

[J-91-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JOHN PECK,	:	3 MAP 2002
	:	
Appellee	:	Appeal from the order of the
	:	Commonwealth Court entered January 22,
v.	:	2001 at No. 3148 C.D. 1999, which
	:	reversed the order of the Delaware
	:	County Court of Common Pleas, Civil
	:	Division, entered November 9, 1999, at
DELAWARE COUNTY BOARD OF	:	No. 97-15878.
PRISON INSPECTORS,	:	
	:	
Appellant	:	ARGUED: May 16, 2002
	:	
	:	
	:	

CONCURRING OPINION

MR. JUSTICE NIGRO

DECIDED: DECEMBER 31, 2002

I agree with the plurality that the Delaware County Board of Prison Inspectors is not immune from suit as a statutory employer under section 203 of the Worker's Compensation Act. Although I dissented in Fonner v. Shandon, Inc., 724 A.2d 903 (Pa. 1999), because I believed that a statutory employer should be required to show that it assumed responsibility for providing workers' compensation to the injured employee before statutory immunity may attach, I recognize that our current law does not impose such a requirement. I remain concerned, however, that the five elements set forth in McDonald v. Levinson Steel Co., 153 A. 124 (Pa. 1930), may be insufficient to prevent one deemed a statutory employer under section 203 from receiving an unfair advantage at the expense of an injured party. In that regard, I agree with the plurality that we must be cognizant that by providing for

statutory employer immunity, the General Assembly has in effect altered the fundamental compromise underlying the workers' compensation system, i.e., that an employer is granted immunity from suit in return for providing workers' compensation benefits to employees for work-related injuries. I therefore believe that statutory employer immunity must be strictly construed and the five McDonald requirements must be unequivocally satisfied before immunity will attach.