

Adams County Legal Journal

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TASSOU APPEAL

This opinion continues to next issue (3/14/2003)

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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. 01-S-1122 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of April, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground situate in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of a private road 50 feet in width at the Westernmost corner of the lot designated as Lot No. 1 on the plan of lots referred to below; thence by said Lot No. 1 and running through an iron pin located 25 feet from the place of Beginning South 48 degrees 23 minutes 38 seconds East, 183.56 feet to an iron pin; thence by land now or formerly of Charles E. Ott and wife South 41 degrees 5 minutes 37 seconds West, 353.01 feet to an iron pin; thence by the lot designated as Lot No. 5 on the plan of lots referred to below and running through an iron pin located 25 feet from the end of this line North 48 degrees 23 minutes 38 seconds West, 186.72 feet to a point in the center of the aforementioned private road; thence in the center of said private road and by the lot designated as Lot No. 4 on the plan of lots referred to below North 41 degrees 36 minutes 22 seconds East, 353 feet to a point in the center of said private road, the place of BEGINNING.

TOGETHER WITH the right to use the 50-foot private road referred to in the foregoing description as a means of ingress, egress and regress from Legislative Route 01041 to the lot hereby conveyed.

SUBJECT, HOWEVER, to the restrictions and responsibilities contained in a deed recorded in the aforementioned Recorder's Office in Deed Book 356 at Page 654.

SEIZED and taken into execution as the property of Patricia Slaybaugh and to be sold by me.

Raymond W. Newman-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 28, 2003, 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.

2/21, 28 & 3/7

INCORPORATION NOTICE

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

3/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for MR. D TECHNOLOGY, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on February 10, 2003, 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

3/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1253 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of April, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of ground, situate, lying and being in the Township of Latimore, Adams County, Pennsylvania, being more particularly described as Lot No. 1125 on a plan of lots of Lake Meade Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Plat Book 1, Page 7.

TITLE TO SAID PREMISES IS VESTED IN Michael Sumner, married by Deed from John Baker dated 5/5/2000, recorded 5/26/2000, in Record Book 2057, Page 176.

Premises being: 257 Lake Meade Drive, East Berlin, PA 17316

Tax Parcel No. #9-28

SEIZED and taken into execution as the property of Michael Sumner and to be sold by me.

Raymond W. Newman-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 28, 2003, 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.

2/21, 28 & 3/7

TASSOU APPEAL

1. Where the applicant is appealing the (Liquor Control) Board's decision, the trial court may only reverse the Board when it finds that the Board has committed a clear abuse of discretion or where new facts are presented which vary from those accepted by the Board. The court may not substitute its discretion for that of the Board nor may this Court substitute its findings for those accepted by the Board where the evidence presented on appeal is not significantly different from the evidence presented to the Board.

2. An applicant seeking a license under this resort area exception to the statutory quota has the burden of establishing 1) that its premises is located within a resort area, and 2) that there is an actual need for an additional license in the area.

3. The factors to be considered in determining actual need for an additional licensee are 1) the need of persons who will use the facility; 2) the number and types of establishments already present; and 3) whether the clientele to be served is different from that served by existing licensees.

4. The courts have broadly construed the term "actual need" to mean a substantial need in relation to the pleasure, convenience, and general welfare of the persons who would make use of the facility; that is, whether the facility can add a service that the present licensees cannot.

5. The purpose of enacting liquor regulation legislation has always been to restrain and discourage the sale of liquor. Thus, the resort area exception to the quota rule of the Code must be interpreted in light of that purpose.

6. The applicant's burden of establishing that the premises is in a resort area requires him to demonstrate a seasonal influx of transients such that the existing licensed establishments cannot adequately accommodate the tourists' needs and that the additional license would serve primarily the transient population and not the area residents.

7. Additionally, courts have required that the evidence adduced must be specific as to the number of tourists, as opposed to area residents, using recreational facilities in the municipality. Furthermore, the recreational facilities must be sufficiently close to the premises to be licensed to be viewed as being within the immediate area of the premises.

8. In order to determine the size of the area which can be considered in deciding whether the premises is within a resort area, it appears that the court is not restricted by governmental boundaries. Although recreational or tourist attractions within 4.7 miles of the subject premises is not considered too remote, facilities 14-22 miles away are not to be considered.

9. An applicant need not show that as a result of the influx of tourists the current licensed establishments are incapable of serving, or inadequately equipped to serve the needs of those tourists along with the local clientele. Similarly, the applicant need not show a need of tourists for the applicant's unique services or cuisine. Actual need is based on the pleasure and convenience of the tourists and the applicant's ability to provide an additional service.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 01-S-986, HARRY R. TASSOU T/A TASSOU'S HONEY
BEE DINER - APPEAL FROM ORDER OF PENNSYLVANIA
LIQUOR CONTROL BOARD.

Robert M. Strickler, Esq., for Appellant
Frank C. Sluzis, Esq., for Liquor Control Board
Kuhn, P.J., May 23, 2002

ORDER

AND NOW, this 23rd day of May, 2002, in consideration of the Appeal From Order of Pennsylvania Liquor Control Board Dated September 5, 2001, Resulting From Appellant's Application For a Restaurant Liquor License in a Resort Area, filed by Appellant, Harry R. Tassou, on September 12, 2001, the Court enters the following:

PROCEDURAL HISTORY

1. On November 6, 2000, Appellant filed an application with the Pennsylvania Liquor Control Board, hereinafter "the Board", for a new restaurant liquor license for premises located at 3015 Baltimore Pike, Gettysburg, Mount Joy Township, Adams County, Pennsylvania.
2. On April 5, 2001, the Board made initial findings but recommended that a hearing be held to address and determine:
 - a. The fact that Mount Joy's restaurant liquor license quota (1) is filled;
 - b. Whether the Applicant made any attempts to purchase the existing license;
 - c. Whether the premises is in a resort area;
 - d. Whether there is a need for an additional restaurant liquor license;
 - e. The fact that the health license expired on March 31, 2001;
 - f. The failure to submit photographs of the interior and exterior of the premises; and
 - g. Whether approval would adversely affect the health, welfare, peace and morals of the neighborhood within a radius of 500 feet of the proposed licensed premises.
3. A hearing relative to the application was held before a Board examiner on July 10, 2001.
4. Sometime prior to September 5, 2001, the hearing examiner rendered a Recommended Opinion containing Proposed

Findings of Fact, Discussion and Proposed Conclusions of Law, recommending approval of the application. The Proposed Conclusions of Law included therein were that:

- a. Applicant received the requisite notice of Licensing's objections and the date, time and place of hearing in this matter.
 - b. The retail license quota for the Township of Mount Joy, Adams County, is one and there is one restaurant liquor license in effect against that quota. Accordingly, the quota is exceeded.
 - c. The proposed licensed premises is located in a resort area.
 - d. There is a necessity for an additional restaurant liquor license in the Township of Mount Joy, Adams County.
 - e. The Applicant has a valid health license, which expires March 31, 2002.
 - f. The Applicant has submitted photographs of the proposed premises.
 - g. Approval of this application will not adversely affect the health, peace, welfare, or morals of the neighborhood within a radius of 500 feet of the proposed licensed premises.
5. Nevertheless, on September 5, 2001, the Board rejected the application.
 6. On September 12, 2001, Applicant filed the instant appeal.
 7. On November 15, 2001, the Board's Opinion was filed of record in this matter. The Conclusions of Law set forth therein are that:
 - a. Applicant received the requisite notice of Licensing's objections and of the date, time, and place of the hearing in this matter.
 - b. The retail license quota for the Township of Mount Joy, Adams County, is one and there is one restaurant liquor license in effect counted against the quota. Accordingly, the quota is filled.
 - c. The proposed licensed premises is not located in a resort area.
 - d. Applicant has a valid health license, which expires March 31, 2002.

- e. Applicant has submitted the requisite photographs of the proposed licensed premises.
 - f. Approval of this application will not adversely affect the health, peace, welfare, or morals of the neighborhood within a radius of 500 feet of the proposed licensed premises.
8. On November 16, 2001, a hearing de novo was held before the undersigned.
 9. At the aforementioned hearing, the Board presented the record and rested. Appellant presented testimony from George Gross, owner of the Gettysburg Marine Center in the Lake Heritage subdivision, Margaret Weaver, President of the Gettysburg-Adams County Chamber of Commerce, J.D. Little, Sr., Code Administrator and Zoning Officer for Mount Joy Township, Jeffrey Palm, Director of the Gettysburg Business Bureau, and Appellant.

ISSUE

1. Whether the area of Mount Joy Township, where the premises is located, is a resort area within the meaning of the Liquor Code.
2. Whether there is a need for an additional restaurant liquor license in Mount Joy Township.

FINDINGS OF FACT

1. The following general Findings of Fact entered by the Board on November 15, 2001, are adopted:
 - a. Applicant filed an application for new Restaurant Liquor License No. R-21424 for premises located at 3015 Baltimore Pike, Gettysburg, Pennsylvania. The proposed licensed premises is located in Mt. Joy Township, Adams County. (FOF 1).
 - b. Mt. Joy Township, Adams County, has a quota of one retail license, and there is one restaurant liquor license in effect counted against the quota. In addition, there are two privately owned public golf course restaurant liquor licenses in effect, which are not counted against the quota. (FOF 4).
 - c. The one restaurant liquor license which is counted against the quota is in safekeeping with the Board after a fire at the premises. (FOF 5).

- d. The proposed licensed premises is located in a one story steel building with three serving areas capable of seating 120, two kitchens, and three storage areas. There are no interior connections with any other business or residence. The proposed licensed premises was open and operating as bona fide restaurant, meeting all Board requirements. (FOF 7).
- e. Applicant is a financially responsible individual and a person of good repute. Applicant will serve in the capacity of manager and is available to devote full time to the operation of the licensed business. (FOF 11).
- f. The proposed licensed premises is not located within 300 feet of any restrictive institution or of an exit/entrance ramp of an interstate limited-access highway; nor is it located within 200 feet of any other premises licensed by the Board. (FOF 12).
- g. The area within 500 feet of the proposed licensed premises is 5% residential and 95% rural. (FOF 13).
- h. No protests were received in opposition to the application. (FOF 14).
- i. Applicant testified that he received a license to operate an "eating and drinking place" with an expiration date of March 31, 2002 from the Department of Agriculture. However, the license was actually issued by the Department of Revenue. (FOF 15).
- j. Applicant made numerous inquiries in an attempt to purchase the one restaurant liquor licensee (sic) issued for Mt. Joy Township, but the licensee's representative informed him that the licensee has no intention of selling the license. (FOF 16).
- k. Applicant has a full and complete menu with soups, salads, sandwiches and entrees including steaks, seafood, turkey, chicken and ham, in addition to specials and menus for children and senior citizens. (FOF 21).
- l. There are currently 45 parking spaces at the proposed licensed premises. Applicant has purchased a lot across the street so that more cars and tourist buses can be accommodated. (FOF 22).

- m. Applicant's last contact with the representative of the owner of the license which is in safekeeping, was in the month of April, 2001. (FOF 29).
 - n. Applicant has no plans to construct a service bar; all service of alcoholic beverages will be table service. He will remain open until 10:00 or 11:00 p.m. if a liquor license is granted. (FOF 34).
2. The following Findings of Fact entered by the Board on November 15, 2001, and which relate to the issue of whether the premises is located within a resort area are adopted:
- a. Applicant requested consideration of his application on a resort area plea. Mt. Joy Township has not previously been determined to be a resort area under the Liquor Code. (FOF 6).
 - b. Applicant serves breakfast, lunch, and dinner and is open six days a week, i.e., closed on Monday. Applicant's hours are 6:00 a.m. until 8:00 or 9:00 p.m., depending on the day. Applicant's business is based on the tourist industry in and around Gettysburg. During the winter months, he employs three full-time employees, but during the summer, he has seven full-time employees and twenty part-time employees. (FOF 17).
 - c. Applicant knows that most of his customers are tourists from the license plates on the cars in his parking lot. (FOF 18).
 - d. Applicant's restaurant is located 4.6 to 4.8 miles from the center of the Borough of Gettysburg. Baltimore Pike is one of the major roads into Gettysburg from Maryland. (FOF 19).
 - e. The Borough of Gettysburg was determined to be a resort area within the meaning of the Liquor Code by the Board in 1974. (FOF 20).
 - f. Applicant maintains a wall with brochures of attractions in the area on his premises. (FOF 23).
 - g. Mt. Joy Township developed a zoning plan for the township. The zoning plan will create a "Historical Corridor" along Baltimore Pike. In addition, the Township identified

- a number of specific properties in the Township with special historical significance. (FOF 24).
- h. Applicant contacted the Gettysburg Convention & Visitors Bureau and obtained its calculation of the number of visitors to Gettysburg National Military Park for 2000 and that number was 1,616,584. He also obtained from the Chamber of Commerce visitation statistics for Eisenhower National Historic Site, indicating that there were 74,395 visitors to that location in 1997. The Eisenhower National Historic Site is located approximately eight miles from the proposed licensed premises. (FOF 25).
 - i. Historic and recreational sites within two miles of the proposed licensed premises include Union Cavalry Camp Spring, Spanglers Spring, a Civil War hospital, an 18-hole golf course, Gettysburg Village Outlets, and a 100-room hotel. (FOF 26).
 - j. Applicant, using a computer program, identified 35 other attractions of various types within an eight-mile radius of the premises. Also within an eight-mile radius are four campgrounds, seven bed & breakfasts, and three national chain hotels. (FOF 27).
 - k. Applicant and his wait-staff frequently get requests for the service of alcoholic beverages along with the meals that they serve. (FOF 28).
 - l. Applicant has the most extensive menu in Adams County with homemade soups and 20 to 30 daily specials in addition to his regular menu. (FOF 30).
 - m. Applicant's first customers of the day are golfers. Applicant estimated that 80% of the golfers who come into his restaurant from the nearby golf courses are tourists, based on the number of golfers who ask for directions before they leave the proposed licensed premises. (FOF 31).
 - n. The other restaurants in the Gettysburg area are overcrowded and the local residents know to come to his restaurant between 4:30 and 5:30 p.m. before the tourists begin arriving for dinner. (FOF 32).

- o. Applicant estimated that 80% of his business is conducted from the middle of April to October each year. (FOF 33).
 - p. During the summer, Applicant has had to wait for service at the restaurants in the area. He does not attempt to go out to dinner on weekends because of overcrowding. (FOF 35).
3. The population of Adams County is approximately 91,000 persons.
 4. The population of the Borough of Gettysburg is approximately 7,000-8,000 persons.
 5. The population of Mt. Joy Township is less than 3,400 persons.
 6. The general Gettysburg area, including Mount Joy Township, is affected by the influx of tourists to the Gettysburg National Military Park and the Eisenhower Center.
 7. Visitation records compiled by the Gettysburg National Military Park for the years 1990-2000, inclusive, show a total of 17,731,300 tourists to that site or an average of 1,611,936 per year.
 8. The peak tourist season to the battlefield is April through October, which corresponds with Applicant's peak business season. During that period 14,862,279 or 83% of the visitors were recorded for the National Military Park although that period constituted 58% of the year.
 9. The average monthly battlefield visitation for the period April through October is 193,016 whereas the average from November through March is 52,164.
 10. Tourists come from throughout the United States and numerous foreign countries to visit the battlefield.
 11. Studies show that the battlefield and the Eisenhower Farm alone have an economic impact on the area of approximately \$275 million.
 12. Baltimore Pike, also known as Route 97, fronting the subject premises is the major highway from the Baltimore and Westminster areas to Gettysburg and was a route used by the Union Army in marching to Gettysburg in 1863.
 13. Situate along Route 97, beginning at the subject premises and going in a northerly direction toward the Borough of

Gettysburg are the following attractions not identified in the Board's findings: Lightner Bed and Breakfast, the Sword and Saber, the Lake Heritage Marina, Yingling's Auction, Mulligan MacDuffer's Miniature Golf, the Gettysburg National Museum, the Soldiers National Monument, Cemetery Hill, Evergreen Cemetery, The National Cemetery, the Gettysburg Tour Center and the Jennie Wade House.

14. The National Park Service has developed plans to construct a new Visitors Center along the same Route 97 corridor.
15. The Lake Heritage Marina is located within the Lake Heritage subdivision, part of which lies in Mount Joy Township. The subdivision surrounds a lake which is used for fishing and boating activities. Although this is a private community, the Marina services residents as well as tourists to the area. Most of the Marina's business is conducted between May 1 and October 15. Many customers ask for dining recommendations, and the Marina's owner, Mr. Gross, frequently refers customers to the Honey Bee Restaurant. A portion of those inquirers ask about alcohol availability.
16. The Country Inn Suites is the hotel referred to in the Board's FOF 26. It does not currently have a restaurant facility and refers customers to the Honey Bee.
17. Located next to the hotel is the Gettysburg Village Outlets, consisting of approximately 60 stores.
18. Within six (6) miles of the subject premises are four public golf courses. Some of these courses refer customers to the Honey Bee. One of the courses, The Links of Gettysburg, is an upscale course which attracts patrons from the Baltimore and Washington D.C. area.
19. Nearby the premises is the Mud College School, which is a site donated to Mount Joy Township and which is in the process of being registered with the National Historic Registry.
20. Also situate along Route 97, but going south of the subject premises, are Smokehouse Crafts and Edge of Towne Center, which attract tourists to the area.
21. The other license in Mt. Joy Township, which is in safekeeping with the Board, was last used in a Chinese restaurant around 1998.

22. There are very few family restaurants within the Borough of Gettysburg and parking can be a significant problem.
23. Applicant has been in business for 10 years and throughout that period, his customers have requested alcoholic beverages.
24. Applicant specializes in Greek and Italian cuisine and no other restaurant in the area carries Greek wines or beer or imported Italian wines.
25. There is no other restaurant from the Maryland line to the Borough of Gettysburg along Route 97 which offers family dining and alcoholic beverages.

CONCLUSIONS OF LAW

1. This Court has jurisdiction.
2. The subject premises is within a resort area as that term is used in the Liquor Code.
3. Applicant has established an actual need for an additional license in the township.

Continued to next issue (3/14/2003)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-914 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of April, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in or near the center line of Township Road T-534, at corner of Lot No. 5 (now or formerly of John F. Donnelly); thence by said Lot No. 5, due East, 698.14 feet to an iron pin at corner of Lot No. 7 (now or formerly of William V. Price); thence by said Lot No. 7, South 19 degrees 43 minutes 10 seconds East, 540.81 feet to an iron pin on line of Lot No. 9 (now or formerly of David R. Keller); thence by Lot No. 9, South 70 degrees 16 minutes 30 seconds West, 489.28 feet to an iron pin at corner of Lot No. 10A (now or formerly of Dwight E. Kuntz, grantee herein); thence by said Lot No. 10A, North 76 degrees 56 minutes 20 seconds West; 424.88 feet to an iron pin in the eastern half of Township Road T-534; thence in said Township Road T-534, North 00 degrees 36 minutes 30 seconds West, 578.20 feet to a railroad spike, the place of BEGINNING. CONTAINING 11.180 Acres.

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

BEGINNING at a point in or near the center line of Township Road T-534, at corner of land now or formerly of Donald M. Redding and corner of Lot No. 6; thence by Lot No. 6, South 76 degrees 56 minutes 20 seconds East, 424.88 feet to a pin at corner of Lot No. 9; thence by Lot No. 9, South 19 degrees 43 minutes 10 seconds East, 306.70 feet to a pipe at corner of Lot No. 10B; thence by Lot No. 10B, and passing through a reference pipe set back 25 feet from the next mentioned point, South 78 degrees 50 minutes 40 seconds West, 517.78 feet to a point in said Township Road, T-534, South 01 degree 16 minutes 00 seconds East, 229.94 feet to a point at corner of land now or formerly of Pet, Inc.; thence by said land of Pet, Inc., and passing through a reference pin set back 26.39 feet from the last mentioned point, North 54 degrees 12 minutes 40 seconds West, 440.13 feet to an iron pin/thence by same, North 31 degrees 20 minutes 40 seconds West 516.35 feet to an iron pin on line of land now or formerly of Donald M. Redding, North 88 degrees 27

minutes 40 seconds East, 611.38 feet to a point in or near the center line of T-534, the place of BEGINNING. CONTAINING 10.123 Acres.

SEIZED and taken into execution as the property of **Dwight E. Kuntz & Karin L. Kuntz** and to be sold by me.

Raymond W. Newman-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 28, 2003, 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.

2/21, 28 & 3/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1235 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of March, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, situate, lying and being in Germany Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the center of Harney Road at lands now or formerly of Esh; thence in the center of said Harney Road, South seventy-seven (77) degrees eight (08) minutes fifty-four (54) seconds East, one hundred sixty-three and forty-four hundredths (163.44) feet to a point at other lands now or formerly of Lake Weant; thence by said lands and through a steel pin set thirty (30) feet back on the line, South seventeen (17) degrees forty-one (41) minutes thirty-two (32) seconds West, two hundred seventy-three and sixty-seven hundredths (273.67) feet to a flange axle; thence continuing by lands, North seventy-seven (77) degrees sixteen (16) minutes eighteen (18) seconds West, one hundred eighteen and eighty-four hundredths (118.84) feet to a flange axle; thence continuing by said lands, South twenty-one (21) degrees eleven (11) minutes twenty-eight (28) seconds West, two hundred sixty-six and sixteen hundredths (266.16) feet to a flange axle;

thence continuing by said lands, North seventy-four (74) degrees fifty-five (55) minutes twenty-two (22) seconds West, twenty-seven and ninety-two hundredths (27.92) feet to a flange axle at lands now or formerly of Esh; thence by said land, North seventeen (17) degrees thirty-nine (39) minutes twenty-five (25) seconds East, five hundred thirty-seven and ten hundredths (537.10) feet to the place of BEGINNING.

CONTAINING 1.2419 acres, neat measure.

THE above description was taken from a draft of survey, dated December 16, 1974, prepared by J.H. Rife, R.E.

TITLE TO SAID PREMISES IS VESTED IN Brian Scott Boese by Deed from Tony R. Forbes and Bonnie S. Forbes, his wife dated 10/29/1999 and recorded 11/4/1999 in Record Book 1947 Page 126.

Premises being: 1655 Harney Road, Littlestown, PA 17340

Tax Parcel No. H-18-13A

SEIZED and taken into execution as the property of **Brian Scott Boese** and to be sold by me.

Raymond W. Newman-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 14, 2003, 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.

2/21, 28 & 3/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1069 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Hamilton Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point in a public right-of-way known as Boy Scout Road and lands now or formerly of Richard Stegman; thence along and through said Boy Scout Road South fifty-five (55) degrees forty-five (45) minutes thirty-five (35) seconds West, two hundred and twenty hundredths (200.20) feet to a point at lands now or formerly of James Busbey; thence along said last mentioned lands North twenty-two (22) degrees eleven (11) minutes forty (40) seconds West, one hundred and fifty-six hundredths (100.56) feet to a point at a twenty (20) foot private right-of-way; thence along said private right-of-way North sixty-three (63) degrees twenty-five (25) minutes fifty (50) seconds East, one hundred thirty-five and zero hundredths (135.00) feet to a point; thence continuing along the same North thirty-nine (39) degrees thirty-eight (38) minutes thirty-five (35) seconds West, twenty and thirty hundredths (20.30) feet to a point; thence continuing along the same South sixty-three (63) degrees twenty-five (25) minutes fifty (50) seconds West, one hundred and zero hundredths (100.00) feet to a point at lands now or formerly of James Busbey; thence along said last mentioned lands North thirty-four (34) degrees thirty-six (36) minutes five (05) seconds West, one hundred seventy-five and forty-nine hundredths (175.49) feet to a point in the Conewago Creek; thence in and through said Conewago Creek North fifty-seven (57) degrees twenty-four (24) minutes zero (00) seconds East, one hundred six and ninety-three hundredths (106.93) feet to a point at the edge of Conewago Creek and lands now or formerly of Richard Stegman; thence along said last mentioned lands South forty-three (43) degrees thirty-seven (37) minutes forty-five (45) seconds East, one hundred eighty-nine and eighty-five hundredths (189.85) feet to a point; thence continuing along same South thirty-nine (39) degrees forty-nine (49) minutes forty-five (45) seconds East, ninety-nine and forty-seven hundredths (99.47) feet to the point and place of BEGINNING. CONTAINING 39,170 square feet. The above

description being taken from a Boundary Survey prepared by Adams County Surveyors, dated November 11, 1991 and designated as Drawing B-673.

HAVING ERECTED THEREON a dwelling known as 217 Boy Scout Road, New Oxford, Pennsylvania.

BEING THE SAME PREMISES WHICH Eric J. Carbaugh and Elecia Carbaugh, by their Attorney-in-fact Edward Francis Powers, by their Deed dated September 30, 1999 and recorded October 6, 1999 in Adams County Deed Book 1928, Page 233, granted and conveyed unto Shawn Gladfelter and Michelle Gladfelter.

TOGETHER WITH all and singular ways, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever thereunto belonging, or in anywise appertaining, and the reversions, and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever, of Grantors in law, equity, or otherwise howsoever, of, in and to the same and every part thereof.

TO HAVE AND TO HOLD the said tract of land, together with the hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances unto the said Grantees, their heirs and assigns, to and for the only proper use and behoof of the said Grantees, their heirs and assigns forever.

SEIZED IN EXECUTION AS THE PROPERTY OF SHAWN GLADFELTER AND MICHELLE GLADFELTER UNDER ADAMS COUNTY JUDGMENT NO. 02-S-1069.

MAP & PARCEL #J10-23B

SEIZED and taken into execution as the property of **Michelle Gladfelter & Shawn Gladfelter** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

2/28, 3/7 & 14

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, March 18, 2003, at 9:00 o'clock a.m.

PETERS—Orphans' Court Action Number OC-3-03. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Robert K. Peters, deceased, late of the Borough of Bendersville, Adams County, Pennsylvania.

SMALL—Orphans' Court Action Number OC-4-03. The First and Final Account of Edgar S. Kuhn and Daniel F. Goulden, Co-Executors of the Estate of Elizabeth Marie Small, deceased, late of Hamilton Township, Adams County, Pennsylvania.

BIDDINGER—Orphans' Court Action Number OC-76-02. The First and Final Account of Amy Drumm, Personal Representative under the Will of Robert A. Biddinger, deceased, late of Cumberland Township, Adams County, Pennsylvania.

SHOWALTER—Orphans' Court Action Number OC-16-03. The First and Final Account of Allfirst Trust Company of Pennsylvania, NA., Executor of the Estate of William C. Showalter, Jr., deceased, late of Oxford Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

3/7 & 14

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 ELEANOR K. BOYER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Michael S. Boyer, 405 Bradford Lane, Bloomsbury, NJ 08804

Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF THOMAS VANCE HINELY, SR., DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Charles Wesley Hinely, 508 Pine Road, Fort Washington, MD 20744

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MURRAY L. PETERSON, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Brenda M. Peterson, 118 Aspen Drive, East Berlin, PA 17316

Attorney: David J. Lenox, Esq., Wiley, Lenox, Colgan & Marzzacco, P.C., One South Baltimore St., Dillsburg, PA 17019

ESTATE OF ALBERT S. TOWNSEND, DEC'D

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

Matthew B. Townsend, 501 Main Street, York Springs, PA 17372

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGIE S. WHITE a/k/a MARGIE ELLEN WHITE, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Nancy L. Hartzell, 2444 Chambersburg Road, Biglerville, PA 17307; Janet E. Stuff, 14 Heritage Road, Akron, PA 17501

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

SECOND PUBLICATION**ESTATE OF MARGARET L. ALWINE, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: James C. Alwine, 108 Manchester Road, Media, PA 19063

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

ESTATE OF L. IRENE CROUSE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Keith E. Crouse, 121 Centre Mills Road, Aspers, PA 17304

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

ESTATE OF AUBREY LEE HARTLEY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: John David Pihl, 114 Valley Drive, Birdsboro, PA 19508

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

ESTATE OF GLENN E. OHLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Randy C. Ohler, 39 Park Avenue, Littlestown, PA 17340

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

THIRD PUBLICATION**ESTATE OF FRED HESS CRUM, DEC'D**

Late of Liberty Township, Adams County, Pennsylvania

Executor: Fred Harry Crum, 845 Pecher Road, Fairfield, PA 17320

ESTATE OF DWIGHT LEON HARBAUGH, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executor: Leon G. Harbaugh, 601 Harbaugh Valley Road, Fairfield, PA 17320

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

ESTATE OF GERALD A. MYERS, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Barbara Ann Hicks, Robert A. Myers, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

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

ESTATE OF GARY LEE YOUNT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Garret L. Yount, 3940 Lawton Street, San Francisco, CA 94122

Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—DIVORCE
CASE NO. 01-S-810

ROSE M. RILL, Plaintiff
vs.

MAURICE N. RILL, JR., Defendant

NOTICE TO DEFEND AND
CLAIM RIGHTS

You have been sued in the court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the Court. A judgment may also be entered against you for any other claim or relief requested in these papers by the Plaintiff. You may lose money or property or other rights important to you, including custody or visitation of your children.

When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary at Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania 17325.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, MARITAL PROPERTY, COUNSEL FEES OR EXPENSES BEFORE THE FINAL DECREE OF DIVORCE OR ANNULMENT IS ENTERED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

YOU SHOULD TAKE THIS PAPER 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.

County Referral Office
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
(717) 334-6781

3/7

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately February 2003, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of PINEAPPLE CORNER, with its principal place of business at 45 Friendly Dr., Hanover, PA 17331. The names and addresses of the persons owning or interested in said business are Jeanette Miller, residing at 45 Friendly Dr., Hanover, PA 17331. The character or nature of the business is Crafts & Home Decorating items.

3/7

Adams County Legal Journal

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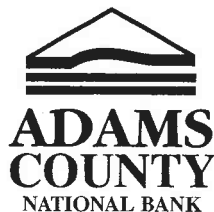
No. 42, pp. 224-228

IN THIS ISSUE

TASSOU APPEAL

This opinion continued from last issue (3/7/2003)

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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**IN THE COURT
 OF COMMON PLEAS OF
 ADAMS COUNTY, PENNSYLVANIA**
 IN RE: Petition for Change of Name of
 Jonathan Wayt Whitesell

NOTICE

NOTICE IS HEREBY GIVEN that on February 20, 2003, the petition of Jonathan Wayt Whitesell was filed in the above-named Court, requesting an Order to change the name of Jonathan Wayt Whitesell to Jonathan Wayt Heller.

The Court has fixed the day of June 16, 2003 at 9:00 a.m. in Courtroom Number 1 or 2 of the Adams County Courthouse, 111 Baltimore Street, Gettysburg, Pennsylvania as the time and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioners should not be granted.

Peterson & Peterson
 /s/Lynn G. Peterson, Esq.

3/14

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on February 12, 2003, for the purpose of obtaining a Certificate of Incorporation organized under the provisions of the Pennsylvania Business Corporation Law, approved December 21, 1988, P.L. 1444, as amended. The name of the corporation is KRIS CORP. The purpose or purposes for which the corporation is incorporated is that the corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under said Business Corporation Law.

Pyle and Entwistle
 Attorneys for the Corporation

3/14

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 February 7, 2003, pursuant to the Fictitious Name Act, setting forth that Anita O. Adams, of 20 Eichelberger Street, Hanover, PA 17331 and Jennifer A. Apostolakis, of 124 Pin Oak Place, McSherrystown, PA 17344, are the only persons owning or interested in a business, the character of which is to own and operate an advertising company and that the name, style and designation under which said business is and will be conducted is MAJESTIC ADVERTISING and the location where said business is and will be conducted is 124 Pin Oak Place, McSherrystown, PA 17344.

Guthrie, Nonemaker, Yingst & Hart
 Solicitor

3/14

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982-295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately February 25, 2003, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of ECK'S HANDYMAN SERVICES, with its principal place of business at 26 Freedom Trail, Fairfield, PA 17320. The names and addresses of the persons owning or interested in said business are Randy A. Eck & Cathy A. Eck, residing at 26 Freedom Trail, Fairfield, PA 17320. The character or nature of the business is Landscaping, Lawn maintenance, house repairs, small outbuilding construction, etc...

3/14

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act 1982-295, approved December 16, 1982, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, PA, February 21, 2003, of a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of GETTYSBURG SOUVENIRS & GIFTS with its principal place of business at 213-B Steinwehr Avenue, Gettysburg, Pennsylvania 17325. The names and addresses of the persons owning or interested in said business are Todd E. Mickley, 217 Highland Avenue, Gettysburg, PA 17325 and Craig A. Redding, 8 Field Trail, Fairfield, PA 17320.

Teeter, Teeter & Teeter
 Solicitors

3/14

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN THAT the shareholders of SECHRIST AUTO TRANSPORT, INC., a Pennsylvania corporation, with an address of 121 Green Springs Road, Hanover, PA 17331, have approved a proposal that the corporation voluntarily dissolve and that the shareholders and officers are now engaged in winding up and settling the affairs of the corporation under the provisions of Section 1975 of the Pennsylvania Business Corporation Law of 1988, as amended.

Guthrie, Nonemaker, Yingst & Hart
 James T. Yingst, Esq., Solicitor

3/14

TASSOU APPEAL

Continued from last issue (3/7/2003)

DISCUSSION

Although the proceeding before this Court is de novo, the authority of the undersigned is limited. Where the applicant is appealing the Board's decision, the trial court may only reverse the Board when it finds that the Board has committed a clear abuse of discretion or where new facts are presented which vary from those accepted by the Board. Therefore, this court may not substitute its discretion for that of the Board nor may this Court substitute its findings for those accepted by the Board where the evidence presented on appeal is not significantly different than the evidence presented to the Board. *Commonwealth, Pennsylvania Liquor Control Board v. Glucki*, 523 A.2d 517, 518 (Pa. Comlth. Ct. 1987); *Commonwealth, Pennsylvania Liquor Control Board v. Ripley*, 529 A.2d 39, 41 (Pa. Comlth. Ct. 1987).

The number of liquor licenses which can be issued in any municipality is limited by statute. 47 P.S. §4-461. Mount Joy Township is allotted one such license. That license is owned by BUI Corporation. That license has not been in use for nearly four years because of a fire, but also is not available for purchase by the Applicant. Therefore, Mount Joy Township has its quota of liquor licenses unless the circumstances warrant an exception.

At the time this application was submitted, the Board had "the power to increase the number of licenses in any such municipality which in the opinion of the board is located within a resort area." 47 P.S. §4-461(b).¹

An applicant seeking a license under this resort area exception to the statutory quota has the burden of establishing 1) that its premises is located within a resort area, and 2) that there is an actual need for an additional license in the area . . . As to the first element, the Courts have required that the applicant demonstrate a seasonal influx of transients such that the existing licensed establishments cannot adequately accommodate the tourists' needs and that the additional licensee would serve primarily the transient population and not area residents . . .

The factors to be considered in determining actual need for an additional licensee are 1) the need of persons who

¹ This section had been deleted by Act 141 of 2000, approved 44 days after Appellant's application was filed with the Board.

will use the facility; 2) the number and types of establishments already present; and 3) whether the clientele to be served is different from that served by existing licensees . . . The courts have broadly construed the term “actual need” to mean a substantial need in relation to the pleasure, convenience, and general welfare of the persons who would make use of the facility; that is, whether the facility can add a service that the present licensees cannot . . . *Chadds Ford Tavern, Inc. v. Pennsylvania Liquor Control Board*, 736 A.2d 70, 72-3 (Pa. Comlth. 1999) (citations omitted).

The Court must, therefore, first determine whether the area of Mount Joy Township where the subject premises is located lies within a “resort area”. That term has not been defined by the legislature. Instead, case law has developed a generally accepted definition of the term. Before stating that definition, it is important to note that

The purpose of enacting liquor regulation legislation has always been to restrain and discourage the sale of liquor. “Thus, the resort area exception to the quota rule of the Code must be interpreted in light of that purpose.” *Pennsylvania Liquor Control Board v. Backer*, 537 A.2d 100, 101 (Pa. Comlth. Ct. 1988) (citations omitted).

The court in *Chadds Ford Tavern, Inc., supra*. described the applicant’s burden of establishing that the premises is in a resort area as requiring him to

demonstrate a seasonal influx of transients such that the existing licensed establishments cannot adequately accommodate the tourists’ needs and that the additional license would serve primarily the transient population and not the area residents.

736 A.2d at 73.

The Court, in *West Reading Tavern, Inc. v. Pennsylvania Liquor Control Board*, 710 A.2d 648, 652 (Pa. Comlth. Ct. 1998) described the burden slightly differently when it stated that the applicant must

demonstrate a seasonal influx of transients which causes the population of the area to swell so that existing liquor licenses cannot adequately meet the needs of the area . . .

In addition, the facilities in the area must be used primarily by the temporary transients or tourists and not by area residents.

Additionally, courts have required that

The evidence adduced must be specific as to the number of tourists, as opposed to area residents, using recreational facilities in the municipality.

Furthermore, the recreational facilities must be sufficiently close to the premises to be licensed to be viewed as being within the immediate area of the premises.

Commonwealth, Pennsylvania Liquor Control Board v. Ripley, supra., 529 A.2d at 42.

In order to determine the size of the area which can be considered in deciding whether the premises is within a resort area, it appears that the court is not restricted by governmental boundaries.² Although recreational or tourist attractions within 4.7 miles, *Commonwealth, Pennsylvania Liquor Control Board v. Jimmy Paul's, Inc.*, 475 A.2d 914 (Pa. Comlth. Ct. 1984) or even 8 miles, *Commonwealth, Pennsylvania Liquor Control Board v. Spring Gutch, Inc.*, 487 A.2d 472, 475 (Pa. Comlth. Ct. 1985) of the subject premises is not considered too remote, facilities 14-22 miles away are not to be considered. *Penn State Facility Club v. Pennsylvania Liquor Control Board*, 381 A.2d 1017 (Pa. Comlth. Ct. 1978).

With this standard in mind, this Court is of the opinion that the Board abused its discretion in concluding that the subject premises is not within a resort area.

Significantly, in 1974, the Board determined the Borough of Gettysburg to be within a resort area. The subject premises is less than five miles from the center of the Borough. The record fully supports the well-known fact that the Gettysburg Battlefield is one of the

² The court in *Commonwealth, Pennsylvania Liquor Control Board v. New Greensburg Aerie Fraternal Order of Eagles #3920, Inc.*, 476 A.2d 985, 988 (Pa. Comlth. Ct. 1984) observed that

Liquor licenses are established on a municipality basis, rather than a county or "general territory" basis. Section 461 of the Code, 47 P.S. Section 4-461(a). The statute does not state whether or not the board is to establish exceptions to the quotas using like boundaries — an approach which could afford some consistency and convenience in administering the law, but which could produce harsh results if mechanically applied.

major tourist attractions in the mid-atlantic region of the United States.³ The Battlefield itself surrounds all sides of the Borough. Thus, the premises lies very close to the area of greatest historic significance and attraction. The premises lies directly on the route used by Union troops during the Civil War battle and is the major access route to the Battlefield from Maryland. The premises is not tucked away in some rural isolated portion of the township but is located along a route heavily traveled by visitors to the area.

Applicant has clearly shown a significant seasonal influx of tourists in the area of the premises. The specificity provided here was as detailed as that described in *West Reading Tavern, Inc., supra.* and *Ripley, supra.* The record also supports the conclusion that the facilities in the area such as the Civil War related sites, golf courses, the outlet mall, the hotel, the campgrounds, and the marina are facilities which cater primarily to the transient population rather than local residents and that they are within the relevant proximity of the premises.

However, simply concluding that the premises is in a resort area is not enough. The applicant must also establish an actual need for an additional license. It has been said that actual need

Means substantial need in relation to the pleasure, convenience and general welfare of the persons who would use the facility of the licensee . . . In assessing actual necessity, the factors to consider are: 1) the needs of the persons who will use the facility; 2) the number and types of existing establishments in the area; and 3) whether the persons to be served differ from those served by existing licensees . . . In other words, the question is whether an applicant can provide a service where and when present licensees cannot . . .

Hanover Bowling Center v. Commonwealth, Pennsylvania Liquor Control Board, 516 A.2d 845, 847 (Pa. Comlth. Ct. 1986).

More recently, however, the court in *Chadds Ford Tavern, Inc., supra.*, noted that

An applicant need not show that as a result of the influx of tourists the current licensed establishments are incapable

³We tend to moderate the attractiveness of the area to outsiders so as not to appear boastful. Nevertheless, the Battle of Gettysburg and Abraham Lincoln's famous Gettysburg Address are recognized worldwide.

of serving, or inadequately equipped to serve the needs of those tourists along with the local clientele. Similarly, the applicant need not show a need of tourists for the applicant's unique services or cuisine. Actual need is based on the pleasure and convenience of the tourists and the applicant's ability to provide an additional service.

723 A.2d at 73.

Here, the Board did not address the issue of actual need. However, the record before this Court adequately supports a finding of need. Currently, no other restaurant in the municipality can provide alcoholic beverages with a meal. Neither the recently constructed 100-room Country Inn Suites nor the marina located near the premises has a restaurant facility. The Applicant frequently receives requests from his patrons for alcohol. Restaurants in the area of the Borough of Gettysburg which serve alcoholic beverages are often overcrowded and have parking problems, especially during the peak seasonal period. Applicant does cater to the family restaurant clientele. There are very few other family-style restaurants in the area. Applicant has the largest selection of Greek and Italian items within miles.

The undersigned recognizes that not every facility within a resort area is entitled to a liquor license just because the patrons traveling from outside the area find it "inconvenient not to be able to buy alcoholic beverages on the premises of the applicant." *Hanover Bowling Center, Inc., supra.*, 516 A.2d at 848. However, the situation before this Court goes beyond the realm of inconvenience. The record indicates that no other family style restaurant within miles of the subject premises can presently offer alcoholic beverages with meals. Thus, the Applicant has established his burden of proving actual need by virtue of the lack of other licensed facilities in the township or nearby, the clientele being served at the premises, and the wants and desires of the non-residents who frequent the premises.

DECISION

The appeal of Harry R. Tassou, t/a Tassou's Honey Bee Diner, is sustained and the decision of the Pennsylvania Liquor Control Board denying his application for a Restaurant Liquor License, is reversed.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF MARY R. HERSH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Myrl L. Hersh, 47 Berlin Street, Spring Grove, PA 17362; Charles E. Hersh, 2791 Loman Avenue, York, PA 17404

Attorney: Paul C. McCleary, Jr., Esq., 1998-A Carlisle Road, York, PA 17404

ESTATE OF DOROTHY MAE KIME, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: David Emmert Kime, 604 W. Myrtle Street, Littlestown, PA 17340; Kenneth Curtis Kime, 1031 White Church Road, Gettysburg, PA 17325

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

ESTATE OF EDWARD S. STARRY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: William J. Starry, 663 East Berlin Road, York Springs, PA 17372

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

SECOND PUBLICATION

ESTATE OF ELEANOR K. BOYER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Michael S. Boyer, 405 Bradford Lane, Bloomsbury, NJ 08804

Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF THOMAS VANCE HINELY, SR., DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Charles Wesley Hinely, 508 Pine Road, Fort Washington, MD 20744

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MURRAY L. PETERSON, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Brenda M. Peterson, 118 Aspen Drive, East Berlin, PA 17316

Attorney: David J. Lenox, Esq., Wiley, Lenox, Colgan & Marzocco, P.C., One South Baltimore St., Dillsburg, PA 17019

ESTATE OF ALBERT S. TOWNSEND, DEC'D

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

Matthew B. Townsend, 501 Main Street, York Springs, PA 17372

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGIE S. WHITE a/k/a MARGIE ELLEN WHITE, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Nancy L. Hartzell, 2444 Chambersburg Road, Biglerville, PA 17307; Janet E. Stuff, 14 Heritage Road, Akron, PA 17501

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

THIRD PUBLICATION

ESTATE OF MARGARET L. ALWINE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James C. Alwine, 108 Manchester Road, Media, PA 19063

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

ESTATE OF L. IRENE CROUSE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Keith E. Crouse, 121 Centre Mills Road, Aspers, PA 17304

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

ESTATE OF AUBREY LEE HARTLEY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: John David Pihou, 114 Valley Drive, Birdsboro, PA 19508

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

ESTATE OF GLENN E. OHLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Randy C. Ohler, 39 Park Avenue, Littlestown, PA 17340

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1069 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Hamilton Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point in a public right-of-way known as Boy Scout Road and lands now or formerly of Richard Stegman; thence along and through said Boy Scout Road South fifty-five (55) degrees forty-five (45) minutes thirty-five (35) seconds West, two hundred and twenty hundredths (200.20) feet to a point at lands now or formerly of James Busbey; thence along said last mentioned lands North twenty-two (22) degrees eleven (11) minutes forty (40) seconds West, one hundred and fifty-six hundredths (100.56) feet to a point at a twenty (20) foot private right-of-way; thence along said private right-of-way North sixty-three (63) degrees twenty-five (25) minutes fifty (50) seconds East, one hundred thirty-five and zero hundredths (135.00) feet to a point; thence continuing along the same North thirty-nine (39) degrees thirty-eight (38) minutes thirty-five (35) seconds West, twenty and thirty hundredths (20.30) feet to a point; thence continuing along the same South sixty-three (63) degrees twenty-five (25) minutes fifty (50) seconds West, one hundred and zero hundredths (100.00) feet to a point at lands now or formerly of James Busbey; thence along said last mentioned lands North thirty-four (34) degrees thirty-six (36) minutes five (05) seconds West, one hundred seventy-five and forty-nine hundredths (175.49) feet to a point in the Conewago Creek; thence in and through said Conewago Creek North fifty-seven (57) degrees twenty-four (24) minutes zero (00) seconds East, one hundred six and ninety-three hundredths (106.93) feet to a point at the edge of Conewago Creek and lands now or formerly of Richard Stegman; thence along said last mentioned lands South forty-three (43) degrees thirty-seven (37) minutes forty-five (45) seconds East, one hundred eighty-nine and eighty-five hundredths (189.85) feet to a point; thence continuing along same South thirty-nine (39) degrees forty-nine (49) minutes forty-five (45) seconds East, ninety-nine and forty-seven hundredths (99.47) feet to the point and place of BEGINNING. CONTAINING 39,170 square feet. The above

description being taken from a Boundary Survey prepared by Adams County Surveyors, dated November 11, 1991 and designated as Drawing B-673.

HAVING ERECTED THEREON a dwelling known as 217 Boy Scout Road, New Oxford, Pennsylvania.

BEING THE SAME PREMISES WHICH Eric J. Carbaugh and Elecia Carbaugh, by their Attorney-in-fact Edward Francis Powers, by their Deed dated September 30, 1999 and recorded October 6, 1999 in Adams County Deed Book 1928, Page 233, granted and conveyed unto Shawn Gladfelter and Michelle Gladfelter.

TOGETHER WITH all and singular ways, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever thereunto belonging, or in anywise appertaining, and the reversions, and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever, of Grantors in law, equity, or otherwise howsoever, of, in and to the same and every part thereof.

TO HAVE AND TO HOLD the said tract of land, together with the hereditaments and premises hereby granted or mentioned and intended so to be with the appurtenances unto the said Grantees, their heirs and assigns, to and for the only proper use and behoof of the said Grantees, their heirs and assigns forever.

SEIZED IN EXECUTION AS THE PROPERTY OF SHAWN GLADFELTER AND MICHELLE GLADFELTER UNDER ADAMS COUNTY JUDGMENT NO. 02-S-1069.

MAP & PARCEL #J10-23B

SEIZED and taken into execution as the property of **Michelle Gladfelter & Shawn Gladfelter** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

2/28, 3/7 & 14

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, March 18, 2003, at 9:00 o'clock a.m.

PETERS—Orphans' Court Action Number OC-3-03. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Robert K. Peters, deceased, late of the Borough of Bendersville, Adams County, Pennsylvania.

SMALL—Orphans' Court Action Number OC-4-03. The First and Final Account of Edgar S. Kuhn and Daniel F. Goulden, Co-Executors of the Estate of Elizabeth Marie Small, deceased, late of Hamilton Township, Adams County, Pennsylvania.

BIDDINGER—Orphans' Court Action Number OC-76-02. The First and Final Account of Amy Drumm, Personal Representative under the Will of Robert A. Biddinger, deceased, late of Cumberland Township, Adams County, Pennsylvania.

SHOWALTER—Orphans' Court Action Number OC-16-03. The First and Final Account of Allfirst Trust Company of Pennsylvania, NA., Executor of the Estate of William C. Showalter, Jr., deceased, late of Oxford Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

3/7 & 14

NOTICE OF FOREIGN CORPORATION QUALIFICATION

PURSUANT TO 15 Pa.C.S., Sec. 4124, notice is hereby given that an Application for Certificate of Authority will be filed on or around March 7, 2003 with the Department of State of the Commonwealth of Pennsylvania, for the purpose of obtaining authority for a Delaware corporation to transact business in the Commonwealth of Pennsylvania.

The name of the corporation is WAVE-SMITH NETWORKS, INC. with its principal place of business at 35 Nagog Park, Acton, MA 01720.

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Adams County Legal Journal

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March 21, 2003

No. 43, pp. 229-232

IN THIS ISSUE

SWORDS VS. BUCHER

This opinion continues to next issue (3/28/2003)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1307 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate, lying and being in Germany Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a railroad spike in or near the center line of Township Road T-423 at corner of Lot No. 17 on the hereinafter referred to draft of survey, thence by said Lot No. 17, and passing through an iron pin set back 15.5 feet from the last mentioned point, North 67 degrees 25 minutes 52 seconds West, 549.89 feet to an iron pin on line of land now or formerly of William Fissel; thence by said land of William Fissel, North 29 degrees 11 minutes 06 seconds East, 186.24 feet to an iron pin at corner of Lot No. 15 on the hereinafter referred to draft of survey, thence by Lot No. 15, South 67 degrees 25 minutes 52 seconds East, 528.43 feet to a railroad spike in or near the center line of Township Road T-423, aforesaid; thence in said Township Road T-423 and passing through a railroad spike set on

the line, South 22 degrees 34 minutes 08 seconds West 185.00 feet to a railroad spike, the place of BEGINNING. CONTAINING 2.29 Acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Co. Inc., dated July 1, 1977, recorded in Plat Book 6 at page 9, revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 16.

BEING the same premises which Timothy L. Kress and Nicola Sue Kress, by Deed dated December 28, 2001 and recorded in the Office of the Recorder of Deeds of Adams County on January 3, 2002, in Deed Book 2517, Page 230, granted and conveyed unto Gregory A. Bovat and Margaret H. Bovat.

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

Parcel No.: (15) H18-48

SEIZED and taken into execution as the property of **Gregory A. Bovat & Margaret H. Bovat** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a

schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on February 26, 2003, for the purpose of obtaining a Certificate of Incorporation of a nonprofit corporation organized under the provisions of the Nonprofit Corporation Law of 1988. The name of the corporation is CAMP SAVAGE, INC.

Puhl, Eastman & Thrasher
Attorneys for the corporation

3/21

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1273 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the northerly right of way line of Sutton Road in the Borough of Abbottstown, County of Adams and State of Pennsylvania known and numbered as Lot No. 28 on a plan of lots for Abbots Manor Phase I recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69 Page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the northerly right of way line of Sutton Road at a corner of Lot No. 29 on said plan; thence extending along the said northerly right of way line of Sutton Road South 62 degrees 30 minutes 00 seconds West 85 feet to a point, at a corner of Lot No. 27 on said plan; thence extending along the said Lot No. 27 North 27 degrees 30 minutes 00 seconds West 120 feet to a point; thence North 62 degrees 30 minutes 00 seconds East 85 feet to a point, at a corner of Lot No. 29 on said plan; thence extending along the said Lot No. 29 South 27 degrees 30 minutes 00 seconds East 120 feet to the point and place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Steve A. Sweeney, Jr. and Rebecca L. Sweeney by Deed from Garland Construction, Inc. dated 6/21/2000, recorded 9/21/2000, in Record Book 2129 Page 247.

Premises being: 583 Sutton Road, Abbottstown, PA 17301

Tax Parcel No. (01) 5-25

SEIZED and taken into execution as the property of **Steve A. Sweeney, Jr. & Rebecca L. Sweeney** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a

schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1183 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 163 in Section R1, bounded and described as follows:

BEGINNING at a point in the center of McGlaughlin Trail at Lot No. 162; thence by said lot North 2 degrees 37 minutes 20 seconds East, 225 feet to Lot No. 150; thence by said lot and by Lot No. 149 South 87 degrees 22 minutes 40 seconds East, 100 feet to Lot No. 164; thence by said lot South 2 degrees 37 minutes 20 seconds West, 225 feet to a point in the center of said McGlaughlin Trail; thence in said McGlaughlin Trail North 87 degrees 22 minutes 40 seconds West, 100 feet to the place of BEGINNING, and being Lot No. 165, Section R1.

The above description was taken from a plan of lots labeled "Section R1 of Charnita, Inc." dated May 29, 1970, prepared by Gordon L. Brown, R.S., recorded in the Adams County Plat Book 1 at page 83.

BEING the same premises which Allen W. Beckett, by Deed dated November 2, 1998 and recorded in the Office of the

Recorder of Deeds of Adams County on November 3, 1998, in Deed Book 1694, Page 342, granted and conveyed unto Patrick D. Warthen.

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

Parcel No.: (43) 40-35

SEIZED and taken into execution as the property of **Patrick D. Warthen** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for ADVANTAGE GARAGE DOORS, INC., were filed with the Department of State of the Commonwealth of Pennsylvania for the purpose of incorporating under the provisions of the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Miller & Shultz, P.C.
Solicitors

3/21

SWORDS VS. BUCHER

1. Summary judgment is granted when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact. The moving party has the burden of proving the non-existence of any genuine issue of fact. The non-moving party must demonstrate that there is a genuine issue for trial and may not rest on averments in its pleadings.....unsupported assertions of conclusory allegations cannot create genuine issues of material fact.

2. In ruling on Defendant's Motion for Summary Judgment, this Court can consider the deposition testimony of Plaintiff and Defendant only to the extent that such testimony sets forth matters which would be admissible into evidence.

3. Where recklessness or carelessness is at issue, proof of intoxication is relevant, but the mere fact of consuming alcohol is inadmissible as unfairly prejudicial, unless it reasonably establishes intoxication.

4. Pennsylvania courts have indicated that something more than a "suggestion of intoxication" is necessary in order for evidence to be admissible.

5. The Doctrine of Assumption of Risk is set forth in Section 496A of the Restatement of Torts (Second). The Supreme Court of Pennsylvania has held that Comment c2 (of the said Restatement Section) refers to a situation in which a plaintiff has "voluntarily and intelligently undertaken an activity which he knows to be hazardous in ways which subsequently cause him injury. The Court further held that the basis for this type of assumption of risk is that as a matter of public policy one who chooses to take risks will not then be heard later to complain that he was injured by the risks he chose to take and will not be permitted to seek money damages from those who might otherwise have been liable....the plaintiff may or may not have been negligent in encountering the risk. He is barred from recovery not because of his negligence, but because of the policy that a person may not recover for injuries which he himself has chosen to risk.

6. Until our supreme court or our legislature abrogates assumption of risk in negligence cases, the doctrine remains viable in Pennsylvania.

7. Pennsylvania has essentially abolished assumption of risk as an affirmative defense.

8. Therefore, in a negligence action, assumption of risk is a question of law that is incorporated into the court's analysis of whether or not the defendant owed a duty to the plaintiff.

9. For summary judgment purposes....assumption of risk is now considered part of a "no duty" analysis. As such, the doctrine now falls under the second type of summary judgment motion, described in Pa.R.Civ.P 1035.2(2). One of the essential elements of a negligence claim is that the defendant owes the plaintiff a duty of care. Under Rule 1035.2(2), the defendant's method for pointing to a lack of evidence on the duty issue is to show that the plaintiff assumed the risk as a matter of law.

10. Assumption of risk has been applied (by Pennsylvania courts) in situations involving injuries sustained during sporting events. Our Supreme Court has stated whatever complexities and difficulties have attended the assumption of the risk doctrine in other areas, cases involving injuries to plaintiffs who were spectators or participants at sporting events or amusement facilities have tended to speak in terms of whether the injury suffered resulted from a risk 'inherent' in the activity in question; if it did, then the defendant was under no duty to the plaintiff, and the suit could not go forward.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 00-S-516, JOE SWORDS VS. KEVIN BUCHER.

Dale E. Anstine, Esq., for Plaintiff
George R. Zacharkow, Esq., for Defendant
Kuhn, P.J., May 29, 2002

OPINION PURSUANT TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

Before the Court is Defendant's Motion for Summary Judgment. For the reasons set forth herein, said Motion is granted.

The case involves a dispute with regard to Defendant's alleged responsibility for injuries Plaintiff sustained during a tubing¹ accident. The factual background has been gathered from the pleadings, depositions² and exhibits.

FACTUAL BACKGROUND

On July 4, 1998, Plaintiff and two friends attended a cookout party at Lake Meade, Adams County, Pennsylvania. Defendant and his family also reside at Lake Meade and are neighbors of the family that hosted the cookout. On the afternoon of July 4, 1998, one of the hosts of the cookout was giving tube rides to his children and some of his guests. Defendant had also taken his sons tubing on the Lake that afternoon and volunteered to give tube rides to some of his neighbor's guests.

About 20 minutes after Plaintiff and his friends arrived at the cookout, they went to the Lake to go tubing. Defendant was returning to the dock at approximately the same time with his wife and sons who got off the boat and went to the cookout. Defendant stayed on the boat and offered tube rides to some of the guests who were waiting on the dock. Plaintiff, who had not met Defendant before this time, boarded the boat along with a few other guests. Defendant had a two-person tube which was connected by a 75-foot line to the rear center of the boat. At some point, Plaintiff and another guest,

¹"[T]ubing [is] an activity whereby an individual rides on an inner tube while being pulled by a boat." *Sebasta v. Holtsberry*, 2000 Ohio App. Lexis 4017.

²Depositions were taken of Plaintiff and Defendant.

Ron Enzer, got on the tube together.³ Plaintiff was lying on his stomach on the left side of the tube and Enzer was on the right side. One of Plaintiff's friends was acting as the spotter. Defendant pulled Plaintiff and Enzer in a counterclockwise direction around the Lake. When Defendant got to the far end of the Lake, he turned the boat to the left in order to begin the trip back toward the dock. When the boat turned to the left, the tube swung to the right.⁴ As they turned the corner, Enzer lifted up his side of the tube, such that he was leaning toward Plaintiff, allegedly to keep the tube from catching in the water. Nevertheless, Enzer's edge of the tube caught the water, and the tube flipped. At that time, Plaintiff's head allegedly struck Enzer's shoulder. Plaintiff states that after falling off the tube, his eyes and head hurt. He also states that he was "dazed and confused," that everything was "hazy and fuzzed away," and that he was "slow comprehending things".

Plaintiff maintains that he was helped into the boat immediately after falling off the tube, and that he was taken back to the dock where he sat alone for some time. Plaintiff states that, after the tubing accident, he suffered from a headache, blurred vision and dizziness for the remainder of the day but that he did not seek medical attention until July 13, 1998. A CT scan and an MRI were both negative.

Plaintiff maintains that he has suffered from aches and pains in his neck and lower back, tingling in his fingers, headaches at night, and problems with balance following the tubing accident. He alleges that he has incurred medical expenses and suffered reduced income as a result of the accident.

Plaintiff maintains that Defendant was operating the boat in a reckless and negligent manner at the time the tube flipped on July 4, 1998. Plaintiff alleges that Defendant was traveling at a high rate of

³ There is conflicting testimony with regard to whether Defendant gave other guests a ride on the tube before giving Plaintiff and Enzer the ride during which the incident in question occurred. There is also conflicting testimony regarding whether or not Plaintiff served as a "spotter" (someone other than the operator of the boat who observes the activity of the tubers) for other tubers prior to his tube ride.

⁴ When a turn is executed, the tube continues on in the opposite direction, until the turn is completed and it realigns itself behind the boat. This action is termed the "whip".

speed and cutting across the wakes from other boats. Plaintiff further alleges that Defendant was under the influence of alcohol to a degree which rendered him incapable of safely operating his boat.

PROCEDURAL BACKGROUND

Plaintiff filed a complaint against Defendant alleging that Defendant was negligent and reckless in the operation of his boat, and that, as a result, Plaintiff sustained injuries and damages. More specifically, Plaintiff alleges that Defendant's negligence consisted of the following:

- a) Failing to exercise reasonable care in the operation of his boat;
- b) Operating his motorboat in careless disregard for the safety of the Plaintiff;
- c) Operating his motorboat at an excessive rate of speed;
- d) Operating his motorboat while under the influence of alcoholic beverages to a degree which rendered him incapable of safely operating the boat;
- e) Operating his motorboat when the Defendant knew, or should have known, that he was unfit to do so;
- f) Failing to exercise reasonable care in the operation of his motorboat by cutting across the wakes of other watercraft; and
- g) Violating 30 Pa.C.S. §5501(a), §5501(b), and §5502(a)(1).

Defendant's Motion for Summary Judgment contends that Plaintiff's claim is barred by the doctrine of assumption of risk, as set forth in the Restatement (Second) of Torts § 496A. Defendant maintains that Plaintiff assumed the risk of a sporting activity in which he voluntarily took part. Furthermore, Defendant alleges there is no evidence in the record to support a conclusion that the alleged conduct was outside the boundaries of the sport. Defendant also argues that Plaintiff's allegations concerning the consumption of beer are not admissible in evidence and do not undermine Plaintiff's assumption of risk because mere consumption of alcohol is inadmissible unless it reasonably establishes intoxication.

Continued to next issue (3/28/2003)

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 IANTHE S. BAKER a/k/a IANTHE GERALDINE BAKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William E. Baker, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

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

ESTATE OF MARY H. GERRICK, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: Francis I. Gerrick, 520 Glenwyn Drive, Littlestown, PA 17340; Harold O. Gerrick, 6107 Ponto Court, Alexandria, VA 22312

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

ESTATE OF C. EUGENE MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Dennis E. Miller, c/o Terry L. Fetterman, Jr., Esq., Fetterman & Yatron, LLC, 2606 Kutztown Road, Reading, PA 19605

Attorney: Terry L. Fetterman, Jr., Esq., Fetterman & Yatron, LLC, 2606 Kutztown Road, Reading, PA 19605

ESTATE OF RUTH KOPMAN MUMPER, a/k/a RUTH MARIE MUMPER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Ralph J. Kopman, Robert C. Berkheimer, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

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

ESTATE OF HARVEY W. RITTER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Helen Wuethrich, 16 Black Bass Trail, Fairfield, PA 17320

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

ESTATE OF JOSEPH E. TOPPER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Catherine E. Myers, 12 Walnut Ln., New Oxford, PA 17350

ESTATE OF JOHN LOUIS TURNBAUGH a/k/a JOHN L. TURNBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representatives: Jeanne L. Cox and Susan B. Turnbaugh, c/o Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF MARY R. HERSH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Myrl L. Hersh, 47 Berlin Street, Spring Grove, PA 17362; Charles E. Hersh, 2791 Loman Avenue, York, PA 17404

Attorney: Paul C. McCleary, Jr., Esq., 1998-A Carlisle Road, York, PA 17404

ESTATE OF DOROTHY MAE KIME, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: David Emmert Kime, 604 W Myrtle Street, Littlestown, PA 17340; Kenneth Curtis Kime, 1031 White Church Road, Gettysburg, PA 17325

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

ESTATE OF EDWARD S. STARRY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: William J. Starry, 663 East Berlin Road, York Springs, PA 17372

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

THIRD PUBLICATION

ESTATE OF ELEANOR K. BOYER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Michael S. Boyer, 405 Bradford Lane, Bloomsbury, NJ 08804

Attorney: Crabbs & Crabbs, Attorneys for the Estate, 202 Broadway, Hanover, PA 17331

ESTATE OF THOMAS VANCE HINELY, SR., DEC'D

Late of Union Township, Adams County, Pennsylvania

Executor: Charles Wesley Hinely, 508 Pine Road, Fort Washington, MD 20744

Attorney: Thomas M. Shultz, Esq., Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF MURRAY L. PETERSON, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executrix: Brenda M. Peterson, 118 Aspen Drive, East Berlin, PA 17316

Attorney: David J. Lenox, Esq., Wiley, Lenox, Colgan & Marzaccoco, P.C., One South Baltimore St., Dillsburg, PA 17019

ESTATE OF ALBERT S. TOWNSEND, DEC'D

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

Matthew B. Townsend, 501 Main Street, York Springs, PA 17372

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGIE S. WHITE a/k/a MARGIE ELLEN WHITE, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Nancy L. Hartzell, 2444 Chambersburg Road, Biglerville, PA 17307; Janet E. Stuff, 14 Heritage Road, Akron, PA 17501

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-338 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Village of Orttanna, Hamiltonban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel rod located in the right-of-way of Carrolls Tract Road (Township Route T-314) and at the Southwestern side of a 12 foot unused unimproved alley; thence along said Southwest side of said alley, South 52 degrees 15 minutes 00 seconds East, 135.00 feet to an existing steel rod located at corner of land of Paul Metz; thence by said land of Metz, South 37 degrees 45 minutes 00 seconds West 120.00 feet to an existing steel rod located along the Northeastern side of the right-of-way of Third Street (private); thence along said right-of-way of said Third Street, North 52 degrees 15 minutes 00 seconds West, 135.00 feet to a magnetic spike located 8 feet East of the center line of the aforementioned Carrolls Tract Road; thence in Carrolls Tract Road, North 37 degrees 45 minutes 00 seconds East, 120.00 feet to a steel rod located in the right-of-way of Carrolls Tract Road and at the Southwestern side of a 12 foot unused unimproved alley, the place of BEGINNING. CONTAINING 16,200 square feet (0.372).

The above description is taken from a boundary survey prepared for Orttanna United Methodist Church by Adams County Surveyors dated March 27, 1997, Drawing B-928.

Being known and designated as Map C-12; Parcel 98.

BEING the same premises which Orttanna United Methodist Church, a/k/a Orttanna Methodist Church, by Deed dated April 7, 1997 and recorded in the Office of the Recorder of Deeds of Adams County on April 10, 1997, in Deed Book 1353, Page 161, granted and conveyed unto Clifford E. Strausbaugh and Amanda L. Strausbaugh.

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

Parcel No.: (18) C12-98

SEIZED and taken into execution as the property of **Clifford E. Strausbaugh & Amanda L. Strausbaugh** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application has been filed under the Fictitious Names Act, 54 Pa. C.S.A. §§301 et seq., as amended, with the Secretary of the Commonwealth, in Harrisburg, Pennsylvania, on February 10, 2003, for conducting business under the assumed or fictitious name of O'BRIEN CONSULTING. The address of the principal office or place of business to be carried on under or through the fictitious name is: 912 Sunset Avenue, P.O. Box 4809, Gettysburg, Pennsylvania 17325. The name and address of the only person who is a party to the registration is: Stephen P. O'Brien, 912 Sunset Avenue, P.O. Box 4809, Gettysburg, Pennsylvania 17325.

John W. Phillips, Esq.
Attorney

3/21

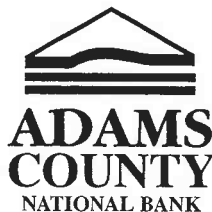
INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed for C.R. GOLF, INC. with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Shultz Law Firm, LLC.
Thomas M Shultz, Esq.
Solicitor

3/21

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Adams County Legal Journal

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No. 44, pp. 233-242

IN THIS ISSUE

SWORDS VS. BUCHER

This opinion continued from last issue (3/21/2003)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1307 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate, lying and being in Germany Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a railroad spike in or near the center line of Township Road T-423 at corner of Lot No. 17 on the hereinafter referred to draft of survey, thence by said Lot No. 17, and passing through an iron pin set back 15.5 feet from the last mentioned point, North 67 degrees 25 minutes 52 seconds West, 549.89 feet to an iron pin on line of land now or formerly of William Fissel; thence by said land of William Fissel, North 29 degrees 11 minutes 06 seconds East, 186.24 feet to an iron pin at corner of Lot No. 15 on the hereinafter referred to draft of survey, thence by Lot No. 15, South 67 degrees 25 minutes 52 seconds East, 528.43 feet to a railroad spike in or near the center line of Township Road T-423, aforesaid; thence in said Township Road T-423 and passing through a railroad spike set on the line, South 22 degrees 34 minutes 08 seconds West 185.00 feet to a railroad

spike, the place of BEGINNING. CONTAINING 2.29 Acres.

The above description was taken from a draft of survey prepared by Gettysburg Engineering Co. Inc., dated July 1, 1977, recorded in Plat Book 6 at page 9, revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 16.

BEING the same premises which Timothy L. Kress and Nicola Sue Kress, by Deed dated December 28, 2001 and recorded in the Office of the Recorder of Deeds of Adams County on January 3, 2002, in Deed Book 2517, Page 230, granted and conveyed unto Gregory A. Bovat and Margaret H. Bovat.

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

Parcel No.: (15) H18-48

SEIZED and taken into execution as the property of **Gregory A. Bovat & Margaret H. Bovat** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C. S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately March 21, 2003, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of MILITARYPRINTS.COM, with its principal place of business at P.O. Box 3514, Gettysburg, PA 17325. The name and address of the persons owing or interested in said business is Gary M. Heller, residing at P.O. Box 3514, Gettysburg, PA 17325.

The character or nature of the business is retail sales.

3/28

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1273 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the northerly right of way line of Sutton Road in the Borough of Abbottstown, County of Adams and State of Pennsylvania known and numbered as Lot No. 28 on a plan of lots for Abbotts Manor Phase I recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69 Page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the northerly right of way line of Sutton Road at a corner of Lot No. 29 on said plan; thence extending along the said northerly right of way line of Sutton Road South 62 degrees 30 minutes 00 seconds West 85 feet to a point, at a corner of Lot No. 27 on said plan; thence extending along the said Lot No. 27 North 27 degrees 30 minutes 00 seconds West 120 feet to a point; thence North 62 degrees 30 minutes 00 seconds East 85 feet to a point, at a corner of Lot No. 29 on said plan; thence extending along the said Lot No. 29 South 27 degrees 30 minutes 00 seconds East 120 feet to the point and place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Steve A. Sweeney, Jr. and Rebecca L. Sweeney by Deed from Garland Construction, Inc. dated 6/21/2000, recorded 9/21/2000, in Record Book 2129 Page 247.

Premises being: 583 Sutton Road, Abbottstown, PA 17301

Tax Parcel No. (01) 5-25

SEIZED and taken into execution as the property of **Steve A. Sweeney, Jr. & Rebecca L. Sweeney** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a

schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1183 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 163 in Section R1, bounded and described as follows:

BEGINNING at a point in the center of McGlaughlin Trail at Lot No. 162; thence by said lot North 2 degrees 37 minutes 20 seconds East, 225 feet to Lot No. 150; thence by said lot and by Lot No. 149 South 87 degrees 22 minutes 40 seconds East, 100 feet to Lot No. 164; thence by said lot South 2 degrees 37 minutes 20 seconds West, 225 feet to a point in the center of said McGlaughlin Trail; thence in said McGlaughlin Trail North 87 degrees 22 minutes 40 seconds West, 100 feet to the place of BEGINNING, and being Lot No. 165, Section R1.

The above description was taken from a plan of lots labeled "Section R1 of Charnita, Inc." dated May 29, 1970, prepared by Gordon L. Brown, R.S., recorded in the Adams County Plat Book 1 at page 83.

BEING the same premises which Allen W. Beckett, by Deed dated November 2, 1998 and recorded in the Office of the

Recorder of Deeds of Adams County on November 3, 1998, in Deed Book 1694, Page 342, granted and conveyed unto Patrick D. Warthen.

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

Parcel No.: (43) 40-35

SEIZED and taken into execution as the property of **Patrick D. Warthen** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

INCORPORATION NOTICE

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

3/28

SWORDS VS. BUCHER

Continued from last issue (3/21/2003)

DISCUSSION

Summary judgment is granted:

when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact. The moving party has the burden of proving the non-existence of any genuine issue of fact. The non-moving party must demonstrate that there is a genuine issue for trial and may not rest on averments in its pleadings. The trial court must resolve all doubts against the moving party and examine the record in the light most favorable to the non-moving party. 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.

Davis v. Resources for Human Development, Inc., 770 A.2d 353 (Pa.Super. 2001).

Furthermore, “unsupported assertions of conclusory allegations cannot create genuine issues of material fact.” *Superka v. Valley Forge Life Insurance Co.*, 44 Pa. D. & C. 4th 92, 94-95 (Pa.Com.Pl. 1999), citing *McCain v. Pennbank*, 379 Pa.Super. 313, 318-319 (1988). Pennsylvania Rule of Civil Procedure 1035.4 states that supporting and opposing affidavits must set forth “such facts as would be admissible in evidence.” The Rule further states that the court may permit affidavits to be supplemented or opposed by depositions. Therefore, in ruling on Defendant’s Motion for Summary Judgment, this Court can consider the deposition testimony of Plaintiff and Defendant only to the extent that such testimony sets forth matters which would be admissible into evidence. See *Todd Heller, Inc., v. UPS*, 754 A.2d 689, 698 (Pa.Super. 2000), citing *McFadden v. American Oil Company*, 257 A.2d 283, 287 (Pa.Super. 1969).

First, the Court will address whether evidence of intoxication is sufficient enough to be considered in determining whether Plaintiff’s cause of action is barred by the defense of assumption of the risk. The Pennsylvania Superior Court has stated:

[w]here recklessness or carelessness is at issue, proof of intoxication is relevant, but the mere fact of consuming

alcohol is inadmissible as unfairly prejudicial, unless it reasonably establishes intoxication.

Cusatis v. Reichert, 267 Pa.Super. 247, 406 A.2d 787 (1979).

Pennsylvania courts have indicated that something more than a “suggestion of intoxication” is necessary in order for evidence to be admissible. For example, in *Burke v. Buck Hotel Inc.*, 742 A.2d 239 (Pa.Comm. 1999), a party was involved in a traffic accident, and was alleged to have been driving while intoxicated. A police officer testified that the driver had a strong odor of alcohol about her breath and person following the accident. He also stated that she had “watery, glassy” eyes, that she needed support while she stood, and that she had a “slight wobble to her gait”. *Id.* at 242. Furthermore, the driver admitted that she had been drinking prior to the accident. *Id.* at 243. The Court held that this evidence was admissible because it reasonably established the driver’s intoxication. The Court based its decision in part on the Superior Court’s holding in *Ackerman v. Delcomico*, 486 A.2d 410 (Pa.Super. 1984). In that case, there was corroborated testimony that a party had been drinking heavily in the late afternoon and evening before an accident. *Ackerman v. Delcomico*, 486 A.2d at 413. Furthermore, there was corroborated testimony that the party had a “strong odor of alcohol and slurred speech” after the accident. *Id.* The Court stated that the evidence established “much more than a suggestion of intoxication.” *Id.* The Court therefore concluded that the evidence of the party’s intoxication was properly admitted, and was not prejudicial. *Id.*

As noted above, Plaintiff alleges that on July 4, 1998, Defendant was “under the influence of alcoholic beverages to a degree which rendered him incapable of safely operating the boat.” Plaintiff further alleges that Defendant was negligent in operating his boat “when the Defendant knew, or should have known, that he was unfit to do so.” Plaintiff provides little support for these allegations.

Plaintiff stated in his deposition testimony that Defendant had consumed alcoholic beverages throughout the day up until the time of Plaintiff’s accident. Plaintiff specified that he saw Defendant drinking beer while he was operating the boat; however, Plaintiff does not know whether Defendant drank more than one beer during that time. Defendant admitted that he drank four or five beers during

the course of the afternoon of July 4th, but Plaintiff has provided no evidence to suggest that Defendant consumed those four or five beers prior to Plaintiff's tube ride that afternoon.⁵ In fact, Plaintiff does not contradict Defendant's testimony that he was at work during the morning of July 4th prior to going out on the Lake. Furthermore, there is no evidence that Defendant was slurring his words or having trouble functioning before or while he was operating the boat. In his deposition testimony, Plaintiff admitted that he never observed Defendant behaving in such a manner. Plaintiff further admitted that he had no contact with Defendant prior to boarding Defendant's boat that afternoon.

Plaintiff states that he believes Defendant was under the influence of alcohol at the time the tube flipped because Defendant was "too intense of a driver," and because he was "too rammy," and "too ego-ish." Plaintiff alleges that such behavior is evidence of Defendant's intoxication at the time the tube flipped; however, Plaintiff provides no further support for this allegation. Plaintiff did not present any evidence, other than Plaintiff's own deposition testimony, which would suggest that Defendant was actually operating the boat at an excessive speed when the tube flipped. Plaintiff states that he believes the boat was traveling at approximately thirty-five miles per hour at the time the tube flipped. When asked how he came to that conclusion, Plaintiff answered, "[t]hrough the years of everything I have done before, knowing at that specific time we were going faster than we should have been." Plaintiff was also asked what speed he believed the boat should have been traveling. Plaintiff answered, "slower than that to get whipped into a corner at 180 degrees." There was no speedometer or tachometer on the tube. Defendant maintains that the boat could not have been traveling at a speed of thirty-five miles per hour because the engine is 135 horsepower and it could not achieve a speed of thirty-five miles per hour with two grown adults on the tube and others in the boat at the time.

⁵Plaintiff alleges that Defendant admitted in his deposition testimony that he consumed four or five beers prior to operating the boat. The transcript of the deposition testimony does not appear to be consistent with Plaintiff's allegation. Defendant does admit that he consumed four or five beers; however, he does not indicate when he consumed those beers. (Transcript of Defendant's deposition taken December 19, 2000 – p. 21).

Plaintiff has not produced sufficient evidence to “reasonably establish” that Defendant was intoxicated while operating his boat on July 4th. Therefore, the Court finds Plaintiff’s allegations concerning Defendant’s consumption of alcohol not admissible in evidence because they would be unfairly prejudicial. Consequently, this Court can not consider those allegations in ruling on Defendant’s motion for summary judgment. This determination does not speak to the merits of Plaintiff’s allegations.

Defendant also argues that Plaintiff’s claim is barred by the doctrine of assumption of risk. Defendant alleges that Plaintiff assumed the risk of a sporting activity in which he voluntarily took part, and that Plaintiff can not shift responsibility for the consequences of his choice. The doctrine of assumption of risk is set forth in the Restatement (Second) of Torts § 496. Section 496 A states, “a Plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm.” Comment c2 to Section 496 A further states that one meaning of the term “assumption of risk” is

that plaintiff has entered voluntarily into some relation with the defendant which he knows to involve the risk, and so is regarded as tacitly or impliedly agreeing to relieve the defendant of responsibility, and to take his own chances. Thus a spectator entering a baseball park may be regarded as consenting that the players may proceed with the game without taking precautions to protect him from being hit by the ball. Again the legal result is that the defendant is relieved of his duty to the plaintiff.

With regard to this implied assumption of risk, Section 496 C provides,

a plaintiff who fully understands a risk of harm to himself or his things caused by the defendant’s conduct or by the condition of the defendant’s land or chattels, and who nevertheless voluntarily chooses to enter or remain, or to permit his things to enter or remain within the area of that risk, under circumstances that manifest his willingness to accept it, is not entitled to recover for harm within that risk.

The Supreme Court of Pennsylvania has held that Comment c2 refers to a situation in which a plaintiff has “voluntarily and intelligently undertaken an activity which he knows to be hazardous in ways which subsequently cause him injury.” *Howell v. Clyde*, 620 A.2d 1107, 1112 (Pa. 1993). The Court further held that the basis for this type of assumption of risk is that,

[a]s a matter of public policy one who chooses to take risks will not then be heard later to complain that he was injured by the risks he chose to take and will not be permitted to seek money damages from those who might otherwise have been liable... [t]he plaintiff may or may not have been negligent in encountering the risk. He is barred from recovery not because of his negligence, but because of the policy that a person may not recover for injuries which he himself has chosen to risk. *Id.*

The court may determine that the defendant was relieved of his responsibility to the plaintiff only if “reasonable minds could not disagree that the plaintiff deliberately and with the awareness of specific risks inherent in the activity nonetheless engaged in the activity that produced his injury.” *Id.*

Plaintiff notes that the doctrine of assumption of risk has been questioned by Pennsylvania courts and has only narrowly avoided abolishment. While this is an accurate assessment of the doctrine’s history, as recently as March, 2000, the Pennsylvania Superior Court has stated, “until our supreme court or our legislature abrogates assumption of risk in negligence cases, the doctrine remains viable in Pennsylvania.” *Staub v. Toy Factory, Inc.*, 749 A.2d 522, 528 (Pa.Super. 2000). Our Supreme Court’s ruling in *Howell v. Clyde* marked a turning point with regard to the assumption of risk doctrine.⁶ The *Howell* decision essentially abolished assumption of risk as an affirmative defense. *Howell v. Clyde*, 620 A.2d at 1113.⁷ The

⁶The Pennsylvania Superior Court has stated that the *Howell* opinion seems to “espouse the approach most narrow in scope that can gain at least a concurrence of the majority of the Court.” *Hardy v. Southland Corp.*, 645 A.2d 839, 842 (Pa.Super. 1994), appeal denied, 652 A.2d 1324 (Pa. 1994).

⁷In footnote 10 of the opinion, the Court noted that assumption of risk remains a viable affirmative defense in cases involving express assumption of risk, or cases brought pursuant to 402A (strict liability theory), or cases in which assumption of risk is specifically preserved by statute.

Court stated in *Howell*, “to the extent that an assumption of risk analysis is appropriate in any given case, it shall be applied by the court as a part of the duty analysis, and not as part of the case to be determined by the jury.” *Howell v. Clyde*, 620 A.2d at 1112-1113. Therefore, in a negligence action, assumption of risk is a question of law that is incorporated into the court’s analysis of whether or not the defendant owed a duty to the plaintiff. See *Staub v. Toy Factory*, supra. 749 A.2d at 526.

Unlike *Howell* in which the Court addressed a motion for compulsory nonsuit, the case before this Court involves Defendant’s motion for summary judgment. The Superior Court has provided some guidance with regard to assumption of risk in these two types of pleadings. In *Staub v. Toy Factory, Inc.*, 749 A.2d at 527 fn. 8, the Court stated:

[f]or summary judgment purposes, affirmative defenses are generally decided under Pa.R.Civ.P. 1035.2(1), where it is the moving party’s burden to establish the defense as a matter of law. Under *Howell* and *Hardy*, however, assumption of risk is now considered part of a “no duty” analysis. As such, the doctrine now falls under the second type of summary judgment motion, described in Pa.R.Civ.P. 1035.2(2). Under Rule 1035.2(2), a party may obtain summary judgment by pointing to the adverse party’s lack of evidence on an essential element of the claim... One of the essential elements of a negligence claim is that the defendant owes the plaintiff a duty of care. Under Rule 1035.2(2), the defendant’s method for pointing to a lack of evidence on the duty issue is to show that the plaintiff assumed the risk as a matter of law. This process will entail gathering and presenting evidence on the plaintiff’s behavior, and attempting to convince the court that the plaintiff knew the risk and proceeded to encounter it in a manner showing a willingness to accept the risk. Thus, for all practical purposes, the process for showing “no duty” assumption of the risk under Rule 1035.2(2) is indistinguishable from showing assumption of the risk as an affirmative defense under Rule 1035.2(1).

Pennsylvania courts have not addressed the doctrine of assumption of risk in the context of a tubing accident specifically; however, assumption of risk has been applied in situations involving injuries sustained during other sporting events. Our Supreme Court has stated,

[w]hatever complexities and difficulties have attended the assumption of the risk doctrine in other areas, cases involving injuries to plaintiffs who were spectators or participants at sporting events or amusement facilities have tended to speak in terms of whether the injury suffered resulted from a risk 'inherent' in the activity in question; if it did, then the defendant was under no duty to the plaintiff, and the suit could not go forward.

Hughes v. Seven Springs Farm, Inc., t/d/b/a Seven Springs Mountain Resort, 762 A.2d 339, 343 (Pa. 2000).

In *Pagesh v. Uzman*, 403 Pa.Super. 549, 589 A.2d 747 (1991), a water-skier brought a personal injury action against the operator of a boat after the skier injured his leg. Plaintiff alleged that his injury occurred as a result of defendant's operating the boat in circles in order to make waves for the skier to be pulled through. Defendant raised the defense of assumption of risk. Plaintiff argued that he could not have assumed the risk of an activity that he did not know was going to occur (that the defendant would operate the boat in circles in order to make waves). The Court held that the plaintiff's injury resulted from an ordinary risk associated with water-skiing. The Court also held that the plaintiff was an experienced water-skier who knew the dangers inherent in the activity. The Court determined that the plaintiff voluntarily chose to ski and willingly accepted the risk. Specifically, the Court stated that the plaintiff could have avoided any aspect of the alleged danger by signaling the defendant to slow down, stop or change course. The Court suggested that the plaintiff also could have dropped the rope being used to pull him. Instead, Plaintiff failed to use the means available to avoid any danger, and therefore assumed the risk of injury. *Id.* The Court also upheld the trial court's comparison of the plaintiff's injury to those sustained during participation in other sports.

Water-skiing is much like tubing in that the skier volunteers to be pulled behind a boat while holding a rope which is attached to the back of the boat. As the Superior Court noted, it is not uncommon

for the operator of the boat to drive in circles in order to make waves which the skier is pulled through. The same can be said of tubing. The waves present a challenge for the skier, making it more difficult for him to maintain his balance. In the case of a tuber, the waves add to the thrill sought by the participant. The Court held that the risk of injury to the skier while being pulled through the waves is an ordinary risk associated with water-skiing. *Pagesh v. Uzman*, 589 A.2d at 750. California courts have heard cases involving tubing injuries, and have described tubing as “a variation of water-skiing designed to accommodate those eager to experience the force of whipping around wakes but lacking the ability to water-ski.” *Record v. Reason*, 73 Cal. App. 4th 472, 482, 86 Cal. Rptr. 2d 547, 554 (1999). This appears to be a fair assessment of the sport of tubing especially in light of *Pagesh v. Uzman*.

The plaintiff in *Pagesh* raised many of the same arguments that Plaintiff makes in this case. For example, both plaintiffs allege that they could not have assumed the risk of a portion of the activity they did not know was going to occur. In this case, Plaintiff argues that he could not have known that Defendant would be intoxicated and would operate the boat at an excessive speed; however, Plaintiff has not provided sufficient evidence to support either of these allegations. Therefore, we must simply assess the risk of falling off a tube as the boat turns a corner, and Plaintiff’s conduct in view of that risk.

Plaintiff was an experienced tuber. He described himself in his deposition testimony as “water oriented.” He stated that he has had 18 years of sailing experience. He further stated that he has been on many power boats, and has operated power boats that belonged to his friends. Plaintiff also stated that he has operated jet skis in the past and that he has been water skiing approximately a dozen times since 1993. Plaintiff indicated that he also began tubing in approximately 1993. Plaintiff acknowledged that he was aware of the standard hand signals used in tubing, although he did not use them on the day the incident occurred. Plaintiff further acknowledged that he has been tubing approximately twelve times, and that he has probably fallen off the tube on each of those occasions. He agreed that falling off the tube is part of the tubing experience and stated that one is aware of the possibility of falling off during any tube ride. Plaintiff also stated that he has fallen off both single and double tubes, and that he

recognizes the possibility of body to body contact between the two riders when riding or falling off a double tube.

Plaintiff's deposition also demonstrated that he was familiar with tubing terminology. For example, he used the term "whipped," and testified that it refers to the movement of the tube behind the boat as the boat turns a corner. Plaintiff stated that the tube typically whips to the side at twice the speed of the boat and then realigns directly behind the boat after the boat has completed the turn. Plaintiff explained that the tube whips to the right if the boat turns to the left. Therefore, it appears that the risk of falling off the tube and being injured when the boat makes a turn is an ordinary risk associated with tubing and one known by Plaintiff. If Plaintiff had provided adequate proof that Defendant was operating the boat at an excessive speed, the question would then have become whether or not such conduct on the part of the Defendant increased the risks above those inherent in the sport.

As Defendant argues, Plaintiff has provided no evidence to demonstrate that Defendant's alleged conduct was outside the normal boundaries of the sport. Plaintiff alleges that Defendant was intoxicated while operating the boat. For the reasons set forth above, this Court will not address those allegations. Plaintiff also alleges that Defendant was operating the boat at an excessive rate of speed. Again, as noted above, Plaintiff has not provided sufficient evidence to support this allegation. Plaintiff cannot avoid summary judgment by alleging that he "believed" the speed of the boat was too fast or that the angle of the turn was too sharp. However, even if Plaintiff had provided sufficient evidence to support those allegations, such conduct would not necessarily increase the risks above those inherent in the sport.

California courts have held that minor accelerations by the driver of the boat cannot form the basis for liability to the tube rider. *Bjork v. Mason*, 77 Cal. App. 4th 544, 552 (2000). That court reasoned that imposition of legal liability on the driver of a boat for ordinary negligence in making too sharp a turn or in pulling a skier too rapidly would have "an undesirable chilling effect on the driver's conduct" and might have a "generally deleterious effect on the nature of the sport of water-skiing as a whole." *Ford v. Gouin*, 3 Cal. 4th 339, 345 (1992) The same reasoning is applicable to tubing.

As the Superior Court suggested in *Pagesh*, if Plaintiff felt that he was in danger, he could have signaled Defendant to slow down, stop or change course. Plaintiff testified that he was aware of the hand signals commonly used in tubing. Plaintiff suggests that he could not let go of the tube in order to give a hand signal because the boat was traveling at an excessive rate of speed. For the reasons set forth above, Plaintiff has not provided sufficient evidence to support the allegation that Defendant was operating the boat at excessive speeds. This court therefore finds that Plaintiff failed to use the means available to avoid the risk of falling off the tube. Furthermore, the risk of falling off the tube while being “whipped” into a corner is a risk inherent in the sport. Plaintiff was aware of this risk but nevertheless he voluntarily chose to go tubing. He therefore willingly accepted the risk and cannot recover for the injuries he sustained as a result of that decision.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 29th day of May, 2002, in consideration of Defendant’s Motion for Summary Judgment and in accordance with the attached Opinion, said Motion is granted.

This case is dismissed. Costs to be paid by Plaintiffs.

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 BERNAIDINE M. DAMLOSKI, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrators: Tony A. Williams, 1461 Hickory Road, Littlestown, PA 17340; Timberly A. Myers, 143 Orchard Lane, Hanover, PA 17331

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

ESTATE OF MILDRED J. KOONS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: John H. Koons, 35 Easy Street, Littlestown, PA 17340; George D. Koons, 96 James Road, Lewisburg, PA 17837

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

ESTATE OF JEROME MALTESE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Roseann Creech, 1469 Hanover Road, Gettysburg, PA 17325

Attorney: Matthew R. Battersby, Esq., Battersby & Sheffer, P.O. Box 215, Fairfield, PA 17320

ESTATE OF WENZEL C. O'DELL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Margaret W. O'Dell, 7 College Avenue, Hanover, PA 17331

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

ESTATE OF ANDREW D. STARNER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Cecil Sandoe, 2760 Old Harrisburg Road, Gettysburg, PA 17325; Pat Sandoe, 2760 Old Harrisburg Road, Gettysburg, PA 17325; Mark Sandoe, 2650 Old Harrisburg Road, Gettysburg, PA 17325; David Sandoe, 256 Boyd's Schoolhouse Road, Biglerville, PA 17307

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

SECOND PUBLICATION

ESTATE OF IANTHE S. BAKER a/k/a IANTHE GERALDINE BAKER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: William E. Baker, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

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

ESTATE OF MARY H. GERRICK, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: Francis I. Gerrick, 520 Glenwyn Drive, Littlestown, PA 17340; Harold O. Gerrick, 6107 Ponto Court, Alexandria, VA 22312

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

ESTATE OF C. EUGENE MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Dennis E. Miller, c/o Terry L. Fetterman, Jr., Esq., Fetterman & Yatron, LLC, 2606 Kutztown Road, Reading, PA 19605

Attorney: Terry L. Fetterman, Jr., Esq., Fetterman & Yatron, LLC, 2606 Kutztown Road, Reading, PA 19605

ESTATE OF RUTH KOPMAN MUMPER, a/k/a RUTH MARIE MUMPER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Ralph J. Kopman, Robert C. Berkheimer, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

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

ESTATE OF HARVEY W. RITTER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Helen Wuethrich, 16 Black Bass Trail, Fairfield, PA 17320

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

ESTATE OF JOSEPH E. TOPPER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Catherine E. Myers, 12 Walnut Ln., New Oxford, PA 17350

ESTATE OF JOHN LOUIS TURNBAUGH a/k/a JOHN L. TURNBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representatives: Jeanne L. Cox and Susan B. Turnbaugh, c/o Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF MARY R. HERSH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Myrl L. Hersh, 47 Berlin Street, Spring Grove, PA 17362; Charles E. Hersh, 2791 Loman Avenue, York, PA 17404

Attorney: Paul C. McCleary, Jr., Esq., 1998-A Carlisle Road, York, PA 17404

ESTATE OF DOROTHY MAE KIME, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: David Emmert Kime, 604 W. Myrtle Street, Littlestown, PA 17340; Kenneth Curtis Kime, 1031 White Church Road, Gettysburg, PA 17325

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

ESTATE OF EDWARD S. STARRY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: William J. Starry, 663 East Berlin Road, York Springs, PA 17372

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-338 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of May, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Village of Orrtanna, Hamiltonban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel rod located in the right-of-way of Carrolls Tract Road (Township Route T-314) and at the Southwestern side of a 12 foot unused unimproved alley; thence along said Southwest side of said alley, South 52 degrees 15 minutes 00 seconds East, 135.00 feet to an existing steel rod located at corner of land of Paul Metz; thence by said land of Metz, South 37 degrees 45 minutes 00 seconds West 120.00 feet to an existing steel rod located along the Northeastern side of the right-of-way of Third Street (private); thence along said right-of-way of said Third Street, North 52 degrees 15 minutes 00 seconds West, 135.00 feet to a magnetic spike located 8 feet East of the center line of the aforementioned Carrolls Tract Road; thence in Carrolls Tract Road, North 37 degrees 45 minutes 00 seconds East, 120.00 feet to a steel rod located in the right-of-way of Carrolls Tract Road and at the Southwestern side of a 12 foot unused unimproved alley, the place of BEGINNING. CONTAINING 16,200 square feet (0.372).

The above description is taken from a boundary survey prepared for Orrtanna United Methodist Church by Adams County Surveyors dated March 27, 1997, Drawing B-928.

Being known and designated as Map C-12; Parcel 98.

BEING the same premises which Orrtanna United Methodist Church, a/k/a Orrtanna Methodist Church, by Deed dated April 7, 1997 and recorded in the Office of the Recorder of Deeds of Adams County on April 10, 1997, in Deed Book 1353, Page 161, granted and conveyed unto Clifford E. Strausbaugh and Amanda L. Strausbaugh.

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

Parcel No.: (18) C12-98

SEIZED and taken into execution as the property of **Clifford E. Strausbaugh & Amanda L. Strausbaugh** and to be sold by me.

Raymond W. Newman-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 23, 2003, 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.

3/21, 28 & 4/4

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Tuesday, April 8, 2003, at 9:00 o'clock a.m.

DUTTERER—Orphans' Court Action Number OC-20-03. The First and Final Administration Account of Karl H. Silex, Executor of the Estate of Gordon M. Dutterer, deceased, late of Oxford Township, Adams County, Pennsylvania.

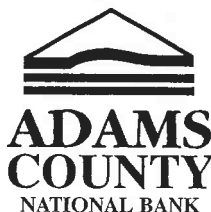
HOLTRY—Orphans' Court Action Number OC-134-01. The First and Final Account of Druccinda S. Miller, Executrix and Adams County National Bank duly appointed Agent of the Estate of Thelma L. Holtry, deceased, late of Oxford Township, Adams County, Pennsylvania.

SARGEANT—Orphans' Court Action Number OC-21-03. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Mary Ellen Sargeant, deceased, late of Cumberland Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

3/28 & 4/4

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



Member FDIC