

Adams County Legal Journal

Vol. 38

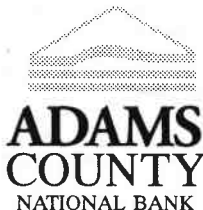
January 3, 1997

No. 32, pp. 183-188

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Estate Planning for the Owner of a Family Business*
Thursday, January 16, 1997—9:00 a.m. – 1:30 p.m.
Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.
 2. *Equitable Distribution Update*
Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.
Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.
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Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, Donald G. Oyler, Esq., Editor and Business Manager.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 91-S-5 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail and washer in the centerline of the Emmitsburg Road (US Business Route 15) on line of land of The United States of America; thence along land of The United States of America and passing through a US government monument 33.34 feet from the beginning of this course, North 87 degrees 55 minutes 30 seconds East, 182.10 feet to an iron pin at corner of Lot No. 4; thence along Lot. No. 4, South 02 degrees 04 minutes 30 seconds East, 199.98 feet to an iron pin at corner of Lot No. 2; thence along Lot No. 2 and passing through a reference iron pin 29.87 feet from the end of this course, North 71 degrees 49 minutes 20 seconds West, 277.40 feet to a nail in the centerline of the Emmitsburg Road; thence in the centerline of the Emmitsburg Road, North 34 degrees 51 minutes 40 seconds East, 130.04 feet to the above described place of BEGINNING. CONTAINING 35,487 square feet or .815 Acre.

The above description was taken from a subdivision plan of the Crouse & McDonnell development recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 69.

BEING THE SAME PREMISES which Patricia K. Crouse, widow, E. A. McDonnell and Ethel B. McDonnell, husband and wife, Patricia K. Crouse and E. A. McDonnell, a partnership, trading as, Crouse & McDonnell, by deed dated 10/9/87 and recorded 10/13/87 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 470-526, granted and conveyed unto Ronald E. Rotz and Cheryl B. Rotz, husband and wife.

IMPROVED WITH DWELLING.

SEIZED and taken into execution as the property of **Ronald E. Rotz and Cheryl B. Rotz** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 12, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/3, 10 & 17

LEGAL NOTICE

The Annual meeting of the policyholders of Protection Mutual Insurance Company of Littlestown will be held at the office at 101 South Queen Street, Littlestown, Pennsylvania between the hours of 1:00 and 2:00 P.M. on January 11, 1997 to elect directors and to transact any other business properly presented.

ATTEST,

Marilyn Q. Butt

Secretary-Treasurer

12/13, 20, 27 & 1/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of this corporation is CEMCO CONSTRUCTION, INC. with its principal office or place of business at 18 Trout Run Trail, Carroll Valley, PA 17320. The names and addresses of all persons owning, or interested, in said business are Charles E. May, 18 Trout Run Trail, Carroll Valley, PA 17320.

Alan K. Patrono
Attorney at Law
30 W. Middle Street
Suite 1
Gettysburg, PA 17325

1/3

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Friday, January 10, 1997, at 10:30 a.m.

HADLOCK—Orphans' Court Action Number OC-156-96. The First and Final Account of Thomas E. Hadlock, Administrator of Estate of Marie K. Hadlock, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

BEARD—Orphans' Court Action Number OC-155-96. The First and Final Account of Ven Ralf Patterson, Executor of the Estate of Jack R. Beard a/k/a Jack Robert Beard, deceased, late of Cumberland Township, Adams County, Pennsylvania.

BYNAKER—Orphans' Court Action Number OC-157-96. The First and Final Account of Adams County National Bank, Executor of the Estate of James L. Bynaker a/k/a Beverly A. Bynaker, deceased, late of Reading Township, Adams County, Pennsylvania.

LONGANECKER—Orphans' Court Action Number OC-158-96. The First and Final Account of Mary S. Longanecker, Executrix of the Estate of Reida Longanecker, deceased, late of Straban Township, Adams County, Pennsylvania.

DUTTERA—Orphans' Court Action Number OC-159-96. The First and Final Account of John W. Duttera, Jr. and Shirley D. Black, Executors of the Estate of Ruth F. Duttera a/k/a Ruth Pauline Duttera a/k/a Ruth Feiser Duttera, deceased, late of Straban Township, Adams County, Pennsylvania.

SMITH—Orphans' Court Action Number OC-160-96. The First and Final Account of Adams County National Bank, Executor of the Will of Edward F. Smith, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

RAMER—Orphans' Court Action Number OC-75-94. The First and Final Account of Adams County National Bank and Doris Large, Co-Executors of the Estate of P. Ross Ramer, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

12/27, 1/3

COMMONWEALTH VS. HELLER

1. To establish a conspiracy, there need not be a formal agreement but it may be tacit and implied from the circumstances.
2. In interpreting a statute the word "or" is read in the disjunctive unless that interpretation would give an absurd result.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-139, 140-96, COMMONWEALTH OF PENNSYLVANIA VS. TROY ANTHONY HELLER.

Michael A. George, Esq, District Attorney
Anthony Miley, Esq., Assistant Public Defender

OPINION ON PETITION FOR WRIT OF HABEAS CORPUS

Spicer, P.J., April 12, 1996.

Defendant is charged with theft by unlawful taking, theft by receiving stolen property and criminal conspiracy in CC-140-96 and with violating 18 Pa.C.S.A §5126 in CC-139-96. Although that section is captioned "Flight to avoid apprehension, trial or punishment," defendant is charged with hiding in a shower stall and describing the crime by using "flight" is inappropriate. He seeks dismissal of charges through a writ of habeas corpus. The undersigned has listened to an audio tape of proceedings before a district justice and bases his decision on facts gleaned therefrom. As part of the order, we will direct that the tape be made a part of the record in these cases.

Chronologically, events began with the theft charges. Defendant drove to the home of William Chapman between November 27 and December 20, 1995, taking with him two juveniles and Steve Carey. All four people entered the home. While there, A.D. stole a pistol. Steve Carey removed cash from a container and placed it on a desk. S.T. took some of the money and Carey took \$100.00. Carey told defendant to take \$20.00, and defendant complied.

The first time the adults knew that A.D. had stolen the pistol was when they returned to defendant's car. The pistol was passed around, with each person handling it. Carey said that defendant had the gun for about 15 minutes. Defendant then drove off.

A day or so later, Carey and A.D. swapped the pistol for drugs, which were later shared with defendant. Carey said that defendant knew the gun had been stolen.

It is sometimes difficult to establish the line which separates mere presence at the scene of a crime from participation and/or conspiracy. *Commonwealth v. Herrick*, 442 Pa.Super. 412, 660 A.2d 51 (1995). Superior Court has held that receiving part of the proceeds from the sale of a stolen gun is not enough. *Commonwealth v. Brady*, 385 Pa.Super. 279, 560 A.2d 802 (1989). On the other hand, being present and aware that drugs were being sold in one's home was sufficient to establish conspiracy in *Com. v. Herrick*, supra.

Defendant's involvement was at least as great as that in *Herrick*, if not more. While it is true the gun did not appear in his home, it did happen in defendant's car. Defendant provided the means of transportation.

Despite Carey's testimony that there was no agreement, circumstances were sufficient to establish a conspiracy. There need not be a formal agreement. It may be tacit and implied from the circumstances. All four people went into the Chapman residence and each, individually, committed an act of theft by unlawful taking. Carey told defendant to take \$20.00 and defendant complied. The party then returned to defendant's car and drove away.

Defendant's request is denied as to CC-140-96.

The Commonwealth produced the testimony of the prosecuting officer and Carey to support their case in CC-139-96. Police went to defendant's residence on two separate occasions, knocked and announced they had a warrant for defendant's arrest. Although there were indications that defendant was present (lights, automobile parked outside, stereo playing), the police received no response. On the second occasion, they entered the house and found defendant hiding in the shower, dressed in his underwear.

Prosecution was initiated under the statute, supra, which reads, in part:

(a) Offense defined. A person who willfully conceals himself or moves or travels within or outside this Commonwealth with the intent to avoid apprehension, trial or punishment commits a felony of the third degree when the crime which he has been charged with or has been convicted of is a felony....

Since one of the warrants related to the firearm theft, Commonwealth charged defendant with a felony.

Although we could find no cases decided under this particular provision, there is authority under a similar section, 18 Pa.C.S.A. §5105. That provision punishes someone who, inter alia, harbors or conceals another with the intent of hindering apprehension, prosecution, conviction or punishment. Although the core issue involved was whether police could validly enter a residence to effectuate an arrest, the factual situation in *Commonwealth v. Migdalia Conception*, 441 Pa.Super. 539, 657 A.2d 1298 (1995) bears some resemblance to that at bar. Police went to Ms. Conception's apartment to arrest one Marcus Rivera. Ms. Conception said she did not know the person and refused to allow the police to enter. They did anyhow and found Mr. Rivera hiding in a shower stall. Ms. Conception's conviction was affirmed.

The newer law seeks to punish both the person who hides and the other who aids in hiding.

Although the title or caption of the section would seem to refer to flight, the body reads in the disjunctive and includes concealment. "Or" is read in the disjunctive unless that interpretation would give an absurd result to the statute. *Commonwealth v. Gerulis*, 420 Pa.Super. 266, 616 A.2d 686 (1992). Criminal statutes must be strictly construed, but this does not mean they are given the narrowest possible meaning. *Commonwealth v. Kowalek*, 436 Pa.Super. 361, 647 A.2d 948 (1994). Criminal statutes are to be read in accordance with established rules of grammar and common usage of words and phrases. *Commonwealth v. Tayler*, 424 Pa.Super 181, 622 A.2d 329 (1993).

A common meaning of conceal is to hide. The American Heritage Dictionary of the English Language, Houghton Mifflin Company, (1981). The statute clearly applies to defendant's conduct.

The attached order is entered.

ORDER OF COURT

AND NOW, this 12th day of April, 1996, defendant's petition for writ of habeas corpus is denied.

COMMONWEALTH VS. BORITT

While failure to obey traffic control signals is not to be generally condoned, the Legislature has recognized in 18 Pa. C.S.A. §312 (*De Minimus Infractions*) that some offenses are too trivial to warrant the condemnation of conviction.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-156-96, COMMONWEALTH VS. JAKOB BORITT.

Bernard A. Yannetti, Jr., Esq., Assistant District Attorney
Jakob Boritt, pro se

STATEMENT OF REASONS FOR DISMISSAL UNDER
18 PA. C.S.A. §312

Kuhn, J., April 19, 1996.

On November 17, 1995, Timothy Biggins of the Cumberland Township Police Department was on routine patrol. At 5:45 p.m. his patrol car was on Hospital Road facing Blacksmith Shop Road. At that location Blacksmith Shop Road is generally an east to west roadway which, at the intersection with Hospital Road, makes a slight curve to the right. The convergence of the two roads forms a "Y" with Hospital Road forming the left arm of the "Y." There is a stop sign on Blacksmith Shop Road at the intersection.

Prior to September 26, 1995, the stop sign facing westerly traffic on Blacksmith Shop Road applied only to left turns onto Hospital Road and did not apply to right turns continuing on Blacksmith Shop Road. On that date Cumberland Township enacted an ordinance which made the intersection a three-way stop thereby eliminating the right to proceed west on Blacksmith Shop Road without stopping. A small rectangular sign posted under the octangular Stop sign read "3-Way." Officer Biggins testified that in September, 1995, the Township had erected a "Stop Ahead" sign 365 feet before the stop sign on Blacksmith Shop Road.

On November 17, 1995, Defendant was returning home from college and traveling west on Blacksmith Shop Road. He proceeded westerly through the stop sign without stopping. This was the first time Defendant drove on this road since September, 1995, and he was unaware of the changes effectuated by the Township. He claims not to have noticed the "Stop Ahead" sign nor the "3-Way" sign. This is a rural area not lighted by street lights. There was no evidence of other traffic in the vicinity at the time.

The Legislature, as embodied in 18 Pa. C.S.A. §312, has determined that certain infractions of the law are so petty or attended by circumstances that they should be removed from criminal sanction. That section provides in pertinent part

§312. De minimus infractions.

(a) General rule - The court shall dismiss a prosecution

if having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant:

...

(2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction.

...

Under the circumstances of this case the Court believes a sanction (even if relatively minor - \$25 fine and 3 points) is relatively harsh. The purpose of erecting stop signs is to prevent traffic mishaps by controlling the movement of vehicles at intersections. Here, a long standing tradition of allowing right turns on a rural roadway was changed just seven weeks before this incident and at a time when Defendant was away at college. There was no other traffic reported in the area except the officer's vehicle and there was no indication that it was harmed or threatened by Defendant's action. Defendant stated that he didn't notice the "Stop Ahead" sign. Whether it was present or whether it was seen is of little consequence in this case. This intersection was always controlled by a stop sign. The only change related to right turns. A "Stop Ahead" sign would not have alerted anyone of that change.

Disposition in this manner should not be considered precedential because it is based upon a very unique set of circumstances. Furthermore, this disposition is not intended to reflect adversely upon the officer who acted in accordance with his responsibilities. Finally, by this disposition the Court does not suggest that failure to obey traffic control signals is to be generally condoned. The Legislature has recognized, as justice requires, that not every act of an individual in a civilized society can be judged by precise standards of guilt and innocence. Sometimes conduct of technical violation falls within an area of tolerable allowance where societal interests are better served with the soft hand of understanding and mercy. This is one of those situations.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 19th day of April, 1996, in consideration of the attached Statement of Reasons For Dismissal Under 18 Pa. C.S.A. §312 the charge of violating Section 3323(b) of the Vehicle Code is dismissed as a de minimis infraction.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF RUTH B. GARRETT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Arthur William Michael, 1130 William St., Hanover, PA 17331
 Attorney: G. Steven McKonly, 119 Baltimore Street, Hanover, Pennsylvania 17331

ESTATE OF ESTHER C. LARUE, DEC'D

Late of Piney Mountain, 6375 Chambersburg Road, Fayetteville, Adams County, Pennsylvania
 Administrator: Donald R. Miller, 8045 Carlisle Pike, York Springs, PA 17372
 Attorney: David J. Lenox, Esquire, Jan M. Wiley & Associates, One South Baltimore Street, Dillsburg, PA 17019

SECOND PUBLICATION

ESTATE OF FLOYD G. CURRENS, DEC'D

Late of Highland Township, Adams County, Pennsylvania
 Administratrix: Janet B. Currens, 2890 Fairfield Rd., Gettysburg, PA 17325
 Attorney: John W. Phillips, Esq., Attorney at Law, 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF GEORGE EMIG, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Administrator: Donald J. Emig
 Attorney: Michael E. Dows, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF BIRNIE W. REINAMAN, a/k/a BERNIE W. REINAMAN, DEC'D

Late of Germany Township, Adams County, Pennsylvania
 Administrator, c.t.a.: Wayne A. Reinaman, 253 High Meadow Road, Reisterstown, MD 21136
 Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF GLENN M. SHIELDS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administratrix: Lynn M. Shields, 59 Knoxlyn Road, Gettysburg, PA 17325
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MABEL KATHRYN WOLF, a/k/a MABEL K. WOLF, DEC'D

Late of Berwick Township, Adams County, Pennsylvania
 Executrix: Loretta K. Wentz, 79 Heritage Court, New Oxford, PA 17350
 Attorney: Louis T. Guthrie, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF CHARLES HENRY GEBENSLEBEN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: George M. Gebensleben, 250 York Street, Hanover, PA 17331
 Attorney: John J. Mooney, III

ESTATE OF FRANCIS R. LUTTER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executrix: Wanda Mariea Whitcomb, 200 Rr. Oliver Street, Hanover, PA 17331
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MARY L. MILLISON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: John R. White, 122 Baltimore Street, Gettysburg, PA 17325
 Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF PAULINE E. WILLIAMS, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, 16 Lincoln Square, Gettysburg, PA 17325
 Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF THOMAS S. ZIEGLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: John M. Ziegler, 27 Whispering Pines Lane, Birdsboro, PA 19508
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on December 10, 1996, pursuant to the Fictitious Names Act, setting forth that Larry L. Mummert and Yvonne S. Mummert, 1509 Rte. 194 North, East Berlin, PA 17316 are the only person(s) owning or interested in a business, the character of which is a farm market, and that the name, style and designation under which said business is and will be conducted is BUTTERCUP FARM MARKET, and the address of the principal office or place of business of said business is 1509 Rte. 194 North, East Berlin, PA 17316.

Countess Gilbert Andrews
 Sharon E. Myers, Esq.
 29 North Duke Street
 York, PA 17401

1/3

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Fictitious Name Act, Act 1982-295, approved December 16, 1982, as amended, 54 Pa.C.S.A. §303 et seq., that on December 6, 1996, an application for a certificate to conduct a business in Adams County, Pennsylvania, under the assumed or fictitious name of FLYING EAGLE FARM was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania. The principal place of said business is 403 Arendtsville Road, Biglerville, Pennsylvania 17307. The names and address of the persons and entity owning or interested in said business are Mark T. Walter and Timothy M. Snyder, Flying Eagle Farm, 403 Arendtsville Road, Biglerville, Pennsylvania 17307.

Bulleit, Schultz & Thrasher
 16 Lincoln Square
 Gettysburg, PA 17325

1/3

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January 10, 1997

No. 33, pp. 189-194

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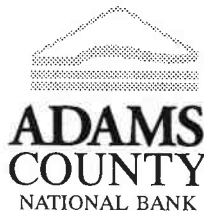
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Ethics—0 credits. Registration through P.B.I. 800-932-4637.

In times like these,
you and your clients need
the experience and expertise
provided by a trust professional.



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ALL that lot of ground situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail and washer in the centerline of the Emmitsburg Road (US Business Route 15) on line of land of The United States of America; thence along land of The United States of America and passing through a US government monument 33.34 feet from the beginning of this course, North 87 degrees 55 minutes 30 seconds East, 182.10 feet to an iron pin at corner of Lot No. 4; thence along Lot. No. 4, South 02 degrees 04 minutes 30 seconds East, 199.98 feet to an iron pin at corner of Lot No. 2; thence along Lot No. 2 and passing through a reference iron pin 29.87 feet from the end of this course, North 71 degrees 49 minutes 20 seconds West, 277.40 feet to a nail in the centerline of the Emmitsburg Road; thence in the centerline of the Emmitsburg Road, North 34 degrees 51 minutes 40 seconds East, 130.04 feet to the above described place of BEGINNING. CONTAINING 35,487 square feet or .815 Acre.

The above description was taken from a subdivision plan of the Crouse & McDonnell development recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 69.

BEING THE SAME PREMISES which Patricia K. Crouse, widow, E. A. McDonnell and Ethel B. McDonnell, husband and wife, Patricia K. Crouse and E. A. McDonnell, a partnership, trading as, Crouse & McDonnell, by deed dated 10/9/87 and recorded 10/13/87 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 470-526, granted and conveyed unto Ronald E. Rotz and Cheryl B. Rotz, husband and wife.

IMPROVED WITH DWELLING.

SEIZED and taken into execution as the property of **Ronald E. Rotz and Cheryl B. Rotz** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
December 12, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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1/3, 10 & 17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is ROBERT W. WEIKERT, JR. LIVESTOCK HAULING, INC.

1/10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for a Domestic Nonprofit Corporation were filed in the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on December 16, 1996.

The name of the corporation is SOV-EREIGN GRACE CHURCH, INC.

The corporation has been incorporated under the provisions of the Nonprofit Corporation Law of 1988. The purpose of the corporation is to provide church and religious services to members of the community.

John R. White
Campbell & White
122 Baltimore Street
Gettysburg, PA 17325

1/10

INCORPORATION NOTICE

NOTICE IS HERBY GIVEN that on November 25, 1996, Articles of Incorporation of a corporation known as MORAN MATERIALS RECYCLING, INC. have been filed with the Department of State, Harrisburg, Pennsylvania, for the purpose of obtaining a certificate of incorporation of a proposed business corporation under the provisions of the Act of Assembly of the Commonwealth of Pennsylvania, known as the "Business Corporation Law" approved December 21, 1988, P.L. 1444, its amendments and supplements.

The purpose for which said corporation is formed are that: The corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Act of December 21, 1988, P.L. 1444, its amendments and supplements, under the provisions of which said Act the corporation is incorporated.

The location and post office address of the initial registered office of said corporation is 1295 Red Rock Road, Gettysburg, PA 17325.

1/10

LIBERTY ASSOCIATES VS. BOARD OF
SUPERVISORS OF HUNTINGTON TOWNSHIP

Where appellant did not assert evidence of any ownership interest before the Township, its concealment constituted a waiver of its right to appeal and claim its entitlement to a deemed approval.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-831 and 95-S-832, LIBERTY ASSOCIATES VS. BOARD OF SUPERVISORS OF HUNTINGTON TOWNSHIP.

William W. Thompson, Esq., for Appellant
Robert E. Campbell, Esq., for Appellee

OPINION ON APPELLEE'S MOTION TO QUASH APPEAL

Kuhn, J., April 19, 1996.

By letter dated August 14, 1995, the Huntington Township Board of Supervisors notified Harry Fox that at its meeting on August 10, 1995, the subdivisions for "The Meadows" and "Huntington Fields" had been rejected for 1) lack of an approved DER planning module and 2) failure to correct comments and suggestions made by the Township engineer. On September 11, 1995, Liberty Associates filed a notice of appeal from that decision. Liberty Associates described itself as a partnership consisting of two general partners, Kimba, Inc. and Harmon-Graves Company, and as being the equitable owner and developer of the subdivisions. On appeal Liberty Associates asserts the right to a deemed approval and claim that the reasons set forth for rejection of the plans are not legally valid.

On October 3, 1995, the Township filed a Motion to Quash Appeal by arguing that the record is devoid of any indication that Liberty Associates had an interest in the land which gives them any standing to pursue this appeal. A hearing on the motion was held on January 6, 1996. Thereafter the Court raised certain concerns with the parties' counsel and asked for response. Liberty Associates' response was not received until April 8, 1996.

The record reveals that the Township's application form for review of each subdivision and the preliminary subdivision plans identify the "owner-subdivider" as John Fox and Harry H. Fox, Jr., hereinafter referred to collectively as "Fox" and the surveyor as Stanley Jarmolenko. In a letter dated June 1, 1995, from the Township engineer to the Township Planning Commission, and copied to the surveyor, certain alleged discrepancies were identified. The Adams County Office of Planning and Development by memorandum dated June 27, 1995, and addressed to Fox and the Township's Board of Supervisors and

Planning Commission identified deficiencies as well. Board of Supervisors' minutes from its meeting on July 13, 1995, suggests that no one was present on behalf of the owner or developer to present or represent the subdivision plan. Interestingly, the record does reveal a letter from the district office of the Department of Environmental Resources to the Board of Supervisors dated July 25, 1995, stating, inter alia, that the planning module submitted for the two proposed subdivisions "is incomplete, and does not comply with the settlement agreement reached between the Department and Liberty Associates on September 14, 1994." (emphasis added). A copy of that letter appears to have been sent to Harry Fox, Jr. At the hearing before the undersigned, Harry Fox, Jr. testified that Harmon-Graves Company (his corporation) and Kimba, Inc. (his brother, John's corporation) formed Liberty Associates as a partnership to develop real estate in which the partnership has an equitable interest pursuant to an Agreement of Sale dated March 22, 1993, between Daniel C. and Jacqueline K. Leer as sellers and Liberty Associates as buyers. The Agreement was signed by the Leers on April 19, 1993, by Harry H. Fox, Jr. on March 3, 1993, and by John H. Fox on an unspecified date. There is no record document that John or Harry Fox were authorized by their respective corporations to execute the Agreement on behalf of the corporation as a partner.

The crux of Township's argument is that John and Harry Fox should have filed the appeal and not Liberty Associates. The Township's Ordinance requires that the subdivision process be commenced by a preliminary plan being submitted to the Planning Commission by the "developer" or his authorized representative. §303.1. The Ordinance uses the same definitional terms as the Pennsylvania Municipalities Planning Code. A "developer" is "any landowner, agent of such landowner, or tenant with permission of such landowner, who makes or causes to be made a subdivision of land or a land development." A "landowner" is "the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land." Art II, Section 12 and 24. 53 PS §10107.

Township argues that John and Harry Fox are the developers. In reaching this conclusion Township notes that the Agreement of Sale was signed by John and Harry Fox in their individual capacities and not as corporate officers. For purposes of this disposition that concern as well as whether Liberty does, in fact, have an equitable interest in the subject real estate, seems to beg the question. The Township is not a

party to the Agreement of Sale and has no standing to challenge whether there was corporate authority for Foxs' signatures.

What is more critical, in the Court's opinion, is that Liberty Associates did not assert evidence of any ownership interest before the Township nor did Fox indicate that either of them was acting on behalf of the partnership or the corporate partners. Now, for the first time, after an allegedly defective decision by the Township sent to Fox the partnership, rather than Fox, seeks to raise its identity and standing on appeal. The Court can find no case on point. Nevertheless, instinct suggests an inherent unfairness in Liberty's position. While it can be argued that the Township could have been more vigilant in ascertaining the right or authority of the brothers to submit a preliminary subdivision plan it is likewise apparent that the brothers took no steps to overcome the clear impression that they, as individuals, were the developers. Because of this concealment we believe it would be procedurally cleaner and imminently fairer for the Motion To Quash to be granted, for the true developer to proceed properly through the Township's subdivision process and address this matter later, if necessary.

For lack of better explanation the undersigned concludes that Liberty's concealment constitutes a waiver of its right to appeal and claim its entitlement to a deemed approval.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 19th day of April, 1996, the Motion To Quash Appeal filed by the Board of Supervisors of Huntington Township is granted.

PURDHAM VS. GARY & DELL'S RESTAURANT

1. Relevant laws and regulations should be admitted in negligence trials to establish a duty of care and a breach of that duty as evidence of negligence.
2. Violations of applicable laws may be negligence per se.
3. Where the relevant act applies only to a special class, of which plaintiff is not a member, the Court will allow proof of violation as evidence of negligence, but not as negligence per se.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-14, KENNETH G. PURDHAM VS. GARY & DELL'S RESTAURANT.

James K. Reed, Esq., for Plaintiff

William A. Addam, Esq., for Defendant

OPINION ON MOTION IN LIMINE

Spicer, P.J., April 22, 1996.

On July 14, 1995, we refused defendant's motion for summary judgment, holding that the record justified submission of issues to a jury. Defendant now requests a pre-trial ruling that evidence of noncompliance with 75 P.S. §1455.2(c)(1)¹ (the act) is inadmissible at trial.

Briefly summarized, this case involves a slip and fall on what is generally referred to as a handicap ramp outside defendant's restaurant. Plaintiff has claimed that the slope of the ramp exceeded standards established in the act, which sets the maximum permissible rise as 8.33 percent. (.0833 or one foot in twelve).

Although the statute was previously identified by plaintiff prior to the Court's July 14, 1995, ruling, and was briefly mentioned in the Court's opinion, neither party has specifically addressed the law's applicability to this case.

We begin by repeating that relevant laws and regulations should be admitted in negligence trials to establish a duty of care and a breach of that duty as evidence of negligence. Violations of applicable laws may be negligence per se. *Christiansen v. Silfies*, ___ Pa.Super. ___, 667 A.2d 396 (1995). Such evidence, however, may be excluded when it is, for example, outside the purview of a witness' expertise, id., or irrelevant.

Defendant argues that the statute and regulations adopted pursuant to it do not pertain to this case and are neither probative of a duty on the part of defendant, nor a breach thereof. As authority, defendant cites *Congini by Congini v. Portersville Valve Company*, 504 Pa. 157, 470 A.2d 515 (1983). In this case, Supreme Court reaffirmed its adoption of §286 of the Restatement 2d of Torts, which provides:

§286. When Standard of Conduct Defined by Legislation or Regulation Will Be Adopted

The court may adopt as a standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part

(a) to protect a class of persons which includes the one whose interest is invaded, and

¹This is part of section 2 of the act. The legislature repealed this section in 1988, effective upon adoption of rules and regulations by Department of Labor and Industry. Those rules were published in Volume 22, Pennsylvania Bulletin, page 4091.

(b) to protect the particular interest which is invaded,
and

(c) to protect that interest against the kind of harm which
has resulted, and

(d) to protect that interest against the particular hazard
from which the harm results

At issue in that case was the responsibility of a person who furnished alcoholic beverages to a person under the age of twenty one. The court held that an adult who violates the Crimes Code² by serving alcoholic beverages to a person under the age of twenty-one to the point of intoxication was negligent per se and responsible for injuries proximately resulting from the minor's intoxication.

However, it is clear that adults who serve adults are not similarly responsible. *Kapres v. Heller*, 536 Pa. 551, 640 A.2d 888 (1994). There is no statute forbidding this type of conduct. The Congini court explained that its decision was based upon a violation of a law applicable to all citizens. Footnote 3, appearing at 170 A.2d 518 is instructive. It reads:

In *Manning v. Andy*, 454 Pa. 237, 310 A.2d 75 (1973) we held that a violation of the Liquor Code could not form the basis for a cause of action against a non-licensee. However, the Crimes Code is applicable to all the citizens of the Commonwealth. Thus, in finding that a cause of action exists under the facts of this case, we are not departing from our holding in *Manning*.

If we accept the view that the act, *supra*., applies only to a special class, of which plaintiff is not a member, *Kapres* would indicate that evidence of non-conformity should be inadmissible. If, on the other hand, we conclude that the statute was meant to apply to all citizens, such evidence would be admissible, as well as possibly amounting to negligence per se.

Defendant argues that the act, *supra*, and its regulations, were intended to benefit only handicapped persons. It finds support in the fact that the act was originally titled the "Physically Handicapped Act of 1965" (Act 235). See *Gilson v. Doe*, 143 Pa.Cmwlth 591, 600 A.2d 267 (1991). Further support is founded in legislative recitals, in §1455.1, that architectural barriers effectively prohibit persons with physical handicaps from enjoying the benefit of programs and facilities.

²18 Pa. C.S.A. §6308

While conceding this is true, plaintiff points out other recitals that the legislature enacted the law to promote the general welfare of all citizens. Furthermore, unlike *Kapres*, where no statute applied, it is clear that defendant was clearly subject to the act's provisions.

Despite this, the only reasonable conclusion is that the act was designed to protect a class, of which plaintiff is ostensibly not a member. The act's purposes supports this interpretation. We cannot believe the legislature attempted to address a non-existent need. Persons who suffer no disabilities do not need ramps instead of stairs.

The class of protected persons is, of course, liberally defined. However, plaintiff has not attempted to include himself, and we offer no comment about the success of any such effort.

We conclude that defendant's violation cannot be construed as negligence per se. That does not end the matter. The Crimes Code section cited in *Congini* contained no indication that members of the general public were intended as beneficiaries of legislative mandates. Even so, someone outside the protected class (those under 21) was allowed to recover for damages suffered as a result of illegal conduct. Strictly from a viewpoint of causation, our case might be more analogous if a disabled person's wheel chair went out of control and struck plaintiff. In a sense, defendant's non-compliance may be more directly the cause of plaintiff's injuries than in that analogous situation. In either case, we do not think that a violation of standards should be completely ignored.

One could argue that the appropriate remedy would be to equate a violation with negligence per se and rule that plaintiff's status, or ability, should be addressed through consideration of contributory negligence. While this might comport with an extension of reasoning in *Congini*, we believe it ignores the Restatement, *supra*. The better approach, in this Court's opinion, is to allow proof of violation as evidence of negligence, but not as negligence per se.

The attached order is entered.

ORDER OF COURT

AND NOW, this 22nd day of April, 1996, the Court rules that violation of 75 P.S. §1455.2(c)(1) and regulations pertaining thereto are admissible, but will not establish negligence per se.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF DOROTHY P. DAVIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
 Executrixes: Shirley M. King, Arlene L. Moul, and Ruthann K. Weidner
 Attorney: Alan M. Cashman, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF DOLORES G. WISLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Administrator, C.T.A.: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF RUTH B. GARRETT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Arthur William Michael, 1130 William St., Hanover, PA 17331
 Attorney: G. Steven McKonly, 119 Baltimore Street, Hanover, Pennsylvania 17331

ESTATE OF ESTHER C. LARUE, DEC'D

Late of Piney Mountain, 6375 Chambersburg Road, Fayetteville, Adams County, Pennsylvania
 Administrator: Donald R. Miller, 8045 Carlisle Pike, York Springs, PA 17372
 Attorney: David J. Lenox, Esquire, Jan M. Wiley & Associates, One South Baltimore Street, Dillsburg, PA 17019

THIRD PUBLICATION

ESTATE OF FLOYD G. CURRENS, DEC'D

Late of Highland Township, Adams County, Pennsylvania
 Administratrix: Janet B. Currens, 2890 Fairfield Rd., Gettysburg, PA 17325
 Attorney: John W. Phillips, Esq., Attorney at Law, 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF GEORGE EMIG, DEC'D
 Late of Conewago Township, Adams County, Pennsylvania

Administrator: Donald J. Emig
 Attorney: Michael E. Dows, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF BIRNIE W. REINAMAN, a/k/a BERNIE W. REINAMAN, DEC'D
 Late of Germany Township, Adams County, Pennsylvania

Administrator, c.t.a.: Wayne A. Reinaman, 253 High Meadow Road, Reisterstown, MD 21136
 Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF GLENN M. SHIELDS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Administrator: Lynn M. Shields, 59 Knoxlyn Road, Gettysburg, PA 17325
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MABEL KATHRYN WOLF, a/k/a MABEL K. WOLF, DEC'D

Late of Berwick Township, Adams County, Pennsylvania
 Executrix: Loretta K. Wentz, 79 Heritage Court, New Oxford, PA 17350
 Attorney: Louis T. Guthrie, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

Adams County Legal Journal

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No. 34, pp. 195-198

CONTINUING LEGAL EDUCATION PROGRAM

1. *Equitable Distribution Update*

Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.

Room 307B, Adams County Courthouse—Substantive Law—4 credits.

Ethics—0 credits. Registration through P.B.I. 800-932-4637.

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-596
Action to Quiet Title

LUIGI G. GAUCH, JR., Plaintiff,
vs.

JONATHAN WRIGHT, THOMAS
WRIGHT, WILLIAM BATEMAN, WILLIAM
OYSTER, aka WILLIAM OISTER,
ELIZABETH OYSTER, aka ELIZABETH
OASTER, aka ELIZABETH EYSTER,
JACOB EYSTER, MICHAEL NEWMAN,
SAMUEL EYSTER, aka SAMUEL
OASTER, aka SAMUEL OYSTER,
JONAS ROUTSONG, aka JONAS
RAUNZAHN, aka JONAS RAUTZAHN,
JOHN DOE, BEN THOMAS, LEROY
ROUTSONG, WILLIAM O. ROUTSONG,
JR., ALEXS. CICHESKIE, DOROTHY R.

CICKESKIE, R. DANIEL KETCHUM,
JASON L. BOWIE, SR., ALICEL BOWIE,
AND PAUL J. KUHN, their respective
heirs and/or assigns, Defendants.

TO: Jonathan Wright, Thomas Wright,
William Bateman, William Oyster, aka
William Oister, Elizabeth Oyster, aka
Elizabeth Oaster, aka Elizabeth Eyster,
Jacob Eyster, Michael Newman, Samuel
Eyster, aka Samuel Oaster, aka Samuel
Oyster, Jonas Routsong, aka Jonas
Raunzahn, aka Jonas Rautzahn, John
Doe, Ben Thomas, their respective heirs
and/or assigns:

Date of Notice: January 3, 1997

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE
YOU HAVE FAILED TO TAKE ACTION
REQUIRED OF YOU IN THIS CASE.
UNLESS YOU ACT WITHIN TEN (10)

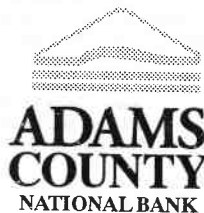
DAYS FROM THE DATE OF THIS NOTI-
TICE, A JUDGMENT MAY BE ENTERED
AGAINST YOU WITHOUT A HEARING
AND YOU MAY LOSE YOUR PROP-
ERTY OR OTHER IMPORTANT RIGHTS.
YOU SHOULD TAKE THIS NOTICE TO
A LAWYER AT ONCE. IF YOU DO NOT
HAVE A LAWYER OR CANNOT AFFORD
ONE, GO TO OR TELEPHONE THE FOL-
LOWING OFFICE TO FIND OUT WHERE
YOU CAN GET LEGAL HELP.

Court Administrator
Adams County Courthouse
Gettysburg, Pennsylvania 17325
Telephone Number: 717-334-6781

Bigham & Puhl
Edward G. Puhl, Esquire
16 Lincoln Square
Gettysburg, PA 17325

1/17

Our Trust Department
makes a business of caring
for other people's property.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 91-S-5 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail and washer in the centerline of the Emmitsburg Road (US Business Route 15) on line of land of The United States of America; thence along land of The United States of America and passing through a US government monument 33.34 feet from the beginning of this course, North 87 degrees 55 minutes 30 seconds East, 182.10 feet to an iron pin at corner of Lot No. 4; thence along Lot. No. 4, South 02 degrees 04 minutes 30 seconds East, 199.98 feet to an iron pin at corner of Lot No. 2; thence along Lot No. 2 and passing through a reference iron pin 29.87 feet from the end of this course, North 71 degrees 49 minutes 20 seconds West, 277.40 feet to a nail in the centerline of the Emmitsburg Road; thence in the centerline of the Emmitsburg Road, North 34 degrees 51 minutes 40 seconds East, 130.04 feet to the above described place of BEGINNING. CONTAINING 35,487 square feet or .815 Acre.

The above description was taken from a subdivision plan of the Crouse & McDonnell development recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 69.

BEING THE SAME PREMISES which Patricia K. Crouse, widow, E. A. McDonnell and Ethel B. McDonnell, husband and wife, Patricia K. Crouse and E. A. McDonnell, a partnership, trading as, Crouse & McDonnell, by deed dated 10/9/87 and recorded 10/13/87 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 470-526, granted and conveyed unto Ronald E. Rotz and Cheryl B. Rotz, husband and wife.

IMPROVED WITH DWELLING.

SEIZED and taken into execution as the property of **Ronald E. Rotz and Cheryl B. Rotz** and to be sold by me Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA December 12, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/3, 10 & 17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about December 31, 1996, for the incorporation of LEONARD J. FERRARA COMPANY, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall provide pension administration and financial services and shall have the authority to engage in all activities permitted by law. The initial registered office of the corporation is 247 Baltimore Street, Gettysburg, Pennsylvania, 17325.

Wilcox, James and Cook Attorneys at Law 234 Baltimore Street Gettysburg, PA 17325

1/17

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, PA of an application for registration under the Fictitious Name Act. The name of the business is D & L ENTERPRISES with its principal place of business at 3574 Taneytown Road, Gettysburg, Pennsylvania. The owners of the business are Donald L. Yingling and Linda L. Yingling, of 3574 Taneytown Road, Gettysburg, Pennsylvania.

Robert G. Teeter Teeter, Teeter & Teeter 108 West Middle Street Gettysburg, PA 17325

1/17

FICTITIOUS NAME NOTICE

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on December 11, 1996, pursuant to the Fictitious Name Act, setting forth that Jad S. Sneeringer, of 640 Delone Avenue, McSherrystown, PA 17344, is the only person owning or interested in a business, the character of which is to provide residential home inspections and that the name, style and designation under which said business is and will be conducted is QUALITY PLUS HOME INSPECTIONS and the location where said business is and will be conducted is 640 Delone Avenue, McSherrystown, PA 17344.

Rudisill, Guthrie, Nonemaker, Guthrie & Yingst Solicitor

1/17

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of an Act of the General Assembly, approved December 16, 1982, P.L. 1309, there has been filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on the 12th day of December, 1996, a certificate for the conduct of a business in Adams County, Pennsylvania, under the fictitious name, style or designation of "THE GOLDEN GALLERY" with its principal place of business at 370 Ridge Road, York Springs, Pennsylvania, 17372. The name and address of the person owning or interested in said business is Emory C. Golden, of 480 Ridge Road, York Springs, Pennsylvania, 17372.

Hartman & Yannetti Attorneys at Law 126 Baltimore Street Gettysburg, PA 17325 Solicitors

1/17

GRAY VS. LEER

1. As a matter of public policy, the Courts favor settlement of disputes by arbitration.
2. Once the issue of the assets of the partnership was submitted to the arbitrators, it mattered not where those assets were located and the parties were bound by the award entered and bound to abide by its terms.
3. The arbitrator has the authority to decide all matters necessary to dispose of the claim and he is the final judge of both law and fact.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-259, C. ADAIR GRAY AND DEBRA G. GRAY VS. DANIEL C. LEER, JACQUELINE K. LEER AND JUNE J. SHOOK.

Larry W. Wolf, Esq., for Plaintiffs

Gary E. Hartman, Esq., for Defendants Leer

Karen N. Connelly, Esq., for Defendant Shook

OPINION ON PLAINTIFFS' PRELIMINARY OBJECTIONS

Kuhn, J., April 23, 1996.

On March 15, 1995, Plaintiffs, C. Adair Gray and Debra G. Gray, filed a Complaint in equity against Defendants, Daniel C. Leer and Jacqueline K. Leer, husband and wife, and June J. Shook. According to the averments of the Complaint as well as the exhibits attached thereto Plaintiffs are contending that the Leers owned a farm in Pennsylvania which an arbitration panel in North Carolina in December, 1994, determined to be an asset of a partnership formed between the Grays and the Leers. The panel directed that all partnership assets be sold, the partnership liabilities be satisfied and after certain credits the profits be divided. The Grays allege that contrary to the arbitration decision, the Leers transferred title of the farm real estate to Mrs. Leer's mother, June Shook. The ostensible reason for the transfer to Shook was a deed in lieu of foreclosure. The Grays contend that the transfer to Shook was fraudulent and seek to have it set aside.

The Leers filed an Answer with New Matter and Counterclaim to which the Grays have filed Preliminary Objections.

The Grays moved to strike Paragraph 13 of the New Matter wherein it is alleged that the Grays "forfeited any right to equitable relief because of their unclean hands in that they have failed to honor the Arbitration Award referenced in their complaint, and have converted partnership assets to their own use." The Grays argue that the Leers have failed to allege the manner in which they have failed to honor the Arbitration Award. Knowledge of what assets were allegedly con-

verted, and when, is basic and critical to any response. We agree that the averment lacks specificity.

Next the Grays demurrer to Paragraph 14 of the New Matter wherein the Leers claim that the North Carolina Arbitration award was capricious, arbitrary, lacking in full faith and credit and is unenforceable in Pennsylvania.

Both North Carolina and Pennsylvania have adopted the Uniform Arbitration Act, G.S. §1-567.1 et seq. and 42 Pa. C.S.A. §7301 et seq., respectively. Here the parties executed a written agreement to arbitrate various issues regarding the existence of a partnership, the assets, the liabilities and the disposition of the same. The Act provides that unless a written agreement to arbitrate provides otherwise, an agreement to arbitrate a dispute on a non-judicial basis shall be presumed to be an agreement for common-law arbitration. 42 Pa. C.S.A. §7302(a). Here the Grays and the Leers entered an agreement for common-law arbitration to resolve a controversy. The agreement provided that all parties would “abide by and perform any award rendered by the arbitrator(s),” that it was the “exclusive remedy for this dispute,” and that the parties would “not later litigate these matters in civil court.” (Para. 7 of Arbitration Agreement.)

As a matter of public policy the courts favor settlement of disputes by arbitration. *Elkins & Co. v. Suplee*, 371 Pa. Super. 570, 574, 538 A.2d 883, 885 (1988). Agreements to arbitrate are interpreted in accordance with principles of contract law. Under contract law, the parties’ intent is paramount and it is regarded to be embodied within the writing, read in its entirety. *Giant Markets, Inc. v. Sigma Marketing Systems, Inc.*, 313 Pa. Super. 115, 123, 459 A.2d 765, 769 (1983). The Leers and the Grays voluntarily submitted themselves to the discretion of the arbitrators. Once the issue of the assets of the partnership was submitted to the arbitrators, it mattered not where those assets were located. The parties were bound by the award entered and bound to abide by its terms.

Whether the award is vague or inequitable is irrelevant at this point. First, there is no evidence that any party to the arbitration moved to modify the award within 30 days after it was entered. Any challenge to an award made thereafter is too late. *Elkins & Co. v. Suplee*, supra., 42 Pa. C.S.A. §7342(b). Second, although there is no indication that a judgment or decree was entered on the award, it appears from the agreement that the award “may be entered as a judgment in a court of competent jurisdiction.” (Para. 7 of Arbitration Agreement.) Similar

language in Elkins & Co. was sufficient to confer jurisdiction upon Pennsylvania courts to enter judgment upon an arbitration award entered in New York. Thus, Grays could make application to enter a decree upon the award at any time. 42 Pa. C.S.A. §7342(b). As such they certainly appear to have a right to argue that an asset ruled by the arbitrators to be partnership property was fraudulently conveyed. Third, anyone taking an appeal from a common law arbitration must show by clear, precise and indubitable evidence that he was denied a hearing or that there was fraud, misconduct, corruption or some other irregularity of this nature on the part of the arbitrator which caused him to render an unjust, inequitable or unconscionable award. An irregularity refers to the process employed in reaching the result and not to the result itself. *Chervenak, Keane & Comp., Inc. v. Hotel Rittenhouse Associates, Inc.*, 328 Pa. Super. 357, 362, 477 A.2d 482, 485 (1984). In these matters the arbitrator has the authority to decide all matters necessary to dispose of the claim and he is the final judge of both the law and fact. There is no authority to vacate his decision for a mistake of either. *Hassler v. Columbia Gas Transmission Corp.*, 318 Pa. Super. 302, 306, 464 A.2d 1354, 1356 (1983); *Giant Markets, Inc. v. Sigma Marketing Systems, Inc.*; *supra.*, 313 Pa. Super. at 124, 459 A.2d at 769. Therefore, if the arbitrators made any legal or factual errors, they cannot be reviewed even if raised by Leers. We are aware of no irregularities on the part of the arbitrator and the Leers have not alleged any. At this point we are left with the conclusion that the Leers are bound by the terms of the arbitration award.

This conclusion also resolves the demurrer to Paragraph 15 of the New Matter wherein the Leers allege that "the Arbitration Award is unenforceable in the Commonwealth because of lack of consideration."

Next, the Grays demurrer to Paragraph 16 of New Matter wherein it is alleged that the arbitration award is unenforceable because an impossibility of performance in that the farm real estate is subject to an agreement of sale dated March 22, 1993, with Liberty Associates for \$650,000. The Grays counter by arguing that the agreement lapsed by its terms on or about July 30, 1993. There certainly are issues to be resolved regarding that contract including but not limited to 1) whether there is valid consideration, 2) did the buyer use best efforts to obtain subdivision approval before July 30, 1993, 3) were 90 day extensions granted by the Leers, 4) after the arbitration decision could the Leers grant such extensions, 5) whether an addendum attached to New

Matter was executed by the Leers, and, if so, was it before or after the arbitration decision, and 6) whether the addendum applies to the March 22, 1993, agreement of sale because, by its terms, it refers to a contract dated July 27, 1992. These are all very interesting questions but that agreement of sale is not a defense to the instant suit. As noted above, the Grays seek to set aside what they contend is a fraudulent conveyance. If they are successful and if the March 22, 1993 agreement of sale is valid, the partnership's interest in the real estate may be limited, however, it would be up to Liberty Associates, not the Leers, to have that agreement enforced. The demurrer will be granted.

Finally, the Grays demurrer to the counterclaim wherein the Leers claim 1) the Grays breached the oral partnership agreement (Para. 20, 21), 2) the Grays withdrew from the partnership (Para. 23), and 3) there never was a partnership (Para. 25). These issues were all the subject of the North Carolina arbitration and cannot be re-litigated.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 23rd day of April, 1996, Plaintiffs' Preliminary Objections of the New Matter and Counterclaim filed by Defendants, Leer, are granted. Paragraphs 14, 15 and 16 of New Matter is stricken. The counterclaim is dismissed. Said Defendants are granted twenty (20) days from the date of mailing of this Order to file an amended pleading.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF MARY C. BENNETT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executrix: Mary K. Dick, 457 Mt. Hope Road, Fairfield, PA 17320
 Attorney: John R. White, Campbell & White, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF J. CLAIR DONLEY, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Executor: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325
 Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ESTHER C. L. KEEFER, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania
 Co-Executors: John H. Keefer, 465 Hillcrest Drive, Aberdeen, MD 21001; Mary Esther Reed, 301 Two Taverns Road, Littlestown, PA 17340
 Attorney: David K. James, III, Esquire, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DORIS E. KUHN, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania
 Executrix: Pamela K. Burnard, R. D. #4, Box 4104A, Spring Grove, PA 17362
 Attorney: Craig A. Diehl, Esquire, 402 N. Main Street, Spring Grove, PA 17362

ESTATE OF REIDA LONGANECKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executrix: Mrs. Mary S. Longanecker, 10 Windbriar Lane, Gettysburg, PA 17325

ESTATE OF ETHEL L. REED, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executors: Peggy J. Breighner, 530 Boyd School Road, Gettysburg, PA 17325; John S. Reed, 850 Bullfrog Road, Gettysburg, PA 17325
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ALFRED JOSEPH SMITH, DEC'D

Late of Hanover, Adams County, Pennsylvania
 Executor: Elaine D. Smith, 502 Jackson Street, Hanover, PA

ESTATE OF VERNA I. STOCK, a/k/a VERNA O. STOCK, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Administrator: Barbara Y. Spicer, 685 Blackhorse Tavern Road, Gettysburg, PA 17325
 Attorney: Bruce R. Spicer, Esq., McNees, Wallace and Nurick, P. O. Box 1166, 100 Pine Street, Harrisburg, PA 17108-1166

SECOND PUBLICATION

ESTATE OF DOROTHY P. DAVIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
 Executrices: Shirley M. King, Arlene L. Moul, and Ruthann K. Weidner
 Attorney: Alan M. Cashman, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF DOLORES G. WISLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Administrator, C.T.A.: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF RUTH B. GARRETT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Arthur William Michael, 1130 William St., Hanover, PA 17331
 Attorney: G. Steven McKonly, 119 Baltimore Street, Hanover, Pennsylvania 17331

ESTATE OF ESTHER C. LARUE, DEC'D

Late of Piney Mountain, 6375 Chambersburg Road, Fayetteville, Adams County, Pennsylvania
 Administrator: Donald R. Miller, 8045 Carlisle Pike, York Springs, PA 17372
 Attorney: David J. Lenox, Esquire, Jan M. Wiley & Associates, One South Baltimore Street, Dillsburg, PA 17019

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

**CIVIL ACTION—LAW
 NO. 96-S-603**

CHARLES H. MORT AND AGNES A. MORT, Plaintiffs,

vs.

SUSAN L. BRINGEN, her spouse, heirs and assigns and CECILIA A. FASULO, her spouse, heirs and assigns, Defendants.

ORDER OF COURT

AND NOW, this 23rd day of December, 1996, upon consideration of the attached Motion, the following is HEREBY ORDERED:

1. Judgment by default in favor of Plaintiffs and against Defendants in this matter is hereby granted;

2. Title is hereby quieted to the land sold by the Adams County Tax Claim Bureau to Plaintiffs by Tax Claim Deed registered in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 445, at page 159, being the same land which Maxwell B. Hope, by deed dated January 29, 1981, deeded to Defendants, as set out in Deed Book 359, at page 212, as recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, with a full description of said property being attached hereto and incorporated herein by reference as Exhibit "A"; and

3. Defendant Susan L. Bringen, her spouse, heirs or assigns, and Defendant Cecilia A. Fasulo, her spouse, heirs or assigns, are hereby forever barred from asserting any right, lien, or interest in the land as described in Exhibit "A" which is inconsistent with the interest or claim of Plaintiffs.

By the Court,
 /S/ Oscar F. Spicer

1/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is LANCOM TECHNOLOGIES, INC.

1/17

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-513
Action to Quiet Title

U & T, Inc., Plaintiff,

vs.

VELVIN S. ANDERSON, his heirs, administrators, executors, successors and assigns; DONALD M. SMITH and SANDRA J. SMITH, their heirs, administrators, executors, successors and assigns; and THE TAX CLAIM BUREAU OF THE COUNTY OF ADAMS, Defendants.

TO: Velvin S. Anderson, his heirs, administrators, executors, successors and assigns

TAKE NOTICE that on the 11th day of June, 1996, U & T, Inc., filed its Complaint against the above-named Defendants in an Action to Quiet Title docketed to No. 96-S-513 with reference to a tract of land situate in Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Ringneck Trail at Lot No. 156; by said lot South 33 degrees 57 minutes 21 seconds West, 225 feet to Lot No. 145; thence by said lot North 56 degrees 2 minutes 39 seconds West, 100 feet to Lot No. 158; thence by said lot North 33 degrees 57 minutes 21 seconds East, 225 feet to a point in the center of said Ringneck Trail; thence in said Ringneck Trail South 56 degrees 2 minutes 39 seconds East, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section P, Charnita" dated August 11, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 52.

The Complaint requests the Court to enter a decree that Plaintiff owns absolutely and is entitled to the quiet and peaceful possession of said property as against Defendants and all persons claiming under them, and that Defendants and all persons claiming under them have no estate, right, title, lien or interest in or to said property or any part thereof, and that title to said property be quieted in Plaintiff against all claims of Defendants and all persons claiming under them.

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money

claimed in the Complaint or for any other claim or relief requested by the Plaintiff. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral Service of the
York County Bar Association
York County Bar Center
137 East Market Street
York, Pennsylvania 17401
Telephone No. (717) 854-8755

AVISO

USTED HA SIDO DEMANDADO EN LA CORTE. Si usted quiere defenderse en contra estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Usted debe presentar una aparincia escrita o en persona or por abogado y archivar en la corte an forma escrita sus defensas o sus objeciones a las demandas en contra suya.

Se ha avisado que si usted no se defienda, la corte tomara medidas y puede entrar una orden contra usted sin previo aviso o notificacion y por cualquier queja o alivio que es pedido en la peticion de demanda. USTED PUEDE PERDER DINERO O PROPIEDADES O OTROS DERECHOS IMPORTANTES PARA USTED.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI USTED NO TIENE O CONOCES UN ABOGADO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEQUIR ASISTENCIA LEGAL.

Lawyer Referral Service of the
York County Bar Association
York County Bar Center
137 East Market Street
York, Pennsylvania 17401
Telephone No. (717) 854-8755

1/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about December 20, 1996, for the incorporation of MR. G' FLAVOR FREEZE, INC., under the Pennsylvania Business Corporation Law of 1988. The corporation shall sell ice cream and food items and shall have the authority to engage in all activities permitted by law. The initial registered office of the corporation is 69 W. Hanover Street, Gettysburg, Pennsylvania, 17325.

Wilcox, James and Cook
Attorneys at Law
234 Baltimore Street
Gettysburg, PA 17325

1/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on October 17, 1996.

The name of the corporation is SB CAR SALES, INC.

The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Robert E. Campbell
Campbell & White
122 Baltimore Street
Gettysburg, PA 17325
Attorneys

1/17

Adams County Legal Journal

Vol. 38

January 24, 1997

No. 35, pp. 199-202

CONTINUING LEGAL EDUCATION PROGRAM

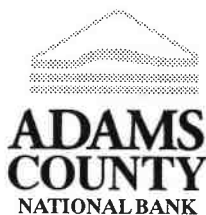
1. *Equitable Distribution Update*

Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.

Room 307B, Adams County Courthouse—Substantive Law—4 credits.

Ethics—0 credits. Registration through P.B.I. 800-932-4637.

Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-721 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Menallen, County of Adams, and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a rebar set in the centerline of Opossum Hill Road (T-393), said rebar marking the common point of adjoiner of Lots #2 and #3 on the hereinafter mentioned plan with the centerline of Opossum Hill Road; thence departing from the centerline of Opossum Hill Road, and extending along Lot #2, North zero (00) degrees zero (00) minutes zero (00) seconds West, through a rebar set on the northernmost dedicated right-of-way of Opossum Hill Road, a distance of twenty-five and no hundredths (25.00) feet from the origin of this call, for a total distance of two hundred twenty-five and no hundredths (225.00) feet to a rebar at lands now or formerly of James Schulteis; thence extending along lands now or formerly of James Schulteis, South eighty-six (86) degrees forty-nine (49) minutes twenty-five (25) seconds East, for a distance of two hundred ten and no hundredths (210.00) feet to a rebar at Lot #4 on the hereinafter mentioned plan; thence extending along Lot #4, South zero (00) degrees zero (00) minutes zero (00) seconds East, through a rebar set on the northernmost dedicated right-of-way line of Opossum Hill Road, a distance of twenty-five and no hundredths (25.00) feet from the terminus of this call, for a total distance of two hundred twenty-five and no hundredths (225.00) feet to a rebar set in the centerline of Opossum Hill Road; thence extending in and through the centerline of Opossum Hill Road, North eighty-six (86) degrees forty-nine (49) minutes twenty-five (25) seconds West, for a distance of two hundred ten and no hundredths (210.00) feet to a rebar set in the centerline of Opossum Hill Road, at Lot #2 on the hereinafter mentioned plan, said rebar marking the place of BEGINNING.

CONTAINING 1.083 acres, and being designated as Lot #3 on a plan of subdivision prepared for Pitzer Bros. Fruit Farms, Inc. by Mark A. Kuntz, Registered Surveyor, dated April 16, 1991,

and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 60, at page 75.

SAID PARCEL BEING CREATED by subdivision of Lot #9 of a Plan of Subdivision of Pitzer Bros. Fruit Farms, Inc. found in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 55, at page 46A.

BEING THE SAME PREMISES which Pitzer Bros. Fruit Farm, Inc. by deed dated August 4, 1994 and recorded August 15, 1994 in the Office of Deeds in and for Adams County, Pennsylvania in Deed Book 0925, at page 0246, granted and conveyed unto Kenneth L. Hoover and Julie A. Hoover, husband and wife.

Tax Parcel No.: Map F-5, Parcel 142.

SEIZED and taken into execution as the property of **Kenneth L. Hoover and Julie A. Hoover** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 7, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-906 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land.

SITUATE in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 965 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of

Adams County, Pennsylvania, in Plat Book 1 at Page 6, and subject to all legal highways, easements, rights of way and restrictions of record.

TAX PARCEL NUMBER: 12-57

TITLE TO SAID PREMISES IS VESTED IN Mark D. Garrett and Deborah A. Garrett, husband and wife by Deed from Eric W. Wallen and Deborah M. Wallen, h/w, and Wallen Construction, Inc., a Pa. Corp. dated 11/24/93 recorded 11/29/93 in Record Book 812 Page 272.

SEIZED and taken into execution as the property of **Deborah A. Garrett and Mark D. Garrett** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 2, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

COMMONWEALTH VS. JOHNSON

A new trial will be denied where, in a DUI trial, the Court charged that no presumption of guilt or that Defendant had something to hide could be extracted from her refusal to submit to a blood test but that such refusal was a factor to be considered together with all other evidence in the case.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-496-95, COMMONWEALTH VS. PHYLLIS A. JOHNSON.

Bernard A. Yannetti, Jr., Esq., Assistant District Attorney for the Commonwealth

Anthony Miley, Esq., for the Defendant

OPINION ON DEFENDANT'S POST-SENTENCE MOTION

Kuhn, J., April 25, 1996.

On January 23, 1996, Defendant, Phyllis A. Johnson, was found guilty by a jury of Court I, Driving Under the Influence, in violation of 75 Pa. C.S.A. §3731(a)(1). Sentencing was entered on March 4, 1996. The same day Defendant filed her Post-Sentence Motion wherein she challenged the Court's instruction to the jury regarding Defendant's refusal to submit to chemical testing.

Section 1547(e) of the Vehicle Code, 75 Pa. C.S.A. §1547(e), provides

(e) Refusal admissible in evidence—In any . . . criminal proceeding in which the defendant is charged with a violation of section 3731 . . . the fact that the defendant refused to submit to chemical testing as required by subsection (a) may be introduced in evidence along with other testimony concerning the circumstances of the refusal. No presumption shall arise from this evidence but it may be considered along with all other factors concerning the charge.

In the case sub judice the court charged the jury on Defendant's refusal as follows:

At the DUI center, the Commonwealth has taken the position that she refused to take a Breathalyzer exam and that she was given the opportunity to do so. There is a provision in the Vehicle Code which is called the Implied Consent Law and when a person has been stopped for what the officer believes to be driving under the influence, the

officer has a right to ask the individual to take one of three types of blood alcohol tests. One can be a breath test like what was requested here. The Vehicle Code provides that the driver has the right to refuse that test. If they refuse it, there are certain consequences that arise from that which you heard Corporal Hofe talk about. We're not here to determine whether any of those consequences should be applied here or not. The purpose of bringing out the information about the refusal is to tell you that this is a factor that you can consider in determining whether she was or was not under the influence of alcohol to the degree that I described. The way you think about it is this: On the one hand you may say, well, her refusal is an indication that she had something to hide and therefore did not want to be tested because by being tested it would reveal information that would be harmful to her. On the other hand, you may say to yourself, well, there are reasons that she refused other than a feeling of guilt or a consciousness of guilt and that is I think her testimony and you'll have to recall this was something to the effect that she was nervous and scared and didn't feel that she was under the influence and didn't need to feel it was necessary to take the test. You can look for those explanations and basically what I'm telling you is that with respect to the refusal there is no presumption that she's guilty of this offense or that automatically you must conclude she had something to hide. That's for you to decide whether that refusal has any bearing on what you ultimately conclude in this case. That's completely up to you.

Defendant claims this instruction violates the ruling in the unpublished Superior Court opinion in *Commonwealth v. Keenan*, 1995 WL 726540 (Pa. Super. filed December 8, 1995). In *Keenan* the trial court charged the jury that,

The Commonwealth argues to you that the testimony tending to show that the defendant refused to give a sample of his blood indicates that he was conscious that he was guilty of driving under the influence. The defendant argues that the evidence means no such thing.

If you believe that the defendant was asked for and refused to give a sample of his blood for testing, you may consider that fact along with all the circumstances surrounding the request for the sample and the defendant's refusal, and any reasons the defendant gave for refusing, when you are deciding whether the defendant was under the influence of alcohol. Give the defendant's refusal whatever weight and meaning you think it deserves. (p. 2.)

In granting the defendant a new trial Superior Court in Keenan stated that,

the court was correct in advising the jury that the "weight" to be given to the appellant's refusal to submit to a blood test was for the jury to decide. *Id.* However, it was error for the court to embellish the instructions by cautioning the jury that it could assign "defendant's refusal whatever weight and meaning [the jury] th[ought] it deserve[d]." Implicit in such an instruction is that the jury may "infer the appellant's consciousness of guilt"—which was argued by the prosecution to the jury—from the refusal, as well as the jury not giving any weight to the refusal.

With the preceding equally likely inferences as possible results from the ambivalent instruction, the former being in direct contradiction to Section 1547(e)'s prohibitive "presumption" not allowed to be drawn from evidence of a refusal and the latter an innocuous result, we note that "[t]o what extent it prejudiced [the appellant's] case it is impossible to say. It is enough that it may have done so." (p. 2-3.)

A careful reading of the entire charge in the instant case shows that it differs significantly from the charge in Keenan. Specifically, the Keenan opinion stated that

permitting the jury here to attribute "whatever weight" it chose to the appellant's refusal to submit to a blood test without qualification was error: The jury should have been instructed that no presumption may be extracted from the defendant's refusal from such evidence of refusal, but that such a finding should be considered together with all other evidence in the case in assessing the defendant's guilt or innocence. (p. 3.)

As can be seen, this Court's charge specifically advised the jury that Defendant's refusal was a factor that could be considered but "that with respect to the refusal there is no presumption that just because she refused . . . she's guilty . . . or that . . . she had something to hide." The undersigned believes that the instant charge did comply with the dictates of Keenan and differs significantly from the charge found to be improper in that case.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 25th day of April, 1996, Defendant's Post-Sentence Motion is denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF ANNA CLAPSADDLE a/k/a ANNA B. CLAPSADDLE, DEC'D
Late of Straban Township, Adams County, Pennsylvania

Executrix: Edith M. Funt, P.O. Box 183, 121 W. York Street, Biglerville, PA 17307

Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VIOLA C. FISSEL, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: E. Virginia Milhimes, 240 W. Gay St., Red Lion, PA 17356

Attorney: Walton V. Davis, 116 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHAROLLET R. HARNISH, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Carol A. Banks, R.R. 1, Box 24A, Huntingdon, PA 16652

Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MAGGIE MAE MILLAR, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executors: Nancy Mae Sipe, 101 E. High Street, New Oxford, PA 17350; Robert Henry Millar, 30 Oak Drive, New Oxford, PA 17350

Attorney: G. Steven McKonly, Attorney, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF LOUISE G. WEAVER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executor: Byron L. Groft, 440 West Hanover Street, Hanover, PA 17331

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

SECOND PUBLICATION

ESTATE OF MARY C. BENNETT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Mary K. Dick, 457 Mt. Hope Road, Fairfield, PA 17320

Attorney: John R. White, Campbell & White, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF J. CLAIR DONLEY, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ESTHER C. L. KEEFER, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Co-Executors: John H. Keefer, 465 Hillcrest Drive, Aberdeen, MD 21001; Mary Esther Reed, 301 Two Taverns Road, Littlestown, PA 17340

Attorney: David K. James, III, Esquire, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DORIS E. KUHN, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Pamela K. Burnard, R. D. #4, Box 4104A, Spring Grove, PA 17362

Attorney: Craig A. Diehl, Esquire, 402 N. Main Street, Spring Grove, PA 17362

ESTATE OF REIDA LONGANECKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Mrs. Mary S. Longanecker, 10 Windbriar Lane, Gettysburg, PA 17325

ESTATE OF ETHEL L. REED, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Peggy J. Breighner, 530 Boyd School Road, Gettysburg, PA 17325; John S. Reed, 850 Bullfrog Road, Gettysburg, PA 17325

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ALFRED JOSEPH SMITH, DEC'D

Late of Hanover, Adams County, Pennsylvania

Executor: Elaine D. Smith, 502 Jackson Street, Hanover, PA

ESTATE OF VERNA I. STOCK, a/k/a VERNA O. STOCK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Barbara Y. Spicer, 685 Blackhorse Tavern Road, Gettysburg, PA 17325

Attorney: Bruce R. Spicer, Esq., McNees, Wallace and Nurick, P. O. Box 1166, 100 Pine Street, Harrisburg, PA 17108-1166

THIRD PUBLICATION

ESTATE OF DOROTHY P. DAVIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrices: Shirley M. King, Arlene L. Moul, and Ruthann K. Weidner

Attorney: Alan M. Cashman, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF DOLORES G. WISLER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator, C.T.A.: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-600 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract or lot of ground situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described and known as follows:

Lot No. 99 on a Plan of Lots of Lake Heritage Subdivision, said Plan duly entered and appearing of Record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Deed Book 4, Page 233.

Being the same real estate conveyed to James P. Walsh and Elizabeth J. Walsh, husband and wife, by deed of James F. Miskel and Mary Ann Miskel, husband and wife, dated July 7, 1983 and recorded in Adams County Record Book 369, Page 245.

Improved with a one and one half story dwelling and having a street address of 99 Meade Drive, Gettysburg, Pennsylvania 17325.

SEIZED and taken into execution as the property of **James P. Walsh and Elizabeth J. Walsh** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 9, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 7, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Friday, February 7, 1997, at 10:30 a.m.

BRYAN—Orphans' Court Action Number OC-162-96. The First and Final Account of Laura B. Zimmerman, Executrix of the Estate of Rose M. Bryan, deceased, late of 72 Sycamore Lane, Hanover, Conewago Township, Adams County, Pennsylvania.

RAFFENSPERGER—Orphans' Court Action Number OC-139-94. The First and Final Account of PNC Bank, N.A., Executor of the Last Will and Testament of Martha E. Raffensperger, deceased, late of Straban Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Martha E. Raffensperger, deceased, under P.E.F. Code Sec. 3501.2.

Peggy J. Breighner
Clerk of Courts

1/24, 31

Adams County Legal Journal

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No. 36, pp. 203-206

CONTINUING LEGAL EDUCATION PROGRAM

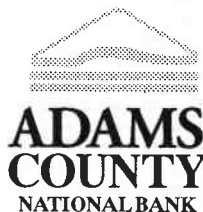
1. *Equitable Distribution Update*

Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.

Room 307B, Adams County Courthouse—Substantive Law—4 credits.

Ethics—0 credits. Registration through P.B.I. 800-932-4637.

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-721 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Menallen, County of Adams, and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a rebar set in the centerline of Opossum Hill Road (T-393), said rebar marking the common point of adjoiner of Lots #2 and #3 on the hereinafter mentioned plan with the centerline of Opossum Hill Road; thence departing from the centerline of Opossum Hill Road, and extending along Lot #2, North zero (00) degrees zero (00) minutes zero (00) second West, through a rebar set on the northernmost dedicated right-of-way of Opossum Hill Road, a distance of twenty-five and no hundredths (25.00) feet from the origin of this call, for a total distance of two hundred twenty-five and no hundredths (225.00) feet to a rebar at lands now or formerly of James Schulteis; thence extending along lands now or formerly of James Schulteis, South eighty-six (86) degrees forty-nine (49) minutes twenty-five (25) seconds East, for a distance of two hundred ten and no hundredths (210.00) feet to a rebar at Lot #4 on the hereinafter mentioned plan; thence extending along Lot #4, South zero (00) degrees zero (00) minutes zero (00) seconds East, through a rebar set on the northernmost dedicated right-of-way line of Opossum Hill Road, a distance of twenty-five and no hundredths (25.00) feet from the terminus of this call, for a total distance of two hundred twenty-five and no hundredths (225.00) feet to a rebar set in the centerline of Opossum Hill Road; thence extending in and through the centerline of Opossum Hill Road, North eighty-six (86) degrees forty-nine (49) minutes twenty-five (25) seconds West, for a distance of two hundred ten and no hundredths (210.00) feet to a rebar set in the centerline of Opossum Hill Road, at Lot #2 on the hereinafter mentioned plan, said rebar marking the place of BEGINNING.

CONTAINING 1.083 acres, and being designated as Lot #3 on a plan of subdivision prepared for Pitzer Bros. Fruit Farms, Inc. by Mark A. Kuntz, Registered Surveyor, dated April 16, 1991,

and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 60, at page 75.

SAID PARCEL BEING CREATED by resubdivision of Lot #9 of a Plan of Subdivision of Pitzer Bros. Fruit Farms, Inc. found in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 55, at page 46A.

BEING THE SAME PREMISES which Pitzer Bros. Fruit Farm, Inc. by deed dated August 4, 1994 and recorded August 15, 1994 in the Office of Deeds in and for Adams County, Pennsylvania in Deed Book 0925, at page 0246, granted and conveyed unto Kenneth L. Hoover and Julie A. Hoover, husband and wife.

Tax Parcel No.: Map F-5, Parcel 142.

SEIZED and taken into execution as the property of **Kenneth L. Hoover and Julie A. Hoover** and to be sold by me

Bernard V. Miller

Sheriff

Sheriff's Office, Gettysburg, PA

January 7, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-906 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land.

SITUATE in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 965 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of

Adams County, Pennsylvania, in Plat Book 1 at Page 6, and subject to all legal highways, easements, rights of way and restrictions of record.

TAX PARCEL NUMBER: 12-57

TITLE TO SAID PREMISES IS VESTED IN Mark D. Garrett and Deborah A. Garrett, husband and wife by Deed from Eric W. Wallen and Deborah M. Wallen, h/w, and Wallen Construction, Inc., a Pa. Corp. dated 11/24/93 recorded 11/29/93 in Record Book 812 Page 272.

SEIZED and taken into execution as the property of **Deborah A. Garrett and Mark D. Garrett** and to be sold by me

Bernard V. Miller

Sheriff

Sheriff's Office, Gettysburg, PA

January 2, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

SEILS VS. KNOUSE FOODS COOPERATIVE, INC., ET AL.

1. As a general statement, a nuisance per se is a nuisance at all times and under all circumstances.
2. A public nuisance is an unreasonable interference with a right common to the general public and may include conduct proscribed by statute.
3. To constitute a public nuisance, the complained of activity must have affected the public in general and not merely one person.
4. The Hazardous Sites Cleanup Act, 35 P.S. §6020.101, et seq., does not include diminution in property value or compensatory damages within the concept of "response costs" for which a person who is responsible for the release of a hazardous substance is strictly liable.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-35, CARL A. SEILS AND DEBORAH R. SEILS VS. KNOUSE FOODS COOPERATIVE, INC., M.F.P. ENTERPRISES, INC. AND PET, INCORPORATED.

Gregory B. Abelin, Esq., for Plaintiffs
Kenneth Joel, Esq., for Defendants

**OPINION ON PRELIMINARY OBJECTIONS FILED BY
DEFENDANT, PET, INC., TO PLAINTIFFS'
THIRD AMENDED COMPLAINT**

Kuhn, J., May 16, 1996.

On June 20, 1995, Plaintiffs filed their Third Amended Complaint in this matter, to which Defendant, Pet, Inc., filed certain preliminary objections which are before the Court for disposition. Plaintiffs' amended pleading contains five counts (although labeled as four) and averments which are substantially similar to those set forth in the original complaint.

Plaintiffs allege that they currently own real estate situated along Orchard Lane (TR. 541) in Menallen and Butler Township (¶ 5). Plaintiffs purchased this site from Crestmont Orchards, Inc. on June 16, 1988 (¶ 6). The site was formerly owned by Pet. Allegedly during the 1970s and early 1980s Pet illegally disposed of waste materials, including organic materials, pesticides, herbicides, fertilizers, food processing wastes, spray material bags, oil filters, petroleum products and heavy metals from its canning operations, into an unlined pit located on the real estate now owned by Plaintiffs (¶ 7, 16). Pet sold the real estate to Defendant, M.F.P. on July 24, 1981 (¶ 8).

Plaintiffs claim that in the Spring of 1992, they were advised by a former employee of Pet of the possible existence of an undisclosed waste disposal area on their land (¶ 9). That summer when they began to subdivide their property they contacted Pet to confirm the existence of the alleged dump site but were informed that Pet had no records of

on-site activities (§ 10). Also during the subdivision process the Director of Planning Services for the Adams County Office of Planning and Development advised the Menallen Township supervisors of the possible existence of a former waste disposal operation on the site (§ 11). As a result of this information, the supervisors required that disclosure of the presence of a possible waste site be noted on Plaintiffs' subdivision plan (§ 12).

Plaintiffs aver that the ground water beneath the site is contaminated and that they will incur expenses for clean up, monitoring of the ground water, diminution in value of their property and administrative and legal expenses related to assessment and remediation of the site (§ 17, 22).

In an earlier Opinion (April 25, 1995) in this matter this Court dismissed Plaintiffs' claim under theories of private and public nuisance but left open for further discussion the issue of nuisance per se raised in Paragraph 39 of the Amended Complaint. In Count I of their Third Amended Complaint Plaintiffs again aver a cause of action for nuisance per se to which Pet objects. Perhaps technically Pet has waived this objection by not raising it as to the earlier pleading but we will address that objection now because Plaintiffs have not objected to Pet's objection.

Plaintiffs theorize in Count I that they are entitled to pursue a common law cause of action in nuisance because the Legislature has declared, in the Hazardous Sites Cleanup Act, 35 P.S. §6020.101, et seq., hereafter "H.S.C.A.," at 35 P.S. §6020.1101, that release of a hazardous substance "shall constitute a public nuisance." Possibly this entire discussion is irrelevant because in our earlier Opinion we acknowledged Plaintiffs' right to a private cause of action under H.S.C.A. (now Count III). Frankly, it appears that Plaintiffs are merely being duplicative in Counts I and III. Nevertheless we must now decide whether a common law cause of action will also lie.

As a general statement a nuisance per se is a nuisance at all times and under all circumstances. 28 P.L.E. Nuisance §1. A public nuisance is an unreasonable interference with a right common to the general public. Circumstances that may sustain a finding that an interference with a public right is unreasonable includes whether the conduct is proscribed by statute. Restatement (Second) Torts §821B. Thus, nuisance per se is merely a sub-category of the general theory of public nuisance. Often the concept of public nuisance is advanced in areas of public health and welfare. The Legislature in enacting the H.S.C.A. declared that releasing hazardous substances into the environment poses "a real and substantial threat to the public health and welfare of the residents of this Commonwealth and to the natural resources upon which they rely." 35 P.S. §6020.102(2). There can be little argument

that this declaration of policy is intended to emphasize the serious impact caused by such releases and that such releases do interfere with a right common to the general public. As such we need spend little effort on concluding that the release of hazardous substances constitutes a nuisance per se.

However, as we discussed in our earlier Opinion, although Plaintiffs may have the right to pursue a private statutory cause of action under H.S.C.A. they do not have standing to pursue a common law action for public nuisance. First, to constitute a public nuisance the complained of activity must have affected the public in general and not merely one person. *Feeley v. Borough of Ridley Park*, 121 Pa. Comlth. Ct. 564, 567, 551 A.2d 373, 375 (1988). There is no averment that the contaminants have extended beyond the subject real estate so the right being pursued seems to be purely a private one. In *Philadelphia Electric Company v. Hercules, Inc.*, 762 F.2d 303 (3rd Cir. 1985), the court was faced with deciding whether a current landowner (PECO) had standing to pursue a cause of action sounding in public nuisance against its predecessor in title (PICCO) who occupied land at a time when it was the source of contaminants which seeped into a public waterway (Delaware River). In rejecting PECO's claim the court found as significant that the contaminated condition upon PECO's land was not the result of pollution but rather was the cause of it. Likewise in the instant case the alleged contamination of Plaintiffs' land is not the result of a nuisance created elsewhere but is the source of it.

If Plaintiffs were adjoining landowners we would have no hesitation in finding that they state a cause of action for public nuisance. They offer no authority to support their position in matters involving the right of a successor in title to pursue a claim for nuisance per se as a public nuisance.

Next, Pet argues that Paragraphs 19, 20, 22, 27, 32, 45, 47, 48, 49, 50, 51 and 52 should be stricken as impertinent. These paragraphs essentially aver that Pet failed to disclose the presence of the disposal site in its sale to subsequent owners including on a deed of disclosure. Furthermore, Plaintiffs allege that by such a failure Pet impliedly warranted that no waste products were present or it had no knowledge of them and that such an implied representation was material and relied upon by them. Plaintiffs point to §512(b) of the HSCA, 35 P.S. §6020.512(b) which provides,

(b) Acknowledgment - The grantor, in every deed of conveyance of property on which a hazardous substance is either presently being disposed or has ever been disposed by the grantor or to the grantor's actual knowledge, shall include in the property description section of the deed an

acknowledgment of the hazardous substance disposal . . .
the acknowledgment shall include . . .

Since this is the only authority relied upon by Plaintiffs to support the relevance of the disputed paragraphs and because we find no other relevancy we must sustain the objection. Plaintiffs acquired title to the premises on June 16, 1988. This statutory requirement was not effective until December 17, 1988. Pet was under no legal requirement when it sold the property in 1981 to make such a disclosure.

Disposition of the aforementioned paragraphs effectively eliminates Count V wherein Plaintiffs are pursuing a claim of implied warranty. To the extent sufficient averments remain this count must nevertheless be dismissed. As noted above there was no statutory disclosure requirement prior to Plaintiffs' acquisition of the real estate. Plaintiffs have offered no authority to support a legal theory for implied warranty under the circumstances presented.

Based upon this dismissal of Count V we need not address the statute of limitations issue raised by Pet.

Lastly, Pet requests that Paragraphs 22(C) and (D) be stricken from the Complaint and any relief associated therewith. These paragraphs allege that Plaintiffs have suffered damage to their property (C) and diminution in value of their property (D). As noted by Pet the only counts which remain are one for declaratory judgment (II), an action for response costs under HSCA (III) and an action in equity (IV). The only independent claim which could provide for monetary damages is Count III.

HSCA provides that a person who is responsible for the release of a hazardous substance is strictly liable for "response costs and damages which result from the release" (§702(a)) or "response costs caused by the release" (§1101). We find nothing within the statutory scheme of HSCA which includes diminution in property value or compensatory damages within the concept of "response costs."

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 16th day of May, 1996, in consideration of Preliminary Objections filed by Defendant, Pet, Inc. to Plaintiffs' Third Amended Complaint, it is ordered that:

1. Count I alleging a common law cause of action for nuisance per se is dismissed.
2. Paragraphs 19, 20, 22, 27, 32, 45, 47, 48, 49, 50, 51 and 52 are stricken.
3. Paragraphs 22C and 22D as well as Plaintiffs' claim for diminution in property value and for compensatory damages are stricken.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

ESTATE OF ELVIN E. FAIR, DEC'D
Late of Hamiltonban Township, Adams County, Pennsylvania

Administrators: Larry D. Fair, 965 Old Harrisburg Road, Gettysburg, PA 17325; Raymond L. Fair, 2545 Biglerville Road, Gettysburg, PA 17325
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF CHESTER W. HOKE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MYRTLE PLUMTON LIVINGSTON, DEC'D

Late of Germany Township, Adams County, Pennsylvania
Executrix: Carolyn Stapish Adamiak, 2431 Hartell Road, Timonium, MD 21093

Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ISABELLE H. LONGENECKER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrices: Dorothy S. Reinecker, 487 Heckenluber Road, Biglerville, PA 17307; Martha Jane Grim, P.O. Box 208, Arendtsville, PA 17303

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPH J. STAUB, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Philip Victor Staub, 230 S. Fifth St., McSherrystown, PA 17344; Maxine Theresa Staub, 122 N. Second St., McSherrystown, PA 17344
Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

ESTATE OF ORA E. TAYLOR, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Sandra M. Wenschof, 3778 Rogers Cove, Duluth, Georgia 30136
Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIE E. WEAVER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Co-Executors: Richard J. Weaver, 42 Maple Street, Gettysburg, PA 17325; Roger R. Weaver, 8 W. Hanover Street, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVELYN ELEANOR WILIAMS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 3129, Gettysburg, PA 17325
Attorney: Chester G. Schultz, Esq., Buleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF ANNA CLAPSADDLE a/k/a ANNA B. CLAPSADDLE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Edith M. Funt, P.O. Box 183, 121 W. York Street, Biglerville, PA 17307

Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VIOLA C. FISSEL, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: E. Virginia Mihimes, 240 W. Gay St., Red Lion, PA 17356
Attorney: Walton V. Davis, 116 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHAROLLET R. HARNISH, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Carol A. Banks, R.R. 1, Box 24A, Huntingdon, PA 16652
Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MAGGIE MAE MILLAR, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executors: Nancy Mae Sipe, 101 E. High Street, New Oxford, PA 17350; Robert Henry Millar, 30 Oak Drive, New Oxford, PA 17350
Attorney: G. Steven McKonty, Attorney, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF LOUISE G. WEAVER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executor: Byron L. Grott, 440 West Hanover Street, Hanover, PA 17331
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

THIRD PUBLICATION

ESTATE OF MARY C. BENNETT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Mary K. Dick, 457 Mt. Hope Road, Fairfield, PA 17320

Attorney: John R. White, Campbell & White, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF J. CLAIR DONLEY, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ESTHER C. L. KEEFER, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Co-Executors: John H. Keefer, 465 Hillcrest Drive, Aberdeen, MD 21001; Mary Esther Reed, 301 Two Taverns Road, Littlestown, PA 17340

Attorney: David K. James, III, Esquire, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DORIS E. KUHN, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Pamela K. Burnard, R. D. #4, Box 4104A, Spring Grove, PA 17362

Attorney: Craig A. Diehl, Esquire, 402 N. Main Street, Spring Grove, PA 17362

ESTATE OF REIDA LONGANECKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Mrs. Mary S. Longanecker, 10 Windbriar Lane, Gettysburg, PA 17325

ESTATE OF ETHEL L. REED, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Peggy J. Breighner, 530 Boyd School Road, Gettysburg, PA 17325; John S. Reed, 850 Bullfrog Road, Gettysburg, PA 17325

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ALFRED JOSEPH SMITH, DEC'D

Late of Hanover, Adams County, Pennsylvania

Executor: Elaine D. Smith, 502 Jackson Street, Hanover, PA

ESTATE OF VERNA I. STOCK, a/k/a VERNA O. STOCK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Barbara Y. Spicer, 685 Blackhorse Tavern Road, Gettysburg, PA 17325

Attorney: Bruce R. Spicer, Esq., McNeas, Wallace and Nurick, P. O. Box 1166, 100 Pine Street, Harrisburg, PA 17108-1166

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-430 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a spike in the centerline of Hoffman Home Road (L.R. 01027) at its point of Intersection with Basehoar-Roth Road (T-415) and at the Southeastern corner of Lot No. 13 on the hereinafter described plan of lots; thence by a curve to the left the radius of which is 970.76 feet with an arc distance of 660.94 feet and a chord bearing of South 29 degrees 05 minutes 35 seconds West and a chord length of 648.25 feet to a spike in the centerline of Hoffman Home Road; thence in the center of Hoffman Home Road South 10 degrees 27 minutes 15 seconds West 33.70 feet to a P.K. nail in the centerline of said road at the Northeastern corner of Lot No. 8 on the hereinafter described plan of lots; thence through a reference steel rod set back 25 feet from the start of this course and by Lot No. 8 North 86 degrees 54 minutes 25 seconds West 400 feet to a pipe; thence by the same, through a pipe at the corners of Lots 8 and 7 on the hereinafter described plan of lots and by Lots 8 and 7 South 10 degrees 27 minutes 15 seconds West 500 feet to a pipe on line of land now or formerly of Esther M. Shultz; thence by land now or formerly of Esther M. Shultz North 86 degrees 54 minutes 25 seconds West 358.29 feet to an existing pipe on line of land now or formerly of H. Earl Basehoar; thence by land now or formerly of H. Earl Basehoar, through a post on the line 557.75 feet from the start of this course and running in a 10-foot private gravel drive used and maintained solely by H. E. Basehoar North 13 degrees 15 minutes 10 seconds West 852.55 feet to a steel rod at the Southwestern corner of Lot No. 11 on the hereinafter described plan of lots; thence by Lot No. 11, through a steel rod at the corners of Lots 11 and 10 and by Lot No. 10 South 82 degrees 21 minutes 35 seconds East 479.14 feet to a steel rod; thence by Lot No. 10 and through a reference steel rod set back 25 feet from the end of this course North 07 degrees 38 minutes 25 seconds East 400 feet to a railroad spike in Basehoar-Roth Road (T-415); thence running in Basehoar-Roth Road and through a railroad spike in the road at the common corners of Lots 12 and 13 on the hereinafter described plan of lots South 82 degrees 21 minutes 35 seconds East 844.11 feet to a spike in the centerline of Hoffman Home Road (L.R. 01027) the

point and place of BEGINNING. CONTAINING 18.469 Acres.

The description was taken from a draft of survey of J. Riley Redding, P.S., dated November 11, 1987, and recorded in Adams County Plat Book 49 at Page 19. The tract described is Lot No. 9 on said Plan of Lots.

IT BEING THE SAME PREMISES WHICH James C. Hunt, Jr. and Margaret C. Hunt, his wife, and Elizabeth Cook Cavanaugh and David T. Cavanaugh, her husband, by their Deed, dated May 26, 1988, and recorded June 10, 1988, in the Office of Recorder of Deeds in and for Adams County, Pennsylvania, at Deed Book Volume 491, Page 504, granted and conveyed unto David L. Showers and Bonnie J. Showers, his wife.

PARCEL MAP #G-18-4C.

SEIZED and taken into execution as the property of **David L. Showers and Bonnie J. Showers** and to be sold by me Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA
January 10, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 7, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/31, 2/7 & 14

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-600 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract or lot of ground situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described and known as follows:

Lot No. 99 on a Plan of Lots of Lake Heritage Subdivision, said Plan duly entered and appearing of Record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Deed Book 4, Page 233.

Being the same real estate conveyed to James P. Walsh and Elizabeth J. Walsh, husband and wife, by deed of James F. Miskel and Mary Ann Miskel, husband and wife, dated July 7, 1983 and recorded in Adams County Record Book 369, Page 245.

Improved with a one and one half story dwelling and having a street address of 99 Meade Drive, Gettysburg, Pennsylvania 17325.

SEIZED and taken into execution as the property of **James P. Walsh and Elizabeth J. Walsh** and to be sold by me Bernard V. Miller

Sheriff

Sheriff's Office, Gettysburg, PA
January 9, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 7, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Friday, February 7, 1997, at 10:30 a.m.

BRYAN—Orphans' Court Action Number OC-162-96. The First and Final Account of Laura B. Zimmerman, Executrix of the Estate of Rose M. Bryan, deceased, late of 72 Sycamore Lane, Hanover, Conewago Township, Adams County, Pennsylvania.

RAFFENSPERGER—Orphans' Court Action Number OC-139-94. The First and Final Account of PNC Bank, N.A., Executor of the Last Will and Testament of Martha E. Raffensperger, deceased, late of Straban Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Martha E. Raffensperger, deceased, under P.E.F. Code Sec. 3501.2.

Peggy J. Breighner
Clerk of Courts

1/24, 31