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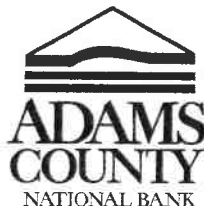
February 3, 2006

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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. 05-S-1034 issuing out of the Court of Common Pleas of Adams County and to me directed, will be exposed to Public Sale on Friday, the 24th day of February, 2006, 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 tract of land situate, lying and being in Latimore Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center line of Latimore Valley Road at corner of land now or formerly Daris M. Ditmer; thence in said Latimore Valley Road, South 05 degrees 00 minutes 00 seconds East, 151.71 feet to a point at corner of Lot No. 3 on the hereinafter referred to plan of lots; thence by said Lot No. 3 and by Lot No. 6 passing through a steel pin set back 25.57 feet from the last mentioned point, and also passing through a concrete monument set back 249.43 feet from the next mentioned point (as concrete monument marking the boundary line between Lot No. 3 and Lot No. 6), South 72 degrees 53 minutes 30 seconds West, 975.00 feet to a point at a corner of said Lot No. 6; thence continuing by said Lot No. 6, North 29 degrees 13 minutes 10 seconds West, 100.21 feet to a point; thence by same, South 72 degrees 53 minutes 30 seconds West, 325.00 feet to a point on line of land now or formerly of William J. Jurell; thence by said land now or late of William J. Jurell, North 12 degrees 16 minutes 46 seconds West, 529.20 feet to a steel pin in concrete monument on line of land now or formerly of Daris M. Ditmer, thence by said land now or late of Daris M. Ditmer, North 74 degrees 01 minutes 44 seconds East, 1,149.91 feet to a pipe found in edge of tree; thence continuing by said land now or formerly of Daris M. Ditmer, South 25 degrees 22 minutes 10 seconds East 464.89 feet to a corner post found; thence by same, and passing through a steel pin set back 25.98 feet from the next mentioned point, North 69 degrees 12 minutes 06 seconds East, 92.01 feet to a point in the centerline of Latimore Valley Road, the point and place of BEGINNING.

Being Known As: 1503 Latimore Valley Road, (Latimore Township) York Springs, PA 17372

Property ID No.: 23-J4-37

TITLE TO SAID PREMISES IS VESTED IN Roland D. Blevins and Michele L. Blevins, husband and wife by deed from Roland Blevins, also known as Roland D. Blevins and Michele L. Blevins, his wife dated 12/10/03 recorded 8/5/04 in Deed Book 3663 Page 143.

SEIZED and taken into execution as the property of **Ronald D. Blevins a/k/a Roland D. Blevins & Michele L. Blevins** 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 March 20, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/27, 2/3 & 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania.

1. The name of the Corporation is: SERGIO OF HANOVER, INC.
2. The Corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

John M. Crabbs
Solicitor

2/3

FICTITIOUS NAME NOTICE

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on January 6, 2006, pursuant to the Fictitious Name Act, setting forth that Ox Paper Tube & Core, Inc., of 331 Maple Avenue, Hanover, PA 17331, is the only entity owning or interested in a business, the character of which is the manufacturing of poultry bedding and that the name, style and designation under which said business is and will be conducted is PUREBED and the location where said business is and will be conducted is 331 Maple Avenue, Hanover, PA 17331.

Guthrie, Nonemaker, Yingst & Hart
Solicitor

2/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on October 14, 2005, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933, as amended. The name of the corporation is: CHRISTIAN HOME EDUCATOR SUPPORT SERVICES. The purpose or purposes for which the corporation is organized is to seek out and provide educational resources to families who educate students at home under Act 169 of the PA School Code or the Private Tutoring Provision of the PA School Code. And to have unlimited power to engage in and do any lawful act for which corporations may be incorporated under the Business Corporation Law Act of 1933, May 5, 1933, P.L. 364, as amended. The initial registered office of the corporation is 37 Mason Dixon Dr., Littlestown, PA 17340.

2/3

DOSCH VS. HUBBELL, INC. ET AL

1. Summary judgment is granted when there is no genuine issue of any material fact as to a necessary element of the cause of action or defense and the moving party is entitled to judgment as a matter of law.

2. The "law of the case" doctrine applies Under the coordinate jurisdiction rule, judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions.

3. In order to recover against a supplier or manufacturer, who incorporates a defective component part into its product, the plaintiff must prove that (1) the product was defective, (2) the defect was the proximate cause of plaintiff's injuries, and (3) the defect existed at the time it left the manufacturer's control.

4. Where a manufacturer merely incorporates a defective part into its product, the manufacturer of the part is considered primarily liable and, for policy reasons, the manufacturer or assembler of the product is considered secondarily liable.

5. Indemnification is not a fault sharing but rather a fault shifting mechanism which exists where one party who is liable, solely by operation of law, seeks to recover his loss from a defendant who actually caused the underlying injury.

6. In cases where a plaintiff cannot produce direct evidence of a product's defective condition, the plaintiff may rely on the malfunction theory of product liability. When proceeding on such a theory, the plaintiff may present a case-in-chief evidencing the occurrence of a malfunction and eliminating abnormal use or reasonable, secondary causes for the malfunction. From this circumstantial evidence, a jury may be permitted to infer that the product was defective at the time of sale.

7. A malfunction alone may be sufficient evidence of a defect to make the existence of a defect a question for the jury, but recovery ultimately rests on a finding that a defect did indeed exist.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 95-S-539, FRANCIS LAWRENCE DOSCH VS.
HUBBELL, INC., DELTONA TRANSFORMER CORP. AND DEL-
TONA LIGHTING PRODUCTS, INC.

William Douglas, Esq., for Plaintiff
Dean Murtagh, Esq., and Donald Smith, Esq., for Defendants
Kuhn, P.J., June 10, 2005

OPINION ON MOTIONS OF DEFENDANTS HUBBELL, INC., DELTONA TRANSFORMER CORP. AND DELTONA LIGHTING PRODUCTS, INC. FOR PARTIAL SUMMARY JUDGMENT

Before this Court are motions for partial summary judgment filed by Hubbell, Inc., Deltona Transformer Corporation and Deltona Lighting Products, Inc. Based upon the reasoning set forth below, said motions are denied.

FACTUAL AND PROCEDURAL BACKGROUNDS

The record before the Court reveals the following background: On June 14, 1993, Plaintiff, an electrician, was replacing a photocell in a dusk-to-dawn light. The lighting unit was connected to a metal arm, which was attached to a metal pole. Plaintiff taped over the new photocell to simulate darkness. Shortly after installing the new photocell, the entire lighting fixture energized. Plaintiff was shocked, thrown to the ground, and suffered injury.

On June 14, 1995, Plaintiff filed a Complaint against Hubbell, Inc. (“Hubbell”), Deltona Transformer Corporation and Deltona Lighting Products, Inc. (collectively “Deltona”) sounding in strict product liability, negligence and breach of warranty. Plaintiff is now pursuing only the strict product liability claim. Hubbell is the manufacturer of the lighting unit and Deltona is the manufacturer of the ballast that constituted a component of the unit. Plaintiff averred that the lighting unit was defective in its design and/or manufacture. More specifically, he averred that the ballast failed because a bare wire within the ballast came into contact with the metal casing, allowing an electrified charge to shock Plaintiff when he was touching the unit or the arm.

On or about April 6, 1994, Plaintiff hired a professional engineer, Roy D. Hoffer, P.E., to investigate the cause of Plaintiff’s accident. Based on his review, Mr. Hoffer produced a fourteen-page report on the lighting unit, dated June 20, 1996. In that report, he indicated, “the ballast exhibited an unsafe fail mode.” When examining the ballast, Mr. Hoffer observed, “a portion of the ballast was damaged as evidenced by the lack of insulation on the aluminum winding wires and the burning and melting of the bobbin.”

Mr. Hoffer opined that the ballast was poorly designed and resulted in higher than necessary operating temperatures that melted the insulation, which, in turn, allowed contact between the exposed wires, resulting in an electrical short. The electrical short would pass current through the steel transformer laminations attached to the metal housing of the lighting fixture. He determined that “this results in a direct electrical connection between the ballast and the lighting fixture” and “introduces a shock hazard to anyone touching the fixture.”

On or about December 11, 1997, Plaintiff settled with Deltona. The settlement agreement specified that for consideration of

\$175,000.00 Plaintiff released Deltona from liability for any damages caused by or related to injuries suffered by Plaintiff on June 14, 1993.

On January 26, 1998, Hubbell filed its first Motion For Summary Judgment. Therein, it contended that because it is not a joint tortfeasor with Deltona, but rather is, at most, a secondarily liable party, it is entitled to full indemnification for any loss arising out of a finding that Deltona's ballast was defective. Hubbell argued that because Plaintiff released Deltona, as the primarily liable party, then he automatically released Hubbell, as a secondarily liable party. Also, in its brief, Hubbell contended that Plaintiff's expert testimony, offered by Mr. Hoffer, must be limited to what Mr. Hoffer had stated in his report of June 20, 1996.

On March 13, 1998, in response to Hubbell's motion, Plaintiff filed a supplemental report by Mr. Hoffer, dated February 26, 1998. In this report, Mr. Hoffer discussed Hubbell's failure to properly ground the lighting unit. Mr. Hoffer opined, "The Hubbell Lighting fixture was defective because it did not have the required [Underwriters Laboratories] grounding connection for the field installation of a grounding wire." He reasoned that without a wire binding screw for attaching a suitable grounding wire an electrical failure within the ballast would result in the metal housing of the light fixture becoming electrically live.

In an opinion authored by then President Judge Oscar F. Spicer (now retired), dated June 23, 1998, the Court denied Hubbell's Motion For Summary Judgment. Judge Spicer determined, *inter alia*, that Mr. Hoffer's supplemental expert report was properly admissible because (1) procedural rules allowed Plaintiff the right to supplement the record in response to Hubbell's motion and (2) Mr. Hoffer's new theory, regarding the lack of a grounding point, was not, in fact, a new theory of liability but rather an amplification of the cause of action laid out in Plaintiff's Complaint. Also, with regard to the issue of indemnification, Judge Spicer concluded, "If [Hubbell's] liability is based solely and exclusively on the defective ballast, it would be entitled to indemnification. If there was an independent basis for liability, it would be entitled to only contribution." (Slip Opinion, p. 7).

On September 16, 1999, Hubbell filed another motion for summary judgment, or in the alternative, for an adverse inference jury

charge based upon alleged spoliation of evidence.¹ By letter dated November 23, 1999, the undersigned forwarded a list of specific questions to counsel relating to the science involved in this case to aid in determining this issue. That letter triggered a telephone conference between counsel and the undersigned on December 2, 1999, with respect to whether Hubbell's fixture did, in fact, have a grounding mechanism.² By letter dated December 16, 1999, Plaintiff was granted 45 days for Mr. Hoffer to supplement his report, regarding this question. After various contacts with counsel, Plaintiff finally filed Mr. Hoffer's updated report on June 2, 2000.

In Mr. Hoffer's third report, dated May 26, 2000, he opined, "Hubbell was negligent by not providing a grounding point within their light fixture which met the requirements of applicable safety codes and standards." He also added, "Hubbell failed to provide an effective ground for their fixture" and "failed to exercise reasonable care to discover and correct such safety hazards" (referring to the grounding defect). More specifically, the "fixture was defective because it did not have the NEC required effective ground in its attachment to the arm." The lack of an effective ground allegedly resulted in the fixture becoming electrically charged and causing injury to Plaintiff.

By Order, dated September 11, 2001, addressing Hubbell's Motion to Preclude Plaintiff's Second Supplemental Report, the undersigned allowed Plaintiff to advance the grounding theory set forth in Mr. Hoffer's third report.

By Order, dated March 29, 2004, the Court denied Hubbell and Deltona's motions for summary judgment. However, they were granted an adverse inference jury charge only in connection with Plaintiff's claim of a manufacture defect.

Subsequently, a pre-trial conference was conducted on August 24, 2004. During the conference, the issue was revisited as to what role the release, entered into by Plaintiff and Deltona, has on Hubbell. In

¹ Hubbell alleged that when Mr. Hoffer initially examined the lighting unit, he altered or damaged it by disassembling it as well as breaking a wire and that such alteration/damage severely prejudiced Hubbell's ability to determine the cause of the accident.

² The undersigned believed at the time that the presence of a grounding mechanism would have relieved Hubbell of liability under the theories then being advanced.

the midst of discussions on this issue, Plaintiff's counsel proposed that under the malfunction theory of products liability, Plaintiff would not have to present any evidence, regarding the ballast, in order to establish that Hubbell's lighting fixture was defective. This was the first time Plaintiff had raised the malfunction theory of liability. Further discussions ensued as to the parties' respective burdens at trial.

Accordingly, by Order dated the same day, the Court directed, *inter alia*, that (1) Hubbell file another motion for summary judgment and brief addressing the impact of the release on Hubbell's liability to Plaintiff; and, (2) the parties' briefs include a discussion of their respective burdens at trial.

On September 27, 2004, Hubbell filed its present Motion for Partial Summary Judgment and brief in support thereof. The motion requests judgment in its favor on the claim arising solely out of incorporating the defective ballast. Therein, it once again argues that because it is, at most, a secondarily liable party, Plaintiff's release of Deltona, as a primarily liable party, for its alleged defective ballast automatically releases Hubbell from any liability on account of that ballast. Thus, Hubbell argues that Plaintiff may only proceed against Hubbell on Mr. Hoffer's second and third reports referring to the adequacy of the grounding mechanism. In its supporting brief, Hubbell also argues that Mr. Hoffer's testimony should be limited to the four corners of his first expert report, specifically that the defect in the ballast was the responsibility of Deltona and not Hubbell. Hubbell further contends that it is entitled to indemnification from Deltona if found liable for incorporating the defective ballast into its lighting fixture.³

On November 1, 2004, Deltona filed its Motion for Partial Summary Judgment, incorporating Hubbell's motion and supporting brief.⁴ Along with its request to grant Hubbell's motion, Deltona requests this Court to enter an additional order dismissing with prejudice any and all claims regarding Deltona in this matter and, as

³On October 19, 2004, Hubbell filed a supplemental memorandum of law in support of its motion responding to the Court's request in its August 24, 2004 Order for the parties to discuss their respective burdens at trial. There, Hubbell addresses the malfunction theory of products liability and the parties' burdens at trial associated therewith.

⁴On December 1, 2004, Plaintiff filed his answer to Deltona's motion, incorporating his response to Hubbell's motion therein.

provided for in the release, excuse Deltona from any further participation in this matter.

On November 15, 2004, Plaintiff filed his response to Hubbell's motion.⁵ Therein, he argues that the release executed by Plaintiff and Deltona is a *pro tanto* release and does not extinguish the liability of Deltona in this matter. Rather, Plaintiff argues that "it only releases Deltona if it is found to be solely liable to Plaintiff and it specifically reserves all claims that Hubbell may have against Deltona for indemnity." Plaintiff further contends that Hubbell may be found primarily liable for placing the defective lighting fixture into the stream of commerce. As to the issue of indemnification, Plaintiff argues that Hubbell does not have an absolute right to indemnification against Deltona, but instead must prove that it is entitled to such relief.

DISCUSSION

Summary judgment is granted when there is no genuine issue of any material fact as to a necessary element of the cause of action or defense and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. 1035.2; *Schroeder v. Commonwealth of Pennsylvania, Dept. of Transportation, et al.*, 710 A.2d 23, 25 (Pa. 1998). This Court must resolve all doubts against Hubbell and Deltona, as the moving parties, and examine the record in a light most favorable to Plaintiff, as the non-moving party. See *Sebelin v. Yamaha Motor Corporation, USA, et al.*, 705 A.2d 904, 907 (Pa.Super. 1998). Summary judgment may only be granted in cases where it is clear and free from doubt that the moving party is entitled to judgment as a matter of law. *Id.*

A. Law Of The Case Doctrine

Regarding the issues of indemnification and Mr. Hoffer's second expert report, I find that the "law of the case" doctrine applies. Under the coordinate jurisdiction rule, judges of coordinate jurisdiction sitting in the same case should not overrule each other's decisions. *Riccio v. American Republic Ins. Co.*, 705 A.2d 422, 425 (Pa. 1997). This rule applies to civil cases and it falls within the "law of the case" doctrine. *Gerrow v. Shincor Silicones, Inc.*, 756 A.2d 697, 701 (Pa.Super. 2000). Pursuant to this doctrine:

⁵Plaintiff's response to Hubbell's supplemental memorandum merely denies all of Hubbell's contentions contained therein and incorporates by reference his response to Hubbell's present motion for partial summary judgment.

[A] court involved in the later phases of a litigated matter should not reopen questions decided by another judge of the same court or by a higher court in the earlier phases of the matter. Among the related but distinct rules which make up the law of the case doctrine are that: . . . upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.

Riccio, 705 A.2d at 425 (citations omitted).

Where the motions differ in kind...a judge ruling on a later motion is not precluded from granting relief although another judge has denied an earlier motion. However, a later motion should not be entertained or granted when a motion of the same kind has previously been denied, unless intervening changes in the facts or the law clearly warrant a new look at the question.

Gerrow, 756 A.2d at 702.

In Judge Spicer's June 23, 1998 Opinion on Hubbell's first motion for summary judgment, he addressed the issues of Hubbell's right to indemnification against Deltona and whether the scope of Mr. Hoffer's testimony at trial would include his second report. When addressing the issue of indemnification, Judge Spicer ruled:

We also conclude that an assembler or supplier, such as Hubbell, whose liability is based solely on incorporation of a defective component into its product, may be entitled to indemnity from the component manufacturer. *Walton v. Avco Corp.*, 610 A.2d 454 (Pa. 1992); *Burbage v. Boiler Engineering & Supply Company, Inc.*, 249 A.2d 563 (Pa. 1969).

* * * * *

If [Hubbell's] liability is based solely and exclusively on the defective ballast, it would be entitled to indemnification. If there was an independent basis for liability, it would be entitled to only contribution.

[Slip Opinion p. 6-7].

Also, when addressing Mr. Hoffer's second report, Judge Spicer concluded that under Pa.R.C.P. 1035.3, Plaintiff was allowed to supplement the record in response to Hubbell's motion for summary judgment. Because Judge Spicer concluded that Mr. Hoffer's second report (which alleges that Hubbell was liable due to the lack of a grounding mechanism) was not a new theory of liability but rather an amplification of the cause of action described in Plaintiff's Complaint, he will be permitted to testify in accordance to that report. Judge Spicer added that because Hubbell had the second report in advance of a potential trial date, it could hardly claim unfair surprise or prejudice if Mr. Hoffer testified to its contents.

As to Defendants' present motions for partial summary judgment, none of the parties have produced any new facts or identified changes in the law which warrant the Court to look anew at the issues already addressed by Judge Spicer in his June 23, 1998 Opinion. Therefore, Judge Spicer's ruling on the issues of indemnification and the admissibility of Mr. Hoffer's testimony on his second report stands.

Furthermore, whether Mr. Hoffer may be permitted to testify in accordance with his third report at trial has been previously determined by the undersigned by Order and Opinion, dated September 11, 2001. Therein, I ruled that Mr. Hoffer may testify to the contents of his third report.

Continued to next issue (2/10/2006)

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—EQUITY
NO. 05-SU-1014
Action to Quiet Title

ROBERT G. KAISER and HANNAH J.
KAISER, husband and wife, Plaintiffs

vs.

DOROTHY DELORES BAUMGARDNER
and LINDA BAUMGARDNER
LLOYD, their heirs, administrators, successors
and assigns, Defendants

TO: Dorothy Delores Baumgardner and
Linda Baumgardner Lloyd, their heirs,
administrators, successors and assigns

TAKE NOTICE that on September 16,
2005, Robert G. Kaiser and Hannah J.
Kaiser, husband and wife, filed a
Complaint in Action to Quiet Title, against
Dorothy Delores Baumgardner and
Linda Baumgardner Lloyd, their heirs,
administrators, successors and assigns,
averring that Robert G. Kaiser and
Hannah J. Kaiser are the owners of the
real property described herein. The
Complaint requests the Court to extinguish
any possible interest you may have
in said real estate. The subject
property is a tract of land being C18-34,
Liberty Township, Adams County,
Pennsylvania, more particularly bounded
and described as follows:

BEGINNING at a point for the
Northwest corner now established, said
point of beginning on the East side of a
proposed 33 foot road, said point of
beginning being also South 9 degrees 23
minutes West, 125 feet from a fence line
along lands of Mrs. Mary Wetzel; thence
along lot proposed to be sold to Kenneth
J. Harris and Hilda H. Harris, in a direction
due East, 150 feet to the Southeast
corner of said lot to be conveyed to
Harris; thence through the original tract
of the Grantors herein, South 9 degrees
23 minutes West, 100 feet to the
Northeast corner of a lot proposed to be
sold to Robert L. Frock and Bernice N.
Frock; thence along said lot to be conveyed
to Frock in a direction due East,
150 feet to a point on the East side of
said proposed 33 foot road; thence along
the East side of said road, North 9
degrees 23 minutes East, 100 feet to the
above described place of BEGINNING.

The above description was taken from
a pencil draft of survey made by Harry
Knox, Professional Engineer.

BEING THE SAME WHICH Elmer W.
Baumgardner and Mary Barbara
Baumgardner, husband and wife, and
Dorothy D. Baumgardner, single woman,
by deed dated March 11, 1999 and

recorded in the Office of the Recorder of
Deeds of Adams County, Pennsylvania
in Deed Book 1849 at page 60, sold and
conveyed unto Dorothy Delores
Baumgardner and Linda Baumgardner
Lloyd, Defendants herein.

The Complaint requested the Court to
enter a Decree and Order that the title of
the property described above is in the
Plaintiffs, and that the Defendants be forever
barred from asserting any right, lien,
title or interest in the said land inconsistent
with the interests of the Plaintiffs as
set forth in their Complaint.

WHEREFORE, by Order dated
January 6, 2006, the Court of Common
Pleas of Adams County, Pennsylvania,
has ordered that service of the
Complaint be made on the above
Defendant, his respective heirs, personal
representatives, successors and
assigns, by publication. Plaintiffs will
request the Court to enter a final judgment
ordering that any possible legal
interest the Defendant might have had in
the property be extinguished.

NOTICE TO DEFEND

You have been sued in Court. If you
wish to defend against the claims set
forth in the Complaint filed in the Adams
County Court of Common Pleas at No.
05-SU-1014 and described hereinabove,
you must take action within **twenty (20)**
days after this publication by entering a
written appearance personally or by an
attorney and filing in writing with the
Court your defenses or objections to the
claims set forth against you. You are
warned that if you fail to do so the case
may proceed without you and a judgment
may be entered against you by the
Court without further notice for the relief
requested by the Plaintiffs. You may lose
property or other rights important to you.

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

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
717-334-6781

Hartman & Yannetti
Gary E. Hartman, Esq.
Attorney for Plaintiffs
126 Baltimore Street
Gettysburg, PA 17325
717-334-3105

2/3

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-955
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

UNIVERSAL LIFE CHURCH, INC., its
successors and assigns, Defendant
TO: Universal Life Church, Inc., its
respective executors, heirs and/or
assigns:

IMPORTANT NOTICE

**YOU ARE IN DEFAULT BECAUSE
YOU HAVE FAILED TO ENTER A WRITTEN
APPEARANCE PERSONALLY OR
BY ATTORNEY AND FILE IN WRITING
WITH THE COURT YOUR DEFENSES
OR OBJECTIONS TO THE CLAIMS
SET FORTH AGAINST YOU. UNLESS
YOU ACT WITHIN TEN DAYS FROM
THE DATE OF THIS NOTICE, A JUDGMENT
MAY BE ENTERED AGAINST YOU
WITHOUT A HEARING AND YOU
MAY LOSE YOUR PROPERTY OR
OTHER IMPORTANT RIGHTS. YOU
SHOULD TAKE THIS NOTICE TO A
LAWYER AT ONCE. IF YOU DO NOT
HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE
THE FOLLOWING OFFICE TO
FIND OUT WHERE YOU CAN GET
LEGAL HELP:**

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone 1-800-337-9846 OR
(717) 337-9846

/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/3

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-950
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

ROBERT LEE SPICER, JR. &
DOROTHY W. SPICER, their respective
executors, heirs and/or assigns,
Defendants

TO: Robert Lee Spicer, Jr. & Dorothy W.
Spicer, their respective executors, heirs
and/or assigns:

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE
YOU HAVE FAILED TO ENTER A WRIT-
TEN APPEARANCE PERSONALLY OR
BY ATTORNEY AND FILE IN WRITING
WITH THE COURT YOUR DEFENSES
OR OBJECTIONS TO THE CLAIMS
SET FORTH AGAINST YOU. UNLESS
YOU ACT WITHIN TEN DAYS FROM
THE DATE OF THIS NOTICE, A JUDG-
MENT MAY BE ENTERED AGAINST
YOU WITHOUT A HEARING AND YOU
MAY LOSE YOUR PROPERTY OR
OTHER IMPORTANT RIGHTS. YOU
SHOULD TAKE THIS NOTICE TO A
LAWYER AT ONCE. IF YOU DO NOT
HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELE-
PHONE THE FOLLOWING OFFICE TO
FIND OUT WHERE YOU CAN GET
LEGAL HELP:

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone 1-800-337-9846 OR
(717) 337-9846

/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/3

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-951
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

RAY NELSON & AUDREY T. NELSON,
their respective executors, heirs and/or
assigns, Defendants

TO: Ray Nelson and Audrey T. Nelson,
their respective executors, heirs and/or
assigns:

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE
YOU HAVE FAILED TO ENTER A WRIT-
TEN APPEARANCE PERSONALLY OR
BY ATTORNEY AND FILE IN WRITING
WITH THE COURT YOUR DEFENSES
OR OBJECTIONS TO THE CLAIMS
SET FORTH AGAINST YOU. UNLESS
YOU ACT WITHIN TEN DAYS FROM
THE DATE OF THIS NOTICE, A JUDG-
MENT MAY BE ENTERED AGAINST
YOU WITHOUT A HEARING AND YOU
MAY LOSE YOUR PROPERTY OR
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/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/3

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-952
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

JAMES G. KOLBE & T. JANE KOLBE,
their respective executors, heirs and/or
assigns, Defendants

TO: James G. Kolbe & T. Jane Kolbe,
their respective executors, heirs and/or
assigns:

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE
YOU HAVE FAILED TO ENTER A WRIT-
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WITH THE COURT YOUR DEFENSES
OR OBJECTIONS TO THE CLAIMS
SET FORTH AGAINST YOU. UNLESS
YOU ACT WITHIN TEN DAYS FROM
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Attorneys for Plaintiffs
47 West High Street
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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 EDITH BUCHANAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Kathy Ann Leonard, 298 John Owings Rd., Westminster, MD 21158

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF VERN H. HALL, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Grace K. Hall, P.O. Box 783, Biglerville, PA 17307

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

ESTATE OF BETTY P. JACOBS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Phyllis S. Chandler, 1340 Buchanan Valley Road, Orttanna, PA 17353

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

ESTATE OF RAY L. JUNKINS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Robert L. Junkins, 499 Frazer Rd., Aspers, PA 17304

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

ESTATE OF JANET E. MAITLAND a/k/a JANET R. MAITLAND, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Richard A. Maitland, Jr., P.O. Box 321, Harwich Port, MA 02646

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

ESTATE OF RALPH E. MARKLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Mildred M. Muller, 65 Henry Street, Hanover, PA 17331

Attorney: Keith A. Hassler, Esq., Attorney at Law, 9 North Beaver Street, York, PA 17401

ESTATE OF MARY CATHERINE SHILDT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Elmer C. Shildt, Jr., 650 Bollinger Rd., Littlestown, PA 17340

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF ALLEN A. SLONAKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Virginia M. Riley, 58 West Hanover St., Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF FRANCES L. TRONE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Frederick C. Trone, 24 Misty Court, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF HELEN R. WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

David L. Weaver, 10 Tiffany Court, Hanover, PA 17331; Ellen Mary Glass, 87 Peanut Drive, Hanover, PA 17331

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

SECOND PUBLICATION

ESTATE OF WANDA L. LEHN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Ronald C. Lehn, 25 Easy Street, Littlestown, PA 17340; Cathy J. Camac, 2225 Bear Den Road, Frederick, MD 21701

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

ESTATE OF CARL VERNON OWINGS, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Stacy L. Owings, 118 Flickinger Road, Gettysburg, PA 17325

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

ESTATE OF CHESTER H. REAM, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrators: Tena L. Wasbers, Tre A. Ream and Stacy L. Myers, c/o Morris & Vedder, 32 N. Duke St. P.O. Box 544, York, PA 17405

Attorney: Rand A. Feder, Esq., Morris & Vedder, 32 N. Duke St., P.O. Box 544, York, PA 17405

ESTATE OF CHRISTOPHER T. VAN SCYOC, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Dellia Joan VanScyoc, c/o Miller, Shultis, P.C., Timothy J. Shultis Esq., 249 York Street, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq. Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF G. RODGER WILDASIN a/k/a GEORGE RODGER WILDASIN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: G. Michael Wildasin, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

Attorney: William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF GENE McCRAE ALBRIGHT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Clark L. Fetters, 55 Gettysburg Street, P.O. Box 92, Arendtsville, PA 17303

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF DONALD F. ALDRICH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sarah E. Aldrich, c/o 135 South Duke Street, York, PA 17403

Attorney: Richard H. Mylin, III, Esq., 135 South Duke Street, York, PA 17403

(continued on page 6,

THIRD PUBLICATION (continued)

ESTATE OF ELLA NAOMI PASCOE,
DEC'D

Late of the Borough of McSherrystown,
Adams County, Pennsylvania

Executrix: Judy Wickline, 405 Crouse
Road, Littlestown, PA 17340

Attorney: Clayton R. Wilcox, Esq., 234
Baltimore St., Gettysburg, PA 17325

ESTATE OF CLIFFORD W. TAYLOR,
DEC'D

Late of Menallen Township, Adams
County, Pennsylvania

Executrix: Arlene V. Briggs, 510
Brysonia Rd., Biglerville, PA 17307

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

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about January 28, 2006, for the incorporation of SAUM INTERIORS, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of providing residential and commercial interior design, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 597 Lake Meade Drive, East Berlin, PA 17316.

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Adams County Legal Journal

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February 10, 2006

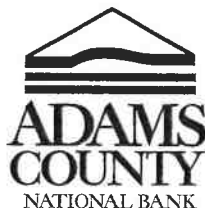
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DOSCH VS. HUBBELL, INC. ET AL

This opinion continued from last issue (2/3/2006)

In times like these,
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provided by a trust professional.



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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. 05-S-1034 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of February, 2006, 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 tract of land situate, lying and being in Latimore Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center line of Latimore Valley Road at corner of land now or formerly Daris M. Ditmer; thence in said Latimore Valley Road, South 05 degrees 00 minutes 00 seconds East, 151.71 feet to a point at corner of Lot No. 3 on the hereinafter referred to plan of lots; thence by said Lot No. 3 and by Lot No. 6 passing through a steel pin set back 25.57 feet from the last mentioned point, and also passing through a concrete monument set back 249.43 feet from the next mentioned point (as concrete monument marking the boundary line between Lot No. 3 and Lot No. 6), South 72 degrees 53 minutes 30 seconds West, 975.00 feet to a point at a corner of said Lot No. 6; thence continuing by said Lot No. 6, North 29 degrees 13 minutes 10 seconds West, 100.21 feet to a point; thence by same, South 72 degrees 53 minutes 30 seconds West, 325.00 feet to a point on line of land now or formerly of William J. Jurell; thence by said land now or late of William J. Jurell, North 12 degrees 16 minutes 46 seconds West, 529.20 feet to a steel pin in concrete monument on line of land now or formerly of Daris M. Ditmer, thence by said land now or late of Daris M. Ditmer, North 74 degrees 01 minutes 44 seconds East, 1,149.91 feet to a pipe found in edge of tree, thence continuing by said land now or formerly of Daris M. Ditmer, South 25 degrees 22 minutes 10 seconds East 464.89 feet to a corner post found; thence by same, and passing through a steel pin set back 25.98 feet from the next mentioned point, North 69 degrees 12 minutes 06 seconds East, 92.01 feet to a point in the centerline of Latimore Valley Road, the point and place of BEGINNING.

Being Known As: 1503 Latimore Valley Road, (Latimore Township) York Springs, PA 17372

Property ID No.: 23-J4-37

TITLE TO SAID PREMISES IS VESTED IN Roland D. Blevins and Michele L. Blevins, husband and wife by deed from Roland Blevins, also known as Roland D. Blevins and Michele L. Blevins, his wife dated 12/10/03 recorded 8/5/04 in Deed Book 3663 Page 143.

SEIZED and taken into execution as the property of **Ronald D. Blevins a/k/a Roland D. Blevins & Michele L. Blevins** 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 March 20, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/27, 2/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1075 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 LOT of ground situate on the South side of South Street in the Village of Midway in Conewago Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake at South Street aforesaid on the center line of Lot #54, the Eastern portion of which is about to be conveyed to Charles S. Frock; thence

by said lands through the center line of said lot South 3 degrees 30 minutes East 172.75 feet, more or less, to a stake at an alley; thence by said South 88 degrees 55 minutes West for a distance of 45 feet to a stake at other land of the grantors also known as Lot #52; thence by the same North 3 degrees 30 minutes West 170.85 feet, more or less, to a stake at South Street aforesaid; thence by the same North 86 degrees 30 minutes East 45 feet to a stake, the place of BEGINNING.

SAID lot of ground being known as all of Lot #53 and the Western half of Lot #54 on a plan or series of lots of the Estate of Edward J. Kuhn dated August 2, 1907, as prepared by A.E. Kohr, Surveyor.

Parcel No. 9-18

Premises Being: 242 South Street, Hanover, PA 17331

SEIZED and taken into execution as the property of **Nellie A. Jacobs** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

B. Effect Of Release On Claim Hubbell Incorporated Deltona's Defective Ballast

The more interesting question arises when addressing the effect of the release entered into by Plaintiff and Deltona on Hubbell. Although this issue was presented to Judge Spicer in Hubbell's first motion for summary judgment Judge Spicer did not explicitly address it in his opinion.

On the claim that Hubbell is strictly liable to Plaintiff for incorporating Deltona's ballast into its light fixture, Hubbell contends that the release between Plaintiff and Deltona necessarily releases Hubbell from that liability. As noted, Plaintiff entered into a release with Deltona, which states that for an amount of \$175,000.00, Plaintiff releases Deltona of all liability arising out of any injury suffered by Plaintiff on June 14, 1993.

The Release provides, in pertinent part:

[F]rances Dosch for and in consideration of the sum of...(\$175,000.00)...do hereby remise, release and forever discharge Deltona...only, of and from all...claims...for...damages...related to the injuries suffered...on June 14, 1993...

The undersigned specifically reserves all claims and causes of action...against all other tortfeasors, and also the right to make claim that they, and not Deltona...are solely liable...

In the event...Dosch should recover a verdict against any other joint tortfeasor, and such recovery shall be reduced only to the extent of the amount...paid...for this Release, irrespective of the apportionment of pro rata liability determined by any trier of fact or judicial determination.

...

It is understood that this is a Pro Tanto Release, and not a General Release or Pro Rata Release, and does not release any claims or actions for contribution or indemnity now existing or that may arise on account of the injuries suffered by...Dosch...Notwithstanding any other provision in this Release, Deltona...are released from continued participation in the trial...for purposes of

determining their status as a joint tortfeasor, to assess the proportion that their liability bears to the total damages, or as may be necessary to establish a claim based upon a theory of agency, derivative or vicarious liability.

...

The undersigned recognizes...the possibility that subsequent decisions of the Pennsylvania Appellate Courts have or may hold that the liability of a non-settling party be determined exclusively by a jury's apportionment of fault.

Notwithstanding any such decisions, with respect to...entities not parties to this Release, the amount of any verdict shall only be reduced by the amount of this Release, and without reference in any manner to the apportionment of pro rata liability by a jury or trier of fact.

...

Plaintiff argues that this release only relieves Deltona from liability for the defective ballast but that Hubbell remains liable for incorporating the ballast into its light fixture.

In order to determine the impact of the Release in this case, we must appreciate the relationship of the parties and the responsibilities that arise therefrom. Here, clearly Deltona manufactured the ballast, which was incorporated by Hubbell into the lighting fixture in question. It is also conceded, for purposes of this discussion, that Plaintiff was injured due to electrical shock when he came into contact with the fixture.

The Pennsylvania Supreme Court adopted Section 402A of the Restatement (Second) of Torts in *Webb v. Zern*, 220 A.2d 853 (Pa. 1966). That section provides:

One who sells any product in a defective condition unreasonably dangerous to the user of consumer...is subject to liability for physical harm thereby caused to the ultimate user or consumer...if

- (a) the seller is engaged in the business of selling such a product, and
- (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

The term “seller” includes all suppliers of the product. *Walasavage v. Robinson Service & Equipment, Inc.*, 483 A.2d 509, 513 (Pa. Super. 1984). Under Comment q of Section 402A of the Restatement (Second) of Torts, a component part manufacturer is strictly liable for its defective product where there is no change in the component product itself at the time it left the manufacturer but it is merely incorporated into something bigger. Restat. 2d of Torts §402A, Comment q; *Burbage, supra.*, 249 A.2d at 566.

In order to recover against a supplier or manufacturer, who incorporates a defective component part into its product, the plaintiff must prove that (1) the product was defective, (2) the defect was the proximate cause of plaintiff’s injuries, and (3) the defect existed at the time it left the manufacturer’s control. *Rogers v. Johnson & Johnson Products, Inc.*, 565 A.2d 751, 754 (Pa. 1989); *Dansak v. Cameron Coca-Cola Bottling Company, Inc.*, 703 A.2d. 489, 495-6 (Pa. Super. 1997); *Woodin v. J.C. Penney Company, Inc.*, 629 A.2d 974, 975 (Pa. Super. 1993). For social policy reasons, liability results regardless of negligence or lack of a contractual relationship between the parties. *Walton v. Avco Corporation, supra.*, 610 A.2d 454 at 458 (Pa. 1992). That policy is premised on the theory that the seller is best able to allocate the risk through increased costs and insurance. *Id.* Therefore, where a manufacturer merely incorporates a defective part into its product, the manufacturer of the part is considered primarily liable and, for policy reasons, the manufacturer or assembler of the product is considered secondarily liable.

As noted, for purposes of this discussion, we accept Mr. Hoffer’s first report, which alleged that Plaintiff was injured due to a defect in Deltona’s ballast. This theory did not suggest that Hubbell altered the ballast or failed to ascertain its defect. Under this theory, Hubbell’s liability arises solely because it incorporated Deltona’s defective ballast.

Hubbell acknowledges that it could be liable for Plaintiff’s injuries as the assembler of the defective ballast into its lighting fixture. However, Hubbell correctly contends that if a verdict is entered against it in favor of Plaintiff, it is nevertheless entitled to indemnification up to the amount of the verdict. This is because the law will place “final responsibility in such instances upon the party primarily responsible for the defective product.” *Walasavage, supra.*, 438 A.2d at 518. As discussed in *Burbage*, 249 A.2d at 567:

The right of indemnity rests upon the difference between the primary and secondary liability of two persons each of whom is made responsible by law to an injured party. The right to indemnity inures to a person who, without active fault on his own part, has been compelled by reason of some legal obligation to pay damages occasioned by the negligence of another.

Indemnification is not a fault sharing but rather a fault shifting mechanism which exists when one party who is liable, solely by operation of law, seeks to recover his loss from a defendant who actually caused the underlying injury. *Walton v. Acvo, Corp.*, 610 A.2d at 460.

With the concept of indemnification in mind, we now turn to the impact of the release. Hubbell argues that whenever a plaintiff releases a party who is primarily liable, the party who is secondarily liable is also released. Hubbell cites to *Sochanski v. Sears, Roebuck and Company*, 689 F.2d 45 (3rd Cir. 1982), to support its position. In that case, Goodyear manufactured a tire that was placed on a wheel manufactured by Geneva. The tire and wheel were assembled into Palsgrove's garden cart and sold to Sears, which, in turn, sold the assembled cart to Sochanski. The tire was defective and injured Sochanski. After trial, the plaintiff executed a release with Goodyear and Geneva for less than the verdict. The court ruled that if either the tire or the wheel was defective, then the manufacturer was primarily liable, Sears was secondarily liable, and Sears was discharged by virtue of the release between plaintiff and the manufacturer.

Thus, there appears to be support for the proposition that the release of Deltona as the party primarily liable also releases Hubbell as the party secondarily liable. However, Plaintiff contends that his release with Deltona did not release Hubbell in any respect. It is clear that Plaintiff intended to release Deltona, whose only liability is premised upon manufacturing the defective ballast. To suggest that such a release would not also release a party secondarily liable is illogical. Although Plaintiff may argue that the Release reserves all claims against other tortfeasors, including Hubbell, it appears that those claims are, or legally must be, construed as claims of independent or joint tortfeasor liability where that liability is not

premised upon the aforementioned social policy related to strict liability of an assembler of a defective component part.⁶

To conclude otherwise would lead to an absurd result and run amuck of the policy behind strict liability and indemnification. In strict liability cases, plaintiffs are to be fairly compensated for injuries caused by defective products. If a plaintiff is awarded a judgment, he may seek satisfaction from any of the manufacturers or sellers in the chain of distribution. To the extent he recovers from any party who is only secondarily liable, that defendant may seek indemnification from the party primarily liable. Thus, the plaintiff is compensated and the party secondarily liable is protected, to the extent the party primarily liable is solvent. Therefore, the party most responsible for the harm bears the possible burden of fully compensating the plaintiff, directly or indirectly.

Parties generally enter into releases in order to limit and/or define their exposure to liability. Practices which facilitate settlement are judicially encouraged. However, if Plaintiff's argument is accepted, settlement with parties primarily liable would be discouraged. Although no record has been created, regarding the circumstances surrounding the Release, I cannot ignore the fact that the Release was executed after the Complaint was filed and Mr. Hoffer's first report was circulated. Deltona obviously was aware that Plaintiff was alleging that Deltona's ballast was the defective product that caused his injury. In entering into the Release, Deltona was attempting to buy its way out of the litigation and limit its exposure.

Because Hubbell was not a party to the Release, its right to indemnification from Deltona was not impacted. If Plaintiff is permitted to obtain a judgment against Hubbell, for merely incorporating the ballast, then Hubbell could seek indemnification from Deltona. Such a

⁶I note that I previously came to this conclusion when referring to Judge Spicer's opinion in my Opinion on Hubbell's Motion to Preclude Plaintiff's Second Supplemental Report, dated September 11, 2001. Therein, I stated:

Judge Spicer noted that indemnification, as between Hubbell and Deltona, is applicable in a products liability case if the assembler of the product is solely liable on the basis of incorporating a defective component into its product. If that were so here, the settlement would have precluded Plaintiff from proceeding. However, if there is an independent basis for Hubbell's liability, then Hubbell is only entitled to contribution from Deltona and Plaintiff would have the right to proceed against Hubbell despite the settlement. (emphasis added).

result would effectively nullify the release by exposing Deltona to damages in excess of what it paid to be released.

C. Deltona's Further Participation

Nevertheless, the issue of the alleged defective ballast must remain in the trial because a jury may find both Hubbell and Deltona primarily strictly liable for their own acts, independent from the other, which caused injury to Plaintiff. Again, as previously determined by Judge Spicer, in such a case, Hubbell's liability for damages awarded to Plaintiff would be reduced by fifty percent because of the settlement with Deltona.⁷

Plaintiff claims an independent cause of action against Hubbell for not discovering the defect, through inspection, after incorporating it into its lighting fixture. Again, the "law of the case" doctrine applies here. Judge Spicer denied Hubbell's first motion for summary judgment,⁸ indicating:

We read Mr. Hoffer's earlier report as raising the possibility that the ballast's defective condition could have been ascertained by inspection before it was incorporated in the lighting fixture. Regardless of what plaintiff may have pleaded, a jury question was thus raised.

In arriving to this conclusion, he stated:

To the extent that dictum in *Tromza v. Tecumseh Products Company*, 378 F.2d 601 (3rd Circuit 1967) suggests that a manufacturer may be entitled to indemnification regardless of its failure to inspect, we find it lacking support in Pennsylvania law.

I recognize that Hubbell cites to *Sochanski* (which cites *Tromza*) and *Builders Supply Company v. McCabe*, 77 A.2d 368 (Pa. 1951), in its present motion, arguing that a party is solely secondarily liable

⁷ See *Walton v. Avco Corp.*, *supra.*, wherein our Supreme Court made clear that as between multiple tortfeasors who are each responsible for a plaintiff's injury on a theory of strict liability, their apportionment of damages is equally divided without consideration of comparative fault. Thus, if Hubbell and Deltona are determined to be joint tortfeasors on that basis, each would be apportioned 50% of any verdict. At that point, a determination whether the instant Release is pro tanto or pro rata becomes relevant. See, *Baker v. AC&S, Inc.*, 755 A.2d 664 (Pa. 2000).

⁸ The undersigned also reiterated Judge Spicer's ruling in the Court's Opinion on Hubbell's Motion to Preclude Plaintiff's Second Supplemental Report.

where its liability arose only because of its failure to discover or remedy a defect created by the party primarily liable. Yet, because Judge Spicer has already ruled upon this issue and expressly rejected this contention, I will not alter his decision.

Also, Plaintiff contends that Hubbell may be held liable for injuries caused by a defect in the light fixture itself. Referring to Mr. Hoffer's second report, where he discusses the lack of a grounding mechanism in the light fixture, Plaintiff argues that the fixture itself is defective because it was not equipped to fail in a safe manner. Apart from incorporating the alleged defective ballast into its light fixture, a jury may find Hubbell primarily liable because the light fixture itself was defective for not being equipped to fail in a safe manner. See generally *Sochanski, supra*. Moreover, as conceded to by Hubbell in its present motion and oral argument, a question of fact remains as to whether Hubbell's lighting fixture had an inadequate grounding mechanism which was the cause of Plaintiff's injuries.

As explained above, if a jury would conclude that a defect in the ballast, existing at the time it left Deltona, was the sole cause of Plaintiff's injury, then Plaintiff would not be able to recover from Hubbell. However, if a jury found Deltona and Hubbell primarily strictly liable for a defective ballast and a defect in the light fixture itself, respectively, then Hubbell would be liable for fifty percent of the jury award and Deltona's share of liability would be extinguished due to the release.⁹ See *Walton, supra*.

D. Malfunction Theory Of Strict Product Liability

Although not directly raised in either Hubbell or Deltona's motions for partial summary judgment, I find it necessary to address and clarify the malfunction theory of strict product liability. As previously

⁹Despite the settlement with Plaintiff, Deltona is required to remain a party to this lawsuit to determine joint or sole liability. *Sochanski*, 689 F.2d at 49, citing *Slaughter v. Pennsylvania X-Ray Corp.*, 638 F.2d 639, 644 (3rd Cir. 1981) and *Davis v. Miller*, 123 A.2d 422 (Pa. 1956) (under Pennsylvania law, a party may be required to remain in the ensuing litigation for the purpose of determining joint or sole liability, even though the party has received a joint tortfeasor release.)

stated, Plaintiff raised the malfunction theory¹⁰ for the first time at the pre-trial conference held on August 24, 2004. He argues that despite any ruling regarding the effect of the release on Hubbell, it can still establish Hubbell's liability under the malfunction theory by simply demonstrating that the light fixture electrified and caused his injury. Hubbell contends that Plaintiff is not entitled to raise such theory at this late stage of the proceedings. It further argues that Plaintiff cannot proceed under this theory because Mr. Hoffer has already indicated the precise defect in the lighting unit, that being a defective ballast.

As noted above, in a strict product liability claim, the plaintiff has the burden of showing that (1) the product was defective, (2) the defect was the proximate cause of the injury, and (3) the defect existed at the time the product left the manufacturer. In cases where a plaintiff cannot produce direct evidence of a product's defective condition, the plaintiff may rely on the malfunction theory of product liability. *Rogers*, 565 A.2d at 754; *Woodin v. J.C. Penney Co., Inc.*, 629 A.2d at 975-76.

When proceeding on such a theory, "the plaintiff may present a case-in-chief evidencing the occurrence of a malfunction and eliminating abnormal use or reasonable, secondary causes for the malfunction. From this circumstantial evidence, a jury may be permitted to infer that the product was defective at the time of sale." *Rogers*, 565 A.2d at 754; *Dansak*, 703 A.2d at 495-96; *Ducko v. Chrysler Motors Corp.*, 639 A.2d 1204, 1205-1206 (Pa.Super. 1994).

¹⁰In most Section 402A cases, the plaintiff will produce direct evidence of a product's defective condition. Sometimes "the plaintiff may not be able to prove the precise nature of the defect in which case reliance may be had on the 'malfunction' theory of product liability. This theory encompasses nothing more than circumstantial evidence of product malfunction. . . It permits a plaintiff to prove a defect in a product with evidence of occurrence of a malfunction and with evidence eliminating abnormal use or reasonable, secondary causes for the malfunction . . . It thereby relieves the plaintiff from demonstrating precisely the defect yet it permits the trier of fact to infer one . . . *Rogers*, 565 A.2d at 754. "Evidence of a malfunction . . . is not a substitute for the need to establish that the product was defective. A malfunction is evidence that a defect existed and eliminates only the need to identify a specific failure. 'Malfunction may itself, in the absence of abnormal use and reasonable secondary causes, be sufficient evidence of a defect to the existence of a defect a jury question . . . Thus, even when a case is tried under a malfunction theory, recovery rests on a finding that a defect did exist.'" *Sochanski*, 689 F.2d at 50 (citations omitted).

However, it must be noted that although proof of a specific defect is not essential to establish liability, the plaintiff cannot depend upon conjecture or guesswork. The mere fact that an accident happens does not take the injured plaintiff to the jury. *Woodin*, 629 A.2d at 976. A malfunction alone may be sufficient evidence of a defect to make the existence of a defect a question for the jury, but recovery ultimately rests on a finding that a defect did indeed exist. *Sochanski*, 689 F.2d at 49.

I recognize that, although the pleadings provide a tenable basis upon which Plaintiff can proceed under a malfunction theory of strict products liability, all proceedings thereafter have been focused upon Hoffer's expert reports regarding the issues of a defective ballast and the light fixture's inadequate grounding mechanism. As such, if Plaintiff proceeds on a malfunction theory at trial, the door is open for Defendant to use these reports to point to a precise defect (presumably a defective ballast) that was the cause of Plaintiff's injuries.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 10th day of June, 2005, the motions for partial summary judgment filed by Hubbell, Inc., Deltona Transformer Corporation and Deltona Lighting Products, Inc. are hereby denied.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1309 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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, bounded and described as follows, to wit:

BEGINNING for a point at Fawn Avenue and Lot No. 34; thence along Lot No. 34 and sewage pump site, South sixty-five (65) degrees fifty-three (53) minutes forty-four (44) seconds West, one hundred sixty-one and ninety hundredths (161.90) feet to a point at lands now or formerly of Richard R. Lupo; thence along said lands, North twenty-two (22) degrees thirty-eight (38) minutes fifteen (15) seconds West, fifty and two hundredths (50.02) feet to a point at Lot No. 36; thence along Lot No. 36, North sixty-five (65) degrees fifty-three (53) minutes forty-four (44) seconds East, one hundred sixty and sixty-two hundredths (160.62) feet to a point at Fawn Avenue; thence along Fawn Avenue, South twenty-four (24) degrees six (06) minutes sixteen (16) seconds East, fifty (50.00) feet to the point and place of BEGINNING. CONTAINING 8,063 square feet and identified as Lot No. 35 on a plan of lots entitled Phase II, Deer Park Estates, recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania, in Plan Book 41, Page 109.

BEING the same tract of land which Donald B. Smith and Alice C. Smith, by their deed dated the 9th day of June 1988 and recorded in the Office of the Recorder of Deeds of Adams County, unto Hugo L. Contreras and Barbara A. Contreras, husband and wife, grantors herein.

SUBJECT TO the restrictions dated December 9, 1982 and recorded in the Office of the Recorder of Deeds of Adams County, in Miscellaneous Book 42 at Page 708.

Parcel Number 36-2-35

Premises known as: 73 Fawn Ave., New Oxford, PA 17350

SEIZED and taken into execution as the property of **Cesar A. Contreras & Sara P. Contreras** 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 April 17, 2006, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1301 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at the corner of Bonnie Field Circle and Lot No. 40 as more particularly described on the hereinafter referred to subdivision plan; thence along Lot No. 40, South eleven (11) degrees forty (40) minutes forty-nine (49) seconds West, one hundred five and one hundredth (105.01) feet to a point at lands now or formerly of Ronald L. Carter and Meyer & Meyer Partnership; thence along said lands, South sixty-three (63) degrees twenty-eight (28) minutes forty-eight (48) seconds West, thirty-seven and two hundredths (37.02) feet to a point at Lot No. 41-B, as more particularly described on the hereinafter referred to subdivision plan; thence along Lot No. 41-B, North zero (00) degrees thirty-two (32) minutes thirty-eight (38) seconds West, one hundred twenty-three and sixty-two hundredths (123.62) feet to a point at Bonnie Field Circle; thence along Bonnie Field Circle by a curve to the right having a radius of two hundred thirty-eight and ninety-seven hundredths (238.97) feet, an arc distance of fifty-five and eighty-four hundredths (55.84) feet and a long chord bearing and distance of South eighty-five (85) degrees thirty-seven (37) minutes thirty (30) seconds East, fifty-five and seventy-two hundredths (55.72) feet to a point, the place of BEGINNING. CONTAINING 5,019 square feet and known as Lot No. 41-A on Final Plan of Bonnie Field, prepared by Worley Surveying, dated April 3, 1995, File No. C-1488, which said subdivision plan is

recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plan Book 67, page 11.

Parcel No. 9-55A

BEING the same premises which Thomas F. Spangler, by Deed dated October 3, 1997 and recorded in the Office of the Recorder of Deeds of Adams County on October 7, 1997, in Deed Book Volume 1452, Page 221, granted and conveyed unto Kathleen D. Mikesell.

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthou, Esq.
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

Premises known as: 5 A Bonniefield Circle, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Kathleen D. Mikesell** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania on March 17, 2005, for the purpose of obtaining a Certificate of Incorporation. The name of the corporation organized under the provisions of the Commonwealth of Pennsylvania Business Corporation Law of 1988 is GETTYSBURG GHOST TOURS, INC.

J. Dennis Guyer
Wertime & Guyer LLP
35 North Carlisle Street, Suite A
Greencastle, PA 17225
Attorney

2/10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1300 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 or parcel of land, situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point on the property line of the cul-de-sac of Cherry Court at corner of Lot No. 106 of the hereinafter referenced plan of lots; thence along Lot No. 106, South 42 degrees 02 minutes 49 seconds West 92.07 feet to a point at other lands now or formerly of Oxford Estates; thence along same, North 34 degrees 52 minutes 51 seconds West 143 feet to a point at Lot No. 104 on said plan; thence along Lot No. 104, South 85 degrees 06 minutes 59 seconds East 129 feet to a point on the property line of the cul-de-sac of Cherry Court; thence along the same, by a curve to the left, the radius of which is 50 feet, for an arc length of 42 feet and having a long chord bearing and distance of South 21 degrees 26 minutes 29 seconds East 40.78 feet to a point at Lot No. 106, the point and place of BEGINNING. CONTAINING 8,650 square feet and being Lot No. 105 on a plan of lots of Oxford Estates, Phase IV, dated May 23, 1985, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 42, page 5.

BEING the same premises which, by her Deed dated September 30, 1993 and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, at Deed Book 787, page 33, Anna Marie Cox granted and conveyed unto Betty J. Topper, Grantor herein.

Under and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objections, easements, agreements, etc., as they appear of record.

With the appurtenances: TO HAVE AND TO HOLD the same unto and for the use of Grantees, their heirs and assigns forever.

HAVING THEREON erected a dwelling house known as: 3 Cherry Court, New Oxford, Pennsylvania 17350

BEING THE SAME PREMISES WHICH Betty J. Topper, by Deed dated 12/3/99 and recorded 12/8/99 in Adams County Deed Book 1966, Page 167, granted and conveyed unto Rodney A. Carey and Teresa M. Carey,

SEIZED IN EXECUTION AS THE PROPERTY OF RODNEY A. CAREY AND TERESA M. CAREY UNDER ADAMS COUNTY JUDGMENT NO. 02-S-1300

Map & Parcel (35) 8-114

SEIZED and taken into execution as the property of **Rodney A. Carey & Teresa M. Carey** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1213 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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, that certain piece, parcel or tract of ground, situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point along the right-of-way line of Stayman Way at corner of Lot No. 64 on subdivision plan hereinafter referred to; thence along the right-of-way line of Stayman Way, by a curve to the left, having a radius of two hundred fifty (250.00) feet, an arc length of fifty-one (51.00) feet, and a long chord bearing and distance of South twenty-eight (28) degrees fifty-seven (57) minutes fifty-six (56) seconds West, fifty and ninety-one hundredths (50.91) feet to a point at corner of Lot No. 66 on subdivision plan hereinafter referred to; thence along Lot No. 66, North sixty-six (66) degrees fifty-two (52) minutes forty-three (43) seconds West, one hundred ten (110.00) feet to a point along Lot No. 472 on subdivision plan hereinafter referred to; thence along Lot No. 472, North thirty-four (34) degrees forty-eight (48)

minutes thirty-five (35) seconds East, seventy-two and ninety-three hundredths (72.93) feet to a point at corner of Lot No. 64 aforesaid; thence along Lot No. 64, South fifty-five (55) degrees eleven (11) minutes twenty-five (25) seconds East, one hundred two and fifty-four hundredths (102.54) feet to a point along the right-of-way line of Stayman Way, the point and place of BEGINNING. (CONTAINING 6,480 square feet and being designated as Lot No. 65 on subdivision plan of Appler Development prepared by Group Hanover, Inc., dated 7/15/94, as revised, Project No. 921060, which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 65, page 89.)

TITLE TO SAID PREMISES IS VESTED IN Franklin J. Beckwith, Sr., by Deed from Steve A. Miller and Tina M. Miller, record owners, and Richard B. Myford and Barbara Eppley, equitable owners, dated 03/30/2001 and recorded 05/03/2001 in Deed Book 2274, Page 18.

Premises being: 23 Stayman Way, Littlestown, PA 17340

Tax Parcel No. 27-004-0129-000

SEIZED and taken into execution as the property of **Franklin J. Beckwith, Sr.** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

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 MADELYN W. McCENEY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executor: Douglas R. Coggins, 8905 Fairview Road, Silver Springs, MD 20910

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF HELEN E. REED, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Gladys M. Rodgers, 294 Zeigler Mill Road, Gettysburg, PA 17325

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF EDITH BUCHANAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Kathy Ann Leonard, 298 John Owings Rd., Westminster, MD 21158

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF VERN H. HALL, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Grace K. Hall, P.O. Box 783, Biglerville, PA 17307

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

ESTATE OF BETTY P. JACOBS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Phyllis S. Chandler, 1340 Buchanan Valley Road, Orttanna, PA 17353

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

ESTATE OF RAY L. JUNKINS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Robert L. Junkins, 499 Frazer Rd., Aspers, PA 17304

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

ESTATE OF JANET E. MAITLAND a/k/a JANET R. MAITLAND, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Richard A. Maitland, Jr., P.O. Box 321, Harwich Port, MA 02646

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

ESTATE OF RALPH E. MARKLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Mildred M. Muller, 65 Henry Street, Hanover, PA 17331

Attorney: Keith A. Hassler, Esq., Attorney at Law, 9 North Beaver Street, York, PA 17401

ESTATE OF MARY CATHERINE SHILDT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Elmer C. Shildt, Jr., 650 Bollinger Rd., Littlestown, PA 17340

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF ALLEN A. SLONAKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Virginia M. Riley, 58 West Hanover St., Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF FRANCES L. TRONE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Frederick C. Trone, 24 Misty Court, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF HELEN R. WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

David L. Weaver, 10 Tiffany Court, Hanover, PA 17331; Ellen Mary Glass, 87 Peanut Drive, Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF WANDA L. LEHN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Ronald C. Lehn, 25 Easy Street, Littlestown, PA 17340; Cathy J. Camac, 2225 Bear Den Road, Frederick, MD 21701

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

ESTATE OF CARL VERNON OWINGS, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Stacy L. Owings, 118 Flickinger Road, Gettysburg, PA 17325

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

ESTATE OF CHESTER H. REAM, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrators: Tena L. Wasbers, Troy A. Ream and Stacy L. Myers, c/o Morris & Vedder, 32 N. Duke St., P.O. Box 544, York, PA 17405

Attorney: Rand A. Feder, Esq., Morris & Vedder, 32 N. Duke St., P.O. Box 544, York, PA 17405

ESTATE OF CHRISTOPHER T. VAN-SCYOC, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Dellia Joan VanScyoc, c/o Miller & Shultis, P.C., Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF G. RODGER WILDASIN a/k/a GEORGE RODGER WILDASIN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: G. Michael Wildasin, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

Attorney: William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1097 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 parcels of land with the improvements thereon erected, situate in Franklin Township, Development of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, being more fully bounded and described as follows, to wit:

Parcel No. 1:

Lots Nos. 45, 46, 47, 48, 49 and 50 of Block No. ... of Section B, respectively as shown on the survey and original plat of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, made by a registered surveyor and of record in the Recorder of Deeds Office in Adams County, Pennsylvania, in Miscellaneous Book No. 4, at Page 487, reference being made thereto for a more particular description of the lot or lots hereinbefore described and herein conveyed.

Parcel No. 2:

Lots Nos. 16, 17 and 18 of Section B, respectively as shown on the survey and original plat of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, made by a registered surveyor and of record in the Recorder of Deeds Office in Adams County, Pennsylvania, in Miscellaneous Book No. 4 at Page 487, reference being made thereto for a more particular description of the lot or lots hereinbefore described and herein conveyed.

BEING the same which Raymond D. Lehr and Jane Lehr, a/k/a Jane E. Lehr, his wife, by deed dated the 26th day of April, 1983, which deed is about to be recorded, conveyed unto Christy E. Reigle, the grantor herein.

TOGETHER with a right of way and all rights whatsoever and subject to all conditions, restrictions, easements, maintenance charges and other matters of record as mentioned in the above recited deed.

TITLE TO SAID PREMISES IS VESTED IN Charles Coene by Deed from Christy E. Reigle, single, dated 10-30-91, recorded 10-31-91 in Deed Book 604, page 226.

Premises being: 55 Maple Lane, Orrtanna, PA 17353

Tax Parcel No. 12-002-0052-000

SEIZED and taken into execution as the property of **Charles Coene** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. §311), there was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on December 21, 2005, an Application for Registration of Fictitious Name of OLD OAK FARM JOINT VENTURE, the address of the principal place of business being 1140 Red Rock Road, Gettysburg, Pennsylvania 17325. The names and addresses of the persons who are parties to said registration are: Douglas E. Sentz, 1140 Red Rock Road, Gettysburg, Pennsylvania 17325, and Ernest R. Shriver, 344 Gordon Road, Fairfield, PA 17320.

Puhl, Eastman & Thrasher
Attorneys

2/10

NOTICE

NOTICE IS HEREBY GIVEN that Trisha M. Cruz, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 4th day of April, 2006, and that she intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

2/10, 17 & 24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for AX CONVERTING, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on December 5, 2005, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker, Yingst & Hart
Solicitor

2/10

NOTICE

On the 1st day of March, 2006, at 9:00 a.m., a hearing will be held in Courtroom No. 2 of the Adams County Courthouse, Gettysburg, Pennsylvania, to determine whether the Gettysburg Area School District shall sell and convey to Daniel I. Keys approximately 2.121 acres of real estate, more or less, with improvements thereon, with an address of 3610 Chambersburg Road, Biglerville (Franklin Township), Adams County, Pennsylvania 17307, for the purchase price of \$75,000, upon terms and conditions set forth in an Agreement of Sale dated January 12, 2006.

Any person who wishes to oppose the sale must attend the hearing and be heard.

Robert L. McQuaide
Solicitor
(717) 337-1360

2/10, 17 & 24

Adams County Legal Journal

Vol. 47

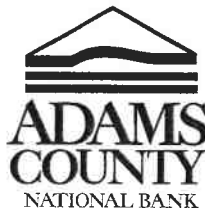
February 17, 2006

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IN THIS ISSUE

YINGLING VS. SCOTT

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1097 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 parcels of land with the improvements thereon erected, situate in Franklin Township, Development of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, being more fully bounded and described as follows, to wit:

Parcel No. 1:

Lots Nos. 45, 46, 47, 48, 49 and 50 of Block No. ... of Section B, respectively as shown on the survey and original plat of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, made by a registered surveyor and of record in the Recorder of Deeds Office in Adams County, Pennsylvania, in Miscellaneous Book No. 4, at Page 487, reference being made thereto for a more particular description of the lot or lots hereinbefore described and herein conveyed.

Parcel No. 2:

Lots Nos. 16, 17 and 18 of Section B, respectively as shown on the survey and original plat of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, made by a registered surveyor and of record in the Recorder of Deeds Office in Adams County, Pennsylvania, in Miscellaneous Book No. 4 at Page 487, reference being made thereto for a more particular description of the lot or lots hereinbefore described and herein conveyed.

BEING the same which Raymond D. Lehr and Jane Lehr, a/k/a Jane E. Lehr, his wife, by deed dated the 26th day of April, 1983, which deed is about to be recorded, conveyed unto Christy E. Reigle, the grantor herein.

TOGETHER with a right of way and all rights whatsoever and subject to all conditions, restrictions, easements, maintenance charges and other matters of record as mentioned in the above recited deed.

TITLE TO SAID PREMISES IS VESTED IN Charles Coene by Deed from

Christy E. Reigle, single, dated 10-30-91, recorded 10-31-91 in Deed Book 604, page 226.

Premises being: 55 Maple Lane, Orrianna, PA 17353

Tax Parcel No. 12-002-0052-000

SEIZED and taken into execution as the property of Charles Coene 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on January 9, 2006, pursuant to the Fictitious Name Act, setting forth that Gettysburg Baking Company is the only entity interested in a business, the character of which is the management of a pizza shop/restaurant, that the designation under which the business is and will be conducted is BEST EVER BRICK OVEN PIZZA (BEBOP) and that the principal place of business is 460 Boyds Hollow Rd., Biglerville, PA 17307.

Bernard A. Yannetti, Jr., Esq.
Solicitor

2/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on 2006-01-12 for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of 1988, 15 Pa.C.S. Section 1101. The name of the corporation is: ULTIMATE PUNCH OUT SERVICE, INC. The purpose for which the corporation is organized is: Finishing and completing punch out work for new home builders, Cabinet installation and general repair.

2/17

NOTICE

On the 1st day of March, 2006, at 9:00 a.m., a hearing will be held in Courtroom No. 2 of the Adams County Courthouse, Gettysburg, Pennsylvania, to determine whether the Gettysburg Area School District shall sell and convey to Daniel I. Keys approximately 2.121 acres of real estate, more or less, with improvements thereon, with an address of 3610 Chambersburg Road, Biglerville (Franklin Township), Adams County, Pennsylvania 17307, for the purchase price of \$75,000, upon terms and conditions set forth in an Agreement of Sale dated January 12, 2006.

Any person who wishes to oppose the sale must attend the hearing and be heard.

Robert L. McQuaide
Solicitor
(717) 337-1360

2/10, 17 & 24

YINGLING VS. SCOTT

1. It is well-settled law that in the event property is conveyed and is so situated that access to it from the highway can only be had by passing over the remaining land of the grantor, then the grantee is entitled to a way of necessity over the lands of his grantor. Therefore, an easement by necessity is created when, after severance from an adjoining property, a piece of land is without access to a public highway.

2. An easement by necessity requires that there be unity of ownership of both the property that must be accessed and the property over which the easement allegedly lies.

3. A right-of-way by necessity may be implied when after severance from adjoining property, a piece of land is without access to a public highway. However, an easement by implied reservation is based on the theory that continuous use of a permanent right-of-way gives rise to the implication that the parties intended that such use would continue.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL ACTION NO. 04-S-864. HAROLD L.
YINGLING AND BETTY J. YINGLING VS. DANIEL L. SCOTT
AND SHIRLEY M. SCOTT.

Henry O. Heiser, III, Esq., for Plaintiffs

Matthew R. Battersby, Esq., for Defendants.

Kuhn, P.J., June 16, 2005

MEMORANDUM OPINION

Before the Court is Plaintiffs' Complaint for Declaratory Judgment, filed August 27, 2004. The facts set forth therein are alleged as follows: Pursuant to deed dated March 20, 1974, Plaintiffs, Harold L. Yingling and Betty J. Yingling ("Plaintiffs"), purchased a tract of land in Hamiltonban Township (mailing address of 287 Cold Spring Road, Gettysburg, Pennsylvania). Pursuant to deed dated July 28, 2000, Defendants, Daniel L. Scott and Shirley M. Scott ("Defendants"), purchased a tract of land situated partially in both Hamiltonban Township and in Highland Township. Defendants' property fronts along Cold Spring Road and lies between the road and Plaintiffs' property. Access to Plaintiffs' property is by way of a private, ten-foot wide gravel road that passes through Defendants' property and intersects with Cold Spring Road. Plaintiffs allege that this private road has been continuously used and maintained by them as well as their predecessors in title for over fifty years.

The parties agree that there is no record grant or reservation of an easement over the private road in the chain of title to Plaintiffs' property. They also concede that there is no common grantor of Plaintiffs'

and Defendants' properties such that an easement by implication could arise. The parties further agree that the private road passes through unenclosed woodlands situated on Defendants' property and as such 68 P.S. §411, relating to unenclosed woodland, precludes the acquisition of a prescriptive easement over the private road.

In their Complaint, Plaintiffs request the Court to declare that 68 P.S. §411 has no application to the facts of this case as outlined in their Complaint. In their Amended Answer, Defendants argue that the statute acts as a complete bar to Plaintiffs' claims.

In Plaintiffs' brief they indicate that they are not seeking an easement arising by implication or prescription. Rather, they claim that they are entitled to an "easement by necessity" because the private road in dispute is the only means of access to their property. Plaintiffs contend that because the unenclosed woodland statute applies only to easements by prescription, their claim of an easement by necessity is not barred by the statute.

Defendants acknowledge that the unenclosed woodland statute only bars a right to an easement by prescription. They also concede that Plaintiffs' property is landlocked and that the private road is necessary for plaintiffs to access their property. Nevertheless, they argue that based upon the facts set forth in Plaintiffs' Complaint, Plaintiffs are not entitled to an easement by necessity because a common grantor does not exist.¹

We depart from the procedural confines of the present action because the parties have agreed to have the Court determine whether Plaintiffs are, in fact, entitled to an easement by necessity. Therefore, the sole issue presently before the Court is whether the lack of a common grantor precludes Plaintiffs from establishing the existence of an easement by necessity.

Plaintiffs argue that an easement by implication, arising by implied reservation or by implied necessity, requires a common

¹In *Tomlinson v. Jones*, 557 A.2d 1103 (Pa. Super. 1989) our Superior Court clearly indicated that 68 P.S. § 411 does not preclude the existence of an easement by necessity. Instead, the "unenclosed woodland statute" was intended to prevent the acquisition of a prescriptive easement through woodland. That purpose of protecting property owners from unknown and undesired encroachment is not promoted by also precluding easements by necessity. Accordingly, if plaintiffs can otherwise establish a right to an easement by necessity, the statute is not a bar to that claim.

grantor. They claim that an easement by necessity is different in that a common grantor is not required. I disagree.

It is well-settled law that in the event property is conveyed and is so situated that access to it from the highway can only be had by passing over the remaining land of the grantor, then the grantee is entitled to a way of necessity over the lands of his grantor. *Phillippi v. Knotter*, 748 A.2d 757, 760 (Pa.Super. 2000). Therefore, an easement by necessity is created when, after severance from an adjoining property, a piece of land is without access to a public highway. *Tricker v. Pennsylvania Tpk., Comm'n*, 717 A.2d 1078, 1082 (Pa.Cmwlt. 1998) (citing *Bodman v. Bodman*, 321 A.2d 910 (Pa. 1994)). To establish that an easement by necessity has been created, the owner of the dominant tenement must prove the following: 1) the titles to the alleged dominant and servient properties had once been held by one person; 2) this unity of title must have been severed by a conveyance of one of the tracts; and, 3) the easement must be necessary in order for the owner of the dominant tenement to use his land, with the necessity existing both at the time of the severance of title and at the time of the exercise of the easement. *Phillippi*, 748 A.2d at 760 (citing *Graff v. Scanlan*, 673 A.2d 1028, 1032 (Pa.Cmwlt. 1996)); *Tricker*, 717 A.2d at 1082; *In re Private Rd. in Union Twp.*, 611 A.2d 1362, 1364 (Pa.Cmwlt. 1992). An easement by necessity requires that there be unity of ownership of both the property that must be accessed and the property over which the easement allegedly lies. *Tricker*, cited above.

In the case before the Court, the parties concede that no common grantor of their properties exists (as far back in the chain of title that they can determine). Therefore, because there is no unity of ownership of the parties' properties, an easement by necessity cannot be established.

I find Plaintiffs' claim that the difference between easements by necessity and those by implication is that an easement by necessity does not require a common grantor to be unsupported by case law. Likewise, I find Plaintiffs' argument that an easement by necessity should be granted in the present case solely because public policy prevents land from being unusable to be unsubstantiated. They cite to *Tomlinson*, cited above, *Burns Mfg. Co., Inc. v. Boehm*, 356 A.2d 763 (Pa. 1976), *Odette's Inc. v. Commonwealth of Pennsylvania*, 699

A.2d 775 (Pa.Cmwth. 1997), and *In the Interest of Jones*, 649 A.2d 488 (Pa.Cmwth. 1994) in support of their contention.

First, I recognize that the *Tomlinson* Court indicates that the use of an easement by necessity arises as a matter of public policy to prevent land from remaining unusable. However, this is not the basis upon which the *Tomlinson* Court determined that an easement by necessity can arise. The Court stated:

Where the servient estate abuts a public roadway and the only access to the dominant estate is by easement over the servient estate, and where the properties were originally held jointly, it has long been the rule that an easement arises of necessity.

Id. at 1105 (quoting *Soltis v. Miller*, 282 A.2d 369 (Pa. 1971) (emphasis added)). It is clear that the *Tomlinson* Court recognized that in order for an easement by necessity to exist, the dominant and servient properties must have been originally held by a common grantor.

Next, in *Burns*, the Court addressed whether an easement by implied reservation existed. In a footnote, the Court distinguished between easements by implied reservation and easements which are implied on the grounds of necessity. *Burns*, 356 A.2d at 767, n.4. The Court explained that a right-of-way by necessity may be implied when after severance from adjoining property, a piece of land is without access to a public highway. *Id.* However, an easement by implied reservation is based on the theory that continuous use of a permanent right-of-way gives rise to the implication that the parties intended that such use would continue. *Id.* I do not interpret the Court's analysis as, in any way, distinguishing between an easement by necessity and an easement arising by implied necessity with respect to the need for a common grantor.

In *Jones*, the issue before the Court was whether Jones, the owner of landlocked property, was entitled to relief under what is commonly known as the Private Road Act. *Jones*, 649 A.2d at 489; Act of June 13, 1836, P.L. 551, as amended, 36 P.S. §§ 2731-2891, The Court did not discuss the requirements for an easement by necessity nor did it distinguish between an easement by necessity and an easement arising by implied necessity.

Finally, in *Odette's, Inc.*, one of many issues before the Court was whether *Odette's, Inc.*'s Complaint alleged sufficient facts to support a *prima case* of a prescriptive easement in order to withstand the defendant's preliminary objections. *Odette's, Inc.*, 699 A.2d at 784. The Court determined that the facts presented in the Complaint were sufficient to allege an easement by prescription and an easement by necessity. *Id.* While it is true that the Court does not mention the existence of a common grantor of the dominant and servient tenements, the issue before the Court was whether sufficient facts were pled to allege a prescriptive easement. The Court chose to go further and conclude that *Odette's, Inc.* also pled sufficient facts to allege an easement by necessity, without addressing any of the requirements for an easement by necessity. I do not find the Court's analysis (or lack thereof) to be controlling in the present matter.

At oral argument Plaintiffs claimed that courts addressing an easement by necessity sometimes follow the Restatement of Property approach while others follow the traditional test. I disagree and find *Phillippi*, cited above, provides guidance on this issue.

In *Phillippi*, the Court conducted two analyses of whether the plaintiffs were entitled to an easement by necessity and/or an easement by implication. In addressing the easement by necessity, the Court specified the requirements for such an easement (as outlined above), one being that "[t]he titles to the alleged dominant and servient properties must have been held by one person." *Id.* at 760. In the Court's separate and distinct analysis addressing the easement by implication, it acknowledged that two different tests have been used by the courts to determine whether an easement has been created by implication: the traditional test² and the Restatement of

²The traditional test has been defined as follows:

It has long been held in this Commonwealth that although the language of a granting clause does not contain an express reservation of an easement in favor of the grantor, such an interest may be reserved by implication, and this is notwithstanding that the easement is not essential for the beneficial use of the property...

"Where an owner of land subjects part of it to an open, visible, permanent and continuous servitude or easement in favor of another part and then aliens either, the purchaser takes subject to the burden or the benefit as the case may be, and this irrespective of whether or not the easement constituted a necessary right of way."

Phillippi, 748 A.2d at 761 (quoting *Tosh v. Witts*, 113 A.2d 226 (Pa. 1955); see also *Bucciarelli v. DeLisa*, 691 A.2d 446, 448-449 (Pa. 1997).

Property test.³ *Id.* at 761. The courts have used these tests when addressing whether an easement by implied reservation (i.e. prior use) has been created. *Id.* at 761-762; *Tricker*, 717 A.2d at 1081-1082.

It is important to note, however, that our Supreme Court stated in 1997 that it “has never specifically adopted the Restatement of Property § 476 and we decline to do so now” *DeLisa*, 691 A.2d at 448 n.1. Our Supreme Court nevertheless stated that courts may find Section 476 “useful and persuasive in analyzing cases like this”. *Id.*

The *Tomlinson* Court utilized the Restatement of Property test when it ruled that the plaintiffs acquired an easement by implication, indicating that “the Restatement of Property does not retain the historical distinction between easements acquired by implication or those acquired by necessity but rather requires a balancing of all relevant factors to ascertain the inference of intent.” *Tomlinson*, 557 A.2d at 1104. Since our Supreme Court instructed after *Tomlinson* that Restatement of Property § 476 is not the law of the Commonwealth, but only a guide courts may use, the *Tomlinson* Court’s use of Section 476 is not binding authority on this Court. Nevertheless, as previously stated, when addressing the necessity of the right-of-way at issue, the Court indicated that the properties in question must have been “originally held jointly” in order for an easement by necessity to arise. *Id.* at 1105 (citing *Soltis*, 282 A.2d 369).

Accordingly, the attached Order is entered.⁴

³ Section 476 of the Restatement of Property designates the following factors as important in determining whether an easement by implication exists:

(a) whether the claimant is the conveyor or the conveyee; (b) the terms of the conveyance; (c) the consideration given for it; (d) whether the claim is made against a simultaneous conveyee; (e) the extent of necessity of the easement to the claimant; (f) whether reciprocal benefits result to the conveyor and the conveyee, (g) the manner on which the land was used prior to its conveyance; and, (h) the extent to which the manner of prior use was or might have been known to the parties.

Restatement of Property § 476 (cited in *Phillippi*, 748 A.2d at 762.)

⁴ Plaintiffs are not without recourse because they can pursue relief under the Private Road Act, 36 P.S. §2731, et seq.

ORDER OF COURT

AND NOW, this 16th day of June, 2005, in accordance with the attached Memorandum Opinion, Plaintiff's Complaint for Declaratory Judgment, filed August 27, 2004, is dismissed. This Order is entered nisi and will become absolute twenty (20) days from the date of this Order.

Meanwhile, the status quo shall remain in effect.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1309 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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, bounded and described as follows, to wit:

BEGINNING for a point at Fawn Avenue and Lot No. 34; thence along Lot No. 34 and sewage pump site, South sixty-five (65) degrees fifty-three (53) minutes forty-four (44) seconds West, one hundred sixty-one and ninety hundredths (161.90) feet to a point at lands now or formerly of Richard R. Lupo; thence along said lands, North twenty-two (22) degrees thirty-eight (38) minutes fifteen (15) seconds West, fifty and two hundredths (50.02) feet to a point at Lot No. 36; thence along Lot No. 36, North sixty-five (65) degrees fifty-three (53) minutes forty-four (44) seconds East, one hundred sixty and sixty-two hundredths (160.62) feet to a point at Fawn Avenue; thence along Fawn Avenue, South twenty-four (24) degrees six (06) minutes sixteen (16) seconds East, fifty (50.00) feet to the point and place of BEGINNING. CONTAINING 8,063 square feet and identified as Lot No. 35 on a plan of lots entitled Phase II, Deer Park Estates, recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania, in Plan Book 41, Page 109.

BEING the same tract of land which Donald B. Smith and Alice C. Smith, by their deed dated the 9th day of June 1988 and recorded in the Office of the Recorder of Deeds of Adams County, unto Hugo L. Contreras and Barbara A. Contreras, husband and wife, grantors herein.

SUBJECT TO the restrictions dated December 9, 1982 and recorded in the Office of the Recorder of Deeds of Adams County, in Miscellaneous Book 42 at Page 708.

Parcel Number 36-2-35

Premises known as: 73 Fawn Ave., New Oxford, PA 17350

SEIZED and taken into execution as the property of **Cesar A. Contreras & Sara P. Contreras** 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 April 17, 2006, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1301 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at the corner of Bonnie Field Circle and Lot No. 40 as more particularly described on the hereinafter referred to subdivision plan, thence along Lot No. 40, South eleven (11) degrees forty (40) minutes forty-nine (49) seconds West, one hundred five and one hundredth (105.01) feet to a point at lands now or formerly of Ronald L. Carter and Meyer & Meyer Partnership; thence along said lands, South sixty-three (63) degrees twenty-eight (28) minutes forty-eight (48) seconds West, thirty-seven and two hundredths (37.02) feet to a point at Lot No. 41-B, as more particularly described on the hereinafter referred to subdivision plan; thence along Lot No. 41-B, North zero (00) degrees thirty-two (32) minutes thirty-eight (38) seconds West, one hundred twenty-three and sixty-two hundredths (123.62) feet to a point at Bonnie Field Circle; thence along Bonnie Field Circle by a curve to the right having a radius of two hundred thirty-eight and ninety-seven hundredths (238.97) feet, an arc distance of fifty-five and eighty-four hundredths (55.84) feet and a long chord bearing and distance of South eighty-five (85) degrees thirty-seven (37) minutes thirty (30) seconds East, fifty-five and seventy-two hundredths (55.72) feet to a point, the place of BEGINNING. CONTAINING 5,019 square feet and known as Lot No. 41-A on Final Plan of Bonnie Field, prepared by Worley Surveying, dated April 3, 1995, File No. C-1488, which said subdivision plan is

recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plan Book 67, page 11.

Parcel No. 9-55A

BEING the same premises which Thomas F. Spangler, by Deed dated October 3, 1997 and recorded in the Office of the Recorder of Deeds of Adams County on October 7, 1997, in Deed Book Volume 1452, Page 221, granted and conveyed unto Kathleen D. Mikesell.

Grenen & Birsic, P.C.

By: /s/Kristine M. Anthou, Esq.

Attorneys for Plaintiff

One Gateway Center, Nine West
Pittsburgh, PA 15222

(412) 281-7650

Premises known as: 5 A Bonniefield Circle, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Kathleen D. Mikesell** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1300 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 or parcel of land, situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point on the property line of the cul-de-sac of Cherry Court at corner of Lot No. 106 of the hereinafter referenced plan of lots; thence along Lot No. 106, South 42 degrees 02 minutes 49 seconds West 92.07 feet to a point at other lands now or formerly of Oxford Estates; thence along same, North 34 degrees 52 minutes 51 seconds West 143 feet to a point at Lot No. 104 on said plan; thence along Lot No. 104, South 85 degrees 06 minutes 59 seconds East 129 feet to a point on the property line of the cul-de-sac of Cherry Court; thence along the same, by a curve to the left, the radius of which is 50 feet, for an arc length of 42 feet and having a long chord bearing and distance of South 21 degrees 26 minutes 29 seconds East 40.78 feet to a point at Lot No. 106, the point and place of BEGINNING. CONTAINING 8,650 square feet and being Lot No. 105 on a plan of lots of Oxford Estates, Phase IV, dated May 23, 1985, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 42, page 5.

BEING the same premises which, by her Deed dated September 30, 1993 and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, at Deed Book 787, page 33, Anna Marie Cox granted and conveyed unto Betty J. Topper, Grantor herein.

Under and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objections, easements, agreements, etc., as they appear of record.

With the appurtenances: TO HAVE AND TO HOLD the same unto and for the use of Grantees, their heirs and assigns forever.

HAVING THEREON erected a dwelling house known as: 3 Cherry Court, New Oxford, Pennsylvania 17350

BEING THE SAME PREMISES WHICH Betty J. Topper, by Deed dated 12/3/99 and recorded 12/8/99 in Adams County Deed Book 1966, Page 167, granted and conveyed unto Rodney A. Carey and Teresa M. Carey,

SEIZED IN EXECUTION AS THE PROPERTY OF RODNEY A. CAREY AND TERESA M. CAREY UNDER ADAMS COUNTY JUDGMENT NO. 02-S-1300

Map & Parcel (35) 8-114

SEIZED and taken into execution as the property of **Rodney A. Carey & Teresa M. Carey** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1213 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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, that certain piece, parcel or tract of ground, situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point along the right-of-way line of Slayman Way at corner of Lot No. 64 on subdivision plan hereinafter referred to; thence along the right-of-way line of Slayman Way, by a curve to the left, having a radius of two hundred fifty (250.00) feet, an arc length of fifty-one (51.00) feet, and a long chord bearing and distance of South twenty-eight (28) degrees fifty-seven (57) minutes fifty-six (56) seconds West, fifty and ninety-one hundredths (50.91) feet to a point at corner of Lot No. 66 on subdivision plan hereinafter referred to; thence along Lot No. 66, North sixty-six (66) degrees fifty-two (52) minutes forty-three (43) seconds West, one hundred ten (110.00) feet to a point along Lot No. 472 on subdivision plan hereinafter referred to; thence along Lot No. 472, North thirty-four (34) degrees forty-eight (48)

minutes thirty-five (35) seconds East, seventy-two and ninety-three hundredths (72.93) feet to a point at corner of Lot No. 64 aforesaid; thence along Lot No. 64, South fifty-five (55) degrees eleven (11) minutes twenty-five (25) seconds East, one hundred two and fifty-four hundredths (102.54) feet to a point along the right-of-way line of Slayman Way, the point and place of BEGINNING. (CONTAINING 6,480 square feet and being designated as Lot No. 65 on subdivision plan of Appler Development prepared by Group Hanover, Inc., dated 7/15/94, as revised, Project No. 921060, which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 65, page 89.)

TITLE TO SAID PREMISES IS VESTED IN Franklin J. Beckwith, Sr., by Deed from Steve A. Miller and Tina M. Miller, record owners, and Richard B. Myford and Barbara Epley, equitable owners, dated 03/30/2001 and recorded 05/03/2001 in Deed Book 2274, Page 18.

Premises being: 23 Slayman Way, Littlestown, PA 17340

Tax Parcel No. 27-004-0129-000

SEIZED and taken into execution as the property of **Franklin J. Beckwith, Sr.** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

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 CARL W. ELICKER, II, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Tina M. Elicker, 725 Railroad Lane, Orttanna, PA 17353

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF MARY L. HERR, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Sharon E. Bower, 195 Oak Hill Road, Biglerville, PA 17307

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

ESTATE OF MICHAEL J. KLUNK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrators: Troy M. Klunk, 1103 North Walnut, Casa Grande, AZ 85222; Benjamin C. Klunk, 3 Shealer Rd., Gettysburg, PA 17325; Kara S. Klunk, 3 Shealer Rd., Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF RITA M. REAVER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Adams County National Bank, Christine R. Settle, Trust Officer, 2 Chambersburg Street, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF ELWOOD A. ROHRBAUGH a/k/a ELWOOD A. ROHRBAUGH, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High St., Gettysburg, PA 17325, Charles Rohrbaugh, 304 Main Street, Apt. 4, McSherrystown, PA 17344

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

ESTATE OF WILLIAM S. YOUNG, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Steven A. Young, 787 Pine Run Road, Abbottstown, PA 17301

Attorney: Timothy J. Colgan, Esq., Wiley, Lenox, Colgan & Marzacco, P.C., 130 W. Church St., Suite 100, Dillsburg, PA 17019

SECOND PUBLICATION

ESTATE OF MADELYN W. MCCENEY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executor: Douglas R. Coggins, 8905 Fairview Road, Silver Springs, MD 20910

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF HELEN E. REED, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Gladys M. Rodgers, 294 Zeigler Mill Road, Gettysburg, PA 17325

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF EDITH BUCHANAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Kathy Ann Leonard, 298 John Owings Rd., Westminster, MD 21158

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF VERN H. HALL, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Grace K. Hall, P.O. Box 783, Biglerville, PA 17307

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

ESTATE OF BETTY P. JACOBS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Phyllis S. Chandler, 1340 Buchanan Valley Road, Orttanna, PA 17353

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

ESTATE OF RAY L. JUNKINS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Robert L. Junkins, 499 Frazer Rd., Aspers, PA 17304

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

ESTATE OF JANET E. MAITLAND a/k/a JANET R. MAITLAND, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Richard A. Maitland, Jr., P.O. Box 321, Harwich Port, MA 02646

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

ESTATE OF RALPH E. MARKLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Mildred M. Muller, 65 Henry Street, Hanover, PA 17331

Attorney: Keith A. Hassler, Esq., Attorney at Law, 9 North Beaver Street, York, PA 17401

ESTATE OF MARY CATHERINE SHILD, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Elmer C. Shild, Jr., 650 Bollinger Rd., Littlestown, PA 17340

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF ALLEN A. SLONAKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Virginia M. Riley, 58 West Hanover St., Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF FRANCES L. TRONE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Frederick C. Trone, 24 Misty Court, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF HELEN R. WEAVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

David L. Weaver, 10 Tiffany Court, Hanover, PA 17331; Ellen Mary Glass, 87 Peanut Drive, Hanover, PA 17331

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

NOTICE

NOTICE IS HEREBY GIVEN that Shane F. Crosby, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 4th day of April, 2006, and that he intends to practice law as the Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/17, 24 & 3/3

INCORPORATION NOTICE

KITCHEN & BATH SOLUTIONS, INC. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

2/17

NOTICE OF FILING OF ARTICLES OF AMENDMENT

NOTICE IS HEREBY GIVEN that White Rose Credit Union with its registered office located at 3498 Industrial Drive, York, PA 17402-9050 will file Articles of Amendment with the Department of Banking.

The purpose of said amendment is to convert from an occupational and/or associational credit union to a community credit union charter. White Rose Credit Union will serve all people who live, work, worship, attend school in, and businesses and other legal entities in York and Adams County, in the Commonwealth of Pennsylvania.

All interested persons may file comments in favor of, or in protest of the application, in writing, with the Pennsylvania Department of Banking, 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101-2290. All comments must be received by the Department not later than ten (10) business days after the date of publication of this notice.

2/17

NOTICE

NOTICE IS HEREBY GIVEN that Trisha M. Cruz, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 4th day of April, 2006, and that she intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

2/10, 17 & 24

Adams County Legal Journal

Vol. 47

February 24, 2006

No. 40, pp. 240-247

IN THIS ISSUE

LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

This opinion continues to next issue (3/3/2006)

Our Trust Department
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for other people's property.



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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. 05-S-1097 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 parcels of land with the improvements thereon erected, situate in Franklin Township, Development of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, being more fully bounded and described as follows, to wit:

Parcel No. 1:

Lots Nos. 45, 46, 47, 48, 49 and 50 of Block No. ... of Section B, respectively as shown on the survey and original plat of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, made by a registered surveyor and of record in the Recorder of Deeds Office in Adams County, Pennsylvania, in Miscellaneous Book No. 4, at Page 487, reference being made thereto for a more particular description of the lot or lots hereinbefore described and herein conveyed.

Parcel No. 2:

Lots Nos. 16, 17 and 18 of Section B, respectively as shown on the survey and original plat of Gettysburg Mountain Campsites, Inc., Adams County, Pennsylvania, made by a registered surveyor and of record in the Recorder of Deeds Office in Adams County, Pennsylvania, in Miscellaneous Book No. 4 at Page 487, reference being made thereto for a more particular description of the lot or lots hereinbefore described and herein conveyed.

BEING the same which Raymond D. Lehr and Jane Lehr, a/k/a Jane E. Lehr, his wife, by deed dated the 26th day of April, 1983, which deed is about to be recorded, conveyed unto Christy E. Reigle, the grantor herein.

TOGETHER with a right of way and all rights whatsoever and subject to all conditions, restrictions, easements, maintenance charges and other matters of record as mentioned in the above recited deed.

TITLE TO SAID PREMISES IS VESTED IN Charles Coene by Deed from Christy E. Reigle, single, dated 10-30-91, recorded 10-31-91 in Deed Book 604, page 226.

Premises being: 55 Maple Lane, Ortanna, PA 17353

Tax Parcel No. 12-002-0052-000

SEIZED and taken into execution as the property of Charles Coene 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on February 1, 2006.

The name of the corporation is D.K. HARTE EXCAVATING, INC.

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

John R. White
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325

Attorneys for the Corporation

2/24

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-945
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

STANLEY O. ADAMS & MARGARITA G.
ADAMS, their respective executors,
heirs and/or assigns, Defendants

TO: Stanley O. Adams & Margarita G.
Adams, their respective executors, heirs
and/or assigns

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone 1-800-337-9846 OR
(717) 337-9846

/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/24

LIBERTY DEVELOPMENT VS. LIBERTY TWP. ET AL

1. In order for a de novo hearing to be warranted the party seeking such hearing must generally demonstrate that the record is incomplete because it was denied the opportunity to be fully heard, or because relevant testimony it offered was excluded.

2. A Court of Common Pleas may accept additional testimony when reviewing a land use appeal only when the moving party is able to establish that the record before the hearing board is incomplete because the moving party was refused the opportunity to be fully heard or relevant testimony was excluded.

3. Every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear and true between a State and the accused, denies the latter due process of law.

4. Those serving in a judicial capacity must be sensitive not only to actual bias, but also should avoid even the appearance of bias. If a tribunal member believes that he or she is capable of hearing the case fairly, his or her decision not to withdraw will ordinarily be upheld on appeal absent a demonstration of actual bias, prejudice, capricious disbelief or prejudgment.

5. It is incumbent upon the proponent of a disqualification motion to allege facts tending to show bias, interest or other disqualifying events, and it is the duty of the judge to decide whether he feels he can hear and dispose of the case fairly and without prejudice because we recognize that our judges are honorable, fair and competent. Once this decision is made, it is final and the cause must proceed.

6. Where fabricated, frivolous or scurrilous charges are raised against the presiding judge during the course of the proceeding, the court may summarily dismiss those objections without hearing where the judge is satisfied that the complaint is wholly without foundation. In such case, the complaining party may assign the accusation as a basis for post-trial relief and, if necessary, a record can be developed at that stage and in that context.

7. Issues relating to recusal are waived, absent a showing of after-discovered evidence, if not raised prior to the entry of a verdict.

8. The denial of a motion to recuse operates, in effect, as a denial of the opportunity to further develop the evidentiary record. To hold otherwise would lead to a number of absurd results.

9. Appellate review is triggered where allegations of bias are alleged in petitions seeking recusal regardless of whether a factual hearing is held before the tribunal in question.

10. If a petition for recusal is filed and the tribunal reasonably determines that the request for recusal was fabricated, frivolous or scurrilous, the petition may be summarily dismissed and the issue is thereafter preserved for appellate consideration.

11. If the petition has merit, recusal is the appropriate response. If the petition is of arguable merit and additional testimony is necessary, including the testimony of the member or members at issue, the testimony may be presented, upon petition of either party, before another tribunal. In land use appeals, that tribunal is the Court of Common Pleas.

12. The Court of Common Pleas' acceptance of additional evidence, related solely to the issue of a board member's bias, is not the type of additional evidence that requires the trial court, under the Municipal Planning Code, to make its own findings of fact on the underlying merits.

13. Where there is an opportunity to raise an issue or to present evidence before a municipal body, and a party fails to do so, that party has waived the right to do so at a later date.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL ACTION NO. 04-S-399. LIBERTY
DEVELOPMENT COMPANY, LLC. VS. BOARD OF SUPERVI-
SORS OF LIBERTY TOWNSHIP, DEFENDANT, AND JOHN
AND CHARLENE TOMKO, JOSEPH AND KELLIE
MACHARSKY, CLYDE AND NANCY WENSCHHOF, JR., RUP-
PERT FARM, LTD. PARTNERSHIP, GEORGE KRAMER,
RICHARD AND SUSAN SWIAT, GEORGE F. AND KAREN
KRAMER, LINDA KNOX, GEOFFREY AND BARBARA RUP-
PERT AND MID-ATLANTIC SOARING ASSOCIATION, INC.,
INTERVENORS.

James M. Strong, Esq., for Plaintiff
Walton V. Davis, Esq., for Defendant
Susan J. Smith, Esq., for Intervenors
George, J., June 24, 2005

OPINION

This matter comes before the Court on an appeal filed by Liberty Development, LLC (“Liberty Development”) from a decision rendered by the Board of Supervisors of Liberty Township (“Board”), which denied the approval of a residential development plan. By Order of Court dated June 20, 2004, permission to intervene was granted to a number of neighboring landowners (“Intervenors”). Currently, Liberty Development requests to present additional evidence to the Court. Both the Board and Intervenors oppose the request. For the reasons set forth hereafter, the Request to Present Additional Evidence is granted in part and denied in part.

Liberty Development’s Request to Present Additional Evidence is authorized by Section 1005-A of the Municipal Planning Code (“MPC”), 53 P.S. § 11005-A. This Section provides that the Court may hold a hearing to receive additional evidence if “it is shown that proper consideration of the land use appeal requires the presentation of additional evidence....” 53 P.S. § 11005-A. Liberty Development suggests that appellate cases interpreting this Section have instructed that the Court of Common Pleas is vested with wide discretion to permit additional evidence without a threshold showing by the

moving party. On the other hand, the Board and Intervenors interpret this same appellate authority as requiring the moving party to fulfill either one of two requirements before additional evidence may be accepted by the Court. They argue that additional evidence is permitted only where the party seeking to introduce the additional evidence demonstrates that the record is incomplete because the party was denied an opportunity to be fully heard, or because relevant testimony was offered and excluded. It appears that this divergence in interpretation finds its genesis in the language of a number of appellate court opinions.

Appellate court opinions commenting on the admissibility of additional evidence in a land use appeal commonly recognize that the “question of whether presentation of additional evidence is to be permitted is a matter within the sound discretion of the trial court.” *Caln Nether Co. v. Bd. of Supervisors of Thornberry Twp.*, 840 A.2d 484, 498 (Pa.Cmwlt. 2004), citing *Eastern Consol. and Dist. Serv., Inc. v. Bd. of Comm’rs of Hampden Twp.*, 701 A.2d 621 (Pa.Cmwlt. 1997). Often, appellate opinions further clarify this general rule by noting that a trial court “faces compulsion to hear additional evidence in a zoning case only where the party seeking the hearing demonstrates that the record is incomplete because the party was denied an opportunity to be heard fully, or because relevant testimony was offered and excluded.” *Eastern Consolidation*, 701 A.2d at 624 (quoting *In re Appeal of Little Britain Twp.*, 651 A.2d 606, 613 (Pa.Cmwlt. 1994)). Because the majority of appellate opinions on this issue consider challenges to the trial court’s **denial** of the admission of additional evidence, there is limited guidance on whether a minimum standard exists before the trial court may **grant** a motion to admit additional evidence. Liberty Development suggests, in light of the lack of clear authority, that appellate cases discussing when a court **must** accept additional evidence implicitly indicate that the Court of Common Pleas has the right, in the exercise of the Court’s discretion, to accept additional testimony regardless of the circumstances. Although the language of some appellate authority may suggest such a conclusion, a careful review of the evolution of the appellate authority interpreting the statutory authorization leads me to a different conclusion.

The cornerstone of Liberty Development’s argument is the appellate language concerning the circumstances under which a court is

under “compulsion” to accept additional evidence. Liberty Development suggests that the use of the word “compulsion” implies that there are other times when a court is free to exercise its discretion in “permitting” the admission of additional evidence. Review of appellate opinions on this subject reveals that the “compulsion” language first appeared in *Danwell Corp. v. Zoning Hearing Bd. of Plymouth Twp.*, 540 A.2d 588 (Pa.Cmwlt. 1988). *Danwell Corp.* 540 A.2d at 590. In *Danwell*, the court addressed the issue of whether a trial judge abused his discretion by refusing to accept additional evidence at an appeal hearing. *Id.* at 589. In affirming the trial court’s decision, the Commonwealth Court opined that a “court of common pleas faces **compulsion** to hear additional evidence...only where...the record is incomplete because [the] party was denied the opportunity to be heard fully, or because relevant testimony was offered and excluded.” *Id.* at 590 (emphasis added). In support of this rule of law, the *Danville* Court cited *Borough Council of Churchill Borough v. Pagal, Inc.*, 460 A.2d 1214 (Pa.Cmwlt. 1983). While the language used by the Commonwealth Court in *Danville* is understandable in light of the issue presented, the unfortunate use of the word “compulsion” is an extension of the rule cited by that opinion as having been enunciated in *Pagal*.

In *Pagal*, the Commonwealth Court addressed the identical issue of whether the trial court erred in refusing to grant a de novo hearing on appeal for the acceptance of additional evidence. *Pagal*, 460 A.2d at 1218. After upholding the Court of Common Pleas’ refusal to accept additional evidence, the Commonwealth Court unequivocally stated: “In order for a de novo hearing to be warranted the party seeking such hearing must generally demonstrate that the record is incomplete because it was denied the opportunity to be fully heard, or because relevant testimony it offered was excluded.” *Id.* There is no mistaking the *Pagal* Court’s intent to set forth the standard which must be satisfied before the Court of Common Pleas may accept additional testimony.

Importantly, the Commonwealth’s Opinion in *Pagal* cites *Boron Oil Co. v. City of Franklin*, 277 A.2d 364 (Pa.Cmwlt. 1971) as precedent. A meticulous search of case law reveals that *Boron Oil Co.* appears to be the first Commonwealth Court Opinion on this subject. In *Boron Oil Co.*, the trial court refused to accept additional testimony from witnesses who would testify on matters dealing

with the safety and the welfare of the community, including fire and traffic hazards in connection with service stations. *Boron Oil Co.* 277 A.2d at 366. In an issue of first impression, the Commonwealth Court upheld the Court of Common Pleas' refusal to accept this additional evidence. In considering the relevant portion of the MPC,¹ the Commonwealth Court opined:

This provision does not mean, as the appellant suggests, that the court must receive additional evidence provided only that it is relevant. Such interpretation would not only nullify the discretion plainly conferred on the court, it would effectually remove from the Zoning Hearing Board the fact-finding function entrusted to it by the Legislature. It would further render meaningless the requirement that the proposed additional evidence be shown to be necessary for proper consideration of the appeal. The appellant is required to demonstrate that the record was incomplete either because it was refused the opportunity to be fully heard, or that relevant testimony offered by it was excluded. *Udylite Corp. v. Philadelphia Zoning Bd.*, 16 D. & C. 2d [346] ([C.P. Philadelphia] 1958), affirmed 394 Pa. 645, 148 A.2d 916 (Pa. 1959).

Id. at 366.

Further search for the origin of this rule led me to *Udylite Corp. v. Philadelphia Board of Adjustment*, an opinion written by Judge Sporkin from the Philadelphia Court of Common Pleas. After recognizing that the "primary purpose and intent of the Legislature in authorizing the creation of the Philadelphia Zoning Board of Adjustments was so [the] Board should hear all testimony and engage its acquired expertise in the formulation of its decision", Judge Sporkin held that "only in extraordinary cases, such as where the Board refuses to permit the parties to be fully heard, or misinterprets the relevancy of the proffered testimony, thus effectuating an incomplete record, the parties should be permitted to introduce additional testimony in the Common Pleas Courts." *Udylite Corp.*, 16 D. & C. 2d at 356.

¹The *Boron* Court interpreted former Section 1009 of the MPC; although this section has been repealed, it is substantially identical to current Section 1009.

After reviewing the evolution of the rule at issue, I am led to conclude that a Court of Common Pleas may accept additional testimony when reviewing a land use appeal only when the moving party is able to establish that the record before the hearing board is incomplete because the moving party was refused the opportunity to be fully heard or relevant testimony was excluded. This conclusion is in accord with a number of recent Commonwealth Court Opinions. See *Reformed Seventh Day Adventist Church, Inc. v. Philadelphia Zoning Bd. of Adjustment*, 561 A.2d 1324, 1327 (Pa.Cmwlth. 1989) (the Court of Common Pleas is only warranted in taking additional testimony at a de novo hearing when the party seeking it demonstrates that the record is incomplete because it was denied an opportunity to be fully heard, or when the board excluded relevant testimony that was offered); *Lower Allen Citizens Action Group, Inc. v. Lower Allen Twp. Zoning Hearing Bd.*, 500 A.2d 1253, 1259 (Pa.Cmwlth. 1985) (in order to be entitled to present additional evidence, the moving party must demonstrate that the record before the Board is incomplete either because appellant was refused the opportunity to be fully heard or relevant testimony was excluded); *In re Appeal of Little Britain Twp.*, 651 A.2d at 616 (the Court of Common Pleas committed error in permitting the presentation of additional evidence in land use appeal where evidence is irrelevant).

Based on the foregoing, I decline Liberty Development's invitation to usurp the role of the Board absent a showing that the record is incomplete because Liberty Development was either denied an opportunity to be heard fully or because relevant testimony was offered and excluded. With this standard in mind, I will now turn to the proffered additional evidence which Liberty Development seeks to introduce.

First, Liberty Development seeks the opportunity to present additional testimony claiming that the Chairman of the Board of Supervisors exhibited a bias during proceedings before the Board. Liberty Development points out that they requested, by letter addressed to the Chairman, that the Chairman recuse himself. Liberty Development further claims that the issue was properly preserved by filing a copy of the letter as an exhibit during the hearing before the Board. Despite the request contained in the letter, Liberty Development notes that the Chairman continued presiding over the proceedings effectively denying its request for recusal by continuing to participate in the proceedings.

The Board and Intervenors oppose the presentation of additional evidence concerning bias on the basis that Liberty Development waived all claims of bias when they failed to properly raise the issues before the Board. They argue that Liberty Development had the full opportunity, at the hearing before the Board, to present facts in support of their claim of bias. The Board also suggests that even if the Chairman improperly failed to recuse himself, the proposed additional evidence is irrelevant since the remaining vote of the Board would have been a tie.² See *Kuszyk v. Zoning Hearing Bd. of Amity Twp.*, 834 A.2d 661, 665 (Pa.Cmwlth. 2003) (a tie vote at the agency level acts as a denial of the relief requested). Therefore, they conclude that the Chairman's actual bias, or lack thereof, is immaterial in light of the fact that the result would have remained the same if the Chairman chose not to participate. I will address each of these arguments separately.

Although it is premature to consider the merits of Liberty Development's claim of bias, a review of the applicable law in this area is helpful. Pennsylvania courts have long recognized the importance of independent and impartial tribunals in resolving legal controversies.

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this [end] no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. This court has said that 'every procedure which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear and true between a State and the accused, denies the latter due process of law.'

Schlesinger Appeal, 172 A.2d 835, 840-41 (Pa. 1961) (quoting *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S. Ct. 437, 444 (1927)). In this regard, those serving in a judicial capacity must be sensitive not only to actual bias, but also should avoid even the appearance of bias.

²Liberty Development's application for a Planned Residential Development was denied by a 2-1 vote with the Chairman and another Board member voting against the application and one Board member voting in favor of the application.

Courts have recognized that “the mere potential for bias or the appearance of non-objectivity may be sufficient to constitute a violation” of due process. *Kusik*, 834 A.2d at 665. However, if a tribunal member believes that he or she is capable of hearing the case fairly, his or her decision not to withdraw will ordinarily be upheld on appeal absent a demonstration of actual “bias, prejudice, capricious disbelief or prejudgment.” *Christman v. Zoning Hearing Bd. of the Twp. of Windsor*, 854 A.2d 629, 633 (Pa.Cmwlth. 2004).

Generally, “a municipal officer should disqualify himself [or herself] from any proceeding in which he [or she] has a personal or pecuniary interest that is immediate or direct.” *Amerikohl Mining Inc. v. Zoning Hearing Bd. of Wharton Twp.*, 597 A.2d 219, 222 (Pa.Cmwlth. 1991). Appellate opinions have found recusal warranted when a member of the hearing board participates as an advocate or witness,³ publicly expresses predisposition,⁴ or has a fiduciary relationship with a party in interest.⁵ Based on the foregoing authority, it is clear that a claim of bias against a member of a board, if properly raised, is an appropriate area of inquiry for consideration by the Court of Common Pleas on an appeal of the board’s decision. I must, therefore, address the issue of waiver raised by the Board and Intervenors.

Continued to next issue (3/3/2006)

³ *Thornbury Twp. Bd. of Supervisors v. W.D.D., Inc.*, 546 A.2d 744, 747 (Pa.Cmwlth. 1988) (recusal necessary on applications before the Board of Supervisors where supervisor appeared before township zoning hearing board as a private citizen and advocated against application).

⁴ *Prin v. The Council of the Municipality of Monroeville*, 645 A.2d 450, 452 (Pa.Cmwlth. 1994) (council member is disqualified after publicly expressing his predisposition against the project).

⁵ *Borough of Youngsville v. Zoning Hearing Bd.*, 450 A.2d 1086, 1091 (Pa.Cmwlth. 1982) (board member improperly failed to recuse himself despite the fact that he was employed by the applicant and presented testimony on the applicant’s behalf).

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1309 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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, bounded and described as follows, to wit:

BEGINNING for a point at Fawn Avenue and Lot No. 34; thence along Lot No. 34 and sewage pump site, South sixty-five (65) degrees fifty-three (53) minutes forty-four (44) seconds West, one hundred sixty-one and ninety hundredths (161.90) feet to a point at lands now or formerly of Richard R. Lupo; thence along said lands, North twenty-two (22) degrees thirty-eight (38) minutes fifteen (15) seconds West, fifty and two hundredths (50.02) feet to a point at Lot No. 36; thence along Lot No. 36, North sixty-five (65) degrees fifty-three (53) minutes forty-four (44) seconds East, one hundred sixty and sixty-two hundredths (160.62) feet to a point at Fawn Avenue; thence along Fawn Avenue, South twenty-four (24) degrees six (06) minutes sixteen (16) seconds East, fifty (50.00) feet to the point and place of BEGINNING. CONTAINING 8,063 square feet and identified as Lot No. 35 on a plan of lots entitled Phase II, Deer Park Estates, recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania, in Plan Book 41, Page 109.

BEING the same tract of land which Donald B. Smith and Alice C. Smith, by their deed dated the 9th day of June 1988 and recorded in the Office of the Recorder of Deeds of Adams County, unto Hugo L. Contreras and Barbara A. Contreras, husband and wife, grantors herein.

SUBJECT TO the restrictions dated December 9, 1982 and recorded in the Office of the Recorder of Deeds of Adams County, in Miscellaneous Book 42 at Page 708.

Parcel Number 36-2-35

Premises known as: 73 Fawn Ave., New Oxford, PA 17350

SEIZED and taken into execution as the property of **Cesar A. Contreras & Sara P. Contreras** 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 April 17, 2006, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1301 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 tract of land situate, lying and being in the Borough of Bonneville, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point at the corner of Bonnie Field Circle and Lot No. 40 as more particularly described on the hereinafter referred to subdivision plan; thence along Lot No. 40, South eleven (11) degrees forty (40) minutes forty-nine (49) seconds West, one hundred five and one hundredth (105.01) feet to a point at lands now or formerly of Ronald L. Carter and Meyer & Meyer Partnership; thence along said lands, South sixty-three (63) degrees twenty-eight (28) minutes forty-eight (48) seconds West, thirty-seven and two hundredths (37.02) feet to a point at Lot No. 41-B, as more particularly described on the hereinafter referred to subdivision plan; thence along Lot No. 41-B, North zero (00) degrees thirty-two (32) minutes thirty-eight (38) seconds West, one hundred twenty-three and sixty-two hundredths (123.62) feet to a point at Bonnie Field Circle; thence along Bonnie Field Circle by a curve to the right having a radius of two hundred thirty-eight and ninety-seven hundredths (238.97) feet, an arc distance of fifty-five and eighty-four hundredths (55.84) feet and a long chord bearing and distance of South eighty-five (85) degrees thirty-seven (37) minutes thirty (30) seconds East, fifty-five and seventy-two hundredths (55.72) feet to a point, the place of BEGINNING. CONTAINING 5,019 square feet and known as Lot No. 41-A on Final Plan of Bonnie Field, prepared by Worley Surveying, dated April 3, 1995, File No. C-1488, which said subdivision plan is

recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plan Book 67, page 11.

Parcel No. 9-55A

BEING the same premises which Thomas F. Spangler, by Deed dated October 3, 1997 and recorded in the Office of the Recorder of Deeds of Adams County on October 7, 1997, in Deed Book Volume 1452, Page 221, granted and conveyed unto Kathleen D. Mikesell.

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthon, Esq.
Attorneys for Plaintiff
One Gateway Center, Nine West
Pittsburgh, PA 15222
(412) 281-7650

Premises known as: 5 A Bonnielield Circle, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Kathleen D. Mikesell** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

NOTICE

On the 1st day of March, 2006, at 9:00 a.m., a hearing will be held in Courtroom No. 2 of the Adams County Courthouse, Gettysburg, Pennsylvania, to determine whether the Gettysburg Area School District shall sell and convey to Daniel I. Keys approximately 2.121 acres of real estate, more or less, with improvements thereon, with an address of 3610 Chambersburg Road, Biglerville (Franklin Township), Adams County, Pennsylvania 17307, for the purchase price of \$75,000, upon terms and conditions set forth in an Agreement of Sale dated January 12, 2006.

Any person who wishes to oppose the sale must attend the hearing and be heard.

Robert L. McQuaide
Solicitor
(717) 337-1360

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1300 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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 or parcel of land, situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING for a point on the property line of the cul-de-sac of Cherry Court at corner of Lot No. 106 of the hereinafter referenced plan of lots; thence along Lot No. 106, South 42 degrees 02 minutes 49 seconds West 92.07 feet to a point at other lands now or formerly of Oxford Estates; thence along same, North 34 degrees 52 minutes 51 seconds West 143 feet to a point at Lot No. 104 on said plan; thence along Lot No. 104, South 85 degrees 06 minutes 59 seconds East 129 feet to a point on the property line of the cul-de-sac of Cherry Court; thence along the same, by a curve to the left, the radius of which is 50 feet, for an arc length of 42 feet and having a long chord bearing and distance of South 21 degrees 26 minutes 29 seconds East 40.78 feet to a point at Lot No. 106, the point and place of BEGINNING. CONTAINING 8,650 square feet and being Lot No. 105 on a plan of lots of Oxford Estates, Phase IV, dated May 23, 1985, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 42, page 5.

BEING the same premises which, by her Deed dated September 30, 1993 and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, at Deed Book 787, page 33, Anna Marie Cox granted and conveyed unto Betty J. Topper, Grantor herein.

Under and subject to any and all covenants, conditions, reservations, restrictions, limitations, right-of-ways, objections, easements, agreements, etc., as they appear of record.

With the appurtenances: TO HAVE AND TO HOLD the same unto and for the use of Grantees, their heirs and assigns forever.

HAVING THEREON erected a dwelling house known as: 3 Cherry Court, New Oxford, Pennsylvania 17350

BEING THE SAME PREMISES WHICH Betty J. Topper, by Deed dated 12/3/99 and recorded 12/8/99 in Adams County Deed Book 1966, Page 167, granted and conveyed unto Rodney A. Carey and Teresa M. Carey,

SEIZED IN EXECUTION AS THE PROPERTY OF RODNEY A. CAREY AND TERESA M. CAREY UNDER ADAMS COUNTY JUDGMENT NO. 02-S-1300

Map & Parcel (35) 8-114

SEIZED and taken into execution as the property of **Rodney A. Carey & Teresa M. Carey** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1213 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of March, 2006, 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, that certain piece, parcel or tract of ground, situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point along the right-of-way line of Stayman Way at corner of Lot No. 64 on subdivision plan hereinafter referred to; thence along the right-of-way line of Stayman Way, by a curve to the left, having a radius of two hundred fifty (250.00) feet, an arc length of fifty-one (51.00) feet, and a long chord bearing and distance of South twenty-eight (28) degrees fifty-seven (57) minutes fifty-six (56) seconds West, fifty and ninety-one hundredths (50.91) feet to a point at corner of Lot No. 66 on subdivision plan hereinafter referred to; thence along Lot No. 66, North sixty-six (66) degrees fifty-two (52) minutes forty-three (43) seconds West, one hundred ten (110.00) feet to a point along Lot No. 472 on subdivision plan hereinafter referred to; thence along Lot No. 472, North thirty-four (34) degrees forty-eight (48)

minutes thirty-five (35) seconds East, seventy-two and ninety-three hundredths (72.93) feet to a point at corner of Lot No. 64 aforesaid; thence along Lot No. 64, South fifty-five (55) degrees eleven (11) minutes twenty-five (25) seconds East, one hundred two and fifty-four hundredths (102.54) feet to a point along the right-of-way line of Stayman Way, the point and place of BEGINNING. (CONTAINING 6,480 square feet and being designated as Lot No. 65 on subdivision plan of Appler Development prepared by Group Hanover, Inc., dated 7/15/94, as revised, Project No. 921060, which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 65, page 89.)

TITLE TO SAID PREMISES IS VESTED IN Franklin J. Beckwith, Sr., by Deed from Steve A. Miller and Tina M. Miller, record owners, and Richard B. Myford and Barbara Eppley, equitable owners, dated 03/30/2001 and recorded 05/03/2001 in Deed Book 2274, Page 18.

Premises being: 23 Stayman Way, Littlestown, PA 17340

Tax Parcel No. 27-004-0129-000

SEIZED and taken into execution as the property of **Franklin J. Beckwith, Sr.** 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 April 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/10, 17 & 24

NOTICE

NOTICE IS HEREBY GIVEN that Trisha M. Cruz, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 4th day of April, 2006, and that she intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

2/10, 17 & 24

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 ANN L. KENDRICK, DEC'D
Late of Berwick Township, Adams County, Pennsylvania

Executors: George A. O'Brien, Jr., George A. O'Brien, Sr. and Mary E. Nugent, c/o Andrew F. Kagen, Esq., 2675 Eastern Blvd., York, PA 17402

Attorney: Andrew F. Kagen, Esq., 2675 Eastern Blvd., York, PA 17402

ESTATE OF DELPHINE V. SEIFRIT a/k/a DELPHINE W. SEIFRIT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Janet M. Smith, 115 Cottage Road, Shippensburg, PA 17257; Randall Sell, 3651 Carlisle Road, Gardners, PA 17324

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

ESTATE OF JOAN MARIE SHERMAN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Lisa Marie Sherman a/k/a Lisa Marie Neeley, 905 Hoods Mill Road, Woodbine, MD 21797

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 30 West Middle Street, Gettysburg, PA 17325

ESTATE OF GLENN R. TROSTLE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Glenn R. Trostle, Jr., 589 Knoxlyn Rd., Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CARL W. ELICKER, II, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Tina M. Elicker, 725 Railroad Lane, Orrtanna, PA 17353

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF MARY L. HERR, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Sharon E. Bower, 195 Oak Hill Road, Biglerville, PA 17307

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

ESTATE OF MICHAEL J. KLUNK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrators: Troy M. Klunk, 1103 North Walnut, Casa Grande, AZ 85222; Benjamin C. Klunk, 3 Shealer Rd., Gettysburg, PA 17325; Kara S. Klunk, 3 Shealer Rd., Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF RITA M. REAVER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Adams County National Bank, Christine R. Settle, Trust Officer, 2 Chambersburg Street, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF ELWOOD A. ROHRBAUGH a/k/a ELWOOD A. ROHRBAUGH, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High St., Gettysburg, PA 17325; Charles Rohrbaugh, 304 Main Street, Apt. 4, McSherrystown, PA 17344

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

ESTATE OF WILLIAM S. YOUNG, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Steven A. Young, 787 Pine Run Road, Abbottstown, PA 17301

Attorney: Timothy J. Colgan, Esq., Wiley, Lenox, Colgan & Marzocco, P.C., 130 W. Church St., Suite 100, Dillsburg, PA 17019

THIRD PUBLICATION

ESTATE OF MADELYN W. McCENEY, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executor: Douglas R. Coggins, 8905 Fairview Road, Silver Springs, MD 20910

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yngst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF HELEN E. REED, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Gladys M. Rodgers, 294 Zeigler Mill Road, Gettysburg, PA 17325

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-948
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

WILLIAM T. HAINES & CAROL HAINES,
their respective executors, heirs and/or
assigns, Defendants

TO: William T. Haines & Carol Haines,
their respective executors, heirs and/or
assigns

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone 1-800-337-9846 OR
(717) 337-9846

/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/24

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-953
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

JAMES F. HERBERT & MARY D. HERBERT,
their respective executors, heirs and/or assigns, Defendants

TO: James F. Herbert and Mary D. Herbert,
their respective executors, heirs and/or assigns

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone 1-800-337-9846 OR
(717) 337-9846

/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/24

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
CASE NO. 05-S-954
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.
JUENE McGLAUGHLIN, Plaintiffs

vs.

LEONARD CRANE RENNIE, JR., his
respective executors, heirs and/or
assigns, Defendants

TO: Leonard Crane Rennie, Jr., his
respective executors, heirs and/or
assigns

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone 1-800-337-9846 OR
(717) 337-9846

/s/John A. Wolfe, Esq.
Attorneys for Plaintiffs
47 West High Street
Gettysburg, PA 17325
(717) 337-3754

2/24

NOTICE

NOTICE IS HEREBY GIVEN that Shane F. Crosby, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 4th day of April, 2006, and that he intends to practice law as the Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/17, 24 & 3/3