

Adams County Legal Journal

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No. 46, pp. 299-306

IN THIS ISSUE

LEMMON ESTATE VS. SHEPHERD'S CHOICE

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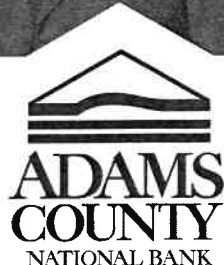
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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-311 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a P.K. nail located in Legislative Route 01080 at corner of land of Robert Cole; thence in said Legislative Route, North 56 degrees 47 minutes 30 seconds East, 75.32 feet to a P.K. nail; thence in same, North 64 degrees 38 minutes 40 seconds East, 218.52 feet to a P.K. nail; thence in same, North 38 degrees 30 minutes 30 seconds East, 317.13 feet to a P.K. nail; thence in same North 51 degrees 37 minutes 00 seconds East, 160 feet to a railroad spike in said Legislative Route; thence by land of Charles Dettinburn and running through a reference pin located 29.80 feet from the beginning of this line, South 30 degrees 4 minutes 20 seconds East, 221.37 feet to an iron pin at Land of Herbert Arndt; thence by said land of Herbert Arndt, South 56 degrees 14 minutes 10 seconds West, 781.33 feet to an iron pin at land of Robert Cole; thence by said land of Robert Cole and running through a reference pin located 30 feet from the end of this line, North 17 degrees 16 minutes 40 seconds West, 150.33 feet to a P.K. nail in Legislative Route 01080, the place of BEGINNING. CONTAINING 2.808 Acres.

TAX PARCEL NO. (20) E-04-0073

Property Address: 2280 Coon Road, Aspers, PA 17304

SEIZED and taken into execution as the property of **Mary F. Yohe & Tony M. Yohe** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance

with said schedule, unless exceptions are filed thereto within 20 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.

3/20, 28 & 4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1366 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in Tyrone Township, Adams County, Pennsylvania, particularly bounded and described as follows:

BEGINNING at a point in the center of T-395, which point is South 60 degrees 24 minutes 41 seconds West, 192.96 feet from the end of the South 33 degrees 45 minutes East, 285.1 foot course of the original tract; thence in said T-395 South 60 degrees 24 minutes 41 seconds West, 208.80 feet to a point at other lands now or formerly of Paul A. Shaffer; thence by said lands and through an iron pin set back 25 feet on the line North 29 degrees 35 minutes 19 seconds West, 182.47 feet to a point in Route 34; thence in said Route 34 North 46 degrees 21 minutes 37 seconds East, 215.24 feet to a point at other lands now or formerly of Paul A. Shaffer; thence by said lands South 29 degrees 35 minutes 19 seconds East, 234.73 feet to the place of BEGINNING.

The above description was taken from a draft of survey dated May 23, 1975, prepared by LaRue Surveys, Inc.

BEING the same premises which the Estate of Harold R. Miller, by Donald R. Miller and Kenneth C. Miller, Co-Executors of the Last Will and Testament of Harold R. Miller, by Deed dated

January 25, 2002 and recorded in the Recorder of Deeds of Adams County on January 29, 2002, in Deed Book Volume 2545, Page 261, granted and conveyed unto Bradley Allen Kroushour and Traci Lynn Kroushour.

GRENEB & BIRSIC, P.C.
Kristine M. Anthon, Esquire
Attorney for Plaintiff
One Gateway Center, Ninth Floor
Pittsburgh, PA 15222
(412) 281-7650

Parcel: G 04-0029 A

Premises: 284 Gardners Station Rd., Gardners, PA 17324

SEIZED and taken into execution as the property of **Bradley Allen Kroushour & Traci Lynn Kroushour** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/20, 28 & 4/4

LEMMON ESTATE VS. SHEPHERD'S CHOICE

1. Regulations pertaining to nursing homes in the Omnibus Budget Reconciliation Act ("OBRA"), as set out in 42 C.F.R. Section 483, et seq., do not establish a basis for negligence *per se* claims.

2. The regulations set out in the Pennsylvania Health Care Facility Act were not implemented to protect a particular class of individuals but were instead intended to implement a system to enhance the delivery of health care services to promote public health.

3. Pa.R.C.P. 1019(h) requires that the pleading must state if an agreement is oral or written. Using the term must does not give the pleader leeway to claim that because the agreement falls under the statute of frauds it is assumed to be a written agreement.

4. A complaint must give the defendants fair notice of the plaintiff's claims and a summary of the material facts that support those claims.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 06-S-1108, DEBRA LITTLE, AS THE ADMINISTRATOR OF THE ESTATE OF MERLE LEMMON, DECEASED, VS. GETTYSBURG RETIREMENT COMMUNITY D/B/A SHEPHERD'S CHOICE OF GETTYSBURG.

Michael D. Pomerantz, Esq., for Plaintiff

William J. Mundy, Esq. and Kathryn C. Mason, Esq., for Defendant
Bigham, J., March 14, 2007

OPINION

STATEMENT OF FACTS

Debra Little ("Plaintiff") is the daughter of Merle Lemmon ("Decedent") and the Administrator of his estate. Gettysburg Retirement Community, Inc., d/b/a/ Shepherd's Choice of Gettysburg ("Defendant") is a Pennsylvania non-profit organization that functions as a nursing home and health care facility located at 867 York Road, Gettysburg, PA. Decedent was a resident at Defendant's facility and was confined to a wheelchair. He suffered from paralysis of the right hand and arm, among other problems. Because Decedent was a resident of Defendant's facility he was under the exclusive care, custody, control, treatment, rehabilitation, supervision and management of the Defendant.

On or about April 19, 2005, Decedent was smoking a cigarette on the premises of Defendant without supervision and was suddenly engulfed in flames. As a result of injuries suffered, Decedent died on April 20, 2005.

Plaintiff commenced this action by filing a complaint with the Philadelphia Court of Common Pleas on May 25, 2006. Plaintiff has raised claims of Negligence Per Se, Gross Negligence, Negligence, Corporate Negligence, Breach of Contract, Breach of third-party Contract, Wrongful Death, and Survival.

Defendant filed a Petition to Transfer Venue to Adams County on July 27, 2006. Preliminary Objections were filed on August 22, 2006. The case was transferred to Adams County by an Order dated August 24, 2006. Plaintiff filed an Amended Complaint to Defendant's original Preliminary Objections and on October 20, 2006 Defendant filed Preliminary Objections to Plaintiff's Amended Complaint. Defendant concurrently filed its Brief in Support of Preliminary Objections. Plaintiff filed a Second Amended Complaint on November 7, 2006 and on November 20, 2006 Defendant filed the following Preliminary Objections:

1. Demurrer to Count I of Plaintiff's Second Amended Complaint;
2. Motion to Strike Count V of Plaintiff's Second Amended Complaint for failure to comply with PA. R.C.P. 1019(h) and 1019 (i) or, in the alternative, Motion to Strike Count V for lack of specificity;
3. Demurrer to Count VI of Plaintiff's Second Amended Complaint or, in the alternative, motion to strike, Count VI for failure to comply with PA.R.C.P. 1019 (h) and 1019 (i) or, in the alternative, motion to strike Count VI for lack of specificity; and
4. Motion to strike Plaintiff's Claim for punitive damages and to strike all allegations of intentional, willful, and reckless conduct.

Oral Argument was held on February 20, 2007 to address these Preliminary Objections and Plaintiff agreed to withdraw Count VI from the Complaint. An Order of Court dated February 21, 2007 disposes of Count VI.

LEGAL DISCUSSION

NEGLIGENCE PER SE

Count I of Plaintiff's Complaint falls under the tort theory of Negligence *Per Se*. Plaintiff claims there are specific requirements,

both federal and state, a nursing home must follow. Plaintiff argues that Pennsylvania common law allows negligence *per se* claims where the laws alleged to have been violated were originally enacted to protect nursing home residents. Plaintiff claims Defendant violated Pennsylvania Code Sections 209.3, 211.10, and 42 C.F.R. Section 483 and that these statutes were created to protect nursing home patients, not set forth as goals for nursing homes to attain.

Defendant argues that these statutes do not create a basis for negligence *per se* claims but instead argue these regulations are merely goals set forth to be attained by long-term care facilities. Defendant also argues a lack of specificity with regard to the federal statutes alleged to have been disregarded.

The Court agrees that the regulations cited by Plaintiff are goals set forth to be attained by long-term care facilities and are not specific requirements for the facility to adhere to. This Court finds the two District Court cases cited by Defendant to be persuasive. The general rule is that when a resident of a nursing home suffers harm, a claim for negligence *per se* will support a cause of action if the violations alleged in the Complaint are not goals set forth for the nursing home to attain. *Goda v. White Cliff Nursing Home*, 62 Pa. D. & C. 4th 476, 484 (Mercer Cty. 2003). Regulations pertaining to nursing homes in the Omnibus Budget Reconciliation Act (“OBRA”), as set out in 42 C.F.R. Section 483, et seq., do not establish a basis for negligence *per se* claims. *Frantz v. HCR Manor Care, Inc.*, 64 Pa. D. & C. 4th 457, 465 (Schuylkill Cty. 2003), citing *Wagner v. Anzon, Inc.*, 684 A.2d 570, 574 (Pa. Super. 1996). The Courts have also held that Pennsylvania regulations set forth in 28 Pa. Code Section 201 et seq. do not set forth a basis for a negligence *per se* action. *Frantz* at 468; *Goda* at 487.

To establish a claim for negligence *per se*, the plaintiff must establish: (1) that the purpose of the statute is “at least in part to protect the interest of a group of individuals, as opposed to the public generally;” (2) that the statute clearly applies to defendant’s conduct; (3) that the defendant violated the statute; and (4) that the violation was the proximate cause of plaintiff’s injuries.

Goda at 481-82, citing *Lutz v. Chomatex, Inc.*, 718 F. Supp. 413, 428 (M.D. Pa. 1989).

“[T]he purpose of the statute must be to protect the interest of a group of individuals, as opposed to the general public, and the statute must clearly apply to the conduct of the defendant.” *Frantz* at 462. The regulations set out in the Pennsylvania Health Care Facility Act (“PHFCA”) were not implemented to protect a particular class of individuals but were instead intended to “implement a system to enhance the delivery of health care services to promote public health[.]” *Frantz* at 468; *Goda* at 487. The Court in *Frantz* rejected 42 C.F.R. Section 483.75 (d)(1) as a basis for a negligence *per se* cause of action. The *Frantz* Court stated that “OBRA was enacted to improve the quality of care for Medicaid-eligible nursing home residents, and either to bring substandard facilities into compliance with Medicaid quality care requirements or to exclude them from the program.” *Frantz* at 467. (citing *Goda* at 483).

The regulations asserted by Plaintiff to qualify for a negligence *per se* claim are the same regulations that were used by the plaintiffs in *Frantz* and *Goda*. The courts in both of those cases denied the negligence *per se* claims based on those regulations. Plaintiff claims the provisions of 28 Pa. Code Section 209.3¹ should be considered regulations and not goals to be attained. The Court disagrees and finds the provisions of 28 Pa. Code Section 209.3² require each institution to have a smoking policy and procedure. Therefore, this Court finds no basis for a negligence *per se* claim and sustains the objection.

CONTRACTS

Plaintiff argues that Defendant’s objection should be overruled arguing that Pennsylvania Rules of Civil Procedure Rule 1019(h) does not apply because the contract would fall under the statute of frauds as it is a contract for longer than one year. Plaintiff also argues there is no violation of Rule 1019(i) because the writing was not accessible to the Plaintiff and the substance of the contract was

¹Plaintiff cites to §§ 209.3(b), (c) specifically.

§ 209.3(b) states that “[p]roper safeguards shall be taken against the fire hazards involved in smoking.” §209.3(c) states that “[a]dequate supervision while smoking shall be provided for those residents who require it.”

²§209.3(a) “Policies regarding smoking shall be adopted. The policies shall include provisions for the protection of the rights of the nonsmoking residents. The smoking policies shall be posted in a conspicuous place and in a legible format so that they may be easily read by residents, visitors, and staff.”

alleged in the complaint. Plaintiff argues that is the necessary information required in a pleading under these rules.

Defendant argues that Plaintiff is required by Rule 1019(h) to state whether the agreement was written or oral and that Plaintiff has failed to so state. Defendant also argues that if the agreement was a written contract that Plaintiff has not provided a copy of the agreement, nor has Plaintiff set forth the substance of the agreement as well as reasons why Plaintiff is unable to access a copy of said agreement pursuant to Rule 1019(i). Defendant argues in the alternative that Plaintiff's allegations alleged in the agreement are vague and unspecific and therefore, Defendant is not provided with an opportunity to prepare its defense.

The Court agrees with Defendant. Plaintiff has violated Pennsylvania Rules of Civil Procedure Rules 1019(h) and (i). Under the Pennsylvania Rules of Civil Procedure, "[w]hen any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written." Pa. R.C.P. 1019(h). Plaintiff avers that the contract falls within the statute of frauds and therefore it is not necessary to specifically state that the contract was in writing. The Court disagrees. The Comments to Rule 1019(h) state that "[t]he pleading must state if an agreement is oral or written." (emphasis added). Using the term must does not give the pleader leeway to claim that because the agreement falls under the statute of frauds it is assumed to be a written agreement.

When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Pa. R.C.P. 1019(i).

Plaintiff offers that this rule was not violated because the writing was not accessible to Plaintiff and that the substance of the agreement was alleged in the Complaint. The Court disagrees. "Merle Lemmon and Defendant entered into an agreement(s) whereby the Defendant was to provide medical care and services, among other things, to Merle Lemmon." (Plaintiff's Second Amended Cmplt. ¶ 42). While Plaintiff may have set forth the substance of the agreement, although vaguely, there is no mention in Plaintiff's Complaint

why the writing was not accessible to the pleader as required of Rule 1019(i). Therefore, the Court finds Plaintiff in violation of Pennsylvania Rules of Civil Procedure 1019(h) and (i) and grants Defendant's preliminary objection for Plaintiff's failure to conform to law or rule of court.

PUNITIVE DAMAGES

Defendant argues that Plaintiff's averments in paragraphs 9, 24, 25, 26, 31, and 38 which allege Defendant acted intentionally, willfully, and recklessly and claim for punitive damages in paragraph 27 should be stricken from the Complaint for failure to plead specific facts that would warrant punitive damages.

Plaintiff claims that by failing to protect Decedent from injury, Defendant recklessly disregarded the law and therefore punitive damages are warranted. Plaintiff argues that the claims for punitive damages should not be decided until the discovery process has been completed. This Court agrees.

The issue before this Court is whether Plaintiff plead specific facts that would warrant punitive damages. "The purpose of the pleadings is to place the defendants on notice of the claims upon which they will have to defend. A complaint must give the defendants fair notice of the plaintiff's claims and a summary of the material facts that support those claims." *Rachlin v. Edmison*, 813 A.2d 862, 870 (Pa. Super. 2002). (citations omitted); Pa. R.C.P. 1019(a).

[I]t is not enough to focus upon one portion of the complaint. Rather, in determining whether a particular paragraph in a complaint has been stated with the necessary specificity, such paragraph must be read in context with all other allegations in that complaint. Only then can the court determine whether the defendant has been put upon adequate notice of the claim against which he must defend.

Id. Citing *Yacoub v. Lehigh High Valley Medical Associates, P.C.*, 805 A.2d 579, 588-89 (Pa. Super. 2002).

Plaintiff lists the acts and/or omissions that are specific to the claims of negligence, carelessness, and *recklessness* which include the following:

- a. failure to provide a safe environment for the decedent;

- b. failure to adequately supervise and/or keep a proper lookout for decedent's activities while he was a resident of Defendant and on Defendant's property;
- c. failure to have a safe and adequate staff to patient ratio during Plaintiff's residency;
- d. failure to have adequate quality training for the caregivers at the facility;
- e. failure to measure, analyze, and improve staffing effectiveness at the facilities;
- f. failure to minimize paperwork and administrative burden that takes care giving time away from patient care at the facility;
- g. failure to have adequate funding for education and training at the facility;
- h. failure to have staff with adequate training that could have prevented, or alleviated the harm suffered by Mr. Lemmon;
- i. failure to adequately supervise residents;
- j. failure to institute and effectuate procedures and policies to secure the health and safety of residents;
- k. failure to adequately review, revise, and update resident care policies;
- l. the Defendant did any and all of the above acts and omissions and thereby subjected Mr. Lemmon to a substantially increased risk of harm.

(Plaintiff's 2nd Amend. Cmplt. ¶¶ 31, 38).

The Court finds that these allegations are specific enough to allow the claim for punitive damages to continue at this juncture. It is clear from this list that Defendant can ascertain the claims they must defend against. Any facts needed to determine an award of punitive damages should be further developed during the discovery process.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 14th day of March 2007, in consideration of Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint IT IS ORDERED THAT:

1. Defendant's objection to Count I is sustained.

2. Defendant's objection to Count V is sustained. Plaintiff has the right to file an Amended Complaint within 20 days from the date of this Order.
3. Defendant's objections to Count II and other references to punitive damages are overruled.
4. The parties are directed to further proceed in accordance with the Pennsylvania Rules of Civil Procedure.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1128 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the following described tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a railroad spike (set) in Old Log House Lane (T-620), an existing 50' wide right of way, thence leaving said Old Log House Lane (T-620) North sixteen (16) degrees thirty-two (32) minutes fifty-one (51) seconds East, One thousand three hundred eighty-six and twenty-four hundredths (1,386.24) feet to a steel pin set at Lot No. 1 as shown on the hereinafter referred to Final Plan; thence along and with said Lot No. 1, and other lands now or formerly of Jack W. Anderson and Barbara E. Anderson, South forty-eight (48) degrees twenty-nine (29) minutes twenty (20) seconds East, one thousand five hundred seven and sixty-three hundredths (1,507.63) feet to a point at lands now or formerly of Harry W. Fletcher; thence continuing along lands of the same, South forty-eight (48) degrees twenty-nine (29) minutes twenty (20) seconds East, one thousand five hundred seven and sixty-three hundredths (1,507.63) feet to a point at lands now or formerly of Harry W. Fletcher, thence continuing along lands of the same, South twenty-one (21) degrees eleven (11) minutes thirty-one (31) seconds West, four hundred thirteen and seventy-two hundredths (413.72) feet to a point at Lot No. 20, as shown on the hereinafter referred to Final plan; thence along and with said Lot No. 20, North fifty-eight (58) degrees zero (00) minutes forty-five (45) seconds West, eight hundred one and thirty-two hundredths (801.32) feet to a steel pin (set); thence continuing along said Lot No. 20, the following four (4) courses and distances: (1) South fifty-seven (57) degrees eleven (11) minutes forty-three (43) seconds West, two hundred twenty-seven and eighty-seven hundredths (227.87) feet to a steel pin (set); (2) South fifty-two (52) degrees thirty-six (36) minutes thirty-four (34) seconds West, one hundred twelve and twenty-seven (27) hundredths (112.27) feet to a steel pin (set); (3) South forty-four (44) degrees forty-two (42) minutes fourteen (14) seconds West, one hundred ninety-eight and forty-two hundredths (198.42) feet to a steel pin (set); (4) South thirty-six (36) degrees forty-seven (47) minutes fifteen

(15) seconds West, one hundred sixty-five and ninety-eight hundredths (165.98) feet to a point on Old Log House Lane (T-620); thence continuing in and through said Old Log House Lane, North sixty (60) degrees fifty-five (55) minutes thirty-one (31) seconds West, two hundred and seven hundredths (200.07) feet to a railroad spike (set) in Old Log House Lane (T-620), the point and place of BEGINNING.

CONTAINING 22.7527 acres and known as Lot No. 19 on a Final Plan prepared for Jack W. Anderson and Barbara E. Anderson by Worley Surveying bearing date of April 25, 1995, revised June 1, June 9, and June 20, 1995 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on June 29, 1995 in Plat Book 67, Page 45.

UNDER AND SUBJECT, NEVERTHELESS, to the Declaration of Restrictions and Covenants recorded July 17, 1995 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1054, Page 234.

SUBJECT ALSO, to any notes, restrictions, covenants and conditions set forth in Plan Book 67, Page 45.

BEING known as Parcel Identification Number K6-56.

BEING the same premises which Henry J. Lesinski and Elizabeth D. Lesinski, husband and wife, by deed dated February 24, 1999 and recorded March 11, 1999 in Adams County in Deed Book 1784, Page 0087, granted and conveyed unto David A. Munson and Virginia L. Munson, husband and wife.

SEIZED and taken into execution as the property of **Joanne Seeley** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/20, 28 & 4/4

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 Pa. C.S.A. 311, that an application for registration of a fictitious name was filed on March 12, 2008 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, for the conducting of a business under the fictitious name of B & E WHITETAILS, with its principal office or place of business at 670 Tall Oaks Road, Gettysburg, PA 17325. The name and addresses of all persons owning or interested in said business are: William J. Weaver, 670 Tall Oaks Road, Gettysburg, PA 17325 and Edward F. Milhimes, 106 4th Street, East Berlin, PA 17316.

David C. Smith, Esq.
754 Edgegrove Road
Hanover, PA 17331
Attorney for Applicant

4/4

CERTIFICATE OF REGISTRATION

NOTICE IS HEREBY GIVEN that in compliance with the requirements of 15 Pa.C.S. § 8913, a Certificate of Registration - Domestic Limited Liability Company was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg for the purpose of registering a limited liability company.

The name of the limited liability company is LINKA DEVELOPMENT CO., LLC with the principal place of business at 1675 Hanover Road, Gettysburg, PA 17325.

The purpose for which the limited liability company was organized is: To engage in and do any lawful act concerning any and all lawful business for which limited liability companies may be formed in accordance with the laws of the Commonwealth of Pennsylvania.

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, L.L.C.
63 West High Street
Gettysburg, PA 17325

4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-TL-429 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of ground, situate, lying and being in the TOWNSHIP OF BERWICK, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING for a corner at a point along U.S. Route 30 and at lands now or formerly of Earl Boswell; thence along U.S. Route 30 North sixty-nine (69) degrees forty-seven (47) minutes East two hundred twenty-one (221) feet to another point along U.S. Route 30 and lands now or formerly of Pasquale Lery; thence along lands of the aforesaid Lery South twenty-one (21) degrees fifty-eight (58) minutes East two hundred ninety-three and eight one-hundredths (293.08) feet to another point at Lery's land; thence along the same land North sixty-nine (69) degrees forty-seven (47) minutes East one hundred thirty (130) feet to lands now or formerly of A. M. Keech; thence along said Keech land South ten (10) degrees nine (9) minutes West one hundred sixty-six (166) feet to other lands of Adam M. (Feeser) Kinneman; thence along the lands of Ada Feeser South eighty-seven (87) degrees forty-seven (47) minutes West eighty and five one-hundredths (80.05) feet to another point at Ada Feeser's land, thence South one (1) degree twenty-seven (27) minutes West one hundred (100) feet to an existing pin, thence South eighty (80) degrees nineteen (19) minutes forty (40) seconds West three hundred eighty-seven (387) feet along lands presently of Sterling Feeser, Jr. and Francis Keamey to a wild cherry tree; thence along the aforesaid Boswell's land North one (1) degree fifty-two (52) minutes zero (0) seconds East four hundred eighty-five and sixty-two one-hundredths (485.62) feet to the place of BEGINNING. The foregoing description is taken from a final plan as surveyed by Adams County Surveyors and recorded in Plan Book 16 Page 38 in the Office of the Recorder of Deeds in and for Adams County.

IT BEING the same premises which Sterling F. Feeser and Kathy M. (Feeser) Marsh, now known as Kathy Marsh-Zepeda and Carlos Zepeda, by their Deed dated March 22, 1999, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1818, Page 222, granted and conveyed unto Kathy Marsh Zepeda

and Carlos Zepeda and Sterling F. Feeser.

Address: 7059 York Road, Abbottstown, PA 17301

Tax Map L10, Parcel 29B

SEIZED and taken into execution as the property of **Karen Marsh Zepeda, Carlos Zepeda & Sterling F. Feeser** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/28, 4/4 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1511 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Eastern edge of Legislative Route 010101, at corner of land now or formerly of David Taylor; thence in said Legislative Route 01010, South 33 degrees 00 minutes 00 seconds East, 171.16 feet to a railroad spike 4 feet from the Western edge of said Legislative Route 01010, at corner of land now or formerly of E.C. Anderson; thence by said land E.C. Anderson, and passing through a reference pipe set back 18.30 feet from the last mentioned point, South 49 degrees 50 minutes 10 seconds West, 106.00 feet to an existing iron pin; thence by same, South 38 degrees 55 minutes 50 seconds East, 171.48 feet to a pipe at corner of land now or formerly of Leroy Routsong; thence by said land of Leroy Routsong, South 49 degrees 29 minutes 30 seconds West, 819.26 feet to a pipe (said pipe being North 7.7 feet from an apple tree); thence by same, North 37 degrees

19 minutes 10 seconds West, 548.01 feet to a pipe at corner of stone row on line of land now or formerly of Janet Harder; thence by said land of Janet Harder and by land now or formerly of Frank Wageman, and passing through an iron pin at an existing stone pile on boundary line, set back 318.90 feet from the last mentioned point, North 52 degrees 34 minutes 30 seconds East, 745.91 feet to a pipe at corner of land now or formerly of David Taylor; thence by said land of David Taylor South 32 degrees 00 minutes 00 seconds East 149.00 feet to a pipe; thence by same, and passing through a reference pipe set back 30.85 feet from the next mentioned point, North 55 degrees 00 minutes 00 seconds East 200.00 feet to a point, the place of BEGINNING.

CONTAINING 10.028 acres.

Address: 444 Bendersville Wensenville Rd., Aspers, PA 17304

Tax Map or Parcel ID No.: (29) E05-0046

SEIZED and taken into execution as the property of **Kelly Sue Slate** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/28, 4/4 & 11

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 CHARLES R. LONG a/k/a CHARLES RICHARD LONG, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Sally A. Long, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

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

ESTATE OF LAWRENCE R. OVERBAUGH a/k/a MSGR. LAWRENCE R. OVERBAUGH, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Msgr. Hugh A. Overbaugh, 675 Rutherford Road, Harrisburg, PA 17109

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

ESTATE OF EDRA EALY POTTER a/k/a EDRA E. POTTER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Leonard L. Potter, 535 Glenwyn Rd., Littlestown, PA 17340

Attorney: Elyse E. Rogers, Esq., Keefe Wood Allen & Rahal LLP, 635 North 12th Street, Suite 400, Lemoyne, PA 17043

SECOND PUBLICATION**ESTATE OF HARRIETT VIRGINIA DENNIS, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Margaret I. Sanders, 49 Pfeiffer Lane, New Oxford, PA 17350

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF PAULINE AGNES ROBINSON a/k/a PAULINE A. ROBINSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ronald J. Robinson, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF ROSE BEVILACQUA, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: John Xavier Bevilacqua, 80 Confederate Drive, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROSIE S. GRIFFITH, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: David C. Griffith, 345 Brough Road, Abbottstown, PA 17301

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF PAUL W. HINKLE, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executors: Allen L. Epleman and Robert Watts, c/o Roger B. Irwin, Esq., Irwin & McKnight, 60 West Pomfret Street, Carlisle, PA 17013

Attorney: Roger B. Irwin, Esq., Irwin & McKnight, 60 West Pomfret Street, Carlisle, PA 17013

ESTATE OF SARA E. MILLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Phyllis A. Whitfield, 3325 Chambersburg Road, Biglerville, PA 17307

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CLARENCE A. NEIMAN, JR. a/k/a CLARENCE ALBERT NEIMAN, JR., DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Darlene M. Baker, c/o E. Steve O'Donnell, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

Attorney: E. Steve O'Donnell, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF CINDY A. ROBERTSON, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: Melissa Schriver, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF BETTY L. STULTZ, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Gary L. Stultz, 1220 Frederick Pike, Littlestown, PA 17340

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

ESTATE OF WYNONA I. WOODWARD, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Doris Sease, 18 Robert Curtis Drive, Gettysburg, PA 17325; Danny Reeve, P.O. Box 175, Arendtsville, PA 17303

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHARLES J. ZABROWSKI, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Patricia A. Beedle, 135 West High Street, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Corporation Bureau of the Pennsylvania Department of State, at Harrisburg, Pennsylvania, for the purpose of forming a domestic business corporation under the Pennsylvania Business Corporation Law of 1988 (P.L. 1444, No. 177), 15 Pa.C.S.A. § 1301 *et seq.*, as amended, having unlimited power to engage in and do any lawful act permitted thereunder.

The name of the corporation is MASS EXPEDITING, INC.

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, L.L.C.
63 West High Street
Gettysburg, PA 17325

4/4

LIMITED PARTNERSHIP NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Limited Partnership was filed with the Corporation Bureau of the Pennsylvania Department of State, at Harrisburg, Pennsylvania, for the purpose of forming a Limited Partnership under the Pennsylvania Business Law of 2001, 15 Pa.C.S.A. § 8511, to engage in and do any lawful act permitted thereunder.

The name of the Limited Partnership is: SOLIDAY FAMILY LIMITED PARTNERSHIP, 1996 Taneytown Road, Gettysburg, PA 17325.

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, L.L.C.
63 West High Street
Gettysburg, PA 17325

4/4

CERTIFICATE OF REGISTRATION

NOTICE IS HEREBY GIVEN that in compliance with the requirements of 15 Pa.C.S. §§ 8913, a Certificate of Registration – Domestic Limited Company was filed on December 27, 2007, with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, for the purpose of registering a limited liability company.

The name of the limited liability company is WILLIAM A. MCINTYRE & SONS, LLC, having a principal place of business at 845 Irishtown Road, New Oxford, PA 17350.

The purpose for which the limited liability company was organized is: to engage in and do any lawful act concerning any and all lawful business for which limited liability companies may be formed in accordance with the laws of the Commonwealth of Pennsylvania.

David C. Smith, Esq.
754 Edgegrove Road
Hanover, PA 17331
Attorney for Applicant

4/4

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act", 54 Pa. C.S.A. §§ 301 *et seq.*, of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is ADAMS COUNTY FARMERS' MARKET ASSOCIATION. The address of the principal office or place of business to be carried on under or through the fictitious name is 256 Hospital Road, Gettysburg, Adams County, Pennsylvania 17325. The name and address of the party to the registration is Adams County Farmers' Market Association, 256 Hospital Road, Gettysburg, Adams County, Pennsylvania 17325. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on March 19, 2008.

Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Attorneys for Applicant

4/4

OPENING – ASSOCIATE ATTORNEY

The Law Office of Douglas H. Gent is seeking one or two qualified attorneys to become associates in the practice of law. Candidates should have two to five years of experience in the general practice of law, particularly in the areas of general civil litigation, family law, commercial litigation, and other areas of the law relating to litigation. Some experience in business, real estate, estate planning, and estate administration is helpful but not required. Further, qualified candidates must have a strong commitment to the integration of the historic evangelical faith with the day to day practice of law. Please send resumes to Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331, or dgent@gentlaw.com.

4/4, 11, 18 & 25

Adams County Legal Journal

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No. 47, pp. 307-311

IN THIS ISSUE

BUCHER VS. NAYLOR

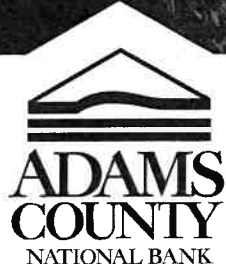
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Trust Officer



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-4 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Carroll Valley Borough (formerly in Liberty Township), Adams County and Commonwealth of Pennsylvania, being Lot No. 15 in Section RH, more particularly bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 16; thence by said Lot North 02 degrees 37 minutes 20 seconds East, 225 feet to a point; thence South 87 degrees 22 minutes 40 seconds East, 100 feet to Lot No. 14; thence by said lot South 02 degrees 37 minutes 20 seconds West 225 feet to a point in the center of Mile Trail; thence in said Mile Trail North 87 degrees 22 minutes 40 seconds West 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section RH of Chamita, Inc." dated August 8, 1968 prepared by Gordon L. Brown, R.S., and recorded in Adams County Plat Book No. 1 at page 32.

Being the same premises which Harry P. Slife and Leslie C. Slife, husband and wife, by Deed dated September 23, 2005 and recorded in the Adams County Recorder of Deeds Office on September 27, 2005 in Deed Book 4141, page 51, granted and conveyed unto Tyrone D. Jenkins and Tara M. Jenkins, husband and wife.

Premises Being: 60 Mile Trail, Fairfield, PA 17320

Parcel: (43) 041-0106

SEIZED and taken into execution as the property of **Tyrone D. Jenkins & Tara M. Jenkins** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1526 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE two lots of ground situate, lying and being in Tyrone Township, Adams County, Pennsylvania, which are bounded and described as follows:

BEGINNING at a post at the side of the Bendersville Public Road; thence by the side of said road, South 57-1/2 degrees West, 50 feet to a post at the side of said road; thence by Lot #6, South 32-1/2 degrees East, 16 feet to a post at a 14 foot alley; thence by said alley North 57-1/2 degrees East, 50 feet to a post; thence by Lot #4 North 32-1/2 degrees West, 160 feet to the place of BEGINNING.

SUBJECT to water right agreement dated 8/1/1995 as set forth in Record Book 1125 Page 217 and Record Book 1064 Page 231.

IT BEING the same premises which Alphonso Jackson, Secretary of U.S. Department of Housing and Urban Development of Washington DC, by his attorney-in-fact, Lew Carlson, by his Deed dated August 11, 2004, and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Record Book 3703 Page 238, granted and conveyed unto Sally Johnson and Dennis Johnson, Grantors herein.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Russell E. Swearman, Jr. and Mary J. Swearman, h/w, as tenants by the entirety, by Deed from Sally Johnson and Dennis Johnson, her husband, dated 1/14/2005, recorded 01/19/2005, in Deed Book 3843, Page 95.

Premises Being: 413 Gardeners Station Road, Gardeners, PA 17324

Tax Parcel No. (40) G 04-0066-000

SEIZED and taken into execution as the property of **Russell E. Swearman, Jr. & Mary J. Swearman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

BUCHER VS. NAYLOR

1. When a language of a statute is clear and unambiguous, it must be given effect in accordance with this plain and common meaning.

2. Clearly, the legislature intended the requirements placed on a dog owner to be mutually exclusive in that compliance with any of the alternatives satisfies a dog owner's legal obligation. This interpretation is consistent with the legislative goal in enacting the Dog Law.

3. The duty of a possessor of land toward a third party entering the land depends upon whether the entrant is a trespasser, licensee or invitee. Generally, however, such status determinations are one of fact for the jury.

4. Assumption of risk is established as a matter of law only where there is no doubt that a plaintiff knowingly and voluntarily proceeded in the face of an obvious and dangerous condition.

5. Contributory negligence, in and of itself, does not establish an assumption of risk.

6. To prevail on assumption of risk, the defendant must establish both the 'awareness of the risk' prong and the 'voluntariness' prong.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 06-S-412, JACK P. BUCHER V. LLOYD B. NAYLOR AND JOY E. NAYLOR.

David M. Pollick, Esq., for Plaintiff

Daniel K. Deardorff, Esq., for Defendants

George, J., March 20, 2007

OPINION

The relevant facts at issue may be stated rather succinctly. On April 18, 2004, Jack P. Bucher ("Bucher"), Plaintiff, entered onto the land of Lloyd B. Naylor and Joy E. Naylor ("Naylors"), Defendants, to thank them for helping to stable a horse of his that had escaped from its holding area earlier in the day. Although the parties were neighbors, they had limited contact with each other and Bucher had never been to the Naylor property before. His visit on the date in question was unannounced and the Naylors were completely unaware that he had planned on entering their land. Upon arriving at the Naylors, Bucher exited his truck and began to walk toward the front door of the residence. Almost immediately thereafter, a dog owned by the Naylors ran toward Bucher and leapt at him. Bucher managed to brush the dog off and continued toward the front door. After knocking on the door and receiving no response, Bucher, without warning, was attacked by one of Naylors' two dogs.¹ As a consequence, Bucher

¹ Although there is some discrepancy as to how many dogs were outside at the time of the incident, the overall analysis of this issue remains the same regardless of this fact.

suffered multiple lacerations and bite wounds to the right hand, arm, and ankle. This suit followed wherein Bucher seeks to recover damages for his injuries based upon a violation of the Pennsylvania Dog Law, 3 P.S. § 459-101 et. seq. Bucher also alleges alternative theories of negligence claiming that the Naylor's failed to properly supervise their dog when they knew or should have known of its viciousness; failed to warn of the dog's viciousness; and were otherwise negligent in owning and keeping a dog with vicious characteristics. The Naylor's have moved for summary judgment alleging that Bucher has failed to state a cause of action and further that Bucher was a trespasser who assumed the risk of being bitten by the dog. The parties have briefed this matter and it is now ripe for disposition.

The standards which govern summary judgment are well settled. When a party seeks summary judgment, a court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. *Swords v. Harleysville Ins. Co.*, 883 A.2d 562, 566-567 (Pa. 2005). A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. *Id.* In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Id.* Finally, the court may grant summary judgment only when the right to such a judgment is clear and free from doubt. *Swords*, 883 A.2d at 566-567.

I will first consider Naylor's challenge to Bucher's ability to sustain the cause of action under the Commonwealth's Dog Law. The relevant provision of that law is as follows:

It shall be unlawful for the owner or keeper of any dog to fail to keep at all times such dog either:

1. Confined within the premises of the owners;
2. Firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
3. Under the reasonable control of some person, or when engaged in lawful hunting, exhibition, or field training.

3 P.S. § 459-305. In his complaint, Bucher does not contest that the incident at issue occurred on the Naylor's property. Nevertheless, he claims that the Naylor's were required to keep their dog under the reasonable control of some person and failed to do so. Bucher, in his brief, suggests that the requirements set forth in the Dog Law are cumulative requiring a dog owner to comply with all of the three subparagraphs of Section 459-305.

In light of the nature of Naylor's argument, I begin my analysis by applying the rules of statutory construction. When interpreting a statute, the courts do so with the goal in mind that ascertaining and giving effect to the general assembly. *Counsel of Middleton Twp. v. Benham*, 523 A.2d 311, 315 (Pa. 1987). When a language of a statute is clear and unambiguous, it must be given effect in accordance with this plain and common meaning. 1 Pa. C.S. § 1921(b); *The Philadelphia Eagles Football Club, Inc. v. City of Philadelphia*, 823 A.2d 108, 127 (Pa. 2003). Similarly, non-technical words and phrases which are not defined should be interpreted according to their ordinary usage. *Commonwealth v. Kelley*, 801 A.2d 551, 555 (Pa. 2002). With this instruction in mind, I turn my attention to the specific language of the Dog Law.

A cursory review of the Dog Law reveals that the legislature couched its provisions with "either/or" language. Since there is nothing ambiguous about the use of these words, see *Branch v. Branch*, 149 A.2d 573 (Pa. Super. 1959) (either means one or the other of several alternatives), further statutory analysis is not necessary. Clearly, the legislature intended the requirements placed on a dog owner to be mutually exclusive in that compliance with any of the alternatives satisfies a dog owner's legal obligation. This interpretation is consistent with the legislative goal in enacting the Dog Law. As recognized by our Superior Court, this provision of the Dog Law was enacted by the legislature for the purpose of requiring dog owners to prevent their dogs from running at large. *Commonwealth v. Glumac*, 717 A.2d 572 (Pa. Super. 1998). Compliance with any of the three alternatives fulfills that goal.

The undisputed factual background reveals that the animal which bit Bucher was located on Naylor's property at the time of the incident. It appears equally undisputed that the dog was confined on the Naylor property by an underground electric fence. Under these circumstances,

there is no issue of material fact concerning Naylor's compliance with the Dog Law. The dog at issue was confined within the premises of the owner.² Accordingly, summary judgment in favor of the Naylor's is appropriate on this issue.

In addressing Naylor's challenge to the remaining causes of action alleged by Bucher, it is appropriate to briefly review the relevant law.

It is hornbook tort law that the duty of a possessor of land toward a third party entering the land depends upon whether the entrant is a trespasser, licensee, or invitee. *Updyke v. BP Oil Co.*, 717 A.2d 546, 549 (Pa. Super. 1998). Generally, however, such status determinations are one of fact for the jury. *Palange v. City of Philadelphia, Law Dept.*, 640 A.2d 1305, 1307 (Pa. Super. 1994). Although it is proper for a court to remove this question from the jury where there is insufficient evidence to place the matter at issue, I find that such is not the case presently. Accordingly, the grant of summary judgment in this respect would be improper.

Naylor also contend that Bucher assumed the risk of injury, thereby precluding any cause of action. The doctrine of assumption of risk is set forth in The Restatement (Second) of Torts at §§ 496A-496G. Assumption of risk is established as a matter of law only where there is no doubt that a plaintiff knowingly and voluntarily proceeded in the face of an obvious and dangerous condition. *Staub v. Toy Factory, Inc.*, 749 A.2d 522, 528-529 (Pa. Super. 2000). Voluntariness is established only when a willingness to accept the risk is manifest in the surrounding circumstances. *Handschuh v. Albert Development*, 574 A.2d 693, 695 (Pa. Super. 1990). Contributory negligence, in and of itself, does not establish an assumption of risk. *Fish v. Gosnell*, 463 A.2d 1042, 1049 (Pa. Super. 1983). Instead, the risk has been assumed by a plaintiff where he or she has gone so far as to abandon his or her right to complain and has absolved the defendant from liability for the injuries. *Id.* To prevail on assumption of risk, the defendant must establish both the 'awareness of the risk' prong and the 'voluntariness' prong. *Jara v.*

²Although neither the definition section, 3 P.S. § 459-102, nor the confinement of dogs section, 3 P.S. § 459-305 of the Dog Law, defines the term "premises", the Superior Court has defined the same "to be that portion of the owner's property which is within the owner's control, i.e. not open to the public." *Commonwealth v. Glumac*, 717 A.2d 572, 574 (Pa. Super. 1998). The private property of a homeowner clearly falls within this definition.

Rexworks, Inc., 718 A.2d 788, 795 (Pa. Super. 1998), *appeal denied*, 737 A.2d 743 (Pa. 1999).

Given the present standard of review, I find that the record is insufficient to support a conclusion that Bucher assumed the risk of injury in the present case. Conflicting testimony exists as to the visibility of a "Beware of Dogs" sign,³ and although Bucher was approached by a dog upon exiting from his vehicle, nothing suggests that the risk of attack was obvious and voluntarily assumed. Because on summary judgment the record must be viewed in the light most favorable to the plaintiff, I hold that genuine issues of material fact exist as to whether Bucher assumed the risk of injury. Accordingly, Naylor's Motion for Summary Judgment in this regard is denied.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 20th day of March, 2007, for the reasons set forth in the attached Opinion, Defendants' Motion for Summary Judgment is granted in part and denied in part. With respect to the duty owed Plaintiff and whether he assumed the risk of injury, the Motion is denied. As for Plaintiff's ability to sustain a cause of action based upon the Pennsylvania Dog Law, 3 P.S. § 459-302, because I hold that the law is inapplicable given the facts at hand, Defendants' Motion for Summary Judgment in this regard is granted.

³ See Deposition of Jack P. Bucher, 68:13, 69:3 and Deposition of Lloyd B. Naylor, 21:14-21:17.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-TL-429 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of ground, situate, lying and being in the TOWNSHIP OF BERWICK, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING for a corner at a point along U.S. Route 30 and at lands now or formerly of Earl Boswell; thence along U.S. Route 30 North sixty-nine (69) degrees forty-seven (47) minutes East two hundred twenty-one (221) feet to another point along U.S. Route 30 and lands now or formerly of Pasquale Lery; thence along lands of the aforesaid Lery South twenty-one (21) degrees fifty-eight (58) minutes East two hundred ninety-three and eight one-hundredths (293.08) feet to another point at Lery's land; thence along the same land North sixty-nine (69) degrees forty-seven (47) minutes East one hundred thirty (130) feet to lands now or formerly of A. M. Keech; thence along said Keech land South ten (10) degrees nine (9) minutes West one hundred sixty-six (166) feet to other lands of Adam M. (Feeser) Kinneman; thence along the lands of Ada Feeser South eighty-seven (87) degrees forty-seven (47) minutes West eighty and five one-hundredths (80.05) feet to another point at Ada Feeser's land, thence South one (1) degree twenty-seven (27) minutes West one hundred (100) feet to an existing pin, thence South eighty (80) degrees nineteen (19) minutes forty (40) seconds West three hundred eighty-seven (387) feet along lands presently of Sterling Feeser, Jr. and Francis Kearney to a wild cherry tree; thence along the aforesaid Boswell's land North one (1) degree fifty-two (52) minutes zero (0) seconds East four hundred eighty-five and sixty-two one-hundredths (485.62) feet to the place of BEGINNING. The foregoing description is taken from a final plan as surveyed by Adams County Surveyors and recorded in Plan Book 16 Page 38 in the Office of the Recorder of Deeds in and for Adams County.

IT BEING the same premises which Sterling F. Feeser and Kathy M. (Feeser) Marsh, now known as Kathy Marsh-Zepeda and Carlos Zepeda, by their Deed dated March 22, 1999, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1818, Page 222, granted and conveyed unto Kathy Marsh Zepeda

and Carlos Zepeda and Sterling F. Feeser.

Address: 7059 York Road, Abbottstown, PA 17301

Tax Map L10, Parcel 29B

SEIZED and taken into execution as the property of **Karen Marsh Zepeda, Carlos Zepeda & Sterling F. Feeser** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/28, 4/4 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1511 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Eastern edge of Legislative Route 010101, at corner of land now or formerly of David Taylor; thence in said Legislative Route 01010, South 33 degrees 00 minutes 00 seconds East, 171.16 feet to a railroad spike 4 feet from the Western edge of said Legislative Route 01010, at corner of land now or formerly of E.C. Anderson; thence by said land E.C. Anderson, and passing through a reference pipe set back 18.30 feet from the last mentioned point, South 49 degrees 50 minutes 10 seconds West, 106.00 feet to an existing iron pin; thence by same, South 38 degrees 55 minutes 50 seconds East, 171.48 feet to a pipe at corner of land now or formerly of Leroy Routsong; thence by said land of Leroy Routsong, South 49 degrees 29 minutes 30 seconds West, 819.26 feet to a pipe (said pipe being North 7.7 feet from an apple tree); thence by same, North 37 degrees

19 minutes 10 seconds West, 548.01 feet to a pipe at corner of stone row on line of land now or formerly of Janet Harder; thence by said land of Janet Harder and by land now or formerly of Frank Wageman, and passing through an iron pin at an existing stone pile on boundary line, set back 318.90 feet from the last mentioned point, North 52 degrees 34 minutes 30 seconds East, 745.91 feet to a pipe at corner of land now or formerly of David Taylor; thence by said land of David Taylor South 32 degrees 00 minutes 00 seconds East 149.00 feet to a pipe; thence by same, and passing through a reference pipe set back 30.85 feet from the next mentioned point, North 55 degrees 00 minutes 00 seconds East 200.00 feet to a point, the place of BEGINNING.

CONTAINING 10.028 acres.

Address: 444 Bendersville Wenksville Rd., Aspers, PA 17304

Tax Map or Parcel ID No.: (29) E05-0046

SEIZED and taken into execution as the property of **Kelly Sue Slate** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 23, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

3/28, 4/4 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1509 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, being designated as Lot No. 1 on the final subdivision plan prepared for Edward C. Wallen, Sr., dated December 29, 1998, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 76 at Page 5, more particularly bounded and described as follows:

BEGINNING at a steel pin set in Miller Road (T-572) and corner of land now or formerly of Gene H. Shenberger; thence continuing along Miller Road North 40 degrees 19 minutes 42 seconds East 160.00 feet to a steel pin set; thence along land now or formerly of Edward Kopp and Edward C. Wallen and through an existing iron pipe set back 24.91 feet from the beginning of this course South 49 degrees 40 minutes 18 seconds East 281.50 feet to a steel pin set at corner of Lot No. 2; thence along Lot No. 2 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set; thence along land now or formerly of Gene H. Shenberger and through an existing iron pipe set back 24.65 feet from the terminus of this course North 49 degrees 40 minutes 18 seconds West 281.50 feet to a steel pin set in Miller Road, the point and place of BEGINNING. CONTAINING 1.034 acres.

Being part of the same tract of land which Home Bange, widower, by his deed dated the 12th day of October, 1993, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 791 at page 264, granted and conveyed unto Edward C. Wallen, Sr. and Darlene K. Wallen, husband and wife, grantors herein.

Parcel Identification No.: (36) J 07-0053-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Michelle L. McDannell and Ronald L. McDannell, h/w, as joint tenants with right of survivorship and not as tenants in common, by Deed from Edward C. Wallen, Sr. and Darlene K. Wallen, h/w, dated 09/28/2000, recorded 09/29/2000, in Deed Book 2136, Page 56.

Premises Being: 24 Miller Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Ronald L. McDannell a/k/a Ronald Lee McDannell, Jr. & Michelle L. McDannell a/k/a Michelle Lynn McDannell a/k/a Michelle Lynn Wallen** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1280 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the hereinafter described tract of land situate, lying and being in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a post for a corner; thence running by land now or formerly of Lester Schartiger, South 60-1/2 degrees East, 30 perches to a post at the state highway leading to Seven Stars; thence running in said highway, North 42 degrees East, 37.8 perches to a post; thence running in said road, North 28-1/2 degrees East, 22.6 perches to a point in state highway leading from Gettysburg to Arendtsville; thence running in said highway, North 35 degrees West, 29.9 perches to a point in said highway; thence running by land now or formerly of Dwight S. Rinehart and Fanus, South 38 degrees 38 minutes West, 73.2 perches to a post, the place of BEGINNING. CONTAINING 12 acres and 119 perches.

TITLE TO SAID PREMISES IS VESTED IN Charles J. Davies and Charles W. Davies and Leah R. Wagner-Davies, husband and wife as joint tenants with the right of survivorship and by deed from Delroy R. Rinehart, Executor of the Last

Will and Testament of Dwight S. Rinehart, deceased dated 12/12/2003 and recorded 12/15/2003 in Deed Book 3415, Page 126, Instrument #200300033208.

Tax I.D. #: E 10-74

Being Known as 2360 Mummasburg Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Charles J. Davies, Leah R. Wagner-Davies & Charles W. Davies** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

INCORPORATION NOTICE

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

The name of the corporation is **LAWVER FIRE APPARATUS, INC.**

Puhl, Eastman & Thrasher
220 Baltimore Street
Gettysburg, PA 17325

4/11

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 SARA B. MUSSELMAN, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Willis H. Musselman, 1548 Fox Hollow Circle, Mechanicsburg, PA 17055; Curtis J. Musselman, 605 Fairfield Station Road, Fairfield, PA 17320

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVELYN M. REAVER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Beatrice M. Micklo, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

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

ESTATE OF PAULINE V. SINGLEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Sherry A. Dennis, 455 Rake Factory Road, Biglerville, PA 17307

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF CHARLES R. LONG a/k/a CHARLES RICHARD LONG, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Sally A. Long, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

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

ESTATE OF LAWRENCE R. OVERBAUGH a/k/a MSGR. LAWRENCE R. OVERBAUGH, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Msgr. Hugh A. Overbaugh, 675 Rutherford Road, Harrisburg, PA 17109

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

ESTATE OF EDRA EALY POTTER a/k/a EDRA E. POTTER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Leonard L. Potter, 535 Glenwyn Rd., Littlestown, PA 17340

Attorney: Elyse E. Rogers, Esq., Keefer Wood Allen & Rahal LLP, 635 North 12th Street, Suite 400, Lemoyne, PA 17043

THIRD PUBLICATION**ESTATE OF HARRIETT VIRGINIA DENNIS, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Margaret I. Sanders, 49 Pfeiffer Lane, New Oxford, PA 17350

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF PAULINE AGNES ROBINSON a/k/a PAULINE A. ROBINSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ronald J. Robinson, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

OPENING – ASSOCIATE ATTORNEY

The Law Office of Douglas H. Gent is seeking one or two qualified attorneys to become associates in the practice of law. Candidates should have two to five years of experience in the general practice of law, particularly in the areas of general civil litigation, family law, commercial litigation, and other areas of the law relating to litigation. Some experience in business, real estate, estate planning, and estate administration is helpful but not required. Further, qualified candidates must have a strong commitment to the integration of the historic evangelical faith with the day to day practice of law. Please send resumes to Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331, or dgent@gentlaw.com.

4/4, 11, 18 & 25

Adams County Legal Journal

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IN THIS ISSUE

COMMONWEALTH VS. MILANO

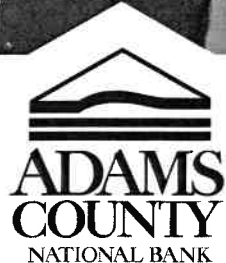
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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-4 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Carroll Valley Borough (formerly in Liberty Township), Adams County and Commonwealth of Pennsylvania, being Lot No. 15 in Section RH, more particularly bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 16; thence by said lot North 02 degrees 37 minutes 20 seconds East, 225 feet to a point; thence South 87 degrees 22 minutes 40 seconds East, 100 feet to Lot No. 14; thence by said lot South 02 degrees 37 minutes 20 seconds West 225 feet to a point in the center of Mile Trail; thence in said Mile Trail North 87 degrees 22 minutes 40 seconds West 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section RH of Chamita, Inc." dated August 8, 1968 prepared by Gordon L. Brown, R.S., and recorded in Adams County Plat Book No. 1 at page 32.

Being the same premises which Harry P. Slife and Leslie C. Slife, husband and wife, by Deed dated September 23, 2005 and recorded in the Adams County Recorder of Deeds Office on September 27, 2005 in Deed Book 4141, page 51, granted and conveyed unto Tyrone D. Jenkins and Tara M. Jenkins, husband and wife.

Premises Being: 60 Mile Trail, Fairfield, PA 17320

Parcel: (43) 041-0106

SEIZED and taken into execution as the property of **Tyrone D. Jenkins & Tara M. Jenkins** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1526 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE two lots of ground situate, lying and being in Tyrone Township, Adams County, Pennsylvania, which are bounded and described as follows:

BEGINNING at a post at the side of the Bendersville Public Road; thence by the side of said road, South 57-1/2 degrees West, 50 feet to a post at the side of said road; thence by Lot #6, South 32-1/2 degrees East, 16 feet to a post at a 14 foot alley; thence by said alley North 57-1/2 degrees East, 50 feet to a post; thence by Lot #4 North 32-1/2 degrees West, 160 feet to the place of BEGINNING.

SUBJECT to water right agreement dated 8/1/1995 as set forth in Record Book 1125 Page 217 and Record Book 1064 Page 231.

IT BEING the same premises which Alphonso Jackson, Secretary of U.S. Department of Housing and Urban Development of Washington DC, by his attorney-in-fact, Lew Carlson, by his Deed dated August 11, 2004, and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Record Book 3703 Page 238, granted and conveyed unto Sally Johnson and Dennis Johnson, Grantors herein.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Russell E. Swearman, Jr. and Mary J. Swearman, h/w, as tenants by the entirety, by Deed from Sally Johnson and Dennis Johnson, her husband, dated 1/14/2005, recorded 01/19/2005, in Deed Book 3843, Page 95.

Premises Being: 413 Gardners Station Road, Gardners, PA 17324

Tax Parcel No. (40) G 04-0066-000

SEIZED and taken into execution as the property of **Russell E. Swearman, Jr. & Mary J. Swearman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

COMMONWEALTH VS. MILANO

1. It is relevant that the prior conviction arises from one count within a multiple count complaint, or that the offenses are from a single arrest and charge as long as at the time of sentencing, a defendant has been convicted of another qualifying offense, the defendant shall receive the enhanced sentence.

2. It is the rule in Pennsylvania that the testimony of an accomplice of a defendant given at the latter's trial comes from a corrupt source and is to be carefully scrutinized by the jury and accepted with caution.

3. A person may be considered an accomplice where the evidence would establish that he knowingly and voluntarily cooperated with or aids another in the commission of a crime with the intent to assist the principle.

4. While this Court's instruction did not refer to the witness as an accomplice, the cautionary instruction otherwise mirrored the proposed standard jury instructions relating to accomplice testimony. Such instructions have previously been found to be adequate in the context of accomplice testimony.

5. The Commonwealth may sustain its burden of proving every element of the offense beyond a reasonable doubt with evidence which is wholly circumstantial, and the trier of fact, in passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CP-01-CR-836-2005, COMMONWEALTH OF
PENNSYLVANIA VS. PETER MILANO

George, J., April 20, 2007

OPINION PURSUANT TO Pa. R.A.P. 1925(b)

On June 2, 2006, the Defendant, Peter Milano ("Milano"), was convicted by a jury of three counts of delivery of cocaine. The convictions stem from three separate incidents occurring on July 28, 2005, August 3, 2005, and August 25, 2005. At the time of sentencing on September 18, 2006, the Commonwealth sought application of the mandatory sentencing provisions of 18 Pa. C.S.A. § 7508 (relating to drug trafficking sentencing and penalties).¹ The Court determined that a three (3) year mandatory sentence was applicable to the first conviction and five (5) year mandatory sentences were applicable to the second and third convictions. Nevertheless, after reviewing the pre-sentence investigation and conducting a sentencing hearing, the Court rejected the Commonwealth's request to run each of the mandatory sentences consecutive but rather imposed an

¹Trial testimony indicated that the July 28, 2005 transaction involved 28 grams of cocaine; the August 3, 2005 transaction involved 13.8 grams of cocaine; and the August 25, 2005 transaction involved 13.9 grams of cocaine.

aggregate sentence of no less than ten (10) nor more than twenty (20) years in a state correctional institution.²

Milano filed timely post-sentence motions which were denied by the Court. Thereafter, he has filed a timely appeal to the Pennsylvania Superior Court.³ In his appeal, Milano raises the following issues:

1. The mandatory sentencing scheme under 18 Pa. C.S.A. § 7508 is illegal and unconstitutional;
2. The plain language of 18 Pa. C.S.A. § 7508 requires that the mandatory sentences for each of the convictions is three (3) years rather than five (5) years;
3. The trial court erred in refusing Milano's request for a jury instruction on accomplice testimony concerning the testimony of the confidential informant who testified at trial; and
4. Evidence at trial is insufficient to support the convictions.

For the following reasons, it is suggested that Milano has failed to raise an issue justifying appellate relief and, therefore, affirmance of the sentence is requested.

The first issue raised by Milano has been specifically considered, and rejected, by the Superior Court in *Commonwealth v. Arriaga*, 618 A.2d 1011 (Pa. Super. 1993) and *Commonwealth v. Logan*, 590 A.2d 300 (Pa. Super. 1991). In each of those cases, the Superior Court recognized that the mandatory sentencing provisions of Section 7508 violate neither the separation of powers doctrine nor any of the other Constitutional clauses.

Similarly, Milano's second issue is easily resolved by a review of controlling precedent. In *Commonwealth v. Vasquez*, 753 A.2d 807,

²The Court sentenced Milano on Count I to serve no less than three (3) years nor more than six (6) years and a concurrent sentence of no less than five (5) years nor more than ten (10) years on Count II. On Count III, Milano was sentenced to a consecutive sentence of no less than five (5) years nor more than ten (10) years.

³Milano's trial counsel sought to withdraw as counsel following this Court's denial of the post-sentence motions. While that request was pending before the Court, Milano timely filed a pro se appeal to the Pennsylvania Superior Court. Counsel's request to withdraw was denied pending the perfection of an appeal to Superior Court. Trial counsel has subsequently timely appealed to the Superior Court. Additionally, trial counsel has filed a Concise Statement of Matters Complained of on Appeal. Subsequent to the filing of said statement, trial counsel was granted leave to withdraw and new counsel was appointed to represent Milano by Order of Court dated March 7, 2007.

809 (Pa. 2000), the Supreme Court held that “[i]t is irrelevant that the prior conviction arises from one count within a multiple count complaint, or that the offenses are from a single arrest and charge...as long as at the time of sentencing, a defendant ‘has been convicted’ of another qualifying ‘offense,’ the defendant shall receive the enhanced sentence.” At sentencing, I applied the controlling authority of the *Vasquez* Court. Thus, Milano’s second issue is meritless as it has consistently been rejected by our appellate courts. See also *Commonwealth v. Bell*, 901 A.2d 1033 (Pa. Super. 2006).

Milano’s third issue challenges this Court’s charge to the jury. Specifically, Milano claims that the Court erred in not granting his request for a jury instruction on accomplice testimony in regard to the testimony of the confidential informant. In this regard, he claims that the confidential informant, as purchaser of the controlled substances, acted as an accomplice to Milano.

It is the rule in Pennsylvania that the testimony of an accomplice of a defendant given at the latter’s trial comes from a corrupt source and is to be carefully scrutinized by the jury and accepted with caution. *Commonwealth v. Tervalon*, 345 A.2d 671 (Pa. 1975). The corrupt source charge is required in cases in which the evidence is sufficient to present a jury question with respect to whether the Commonwealth’s witness is an accomplice. *Commonwealth v. Williams*, 732 A.2d 1167, 1181 (Pa. 1999). A person may be considered an accomplice where the evidence would establish that he knowingly and voluntarily cooperated with or aids another in the commission of a crime with the intent to assist the principle. *Id.*

Initially, I note that the current confidential informant does not fit within the definition of an accomplice law. Statutory provisions relating to the criminal liability for the conduct of another specifically except from complicity one who terminates criminal involvement prior to the commission of the offense and wholly deprives the complicity of its effectiveness. 18 Pa. C.S.A. § 306(f)(3)(i). Similarly, one who gives timely warning to law enforcement of the anticipated criminal act is exempted from the criminal liability which otherwise attaches to an accomplice. See 18 Pa. C.S.A. § 306(f)(3)(ii). Instantly, the confidential informant fully cooperated with the police throughout the criminal episode. His actions not only gave timely warning to police of an impending crime, but to a large

extent were conducted under the supervision of law enforcement. The confidential informant's cooperation with police unquestionably deprived Milano's criminal conduct of its effectiveness. Since the confidential informant, under the circumstances of this case, is not an accomplice, Milano was not entitled to an accomplice jury instruction at trial.

Nevertheless, the Milano jury was cautioned to carefully view the testimony of the confidential informant. While this Court's instruction did not refer to the witness as an accomplice, the cautionary instruction otherwise mirrored the proposed standard jury instructions relating to accomplice testimony. Such instructions have previously been found to be adequate in the context of accomplice testimony. *Commonwealth v. Fodero*, 417 A.2d 648 (Pa. Super. 1979). Moreover, a review of the jury charge as a whole reveals that the charge was sufficient. *Butler v. Kiwi, S.A.*, 604 A.2d 270 (Pa. Super. 1992).

The final challenge raised by Milano concerns the sufficiency of the evidence. When considering a challenge to the sufficiency of the evidence, it is necessary to determine whether the evidence submitted at trial, and all reasonable inferences drawn therefrom, when viewed in the light most favorable to the Commonwealth as the verdict winner, is sufficient to establish every element of the offense beyond a reasonable doubt. *Commonwealth v. Dailey*, 828 A.2d 356, 358 (Pa. Super. 2003). The Commonwealth may sustain its burden of proving every element of the offense beyond a reasonable doubt with evidence which is wholly circumstantial, and the trier of fact, in passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. *Id.* at 358-359.

Instantly, the Commonwealth called the confidential informant to testify at trial. His testimony reflected that, on three separate occasions, he purchased cocaine directly from Milano. He credibly described the circumstances leading up to each of the separate incidents and convincingly described Milano selling cocaine to him. The confidential informant's testimony was corroborated by surveillance conducted by the Pennsylvania State Police. Specifically, at least two undercover troopers observed Milano and the confidential informant meeting at the time of the drug transactions. Since the

confidential informant had consensually agreed to wear an audio receiver, conversations between Milano and the confidential informant concerning the purchase of controlled substances were audio recorded. Video of the transactions linked the voice on the audio to Milano.⁴ A laboratory report by the Pennsylvania State Police Forensic Laboratory confirmed that the substance Milano represented to be cocaine, and subsequently transferred to the confidential informant, was in fact cocaine, a Schedule II controlled substance. The evidence at trial was not only sufficient to support the verdict but, in the opinion of this Judge, was overwhelming. Accordingly, it is requested that Milano's request for relief on the basis of insufficiency of evidence be denied.

⁴During trial, the Commonwealth introduced an audio/video recording of one of the alleged transactions. Although the recording was not of the quality normally produced by Hollywood, it was sufficient to reveal consistent qualities between the person recorded and Milano. The video equipment was apparently located in a small box in the rear seat of the confidential informant's vehicle. The trooper who operated the equipment testified that the type of equipment used to record the transaction had never been used by him before. Accordingly, he was not completely familiar with camera angles.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1509 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, being designated as Lot No. 1 on the final subdivision plan prepared for Edward C. Wallen, Sr., dated December 29, 1998, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 76 at Page 5, more particularly bounded and described as follows:

BEGINNING at a steel pin set in Miller Road (T-572) and corner of land now or formerly of Gene H. Shenberger; thence continuing along Miller Road North 40 degrees 19 minutes 42 seconds East 160.00 feet to a steel pin set; thence along land now or formerly of Edward Kopp and Edward C. Wallen and through an existing iron pipe set back 24.91 feet from the beginning of this course South 49 degrees 40 minutes 18 seconds East 281.50 feet to a steel pin set at corner of Lot No. 2; thence along Lot No. 2 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set; thence along land now or formerly of Gene H. Shenberger and through an existing iron pipe set back 24.65 feet from the terminus of this course North 49 degrees 40 minutes 18 seconds West 281.50 feet to a steel pin set in Miller Road, the point and place of BEGINNING. CONTAINING 1.034 acres.

Being part of the same tract of land which Home Bange, widower, by his deed dated the 12th day of October, 1993, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 791 at page 264, granted and conveyed unto Edward C. Wallen, Sr. and Dartene K. Wallen, husband and wife, grantors herein.

Parcel Identification No.: (36) J 07-0053-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Michelle L. McDannell and Ronald L. McDannell, h/w, as joint tenants with right of survivorship and not as tenants in common, by Deed from Edward C. Wallen, Sr. and Dartene K. Wallen, h/w, dated 09/28/2000, recorded 09/29/2000, in Deed Book 2136, Page 56.

Premises Being: 24 Miller Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Ronald L. McDannell a/k/a Ronald Lee McDannell, Jr. & Michelle L. McDannell a/k/a Michelle Lynn McDannell a/k/a Michelle Lynn Wallen** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1280 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the hereinafter described tract of land situate, lying and being in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a post for a corner; thence running by land now or formerly of Lester Schartiger, South 60-1/2 degrees East, 30 perches to a post at the state highway leading to Seven Stars; thence running in said highway, North 42 degrees East, 37.8 perches to a post; thence running in said road, North 28-1/2 degrees East, 22.6 perches to a point in state highway leading from Gettysburg to Arendtsville; thence running in said highway, North 35 degrees West, 29.9 perches to a point in said highway; thence running by land now or formerly of Dwight S. Rinehart and Fanus, South 38 degrees 38 minutes West, 73.2 perches to a post, the place of BEGINNING. CONTAINING 12 acres and 119 perches.

TITLE TO SAID PREMISES IS VESTED IN Charles J. Davies and Charles W. Davies and Leah R. Wagner-Davies, husband and wife as joint tenants with the right of survivorship and by deed from Delroy R. Rinehart, Executor of the Last

Will and Testament of Dwight S. Rinehart, deceased dated 12/12/2003 and recorded 12/15/2003 in Deed Book 3415, Page 126, Instrument #200300033208.

Tax I.D. #: E 10-74

Being Known as 2360 Mummasburg Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Charles J. Davies, Leah R. Wagner-Davies & Charles W. Davies** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 2008-S-488

Condemnation Proceeding
Proceeding in Rem

IN RE: Condemnation by Abbottstown Borough of the respective lands of William Penn, Thomas Penn, John Penn and Richard Penn, all proprietors of Pennsylvania, together with their executors, administrators, successors and assigns, and all other parties of interest, and in Abbottstown Borough, Adams County, Pennsylvania.

NOTICE TO CONDEMNNEES OF
FILING OF DECLARATION OF TAKING

TO: William Penn, Thomas Penn, John Penn and Richard Penn, all proprietors of Pennsylvania, together with their executors, administrators, successors and assigns, and all other parties of interest, and in Abbottstown Borough, Adams County, Pennsylvania.

In accordance with the Eminent Domain Code of the Commonwealth of Pennsylvania, Abbottstown Borough, has condemned, or gives the following notice of filing of its Declaration of Taking in the above-captioned matter:

1. A Declaration of Taking has been filed by the Condemnor in the above-captioned matter. The Declaration of Taking is part of the Court records filed with the Prothonotary of Adams County in this action.
2. The aforesaid Declaration of Taking was filed on April 4, 2008 to the above term and number of the above-captioned Court.
3. This Notice is being given to the above-named Condemnees.
4. The Condemnor is Abbottstown Borough, which has a business address of 4 West Water Street, P.O. Box 474, Abbottstown, Pennsylvania 17301.
5. This condemnation is authorized by Section 1501 of the Borough Code, 53 P.S. §46501 and the Eminent Domain Code of 1964, 26 Pa. C.S. §1-101.
6. The Declaration of Taking was authorized by Abbottstown Borough by Ordinance 2008-03 at a duly authorized meeting on March 20, 2008. A copy of the Ordinance may be examined at the Office of the Borough.
7. The purpose of this condemnation is to allow the Borough to take four (4) parcels of land of unknown ownership located in the Square in Abbottstown

Borough. This will facilitate a project to beautify the Abbottstown Borough Square, which is being undertaken by the Borough.

8. Condemnees' property, being the four (4) parcels of land of unknown ownership, have been condemned.
9. The parcels required by the Borough for the project are of varying size in accordance with the drawing prepared by Dewberry-Goodkind, Inc., the Condemnor's consulting engineer. The drawing, which reflects the parcels to be condemned, may be inspected upon request at the office of Abbottstown Borough, 4 West Water Street, Abbottstown, Pennsylvania 17301.

10. The title acquired by the Borough shall be in fee simple. As the owners of the parcels are unknown, the Borough is not able to negotiate with the Condemnees to appropriate title in fee simple.

11. Under Section 303(B) of the Eminent Domain Code, 26 Pa. C.S. §1-403(b), the power of taxation granted to Abbottstown Borough by the state legislature is sufficient to secure just compensation for the appropriation of the properties described herein.

12. If Condemnees wish to challenge the power or right of the Condemnor to appropriate the condemned property, the sufficiency of the security, the procedure followed by the Condemnor or the Declaration of Taking, then Condemnees must file preliminary objections within thirty (30) days after being served with this Notice of Condemnation.

CGA Law Firm
Margaret W. Driscoll, Esq.
Attorneys for Condemnor
135 North George Street
York, PA 17401
(717) 848-4900

4/18

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 JOHN WILLIAM BOEHNE, III, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Gregg William Boehne, 125 Water Works Road, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LOUISE E. DAVIS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joanne E. Shorb, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF BEULAH R. KIME, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

David M. Kime, 424 Ground Oak Church Road, Gardeners, PA 17324

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF EVELYN S. MURRAY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Wayne R. Reedy, 6737 Congressional Terrace, Fayetteville, PA 17222

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

ESTATE OF KATHRYN G. PITZER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrices: Lucinda K. Heller, 737 Brysonia Road, Biglerville, PA 17307; Jennifer L. Mickley, 123 Brysonia-Wenksville Road, Biglerville, PA 17307; Barbara J. Pitzer, 1505 Potato Road, Biglerville, PA 17307

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF JAMES RODNEY SMALL, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Marion Small, 203 Vincent Drive, McSherrystown, PA 17344

SECOND PUBLICATION**ESTATE OF SARA B. MUSSELMAN, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Willis H. Musselman, 1548 Fox Hollow Circle, Mechanicsburg, PA 17055; Curtis J. Musselman, 605 Fairfield Station Road, Fairfield, PA 17320

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVELYN M. REAVER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Beatrice M. Micklo, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

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

ESTATE OF PAULINE V. SINGLEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Sherry A. Dennis, 455 Rake Factory Road, Biglerville, PA 17307

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF CHARLES R. LONG a/k/a CHARLES RICHARD LONG, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Sally A. Long, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

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

ESTATE OF LAWRENCE R. OVERBAUGH a/k/a MSGR. LAWRENCE R. OVERBAUGH, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Msgr. Hugh A. Overbaugh, 675 Rutherford Road, Harrisburg, PA 17109

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

ESTATE OF EDRA EALY POTTER a/k/a EDRA E. POTTER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Leonard L. Potter, 535 Glenwyn Rd., Littlestown, PA 17340

Attorney: Elyse E. Rogers, Esq., Keefer Wood Allen & Rahal LLP, 635 North 12th Street, Suite 400, Lemoyne, PA 17043

OPENING – ASSOCIATE ATTORNEY

The Law Office of Douglas H. Gent is seeking one or two qualified attorneys to become associates in the practice of law. Candidates should have two to five years of experience in the general practice of law, particularly in the areas of general civil litigation, family law, commercial litigation, and other areas of the law relating to litigation. Some experience in business, real estate, estate planning, and estate administration is helpful but not required. Further, qualified candidates must have a strong commitment to the integration of the historic evangelical faith with the day to day practice of law. Please send resumes to Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331, or dgent@gentlaw.com.

4/4, 11, 18 & 25

Adams County Legal Journal

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IN THIS ISSUE

UPDYKE VS. MT. JOY TWP. ZONING HEARING BOARD

Helping families achieve
their long-range financial
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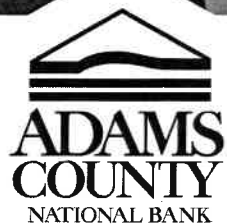
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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-4 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in Carroll Valley Borough (formerly in Liberty Township), Adams County and Commonwealth of Pennsylvania, being Lot No. 15 in Section RH, more particularly bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 16; thence by said lot North 02 degrees 37 minutes 20 seconds East, 225 feet to a point; thence South 87 degrees 22 minutes 40 seconds East, 100 feet to Lot No. 14; thence by said lot South 02 degrees 37 minutes 20 seconds West 225 feet to a point in the center of Mile Trail; thence in said Mile Trail North 87 degrees 22 minutes 40 seconds West 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section RH of Charmita, Inc." dated August 8, 1968 prepared by Gordon L. Brown, R.S., and recorded in Adams County Plat Book No. 1 at page 32.

Being the same premises which Harry P. Slife and Leslie C. Slife, husband and wife, by Deed dated September 23, 2005 and recorded in the Adams County Recorder of Deeds Office on September 27, 2005 in Deed Book 4141, page 51, granted and conveyed unto Tyrone D. Jenkins and Tara M. Jenkins, husband and wife.

Premises Being: 60 Mile Trail, Fairfield, PA 17320

Parcel: (43) 041-0106

SEIZED and taken into execution as the property of **Tyrone D. Jenkins & Tara M. Jenkins** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1526 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE two lots of ground situate, lying and being in Tyrone Township, Adams County, Pennsylvania, which are bounded and described as follows:

BEGINNING at a post at the side of the Bendersville Public Road; thence by the side of said road, South 57-1/2 degrees West, 50 feet to a post at the side of said road; thence by Lot #6, South 32-1/2 degrees East, 16 feet to a post at a 14 foot alley; thence by said alley North 57-1/2 degrees East, 50 feet to a post; thence by Lot #4 North 32-1/2 degrees West, 160 feet to the place of BEGINNING.

SUBJECT to water right agreement dated 8/1/1995 as set forth in Record Book 1125 Page 217 and Record Book 1064 Page 231.

IT BEING the same premises which Alphonso Jackson, Secretary of U.S. Department of Housing and Urban Development of Washington DC, by his attorney-in-fact, Lew Carlson, by his Deed dated August 11, 2004, and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Record Book 3703 Page 238, granted and conveyed unto Sally Johnson and Dennis Johnson, Grantors herein.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Russell E. Swearman, Jr. and Mary J. Swearman, h/w, as tenants by the entirety, by Deed from Sally Johnson and Dennis Johnson, her husband, dated 1/4/2005, recorded 01/19/2005, in Deed Book 3843, Page 95.

Premises Being: 413 Gardners Station Road, Gardners, PA 17324

Tax Parcel No. (40) G 04-0066-000

SEIZED and taken into execution as the property of **Russell E. Swearman, Jr. & Mary J. Swearman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

UPDYKE VS. MT. JOY TWP. ZONING HEARING BOARD

1. Under Pennsylvania law, it is without question that property owners have a constitutionally protected right to enjoy their property without governmental interference. This right, however, may be reasonably limited by zoning ordinances that are enacted by municipalities pursuant to their inherent duty to promote the public safety, health, and welfare.

2. When determining the validity of a zoning ordinance, it must be presumed constitutionally valid unless a challenging party shows that it is unreasonable, arbitrary, or not substantially related to the police power interest that the ordinance purports to serve.

3. Where the validity of a zoning ordinance is questionable, the legislative judgment of the governing body must control.

4. The correct standard of review to the determination of arbitrariness is whether an ordinance results in disparate treatment of similar landowners without a reasonable basis for such treatment.

5. Spot zoning is defined as the singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment.

6. It is well settled that the preservation of agricultural land is a legitimate governmental goal which can be implemented by zoning regulation.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 06-S-967, DAVID UPDYKE AND LESLIE UPDYKE VS.
ZONING HEARING BOARD OF MT. JOY TOWNSHIP

Jeremy D. Frey, Esq., for Appellants

Joseph A. Kalasnik, Esq., for Zoning Hearing Board

Walton V. Davis, Esq., for Township Supervisors

George, J., May 8, 2007

OPINION

On November 17, 2005, the Mt. Joy Township Board of Supervisors ("Supervisors") passed a zoning map amendment ("2005 Amendment") to rezone approximately 149 parcels located in the Township's rural residential ("RR") zone to agricultural conservation ("AC"). The intent of the 2005 Amendment was to protect the Township's investment in Agricultural Land Preservation Areas by rezoning as AC any properties contiguous to land which is participating in either the Township or Adams County land preservation programs. Transcript of Proceedings, 4/19/2006, pgs. 75-76. On December 19, 2005, David and Leslie Updyke ("Updykes"), owners of rezoned land located at 361 Updyke Road, Littlestown, Pennsylvania, filed an appeal with the Mt. Joy Township Zoning Hearing Board ("the Board") challenging the validity of the 2005 Amendment.

After several hearings on the matter, the Board¹ reached an oral decision on June 26, 2006. A written decision (Memorandum, Findings, Opinion, and Order) was issued by the Board on August 3, 2006. Shortly thereafter, on August 23, 2006, the Updykes filed a notice of appeal to the decision of the Board. Subsequently, the Township filed a notice of intervention on August 23, 2006.

The Updykes' appeal questions whether the Board committed an error of law by finding that any alleged disparate treatment of several properties within the zoning area was not arbitrary and, therefore, constitutional. Additionally, the Updykes suggest that the Board committed an error of law in finding that the rezoning process has not resulted in "spot zoning" despite the fact that the property in question is surrounded on three sides by residential use or property not subject to the AC zoning restrictions. Each claim shall be addressed in turn.

In reviewing the decision of a zoning hearing board where additional evidence has not been taken, appellate review is limited to determining whether the Board abused its discretion, committed a legal error, or made findings of fact not supported by substantial evidence. *In re: Realen Valley Forge Greener Associates*, 838 A.2d 718 (Pa. 2003). Additionally, when an appeal presents a question of law the correct scope of review is plenary. *Id.*

Under Pennsylvania law, it is without question that property owners have a constitutionally protected right to enjoy their property without governmental interference. *Southeastern Chester County Refuse Authority v. Zoning Hearing Board of London Grove Twp.*, 898 A.2d 680, 687 (Pa. Cmwlth. 2006). This right, however, may be reasonably limited by zoning ordinances that are enacted by municipalities pursuant to their inherent duty to promote the public safety, health, and welfare. *Cleaver v. Board of Adjustment*, 200 A.2d 408, 412 (Pa. 1964). Accordingly, when determining the validity of a zoning ordinance, it must be presumed constitutionally valid unless a challenging party shows that it is unreasonable, arbitrary, or not substantially related to the police power interest that the ordinance purports to serve. *C & M Developers, Inc. v. Bedminster Township*

¹ At the initial hearing held on February 15, 2006, two of the members of the Board recused themselves based on apparent conflicts of interest. This left the Board with two members, an original member and an alternate Board member.

Zoning Hearing Board, 820 A.2d 143, 150-51 (Pa. 2002). Such an inquiry requires the Court to utilize a substantive due process inquiry, balancing the landowners' rights against the public interest sought to be protected by an exercise of the police power. *Id.* Of significant importance to this determination is whether the restriction involved is consistent with the stated purpose of the particular zoning district. *Hock v. Board of Supervisors of Mount Pleasant Township*, 622 A.2d 431 (Pa. Cmwlth. 1993). Finally, where the validity of a zoning ordinance is questionable, the legislative judgment of the governing body must control. *Crystal Forest Associates LP v. Buckingham Twp. Supervisors*, 872 A.2d 206, 215-16 (Pa. Cmwlth. 2005).

The Updykes first contend that the Board erred in failing to find that the treatment of several properties was arbitrary. To support this suggestion, the Updykes point to several inconsistencies identified in the Board's written opinion.² These inconsistencies, it is suggested, clearly establish that the 2005 Ordinance resulted in the disparate treatment of similarly situated landowners without a reasonable basis. I disagree.

As previously mentioned, the lands subject to rezoning under the 2005 Amendment were rather extensive, with 149 properties identified as suitable for rezoning. The Board, in its written opinion, determined that out of these 149 parcels, only three tracts³ presented potential inconsistency with the goals of the rezoning ordinance. Memorandum, Findings, Opinion, and Order, pg. 5. Despite these flaws, the Board opined that the mere existence of some error in the rezoning results did not constitute sufficient evidence to show that the 2005 Amendment was unconstitutional. Concluding that an ordinance need not be perfect to be valid, the Board found that the 2005

²Specifically, the Updykes argue that the following findings of fact compel a finding of error by this Court:

- 1) Inconsistencies exist in the process by which some properties were excluded from rezoning, while others were not;
- 2) At least five properties were treated improperly during the rezoning process; and
- 3) Some error in the rezoning results.

Brief in Support of Notice of Appeal/Petition for Review from the Decision of the Zoning Hearing Board of Mt. Joy Township, pg. 6.

³The Board, in its written opinion, concluded that the three properties which bordered agricultural preservation properties were not rezoned. An independent review of the record supports this finding.

Amendment was reasonably enacted and substantially related to the promotion of public health, safety, and welfare. After a thorough review of the record, I hold that the Board correctly upheld the validity of the 2005 Amendment and, therefore, did not abuse its discretion.

The correct standard of review to the determination of arbitrariness is whether an ordinance results in disparate treatment of similar landowners without a reasonable basis for such treatment. *C & M Developers, supra*. While it is true that some of the identified properties for rezoning were in fact overlooked and, subsequently, were not rezoned from RR to AC, these lands represent a paltry minority.⁴ Given the fact that the Updykes' property was treated similarly to the vast majority of properties in the same circumstance, one cannot reasonably conclude that the Supervisors, in any way, arbitrarily singled out the Updykes' property. Such errors, although serious, are insufficient to, in and of themselves, satisfy the high burden placed upon a challenger to the constitutionality of a zoning ordinance. It is reasonable to expect that, given the scope of the rezoning scheme, certain identified lands may escape rezoning.

Additionally, the Updykes have failed to demonstrate how the switch from RR to AC results in disparate treatment. According to the April 19, 2006 testimony of Mr. Updyke, the main reason he wished to challenge the 2005 Amendment centered on the ability to get more money out of the land should he wish to build out the property. Transcript of Proceedings, 4/19/2006, pg. 136. However, uncontradicted testimony, offered by Timothy Knoebel, a municipal consulting engineer in Adams County, clearly demonstrated that if the Updykes wished to sell and develop the land, the zoning change would not inhibit their ability to do so. Transcript of Proceedings, 4/19/2006, pgs. 167-69. In fact, Mr. Knoebel noted that in certain instances, the Updykes would be able to sell a greater number of lots given the new AC zoning than if the land was still zoned RR. *Id.* Because I find that the record supports the conclusion that zoning changes have minimal, if any, impact on the financial viability of the target property, I conclude that the 2005 Amendment was not arbitrary and was properly enacted pursuant to the municipality's police powers.

⁴Of the 149 properties identified for rezoning, 146 were, in fact, rezoned. This equates to a rezoning rate of approximately 98%.

The Updykes further contend that the Board erred in failing to find that the 2005 Amendment resulted in the unconstitutional spot zoning of their property. The main thrust of this contention is that the 2005 Amendment isolates the Updykes' property and creates a virtual island of AC property within a sea of surrounding RR properties. Initially, I note that the Updykes' argument ignores that the change in zoning is consistent with the historical use of the property. Moreover, the Updykes' property is not entirely surrounded by RR zoned properties but rather borders other agricultural land which was also rezoned AC by the ordinance at issue.

Several Courts of this Commonwealth have previously defined spot zoning as the singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment. See *Realen*, 838 A.2d at 729; *Appeal of Mulac*, 210 A.2d 275, 277 (Pa. 1965). The key point for consideration is that when a municipal governing body puts on blinders and confines its vision to just one isolated place within the community, disregarding a community-wide perspective, that body is not engaged in lawful zoning. *Township of Plymouth v. County of Montgomery*, 531 A.2d 49 (Pa. Cmwlth. 1987), *petition for allowance of appeal denied*, 554 A.2d 513 (Pa. 1988). Because the record is replete of any evidence showing that the Mt. Joy Supervisors acted to isolate certain tracts of land within the township, the Updykes' challenge must fail.

The 2005 Amendment was enacted to preserve agricultural lands in accordance with the municipality's Comprehensive Plan. To achieve this end, the Supervisors drafted and passed the 2005 zoning amendment involving a large number of properties within Mt. Joy Township. It is well settled that the preservation of agricultural land is a legitimate governmental goal which can be implemented by zoning regulation. *Crystal Forest*, 872 A.2d at 216. Despite the best efforts of the Mt. Joy Supervisors, one hundred percent perfection towards this end has arguably not been accomplished. The mere fact that identified properties escaped rezoning does not indicate an arbitrary act by the Supervisors nor equates to a finding that unconstitutional spot zoning resulted. There is nothing of record even suggesting that the 2005 Amendment in some way unfairly hinders the

Updykes' ability to derive an economic benefit equivalent to that which existed under the previous zoning scheme. Because I hold that the Board did not abuse its discretion in finding that the 2005 Amendment was a valid exercise of the municipality's police powers, the Updykes' appeal must fail.

ORDER OF COURT

AND NOW, this 8th day of May, 2007, for the reasons set forth in the attached Opinion, Appellants' appeal is denied.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1509 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, being designated as Lot No. 1 on the final subdivision plan prepared for Edward C. Wallen, Sr., dated December 29, 1998, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 76 at Page 5, more particularly bounded and described as follows:

BEGINNING at a steel pin set in Miller Road (T-572) and corner of land now or formerly of Gene H. Shenberger; thence continuing along Miller Road North 40 degrees 19 minutes 42 seconds East 160.00 feet to a steel pin set; thence along land now or formerly of Edward Kopp and Edward C. Wallen and through an existing iron pipe set back 24.91 feet from the beginning of this course South 49 degrees 40 minutes 18 seconds East 281.50 feet to a steel pin set at corner of Lot No. 2; thence along Lot No. 2 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set; thence along land now or formerly of Gene H. Shenberger and through an existing iron pipe set back 24.65 feet from the terminus of this course North 49 degrees 40 minutes 18 seconds West 281.50 feet to a steel pin set in Miller Road, the point and place of BEGINNING. CONTAINING 1.034 acres.

Being part of the same tract of land which Home Bange, widower, by his deed dated the 12th day of October, 1993, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 791 at page 264, granted and conveyed unto Edward C. Wallen, Sr. and Darlene K. Wallen, husband and wife, grantors herein.

Parcel Identification No.: (36) J 07-0053-000

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Michelle L. McDannell and Ronald L. McDannell, h/w, as joint tenants with right of survivorship and not as tenants in common, by Deed from Edward C. Wallen, Sr. and Darlene K. Wallen, h/w, dated 09/28/2000, recorded 09/29/2000, in Deed Book 2136, Page 56.

Premises Being: 24 Miller Road, New Oxford, PA 17350

SEIZED and taken into execution as the property of **Ronald L. McDannell a/k/a Ronald Lee McDannell, Jr. & Michelle L. McDannell a/k/a Michelle Lynn McDannell a/k/a Michelle Lynn Wallen** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1280 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 9th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that the hereinafter described tract of land situate, lying and being in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a post for a corner; thence running by land now or formerly of Lester Schartiger, South 60-1/2 degrees East, 30 perches to a post at the state highway leading to Seven Stars; thence running in said highway, North 42 degrees East, 37.8 perches to a post; thence running in said road, North 28-1/2 degrees East, 22.6 perches to a point in state highway leading from Gettysburg to Arendtsville; thence running in said highway, North 35 degrees West, 29.9 perches to a point in said highway; thence running by land now or formerly of Dwight S. Finehart and Fanus, South 38 degrees 38 minutes West, 73.2 perches to a post, the place of BEGINNING. CONTAINING 12 acres and 119 perches.

TITLE TO SAID PREMISES IS VESTED IN Charles J. Davies and Charles W. Davies and Leah R. Wagner-Davies, husband and wife as joint tenants with the right of survivorship and by deed from Delroy R. Finehart, Executor of the Last

Will and Testament of Dwight S. Finehart, deceased dated 12/12/2003 and recorded 12/15/2003 in Deed Book 3415, Page 126, Instrument #200300033208.

Tax I.D. #: E 10-74

Being Known as 2360 Mummasburg Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Charles J. Davies, Leah R. Wagner-Davies & Charles W. Davies** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 May 30, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/11, 18 & 25

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 statements 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 — Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, May 5, 2008 at 9:00 a.m.

SMITH—Orphan's Court Action Number OC-19-2008. The First and Final Account of Yvonne M. Smith, Administratrix of the Last Will and Testament of Thomas J. Smith, deceased, late of Oxford Township, Adams County, Pennsylvania.

MATTHEWS—Orphan's Court Action Number OC-22-2008. The First and Final Account of Margaret E. Gilbert, Executrix of the Last Will and Testament of Alice E. Matthews, deceased, late of Straban Township, Adams County, Pennsylvania.

STILLER—Orphan's Court Action Number OC-23-2008. The First and Final Account of Donna Jean Radford Ludwig, Executrix of the Last Will and Testament of Jerry Stiller, deceased, late of Freedom Township, Adams County, Pennsylvania.

VAN SCYOC—Orphan's Court Action Number OC-24-2008. The First and Final Account of Delliia Joan Van Scyoc, Executrix of the Last Will and Testament of Christopher T. Van Scyoc, deceased, late of Reading Township, Adams County, Pennsylvania.

BORNEMANN—Orphan's Court Action Number OC-32-2008. The First and Final Account of Frederick D. Bornemann, Executor of the Estate of Erich A. Bornemann, deceased, late of Cumberland Township, Adams County, Pennsylvania.

HOFFMAN—Orphan's Court Action Number OC-63-97. The Second and Partial Account of PNC Bank, N.A., Trustee of the Estate of Robert C. Hoffman, deceased, late of Straban Township, Adams County, Pennsylvania.

KENDRICK—Orphan's Court Action Number OC-35-2008. The First and Final Account of Mary E. Nugent, Executor, George A. O'Brien, Sr., Executor, and George A. O'Brien, Jr., Executor of the Estate of Ann L. Kendrick, deceased, late of Berwick Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

4/25 & 5/2

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-1133 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground located along the South side of West Middle Street, in the Borough of Gettysburg, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at the Northeast corner of Lot now or formerly of Harold Myers on the South side of the aforesaid tract; thence with said street in an Easterly direction twenty-one (21) feet, more or less, to a corner of Lot now or formerly of Edward J. Myers in a Southerly direction one hundred eighty (180) feet to a public alley; thence with said alley in a Westerly direction twenty-one (21) feet, more or less, to Lot now or formerly of Harold Myers; thence with said Lot now or formerly of Harold Myers in a Northerly direction one-hundred eighty (180) feet to the place of BEGINNING.

BEING the same premises which Patsy L. Braithwalte by Deed dated June 11, 2005 and recorded in the Adams County Recorder of Deeds Office on July 29, 2005 in Deed Book 4062, page 82, granted and conveyed unto Kathy Oberlin.

Premises Being: 324 W. Middle Street, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Kathy Oberlin & The United States of America** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 June 20, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/25, 5/2 & 9

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 statements 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 — Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, May 5, 2008 at 9:00 a.m.

O'BRIEN—Orphan's Court Action Number OC-4-2008. The First and Final Account of Herbert A. O'Brien, Ruth E. Cease, Executrix of the Last Will and Testament of Herbert A. O'Brien, deceased, late of Union Township, Adams County, Pennsylvania.

BARAL—Orphan's Court Action Number OC-10-2008. The First and Final Account of Louis F. Baral, Fred E. Baral, Executor of the Estate of Louis F. Baral, deceased, late of Tyrone Township, Adams County, Pennsylvania.

HOYT—Orphan's Court Action Number OC-15-1996. The Second and Partial Account of PNC Bank National Association, Trustee of the Estate of Helen G. Hoyt, deceased, late of Straban Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

4/25 & 5/2

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 DONALD L. BRICKER, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania

Co-Executors: Maxine M. Millar, 2389 Oxford Road, New Oxford, PA 17350; Lauren W. Starner, Sr., 4056 Old Harrisburg Road, Gettysburg, PA 17325

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

ESTATE OF KENNETH F. NOEL, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Anna M. Noel, 355 Clouser Road, Hanover, PA 17331

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF VICTORIA A. RIDER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administrator C.T.A.: Charles C. Rider, 125 Main Street, McSherrystown, PA 17344

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LYDIA ANN SCHOECK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHRYN F. YANTIS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administrator: Michael A. Yantis, 355 North Street, McSherrystown, PA 17344

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF JOHN WILLIAM BOEHNE, III, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Gregg William Boehne, 125 Water Works Road, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LOUISE E. DAVIS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joanne E. Shorb, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF BEULAH R. KIME, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

David M. Kime, 424 Ground Oak Church Road, Gardners, PA 17324

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF EVELYN S. MURRAY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Wayne R. Reedy, 6737 Congressional Terrace, Fayetteville, PA 17222

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

ESTATE OF KATHRYN G. PITZER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrices: Lucinda K. Heller, 737 Brysonia Road, Biglerville, PA 17307; Jennifer L. Mickley, 123 Brysonia-Wenksville Road, Biglerville, PA 17307; Barbara J. Pitzer, 1505 Potato Road, Biglerville, PA 17307

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

ESTATE OF JAMES RODNEY SMALL, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Marion Small, 203 Vincent Drive, McSherrystown, PA 17344

THIRD PUBLICATION

ESTATE OF SARA B. MUSSELMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Willis H. Musselman, 1548 Fox Hollow Circle, Mechanicsburg, PA 17055; Curtis J. Musselman, 605 Fairfield Station Road, Fairfield, PA 17320

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVELYN M. REAVER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Beatrice M. Micklo, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

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

ESTATE OF PAULINE V. SINGLEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Sherry A. Dennis, 455 Rake Factory Road, Biglerville, PA 17307

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-469 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of May, 2008, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two certain lots or pieces of ground situate in Cumberland Township, County of Adams, Commonwealth of Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a P.K. nail in the center line of PA Route #134 leading from Gettysburg, Pennsylvania to Harney, Maryland at corner of Lot No. 2; thence by Lot No. 2 North 86 degrees 24 minutes 17 seconds East, 506.67 feet to a pipe at land now or formerly of J. D. Soliday; thence by J. D. Soliday South 24 degrees 02 minutes 00 seconds East, 74.45 feet to a pipe at post at land now or formerly of Romaine Maring; thence by land of Romaine Maring South 52 degrees 02 minutes 00 seconds West, 62.62 feet to a pipe at corner of Lot No. 4; thence by Lot No. 4 South 86 degrees 24 minutes 00 seconds West, 483.67 feet to a P.K. Nail in the center line of PA Route #134; thence in the center line of PA Route #134 and a curve to the right having a long chord bearing of North 02 degrees 17 minutes 50 seconds West, 105.03 feet, an arc distance of 105.05 feet and a radius of 1432.69 feet to a point in the center line of PA Route #134 the place of BEGINNING.

Said tract being referred to as Tract No. 3 on a draft of survey dated April 24, 1977 and prepared by Adams County Surveyors for Evelyn Brown, said survey being designated as Final Plan.

AND:

BEGINNING at a P. K. nail in the center line of Pennsylvania Route 134 leading from Gettysburg, Pennsylvania to Harney, Maryland at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence along Lot No. 1, North 86 degrees 24 minutes 00 seconds East, 457.41 feet to a pipe at land now or formerly of J. D. Soliday; thence by same, South 24 degrees 17 minutes 00 seconds East, 111.00 feet to a pipe at corner of Lot No. 3 on the aforesaid draft of survey; thence along Lot No. 3 South 86 degrees 24 minutes 00 seconds West, 506.67 feet to a P.K. nail in the centerline of aforesaid state highway; thence in the center line of said highway by a curve to the right, having a radius of 1,432.69 feet, an arc distance of 86.39 feet and a long chord bearing of North 01 degree 30 minutes 20 seconds East, 86.38 feet to a P.K. nail; thence by the same North 01 degrees 58 minutes 30 seconds West, 18.01 feet to a P.K. nail, (this final course was missed in the prior deed and has been added to reflect a Seriveners error) the place of BEGINNING.

The above description was taken from a draft of survey prepared by Adams County Surveyors, dated April 24, 1977, designating the above as Tract No. 2.

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Harry E. Prince, Jr., married man, by Deed from Mark J. Wivell and S. Lynn Wivell, (formerly known as S. Lynn Baker), dated 06/28/2005, recorded 07/06/2005, in Deed Book 4030, page 194.

Tax Parcel: (09) F 16-0072-000

Premises Being: 2050 Taneytown Road, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Harry E. Prince, Jr.** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

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 June 20, 2008, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

4/25, 5/2 & 9

OPENING – ASSOCIATE ATTORNEY

The Law Office of Douglas H. Gent is seeking one or two qualified attorneys to become associates in the practice of law. Candidates should have two to five years of experience in the general practice of law, particularly in the areas of general civil litigation, family law, commercial litigation, and other areas of the law relating to litigation. Some experience in business, real estate, estate planning, and estate administration is helpful but not required. Further, qualified candidates must have a strong commitment to the integration of the historic evangelical faith with the day to day practice of law. Please send resumes to Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331, or dgent@gentlaw.com.

4/4, 11, 18 & 25