contractual language between Celanese and Seay's direct employer, Daniel. As this Court has previously explained, "[w]hatever the parties contract to call their relationship is not controlling in a statutory employment analysis." *Harrell*, 337 S.C. at 322, 523 S.E.2d at 770); *see also Wilson v. Daniel Intern. Corp.*, 260 S.C. 548, 197 S.E.2d 686 (1973) (stating that the terminology used by the parties is not controlling on the statutory employee question). The Act makes this explicit: "No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this Title except as otherwise expressly provided in this Title." S.C. Code Ann. § 42-1-610.

The contract therefore, was not determinative or even the best evidence for evaluating or determining whether Seay was a statutory employee. The contractual language contains no discussion about the precise work that millwrights like Seay performed, and is only marginally relevant because it simply confirms that Daniel employees were not responsible for operating the

5266618, at *1 (D.S.C. Oct. 23, 2018) and *Jackson v. Eastman Chem. Co.*, No. 5:17-CV-01015-JMC, 2018 WL 5266502, at *1 (D.S.C. Oct. 23, 2018)); *Provau v. YRC, Inc.*, No. 4:16-CV-00422-RBH, 2017 WL 1541880 (D.S.C. Apr. 28, 2017); *Singleton v. J. P. Stevens & Co.*, 533 F. Supp. 887, 893 (D.S.C. 1982).

manufacturing equipment. (*See* Op. No. 5625, Shearouse Adv. Sh. No. 7 at 27-28.) Additionally, the Court of Appeals disregarded the testimony of Celanese's corporate representative, as well as that of Seay and Thompson. As discussed above, **all three** witnesses testified that the work of the Daniel millwrights was important, necessary, and essential to the continued operations of the Celanese manufacturing facility. Nevertheless, the Court of Appeals characterized the testimony of Celanese's corporate representative as "self-serving," and declined to assign it any probative value. Moreover, it did not mention the testimony of Seay and Thompson.

The Court of Appeals' failure to consider this testimony, combined with its principal (and mistaken) emphasis on the contractual language between Daniel and Celanese, reflected its misinterpretation of the proper analysis under this Court's precedent. Hence, the Court should grant certiorari.

II. If left unchanged, the Court of Appeals' decision will have extensive negative ramifications.

The impact of the Court of Appeals' opinion, if permitted to stand, will be significant. First, it will cause widespread confusion. The Court of Appeals' decision constitutes a functional overruling of the three-factor *Ost* test. The trial courts will be left without guidance on how to apply the new statutory employee test from this case going forward. The decades of prior cases previously decided under the *Ost* test will be of marginal use. Further, statutory employee issues will transform into factual disputes governed by unclear and evolving legal standards. This uncertainty will hamper the ability of businesses and workers alike to be able to understand their status. Finally, permitting the decision to stand would cause harm to workers by reducing the scope of the statutory employee doctrine, which is specifically designed to protect workers by expanding workers' compensation liability. These concerns further support the need for this Court's attention and direction, and therefore certiorari is warranted.

CONCLUSION

The evidence and testimony support that Seay was Celanese's statutory employee because his maintenance work was an essential, important, necessary, and integral part of Celanese's manufacturing business. The Court of Appeals reached its contrary conclusion only by violating this Court's prior precedents, and by disregarding South Carolina's policy of inclusion and fundamentally altering the three factor *Ost* test. The Court should grant certiorari and reverse the Court of Appeals' erroneous decision, which is in direct conflict with prior decisions of this Court.

Respectfully submitted,

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Columbia, South Carolina

June 27, 2019

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JUN 28 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2016-000227
Case No. 2013-CP-42-03915

Angie Keene, Individually and as Personal
Representative of the Estate of Dennis Seay, Deceased,
and Linda Seay,..... Respondents,

v.

CNA Holdings, LLC, Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for CNA Holdings, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **Petition for a Writ of Certiorari**

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SC Court of Appeals

Hand Delivered

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: Angie Keene, as Personal Representative of the Estate of Dennis Seay and Linda Seay, Individually v. 3M Company, et al.
Civil Action No. 2013-CP-42-03915
Appellate Case No. 2016-000227
Our File No. 46697/01501

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of a Petition for a Writ of Certiorari and two copies of the Appendix, one unbound, in the above-referenced matter. We would ask that you file the original and return clocked-in copies to us via our courier. Also enclosed is our check in the amount of \$250.00 for the required filing fee.

By copy of this letter to the Clerk of Court for the SC Court of Appeals and counsel of record, we are serving them with a copy of the Petition.

Sincerely yours,

C. Mitchell Brown

CMB:eh
Enclosures

The Honorable Daniel E. Shearouse
June 27, 2019
Page 2

cc: Clerk of Court, South Carolina Court of Appeals
Blake A. Hewitt, Esquire
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