

A construction site at sunset. In the foreground, a worker in a yellow hard hat and orange safety vest stands on the left. In the center, a large excavator is silhouetted against the bright orange and yellow sky. To the right, another worker is visible near a large piece of machinery. The background shows a complex network of steel beams and scaffolding for a building under construction. The overall atmosphere is one of industriousness and the end of a day's work.

# **IDENTIFYING & MAXIMIZING 3<sup>rd</sup> PARTY CASES**





**INJURED?**



**ON THE JOB?**



**WORKERS COMP**

**???**

SOUTH  
Law

Part of the BRIDGE TOWER MEDIA network

## Elevator

■ Heath Hamacher

THE ESTATE OF A MAN killed after falling approximately 60 feet from an elevator he was working on has settled its claims for wrongful death and negligence, among others, for \$20 million.

Attorneys for Lennox Holdings, the 65-year-old immigrant who died in the 1980s and made a career out of installing, servicing, and maintaining elevators. Hinckson worked for



David Yarborough



Perry Buckner

the elevator stopping short of the fourth-floor landing, adjusting a limit switch.

The attorneys said that Holcim's personnel failed to abide by their third-party contractor safety policies and procedures to provide Hinckson a safe workplace by notifying the control room operators, who typically limit and restrict access to workers in certain areas, that Hinckson was on site.

"Holcim employees were working in and around the pre-heater tower area and using the subject elevator there without restriction," the attorneys wrote in an email to *The State Weekly*. "No warning came before

# SOUTH CAROLINA Lawyers Weekly

Part of the BRIDGE TOWER MEDIA network

AUGUST 1, 2022

VERDICTS & SETTLEMENTS

## Elevator death leads to \$20M settlement

■ Heath Hamacher

THE ESTATE OF A MAN killed after falling approximately 60 feet from an elevator he was working on has settled its claims for wrongful death and negligence, among others, for \$20 million.

"In fact, the Holcim employee typically responsible for coordinating safety protocols for Alimak contractors like Lennox Hinckson was on vacation on this specific day," the attorneys wrote.

**SETTLEMENT REPORT-  
WRONGFUL DEATH/  
PREMISES LIABILITY**

ing, the attorneys said, the court ordered the defendants to produce the evidence.

"This proved to be a significant turning point in the case and demonstrated that the defense of the case didn't necessarily align with the internal corporate investigation," the attorneys wrote.

The defendants were represented by G. Mark Phillips Jr., Sam Outten, and Jonathan Knicely of Nelson Mullins Riley & Scarborough in Charleston, Greenville, and Columbia, respectively.

But in their email, plaintiffs' lawyers Yarborough and Applegate wrote that the defense blamed Hinckson for failing to

Maucher in Goose Creek, and David Williams of Williams & Williams in Orangeburg

### ATTORNEYS FOR DEFENDANT:

G. Mark Phillips Jr., Sam Outten, and Jonathan Knicely of Nelson Mullins Riley & Scarborough in Charleston, Greenville, and Columbia, respectively

safety," the attorneys wrote. "Additionally, it became clear that Holcim had an ob-



**#1**



**WORK  
INJURY**

**THIRD PARTY  
CASES**

**WC  
SYSTEM**

**TORT  
SYSTEM**



# **S.C. Code § 42-1-400**

## **STATUTORY EMPLOYEE DOCTRINE**

**Even if no “direct employment” relationship, WC is exclusive remedy if injury occurs while worker is engaged in activity that is part of the organization’s trade, business, or occupation.**

# **S.C. Code § 42-1-400**

## **STATUTORY EMPLOYEE DOCTRINE**

**“Part of the organization’s  
trade, business, or  
occupation.”**



# **S.C. Code § 42-1-400**

## **STATUTORY EMPLOYER DOCTRINE**





A man in a military uniform, wearing a camouflage cap and jacket, is shown from the side, looking through binoculars. The background is a blurred green forest. The image has a dark, moody tone.

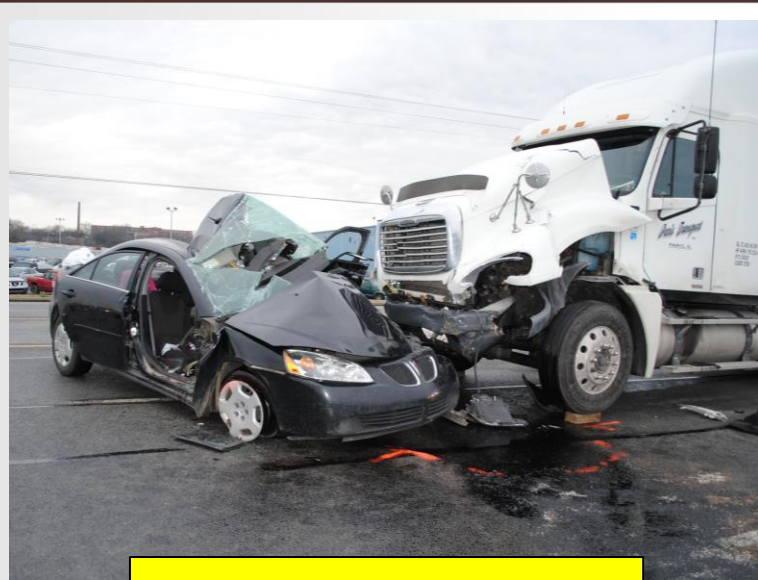
**#2**

**KEEP AN EYE OUT**





**DEFECTIVE PRODUCTS**



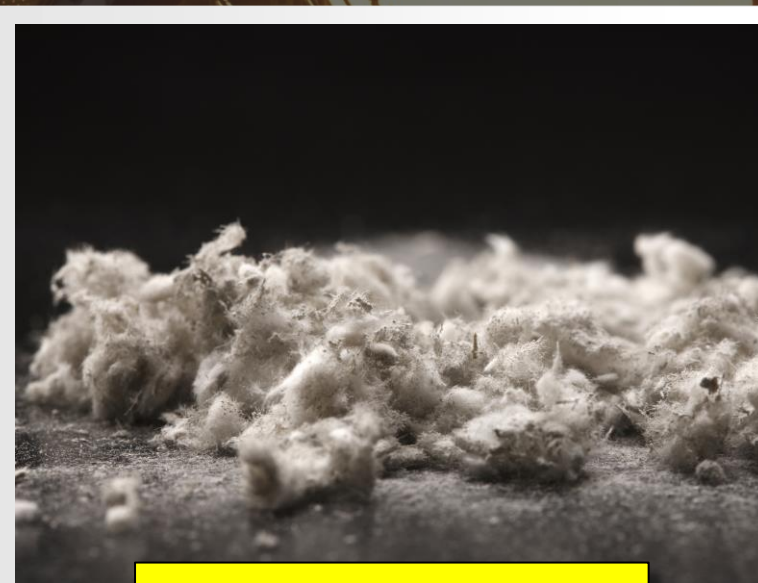
**AUTO CASES**



**PREMISES LIABILITY**



**CONSTRUCTION SITES**



**TOXIC EXPOSURE**



**UTILITY CASES**





# **WHAT TO LOOK FOR**

**PHOTOS/VIDEO**

**OSHA REPORTS**

**FOIA RECORDS**

**EMPLOYER DOCS**





# #3

# RECOGNIZE OPPORTUNITY

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Focus On Sports

25 YEARS





**CELANESE**

**DANIEL  
CONST.**

**DENNIS  
SEAY**

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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

v.

CNA Holdings, LLC, Petitioner.

Appellate Case No. 2019-000816

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal from Spartanburg County  
D. Garrison Hill, Circuit Court Judge

Opinion No. 28052  
Heard June 11, 2020 – Filed August 11, 2021

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**AFFIRMED**

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**CELANESE**



**DANIEL  
CONST.**



**DENNIS  
SEAY**



**CELANESE**

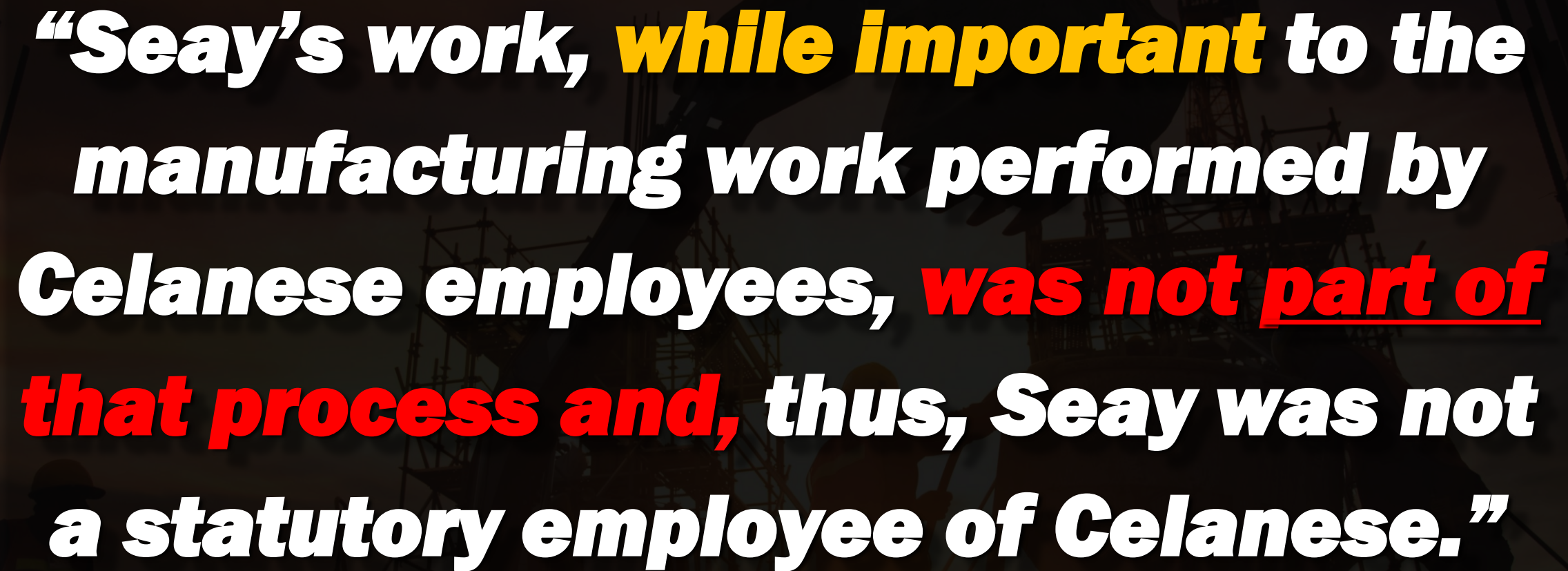


**WORKED **FULL-TIME** AT  
CELANESE PLANT FOR **9 YRS****

****DAILY MAINTENANCE &  
REPAIR OF MANUF. EQUIP.****

****ESSENTIAL & NECESSARY  
FOR OPERATION OF PLANT****





***“Seay’s work, **while important** to the manufacturing work performed by Celanese employees, **was not part of that process and,** thus, Seay was not a statutory employee of Celanese.”***

A photograph of an industrial facility, likely a power plant or refinery, with several tall smokestacks emitting thick white plumes of smoke against a clear blue sky. In the foreground, there are various pipes, valves, and structural elements of the plant.

**DANIEL  
CONST.**

**DENNIS  
SEAY**

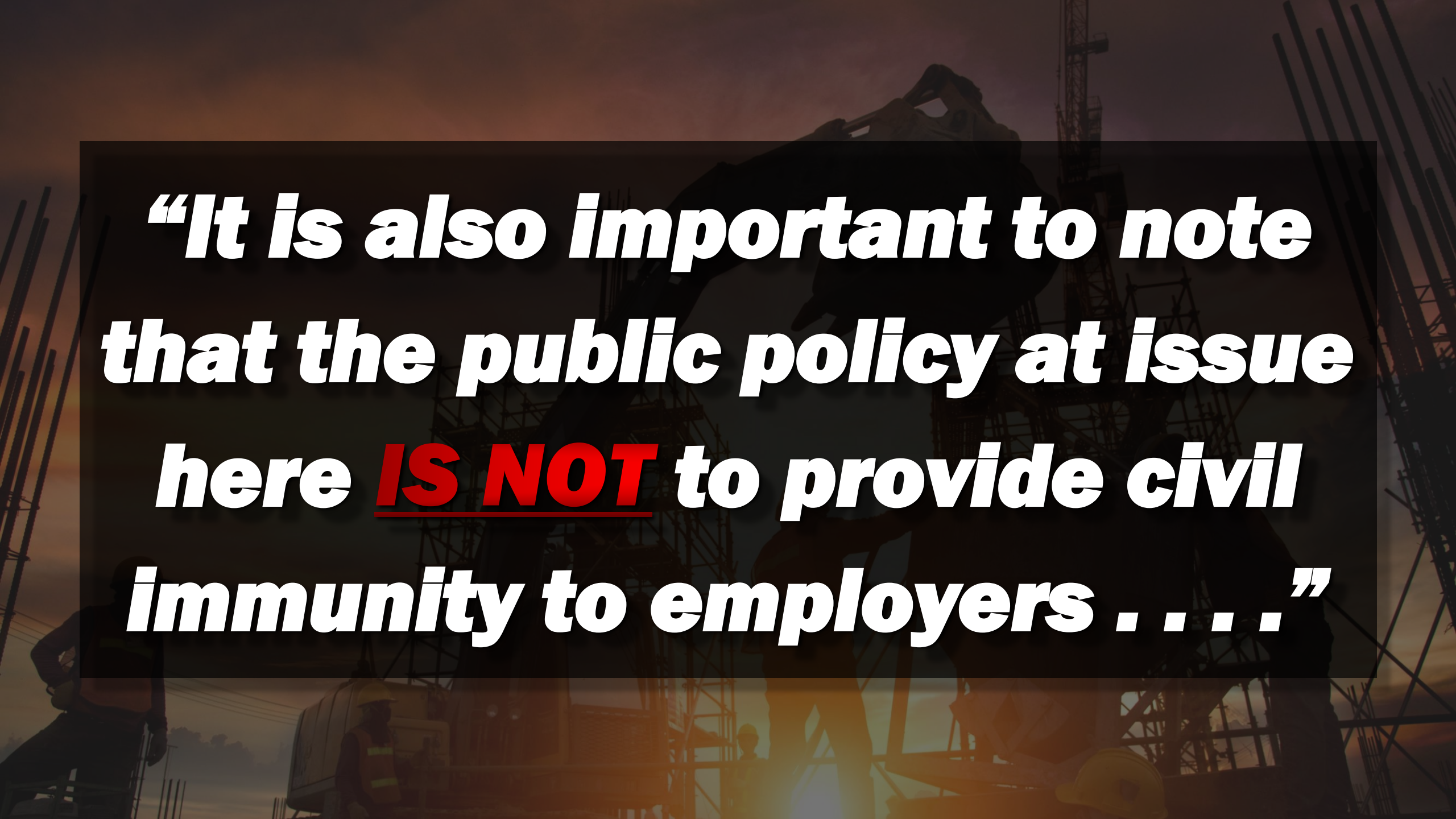
**CELANESE**

**BUSINESS PURPOSE =  
MANUF., NOT MAINTENANCE**

**SPECIALIZED WORK NOT  
DONE BY OWN EMPLOYEES**

**DECISION TO SUB WAS NOT TO  
AVOID WC COVERAGE**



The background of the image is a construction site at dusk or dawn. Silhouettes of construction workers wearing hard hats and safety vests are visible against a warm, orange-hued sky. In the background, there are cranes and the skeletal framework of a building under construction.

***“It is also important to note  
that the public policy at issue  
here IS NOT to provide civil  
immunity to employers . . . .”***



**#4**



**BE CREATIVE**



**WHAT IS S.E.'S  
*BUSINESS PURPOSE?***

**WHAT WORK DOES S.E.  
*ACTUALLY PERFORM?***

**S.E. OR "SUB" – IS  
THERE *SOME WRINKLE?***

**WHAT TO  
LOOK FOR**





FOOD LION

161



# QUESTIONS?

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