STATE OF SOUTH CAROLINA
In The Supreme Court

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

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

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

v.

CNA Holdings, LLC, Petitioner.

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# BRIEF OF RESPONDENTS IN RESPONSE TO THE COURT'S OCTOBER 11, 2021 ORDER

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Respondents submit this brief as directed by the Court's Order dated October 11, 2021, issued in response to Celanese's Petition for Rehearing.[1] For the reasons set forth below and in their Return to Petition for Rehearing, Respondents respectfully ask the Court to deny the Petition for Rehearing.

**Issue 1: Whether it is accurate that "Mr. Seay and his family never pursued worker's compensation benefits, and thus did not receive any."**

Mr. Seay and his family did not pursue or receive workers' compensation benefits because Mr. Seay was not diagnosed with mesothelioma until 2013 (App. p. 2086), decades after he stopped working for Daniel (App. p. 557-58) and well after the Workers' Compensation Act's statute of repose had expired. S.C. CODE ANN. § 42-11-70 (Repl. Vol. 2015) (two-year statute of repose for occupational diseases "arising out of the inhalation of organic or inorganic dusts").

Respondents discussed this fact in their brief, noting the inequity that would result from denying them any remedy for Mr. Seay's illness and death because of the interplay between the statute of repose and a statutory employee doctrine that is at least nominally intended to provide greater protection to injured workers. (Brief of Respondents, pp. 30-32). Respondents specifically noted:

> Ironically, the rule cited by Petitioner [that all doubts should be construed in favor of statutory employment] is designed to provide greater protection to injured workers, not to deny all legal remedies, which would be its effect if it controlled the Court's decision here.
>
> The "beneficent purpose" of the Act is actively thwarted by finding statutory employment in a case where the injured worker never had any way to make a claim for workers' compensation.
>
> …
>
> This unfairness – arguably, cruelty – would not just be a statutory problem. It would violate the South Carolina Constitution's guarantee that "every person shall have a speedy remedy

[1] Capitalized terms in this Brief are defined as in the Petition for Rehearing. Additionally, the Court's Opinion, *Keene v. CNA Holdings*, Op. No. 28052, Howard Adv. Sh. No. 27 (Aug. 11, 2021) is hereinafter cited as "Op., p. __" with the page number being that of the Advance Sheet.

> [in court] for wrongs sustained." S.C. CONST. ART. I, § 9. While the Constitution does not guarantee "full compensation" to all injured persons, that is different than leaving a plaintiff and his family without any remedy or compensation whatsoever for their loss at the hands of an adjudicated at-fault defendant.

(Brief of Respondents, pp. 30-31) (some citations omitted).

**Issue 2: "As addressed in Section II of the petition, 'the rationale and consequences of the opinion's … analysis.'"**

Section II of Celanese's petition asserted:

> The Opinion's new "refocus" analysis was not argued, considered or briefed by the parties to this appeal. This Court thus did not have the benefit of hearing from the parties (or any amicus) as to their views regarding its implications for the existence and scope of the statutory employee doctrine, or the likely marketplace consequences.

(Pet. for Rehearing, p. 8).

The "marketplace consequences" aspect of this argument appears to be subsumed in Issue 3, which addresses alleged "negative outcomes in the marketplace." Therefore, Respondents address that component of the Petition for Rehearing *infra*.

Thus, the remaining aspect of Section II to which the Court appears to be asking for additional briefing is whether the "new 'refocus' analysis" has implications on "the existence and scope of the statutory employee doctrine."[2] Respondents accordingly address that topic below

[2] In reaching this conclusion, Respondents note the Court did not request additional briefing on the following arguments in the Petition for Rehearing, so these arguments appear beyond the scope of the Court's Section II request:

- Whether the Opinion misapprehends facts central to its analysis and holding (specifically: "business judgment/business decision" facts; "who provides coverage" facts; and "original purpose" facts) (Pet. for Rehearing, § I);
- Whether the Opinion "rewrites" the workers' compensation law (including consideration of rules of statutory construction, all of the statute's purposes, and specific text of the statute) (Pet. for Rehearing, § III); and
- Whether the Opinion "neuters" precedent (Pet. for Rehearing, § IV).

Respondents previously responded to each of these arguments in their Return.

with the caveat that, if they have misunderstood the Court's instructions, they do not intend to concede any point raised by Celanese but instead refer the Court to their Return to Petition for Rehearing for a further discussion of their responsive positions.

As a threshold matter, Respondents reject the notion that the Court has adopted a "new refocus analysis" as argued by Celanese. (*See* Return to Pet. for Rehearing, pp. 2-4). Therefore, Section II of Celanese's Petition is based on a flawed premise. Simply stated, there is nothing new or controversial about the Court seeking to define a defendant's business when the statute at issue requires it to determine whether work is "part of his trade, business or occupation." Nevertheless, as requested by the Court, Respondents will address the Opinion's potential implications on "the existence and scope of the statutory employee doctrine."

Celanese claims the effect of the Opinion is to "eliminate" the doctrine "in all but name only" (Celanese's Brief in Response to the Court's October 11, 2021 Order ["Celanese's Brief in Response"], p. 4), such that an owner which "outsources work that is part of its business for legitimate business reasons" cannot be found a statutory employer. (*Id*., p. 5, n.2). These statements mischaracterize the Opinion. The doctrine remains viable when the work is part of the owner's business and the Opinion reiterates that this is the key inquiry. (Op., p. 61).

So, for example, the business owner in *Bridges v. Wyandotte Worsted Co.,* 243 S.C. 1, 132 S.E.2d 18 (1963) would still receive protection of the statutory employee doctrine today because the work provided by the subcontractor's employees was work the owner used its own employees to perform as part of its business. Similarly, although decided fifty years later, the business owner in *Poch v. Bayshore Concrete Prods./S.C.*, 405 S.C. 359, 747 S.E.2d 757 (2013) – which, like the present case, applied the statutory employee doctrine through the lens of *Glass v. Dow Chemical Co.,* 325 S.C. 198, 482 S.E.2d 49 (1997), *Abbott v. The Limited*, 338 S.C. 161, 526 S.E.2d 513

(2000), and *Olmstead v. Shakespeare,* 354 S.C. 421, 581 S.E.2d 483 (2003) – would also still receive the benefit of the statutory employee defense because the plaintiff was performing work that was routinely done by the owner's employees at all its facilities and had been done by its employees at the facility where the plaintiff was injured.[3]

Even cases Celanese contends have now been overruled demonstrate the continuing viability of the doctrine. In its Reply to Return to Petition for Rehearing, Celanese listed eight other post-*Bridges* cases – most from the Court of Appeals – that it claims would be decided differently in light of the Court's Opinion here. (Reply to Ret. to Pet. for Rehearing, p. 13, n.2). Contrary to Celanese's contention, the holdings in those cases can be reconciled with the Opinion's recognition of the statutory employee doctrine's evolution since *Bridges* and demonstrate how the doctrine will continue to apply under appropriate circumstances; to wit:[4]

- *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 523 S.E.2d 766 (1999). The defendant, an absentee owner of a vacation property, contracted with plaintiff's employer, a land management company, to run every aspect of defendant's operations. The defendant did not have its own employees could do who the work but instead outsourced all of its work to plaintiff's employer. In short, the Court found plaintiff's employer's work was "part of" the defendant's business because it was all of the defendant's business. Generally, such a business decision is considered legitimate and is entirely consistent with the Opinion. (Op., p. 62). The defendant in *Harrell* was

[3] These outcomes also refute Celanese's claim that, in light of the Opinion, a business owner cannot be a statutory employer if the injured worker is covered by workers compensation insurance. (Celanese's Brief in Response, pp. 12-14).

[4] Respondents discuss the Court of Appeals cases although they are not binding precedent in this Court.

denied protection of the Act, however, because it failed to secure the payment of compensation by providing workers compensation insurance. This, too, is consistent with the Opinion, which recognizes that the legitimacy of a business owner's decision to outsource is called into question if it is motivated by a desire to avoid the cost of providing workers compensation insurance. (Op., pp. 61-62). The outcome would be the same despite the Opinion because of the operation of S.C. CODE ANN. § 42-5-40 (Repl. Vol. 2015). *Harrell*, 337 S.C. at 327, 523 S.E.2d at 773 ("An employer who refuses or neglects to secure such compensation becomes liable either under the Act or in an action at law.")

- *Smith v. T.H. Snipes & Sons*, 306 S.C. 289, 411 S.E.2d 439 (1991). As acknowledged by Celanese, the Court subsequently limited the holding of this case "to its facts" in S*mith v. Squires Timber Co.*, 311 S.C. 321, 325 n.3, 428 S.E.2d 878, 880 n.3 (1993), so it is of questionable precedential value in any event. Moreover, those facts are unclear because they consisted largely of stipulations that were not discussed in the reported decision. *See Keene v. CNA Holdings*, 426 S.C. 357, 372, 827 S.E.2d 183, 191 (Ct. App. 2019) ("*Keene I*"). As a result, it is difficult to discern whether its outcome would differ in light of the Opinion.
- *Parker v. Williams & Madjanik, Inc.*, 275 S.C. 65, 267 S.E.2d 524 (1980). The plaintiff in *Parker* was engaged in construction work on Island Properties' property. Island Properties had decided this work was part of its business: "Island Properties was engaged in work which was a part of its business, *i.e.*, as the partnership agreement states, '…constructing, altering, and repairing of real property.'" *Id.* at 73, 267 S.E.2d at 528. Thus, the Court's decision there was entirely consistent with its Opinion here,

which holds that "the court should focus on initially what the owner decided is part of its business." (Op., p. 61).[5]

- *Posey v. Proper Mold & Eng'g*, 378 S.C. 210, 661 S.E.2d 395 (Ct. App. 2008). There, the plaintiff was performing work that was part of the defendant's business (transporting products to and from customers). His work was the same as that for which defendant typically used its own employees; however, at the time, defendant did not have sufficient employees available to do the work and therefore hired plaintiff's employer to provide supplemental labor. Because the plaintiff's work was part of the defendant's business in which its direct employees also participated, the Opinion would not change the outcome
- *Wheeler v. Morrison Machinery Co.*, 313 S.C. 441, 438 S.E.2d 264 (Ct. App. 1993). The Court of Appeals in the present case addressed its previous decision in *Wheeler*, distinguished it factually from the present case, and questioned its continuing vitality in light of *Abbott* and *Olmstead*. *Keene I*, 426 S.C. at 373, 827 S.E.2d at 192. To the extent *Wheeler* was based on "the fact that the defendant's own employees were engaging in the activity in which the plaintiff was involved," *id.*, the Opinion would not alter application of the statutory employee doctrine there. Alternatively, as suggested by the Court of Appeals, this Court impliedly overruled *Wheeler* in *Abbott* and *Olmstead*, prior to its Opinion in the present case.

[5] In *Parker*, the Court also found that a second defendant, Williams Madjanik, Inc., was a statutory employer. However, there is little specific factual analysis regarding that defendant; instead, the Court's holding with respect to it appears to have been based on the fact that it was a general contractor owned by two partners of Island Properties and was engaged in construction on Island Properties' real property.

- *Gentry v. Milliken & Co.*, 307 S.C. 235, 414 S.E.2d 180 (Ct. App. 1992). In *Gentry*, the plaintiff's employer was installing equipment at defendant's plant, which "had from forty to fifty regular employees who installed, maintained, and removed equipment." *Id.* at 236, 414 S.E.2d at 181. As such, the defendant's "employees had previously installed equipment at the plant." *Id.* at 237, 414 S.E.2d at 181. Thus, equipment installation was part of the defendant's business, a finding that would be the same under the Opinion.
- *Revels v. Hoechst Celanese Corp.*, 301 S.C. 316, 391 S.E.2d 731 (Ct. App. 1990). The Court of Appeals in *Olmstead* distinguished *Revels* from *Abbott* and the cases it expressly overruled because the plaintiff there was involved in the defendant's actual business process, including distribution of the goods it produced, a ruling this Court affirmed. *Olmstead v. Shakespeare*, 348 S.C. 436, 440-41, 559 S.E.2d 370, 372 (Ct. App. 2002), *aff'd*, 354 S.C. 421, 581 S.E.2d 483 (2003). The accuracy of that distinction continues with equal force in light of the Opinion because the work was part of the defendant's business in which its direct employees also participated. *Revels*, 301 S.C. at 319, 391 S.E.2d at 732. Nothing in the Opinion would change the outcome.
- *Bailey v. Owen Elec. Steel Co. of S.C.*, 298 S.C. 36, 378 S.E.2d 63 (Ct. App. 1989). This Court reversed the Court of Appeals' decision affirming the trial court because the trial court failed to address discovery issues before conducting an evidentiary hearing on the statutory employee question. *Bailey v. Owen Elec. Steel Co. of S.C.*, 301 S.C. 399, 392 S.E.2d 186 (1990). The effect of the reversal was to vacate the Court of Appeals' finding of statutory employment, which now has no precedential effect and need not be reconciled with the Opinion.

Most importantly, as the Opinion emphasizes, business owners who outsource parts of their business in an effort to avoid payment of workers compensation claims will continue to be liable to subcontractors' injured employees for those benefits. *See, e.g., Harrell*, 337 S.C. at 327, 523 S.E.2d at 773.

Ultimately, the Opinion's holding that Celanese is not entitled to immunity from the consequences of its wrongful conduct is neither as complex nor as revolutionary as Celanese's petition suggests. Rather, the Court applied the "firmly established" view of an owner's "trade, business or occupation" that has developed over the past 58 years (Op., p. 60) and confirmed that its holdings in *Abbott* and *Olmstead* were not limited to the transportation context (Op., p. 59) – hardly an innovation when one considers there is no doctrinal reason to carve out a special rule for one type of work when the Act itself does not do so. *Cf.* S.C. CODE ANN. § 42-1-360 (Repl. Vol. 2015) (expressly exempting certain types of employment from the Act). This latter point is also consistent with *Olmstead* wherein the Court rejected another defense argument that the Court should limit its holding in *Abbott* – there, the defense sought to limit it to the receipt of goods as opposed to the delivery of goods but the Court instead affirmed the Court of Appeals' conclusion that this was an "overly narrow reading of *Abbott*." *Olmstead v. Shakespeare*, 348 S.C. at 439, 559 S.E.2d at 372, *aff'd*, 354 S.C. 421, 425 581 S.E.2d 483, 485 (2003). This undermines the premise that the Court intended its holdings in *Abbott* and *Olmstead* to be limited to specific factual situations.

In short, despite Celanese's criticisms of how the Opinion refuted its arguments regarding the policies underlying the statutory employee doctrine (Op., p. 60; Celanese's Brief in Response, pp. 5-10), the simple fact remains that *the Court affirmed the Court of Appeals because the work performed by Mr. Seay was not part of Celanese's business*. (Op., p. 62). Under the facts of this

case – and for all of the reasons recited in Respondents' original brief to this Court – this was an inescapable conclusion once the majority of the Court agreed with the Circuit Court and the Court of Appeals that this Court meant what it said in *Abbott* and *Olmstead* and did not intend to limit the scope of its holdings in those cases to the transportation context. On the other hand, Celanese's criticisms of the Opinion are directed to parts of the Court's ruling that were not necessary to reach that conclusion.

**Issue 3: "As addressed in Section V of the petition, whether 'the opinion will produce negative outcomes in the marketplace and for subcontractor employees.'"**

The Court decided this case by properly focusing on the language of the exclusivity statute and then interpreting and applying it to the specific facts of this case in light of legislative intent. Now, joined by several amici – some of whom are more often associated with efforts to lobby the legislative branch but who chose to sit on the sidelines of this appeal until the Court ruled in favor of Respondents – Celanese seeks to entice this Court to abandon its approach and instead to act as "super legislators" by deciding this matter in Celanese's favor based on forecasts of negative economic and other "marketplace" effects. *See, e.g., Club Gallistico De P.R. Inc. v. United States*, 2019 WL 5566322, at *28-29 (D.P.R. 2019) (rejecting arguments based on the alleged "dire economic impact" of upholding a federal statutory ban and noting that, "without a valid legal ground, a federal court simply cannot sit as a 'super-legislator' to amend or repeal the work of Congress."); *Scientific Products v. Cyto Med. Lab.*, 457 F. Supp. 1373, 1380 (D. Conn. 1978) (whether to extend the application of a statute "calls for a policy judgment. Unless the courts are to become super-legislators, the elected legislators must be permitted to make that judgment.").

The Court should reject Celanese's last-ditch appeal to policy considerations. If the Court were to engage in such an undertaking, it would violate the separation of powers doctrine in direct

conflict with this Court's steadfast refusal to avoid such judicial activism. *See, e.g., Machin v. Carus Corp.*, 419 S.C. 527, 799 S.E.2d 468 (2017) (favoring legislative intent rather than "judicial activism" to resolve tension between workers' compensation and contribution-among-tortfeasors statutes). Moreover, even if it were tempted to wade into a debate about which policy to favor, the Court should not do so in the context of a rehearing of this case.

First, any policy review should include an analysis of all benefits and detriments of a particular decision; here, however, Celanese has only posited one side of that argument and has not asked the Court to address the effects on injured workers, their families, public assistance programs, disability insurers, workers' compensation subrogation rights, and others, all of which have potential economic impacts, some of which may be considered beneficial to the State. A legislative committee, on the other hand, would be far better equipped to do so.

More importantly, there is no record here for the Court to conduct such an investigation. The present case is about Respondents' pursuit of justice for the illness and death of Mr. Seay at the hands of Celanese, who the law of the case establishes knowingly and recklessly exposed Mr. Seay to the hazards of asbestos. As such, the record is devoted to that topic and the case-specific inquiry as to the nature of Celanese's trade, occupation, or business.

Respondents filed this action eight years ago and have prevailed on the factual and legal issues presented at every stage, including this Court's affirmance of their right to relief. The Court should not now burden Respondents with the additional and greater obligation of having to lobby against a large corporation and several industry groups on the question of whether the Court should disfavor on public policy grounds an outcome that negatively impacts Celanese economically by holding it accountable for its wrongful conduct, especially when the public policy question is

framed entirely upon Respondents' opponents' prediction that other members of the marketplace may also be negatively affected.

Not only would it be unfair for the Court to require this of Respondents now but it would also be virtually impossible for the Court to undertake a meaningful and evenhanded analysis of all stakeholders' interests given the lack of necessary data and other information in the present record. Consistent with constitutional limitations, this is the type of public policy inquiry to which the legislature is charged and is particularly suited to undertake via committee hearings and receipt of all relevant information to make such a determination. *See Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 655-56, 767 S.E.2d 157, 176 (2015) (There, despite finding a constitutional violation, a majority of the Court held "[t]he principle of separation of powers directs that the legislature, not the judiciary, is the proper institution to make major … policy choices [regarding the remedy]. … In light of this sacrosanct principle, we refuse to provide the General Assembly with a specific solution to the constitutional violation.")

Specifically, in its Petition for Rehearing, Celanese argues the Court should consider policy-based arguments like marketplace effects before applying the statute as it did. (Pet. for Rehearing, pp. 8, 20-23). As noted above and as discussed in Respondents' Return to Petition for Rehearing (pp. 7-8, 12), such an appeal to policy considerations is improperly addressed to the Court; rather, in light of separation of powers principles, the Court should not engage in a policy-driven decision because its role is to interpret and to apply the statute while policy matters are properly left to the General Assembly. *See Smith v. Tiffany*, 419 S.C. 548, 559-60, 799 S.E.2d 479, 485 (2017) ("The point remains – absent a constitutional prohibition, where the General Assembly has spoken and established policy, separation of powers demands that courts honor the legislative policy determination.").

The Court recently reaffirmed its role vis-à-vis the General Assembly, noting:

> [A]s part of the judicial branch of government, we are not permitted to weigh in on the merits of the [subject] debate. Rather, we are a court that is constitutionally bound by the rule of law – specifically, separation of powers – to interpret and apply existing laws; we do not, and cannot, set public policy ourselves. Instead, the people of South Carolina, through their elected state representatives, set the state's policy.
>
> Where, as here, the General Assembly establishes policy via legislation, it is our solemn duty to uphold that law absent a clear constitutional infirmity.

*Wilson v. City of Columbia*, __ S.C. __, __ S.E.2d __, Op. No. 28056, 2021 WL 3928992, at *1 (S.C. Sup. Ct., Sept. 2, 2021).

Another case in which the Court addressed separation of powers, *Fullbright v. Spinnaker Resorts*, 420 S.C. 265, 802 S.E.2d 794 (2017), is particularly instructive here. There, the Court addressed certified questions regarding the Real Estate Commission's statutory jurisdiction over timeshare disputes. The defendants urged the Court to adopt their jurisdictional view based upon appeals to public policy considerations that were strikingly similar to those urged by Celanese and amici here.

Specifically, the defendants in *Fullbright* contended a ruling contrary to their position would produce "uncertainty and chaos," "instability," and "inconsistent determinations" and would encourage forum shopping, cause negative economic effects to the timeshare industry and its employees, and result in "dire consequences" to the State's economy, including the insurance industry and the banking industry. (*Fullbright v. Spinnaker Resorts*, S.C. Sup. Ct. Case No. 2016-001765, Defendant's Brief, pp. 9-11, 23). The Court rightfully refused to entertain these entreaties, reasoning:

> In resolving this dispute, we must be cognizant of our role as a court. Defendants frame these certified questions in terms of public policy, appeals to which dominate their arguments. Determinations of public policy, however, are chiefly within the province of the legislature, whose authority on these matters we must respect.

420 S.C. at 271, 802 S.E.2d at 797.

Celanese's public policy arguments are no different and should receive similar treatment from this Court. Specifically, Celanese predicts confusion over the scope of the Court's decision (Celanese's Brief in Response, pp. 10 n.5, 27), negative economic impacts on business owners and workers (*id*., pp. 21, 25-26), a "flood" of civil litigation (*id*., pp. 20 n.8, 21, 26-27), and effects on insurance and other goods and services (*id*., pp. 26, 28) – in short, potential "dire consequences" (at least from the perspective of Celanese), just as the defendants forecasted in *Fullbright*.

Nevertheless, given the Court's instructions, Respondents will attempt to address the public policy questions raised by Celanese, recognizing that – like Celanese's arguments – Respondents' responses will be largely hypothetical, arguably speculative, and without the benefit of a factual record.

The Opinion provides greater clarity than previously existed with the statutory employee doctrine. As the Opinion notes, application of the doctrine has been a "struggle" for many years. (Op., p. 51). One reason has been – and will continue to be – the case-by-case, fact-specific nature of the inquiry and the appellate courts' application of a *de novo* standard of review (*see generally* Brief of Respondents, pp. 3-11); the Opinion has no effect on that. However, the Court has now put to rest the defense claim that the scope of its decisions in *Abbott* and *Olmstead* were limited, an argument that had created disputes about when the doctrine applies. Moreover, by providing a distillation of its previous decisions and clear framework to analyze the threshold inquiry of defining a defendant's "trade, business or occupation," the Opinion gives all parties the ability to predict more accurately whether specific work will fall within that definition.

Contrary to Celanese's contention, this clarity has the potential to reduce litigation, not increase it. The heretofore unresolved questions that the Opinion decided will no longer present

grey areas that may encourage a party to litigate a claim or defense; similarly, the Opinion will promote the settlement of claims for these same reasons.

To consider fully the financial impacts on business owners and the effects on insurance costs, Respondents submit the Court would need extensive information that is absent from the record in this appeal. There is no record evidence as to this point because it is simply irrelevant to whether Celanese should be held responsible for its recklessness that caused Mr. Seay's injuries, suffering, and death. Certainly, Celanese has not pointed to any evidence of the alleged increased cost of losing its "settled expectations" of freedom from responsibility for its conduct based on the fact Daniel provided workers compensation insurance coverage for its direct employees. (*See* Celanese's Brief in Response, p. 4). One could speculate that the cost to Celanese may decrease because subcontractors may not have to include it as an additional insured on their workers compensation policies.[6] It is probably safer to predict that the cost to workers and society as a whole would decrease because businesses like Celanese would be motivated to engage in safer behavior to avoid the prospect of civil liability, thereby reducing the number of injuries on their property and the consequent costs to health insurers and social programs.

## CONCLUSION

For the foregoing reasons, as well as reasons set forth in their Return to Petition for Rehearing, Respondents respectfully submit that the Court should deny the Petition for Rehearing. Moreover, regardless of whether the Court finds any merit to Celanese's arguments attacking some of the Court's comments in the Opinion, the Court should nevertheless affirm the holding of the

[6] The cost of workers compensation insurance could also decline based upon insurers' increased ability to recoup their costs of providing benefits via greater subrogation rights against businesses that negligently injure their insureds' workers.

Court of Appeals in this matter because it is consistent with the statutory employee doctrine as applied by this Court in *Glass*, *Abbott*, and *Olmstead*.

Respectfully submitted,

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