

RAWLE'S REPORTS

THE NATION'S OLDEST LAW OFFICE

RAWLE &
HENDERSON LLP



The Nation's Oldest Law Office
~Established in 1783~

www.rawle.com

Philadelphia, PA
215. 575. 4200
Fax 215. 563. 2583

New York City, NY
212. 323. 7070
Fax 212. 323. 7099

Long Island, NY
516. 294. 2001
Fax 516. 294. 2006

Marlton, NJ
856. 596. 4800
Fax 856. 596. 6164

Pittsburgh, PA
412. 261. 5700
Fax 412. 261. 5710

Harrisburg, PA
717. 234. 7700
Fax 717. 234. 7710

Wilmington, DE
302. 778. 1200
Fax 302. 778. 1400

Wheeling, WV
304. 232. 1203
Fax 304. 232. 1205

@1783Rawle

PENNSYLVANIA

PERSONAL INJURY

Statutory Employer Defense Alive and Well in Philadelphia



**Suzanne
Curran Murphy**

On February 19, 2015, plaintiff was working at a renovation project as an electrician employed by an electrical subcontractor. He alleged that while carrying a six-foot ladder through the building's mechanical room, his ladder struck a nitrogen tank that was not secured and the tank fell onto his left foot. Plaintiff claimed significant injury to his left foot.



Margaret S. Costello

Plaintiff filed suit against the owners and our client, the general contractor, in Philadelphia County. We joined the electrical subcontractor and the plumbing subcontractor who owned the subject tank.

Liability was contested by all defendants. Rawle & Henderson LLP filed Summary Judgment on behalf of our client, the general contractor, based upon its statutory employer status. We argued that our client met the necessary requirements to be considered a statutory employer pursuant to the *McDonald* test based upon the following criteria:

- (1) It is under contract with an owner or one in the position of an owner;
- (2) The premises in question are occupied by or under the control of such employer;
- (3) The employer makes a subcontract;
- (4) Part of the employer's regular business has been entrusted to such subcontractor; and
- (5) An employee of the subcontractor is the party bringing the claim.

McDonald, 153 A. at 426. See also *Braun v. Target Corp.*, 2009 PA Super 206, ¶ 31, 983 A.2d 752, 764.

Multiple parties filed opposition to our Summary Judgment motion. The primary argument was that our client served dual roles on the project. Our client was both the construction manager and performed the carpentry work on the site. Our client did not have a separate contract for the carpentry work.

In addition, the opponents argued that our client billed separately for the carpentry work. The opponents further argued that the first requirement of the *McDonald* test was not met because our client, the general contractor, did not have a contract for the carpentry work with the owner. It was argued that the second requirement was not met because our client did not show control of the site mainly because it was alleged that its employees had moved the tank as part of their carpentry work and the carpenters did not have actual control of the site and did not serve in any supervisory role on the site. It was further argued that the fourth requirement was not met because our client did not have a specific contract with the owner for electrical work.

We argued that all parties had agreed in deposition that our client was the general contractor. There was no case law cited that made any exception with regard to the statutory

employer status because a general contractor performed dual roles. We asserted that the opposition's argument that dual roles had any effect on our client's statutory employer status was a red herring meant to sidetrack and confuse the court.

We further argued that it was made clear in *O'Boyle v. J.C.A. Corp.* 538 A.2d 915 (Pa. Super 1988) that the subcontracted work need not mimic verbatim the obligation assumed by the general contractor; rather, a general contractor tasked with completing a construction project may subcontract work in furtherance of this overall goal, even if the task is not mentioned in the general contractor's obligations. *See generally Id* at 918.

Therefore, the fact that carpentry and electrical work were not specifically mentioned in the contract were not relevant factors in determining the statutory employer status of the general contractor.

The court did not find the arguments of the opposing parties compelling and concluded that our client was the statutory employer and granted the motion for Summary Judgment dismissing all claims against our client with prejudice.

Suzanne Curran Murphy is Of Counsel to the firm in our Philadelphia office. She concentrates her practice in the areas of premises liability, construction litigation and school bus/commercial motor vehicle litigation. Suzanne received her B.A. from Loyola College in 1989 and J.D. from Widener University School of Law in 1993. She served as a judicial law clerk for the Honorable Frank X. O'Brien, Court of Common Pleas in Philadelphia. She is admitted to practice in the state courts of Pennsylvania and New Jersey as well as the U.S. District Court for the District of New Jersey and the U.S. District Court for the Eastern District of Pennsylvania. She has argued successfully before the Pennsylvania Superior Court. Suzanne is an active participant in the University of Pennsylvania Law School's Quaker Classic Mock Trial Tournament.

Suzanne can be reached directly at (215) 575-4242 • smurphy@rawle.com

Margaret S. Costello is an associate in our Philadelphia office. She concentrates her practice on casualty & premises liability matters. Margaret earned her J.D. from the Drexel University Thomas R. Kline School of Law in 2015. While at Drexel, she was an active participant in Drexel's Community Lawyering Clinic, where she provided legal aid to community members, focusing on issues of homeownership stability and foreclosure prevention. Margaret has also earned a Master of Science degree in Social Policy from the University of Pennsylvania, and a Bachelor of Arts in History, *summa cum laude*, from Villanova University. Margaret is a member of the Philadelphia Bar Association's Women in the Profession Committee, and also serves as a nonprofit Board Observer for Dignity Housing. She is admitted to practice in Pennsylvania and New Jersey.

Margaret can be reached directly at: (215) 575-4354 • mcostello@rawle.com

SCHOOL SUPPLY DRIVE



Pictured above (l.-r.): Michael P. Zabel, Partner Tara Gill Nalencz, Joseph A. Gorman, Partner William J. Carr and Partner Brett A. Wolfson.

Rawle & Henderson LLP participated in the **Global Citizen** annual School Supply Drive in August 2017 to benefit students in Philadelphia public schools. Global Citizen partnered with the **School District of Philadelphia**, **Philadelphia Media Network** (*Philadelphia Inquirer*, *Daily News* & Philly.com), **900AM-WURD**, the **African American Museum in Philadelphia**, **High Point Café**, **iHeart Media**, **Coca-Cola** and **Home Depot** for this year's drive to benefit students in underserved Philadelphia public schools. Rawle & Henderson LLP donated pens, pencils, erasers, markers, notebooks, binders, backpacks, rulers and other items.

COMMERCIAL VEHICLE SAFETY SUMMIT

Gary N. Stewart, a partner in our Harrisburg, Pennsylvania office, attended the Commercial Vehicle Safety Summit in August 2017 at the Pennsylvania State University. The event, presented by Penn State, the Pennsylvania Department of Transportation, the National Highway Traffic Safety Administration and the Pennsylvania Motor Carrier Safety Advisory Committee, was held at the Penn Stater Hotel and Conference Center.

Gary focuses his practice on the defense of commercial motor vehicle companies and their insurers. He is admitted to practice in Pennsylvania, New Jersey, Massachusetts, Connecticut, Vermont and Rhode Island, as well as before the U.S. District Courts for the Eastern, Middle and Western Districts of Pennsylvania, the District of New Jersey, the District of Massachusetts, the District of Rhode Island, the District of Connecticut and the U.S. Court of Appeals for the First and Third Circuits. He graduated *magna cum laude* from the Harrisburg campus of Widener University School of Law. Gary was the recipient of the James C. Crumlish Jr. Award for Excellence in Scholarship and Administrative Law. He received his undergraduate degree from the U.S. Merchant Marine Academy at Kings Point, New York, and holds U.S. Coast Guard professional licenses as Master of Oceans, Steam or Motor Vessels up to 1600 gross tons as well as Chief Officer, unlimited tonnage, all oceans. Gary served as the law clerk for the Honorable Rochelle Friedman, Commonwealth Court of Pennsylvania in Harrisburg. He has been selected by his peers as a Transportation/Maritime Pennsylvania Super Lawyer in 2017, 2016, 2012, 2011, 2010, 2009 and 2007. He is a member of Rawle & Henderson LLP's Executive Committee.



Gary N. Stewart

Gary can be reached at (717) 234-7730 • gstewart@rawle.com

WIDENER LAW

Inder Deep Paul, an associate in our Harrisburg office, was the alumni speaker at the Widener University Commonwealth Law School orientation for the incoming class in August 2017. Inder earned his J.D. from Widener Law in 2016. He spoke to students about what to expect in the following three years and how the legal profession makes a difference in the lives of others.



Inder Deep Paul

Inder concentrates his practice in the area of commercial motor vehicle defense. While attending Widener Law, he served as vice president of the Moot Court Honor Society and was a member of the Trial Advocacy Honor Society. He was also a representative of the Student Bar Association and co-authored the article “*Interview with the Judge: A Lawyer and Law Student Talk with Superior Court Judge Victor P. Stabile about Legal Writing and Advocacy*,” published in the March/April 2016 issue of *The Pennsylvania Lawyer*. Inder won the national award “The Order of Barristers” in 2016 at Widener Law for excellence in oral and written advocacy. He served as a student clerk in 2016 for the Honorable John F. Cherry, Dauphin County Court of Common Pleas in Harrisburg. In 2015, he served as a student clerk for the Honorable J. Michael Eakin of the Pennsylvania Supreme Court in Mechanicsburg and as a law clerk for a Harrisburg law firm. He is fluent in English, Hindi and Urdu. Inder earned his B.A. in International Law, with honors, from the University Institute of Legal Studies, Panjab University in Chandigarh, India, in 2012. He is admitted to practice in Pennsylvania, as well as the U.S. District Court for the Middle District of Pennsylvania.

Inder can be reached directly at: (717) 234-1056 • ipaul@rawle.com

NEW ADDITIONS

Timothy C. Alexander has joined our **Philadelphia** office as an associate. He concentrates his practice on environmental, toxic and mass tort litigation matters. Tim earned his J.D. from Rutgers University School of Law in Camden, New Jersey, in 2012. He earned an M.B.A. from Drexel University LeBow College of Business in 2008. Tim earned a B.S., *summa cum laude*, in Business Management from Drexel University College of Professional Studies in 2006. Prior to joining Rawle & Henderson LLP, Tim served as Assistant City Solicitor for the Civil Rights Unit of the Philadelphia Law Department from November 2016 to July 2017. He was an Assistant District Attorney for the Philadelphia District Attorney’s office from 2014 to 2016, serving on the Trial Division Bureau and acting as a Major Trial Litigant in the Philadelphia Court of Common Pleas. He served as Detective Captain for the Atlantic County Prosecutor’s Office in Mays Landing, New Jersey, from 2011 to 2014. Tim is admitted to practice in Pennsylvania and New Jersey, as well as the U.S. District Court for the Eastern District of Pennsylvania.



Timothy C. Alexander

Tim can be reached directly at (215) 575-4270 • talAlexander@rawle.com

Edward I. Wicks has joined our **Philadelphia** office as an associate. He focuses his practice in the areas of general liability, commercial motor vehicle defense, insurance coverage and employment relations. Edward graduated from Temple University Beasley School of Law in Philadelphia, Pennsylvania, in 2008. While attending law school, he served as a legal intern for Temple Law’s Center for Community and Non-Profit Organizations. He also served as a legal intern for the New Jersey Department of the Public Advocate. Edward earned a B.S. in International Business, *summa cum laude*, from Messiah College in Grantham, Pennsylvania, in 2001. Edward is admitted to practice in Pennsylvania and New Jersey, as well as the U.S. District Court for the Middle District of Pennsylvania, the U.S. District Court for the District of New Jersey and the Third Circuit Court of Appeals.



Edward I. Wicks

Edward can be reached directly at: (215) 575-4285 • ewicks@rawle.com