



The Voice

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Volume 14 Issue 3

In The Voice

[This Week's Double Feature](#)

[Legal News](#)

[DRI News](#)

[And The Defense Wins](#)

[New Member Spotlight](#)

[DRI Cares](#)

[DRI Blog—The Defense Perspective](#)

[Did You Know...?](#)

[Legislative Tracking](#)

[DRI CLE Calendar](#)



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Robert M. Cavalier



DRI member [Robert M. Cavalier](#) successfully moved for summary judgment in favor of the general contractor, Daniel J. Keating Company, based upon the statutory employer defense.

Timothy Fahy was seeking \$3.2 million for damages related to a trip and fall occurring on a construction site in Philadelphia, Pennsylvania on October 2, 2012 while working for a subcontractor. Mr. Fahy sued the subcontractor involved in the incident, as well as Keating.

Based on the recent Pennsylvania Supreme Court decision, *Patton v. Worthington Associates, Inc.*, 89 A.3d 643 (Pa. 2014), a motion for summary judgment was filed on behalf of Keating arguing it was entitled to immunity for this negligence claim filed by its subcontractor's employee injured on the job site.

Keating argued the five elements of the seminal case *McDonald v. Levinson Steel Corporation* were met and the claim against it should be dismissed with prejudice. Applying the five factors, Keating demonstrated: 1) Keating had a contract with the owner of the premises; 2) Keating occupied the premises during the construction phase; 3) Keating had a subcontract with plaintiff's employer; 4) the subcontract was for carpentry work; and 5) plaintiff was allegedly injured while performing carpentry work on the premises. As Keating was able to demonstrate there were no genuine issues of material fact as to these five factors of *McDonald*, summary judgment was appropriate.

The court granted the opposed motion on August 15, 2014 and dismissed all causes of action against Keating with prejudice. The claims against the subcontractor remain.

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