

# *Adams County* Legal Journal

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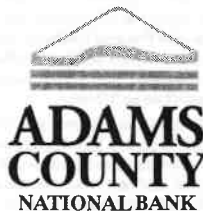
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## **IN THIS ISSUE**

**COMMONWEALTH VS. MORITZ**

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that the voluntary dissolution of LARSON CORPORATION, a Pennsylvania business corporation with its registered office at Rear 239 Chambersburg Street, Gettysburg, PA 17325, has been approved by the Board of Directors and Shareholders of the corporation. Said corporation is now engaged in winding up its affairs so that the existence of the corporation shall cease upon the filing of Articles of Dissolution in the Department of State of the Commonwealth of Pennsylvania.

Bigham & Puhl  
Attorneys at Law  
16 Lincoln Square  
Gettysburg, PA 17325  
Attorneys for the Corporation

10/4

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-45 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, 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 Borough of Bendersville, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin at the curb on the Northern right of way line of Rampike Lane at the point where it intersects with the Eastern curb line of Carlisle Street; THENCE running by the Eastern curb line of Carlisle Street, North 48 degrees 00 minutes 00 seconds East, 150 feet to a chisel mark on the Eastern curb line of Carlisle Street and at corner of land now or formerly of Rampike Industries Limited; THENCE running by land now or formerly of Rampike Industries Limited, South 42 degrees 04 minutes 00 seconds East, 126.02 feet to a point at land now or formerly of Richard Orner; THENCE by land now or formerly of Richard Orner, South 40 degrees 18 minutes 5 seconds West, 103.10 feet to an iron pin on the Northern edge of the paving at the right of way line of Rampike Lane and at the Southwestern corner of land now or formerly of Richard Orner (Tract No. 2 on the hereinafter referred to survey); THENCE along the Northern right of way line of Rampike Lane, North

60 degrees 56 minutes 00 seconds West, 147.83 feet to an iron pin at the curb at the intersection of Carlisle Street, the point and place of BEGINNING. CONTAINING approximately 16,926 square feet.

BEING the same premises which Daniel I. Keys, a single man granted and conveyed unto Thomas H. Schriver and Linda A. Schriver, husband and wife, as tenants by the entireties by Deed dated October 25, 1988 and recorded in the Office of the Recorder of Deeds for ADAMS County on October 26, 1988 in Deed Book 504, Page 1144.

SEIZED and taken into execution as the property of **Thomas H. Schriver and Linda A. Schriver**, and to be sold by me **Bernard V. Miller**  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 19, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-556 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, 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 Franklin Township, Adams County, Pennsylvania, being Lot No. 9 of Silver Meadows Subdivision, bounded and described as follows:

BEGINNING at an iron pin in U.S. Route 30 at Lot No. 8; THENCE by said lot North 44 degrees 38 minutes 2 seconds East, 307 feet to an iron pin at Lot No. 16; THENCE by said lot and by Lot

No. 15 South 45 degrees 21 minutes 58 seconds East, 150 feet to an iron pin at Lot No. 10; THENCE by said lot South 44 degrees 38 minutes 2 seconds West, 307 feet to an iron pin in said U.S. Route 30; THENCE in said U. S. Route 30 North 45 degrees 21 minutes 58 seconds West, 150 feet to the place of BEGINNING.

CONTAINING 1.057 acres, more or less.

The above description was taken from sheet 4 of a plan of lots labeled "Silver Meadows Subdivision," dated September 22, 1978, prepared by Boyer Surveys, and recorded in Adams County Plat Book 26 at page 19c.

SUBJECT to conditions, covenants, restrictions, reservations and easements as appear of record.

BEING the same premises which James E. Brown and Bonnie K. Brown, husband and wife, by Deed dated July, 19, 1990 and recorded in the Adams County Recorder of Deeds' Office on July 20, 1990 in Deed Book 562, Page 281, granted and conveyed unto Eldridge G. Moses, single.

SEIZED and taken into execution as the property of **Eldridge G. Moses**, and to be sold by me

**Bernard V. Miller**  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## COMMONWEALTH VS. MORITZ

1. The elements necessary for a conviction of murder in the first degree are: (1) the unlawful killing of another human being; (2) Defendant did the killing; and (3) Defendant acted deliberately, intentionally and with premeditation.

2. Malice is the essential element or gravamen of third degree murder and the distinguishing factor between murder and manslaughter.

3. Legal malice exists where there is a particular ill-will, or where there is wickedness of disposition, hardness of heart, wanton conduct, cruelty, recklessness of consequences and a mind regardless of social duty.

4. Where malice is based on recklessness of consequences, it must be shown that the defendant consciously disregarded an unjustified and extremely high risk that his actions might cause death or serious bodily injury; mere recklessness, as codified by 18 Pa. C.S.A. §302(b)(3) is not sufficient to establish the requisite malice for third degree murder.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-939-95, COMMONWEALTH OF PENNSYLVANIA VS. CYNTHIA SUE MORITZ.

Martha J. Duvall, Esq., District Attorney

Jeffery M. Cook, Esq., for Defendant

### OPINION ON PETITION FOR HABEAS CORPUS

Spicer, P.J., February 26, 1996.

Defendant has filed a petition for a writ of habeas corpus, seeking dismissal of murder charges against her. The Commonwealth relies on a transcript of the preliminary hearing and has not supplemented the record. The court's review is limited to whether evidence adduced at the preliminary hearing established all elements necessary for murder in the first and third degree. The test is not whether the evidence is sufficient for conviction, but whether it would require submission to a jury. *Commonwealth v. Lutz*, 443 Pa.Super. 262, 661 A.2d 405 (1995); *Lagana v. Office of the Attorney General*, 443 Pa.Super 609, 662 A.2d 1127 (1995).

Commonwealth produced three witnesses and introduced a necropsy report at the preliminary hearing, which was held November 21, 1995. Betty Jane Lookingbill testified that she delivered her son, Casey, into defendant's care on October 5, 1995. The child was in good health and condition. She received a telephone call from Kathy Sharrah, defendant's sister in law, around 12:30 P.M., telling her that something had happened and that she Ms. Lookingbill needed to come home. The next time the child's mother saw Casey was in the Gettysburg Hospital and Casey was dead.

The mother explained that defendant had been babysitting six or seven months and that everything had been all right. However, she then recollected several injuries that Casey suffered while in defendant's care. The first was a scraped face, said to have occurred when the child fell out of a wagon. The second was a bruise said to have resulted from Casey's falling asleep on a teething ring. The third was a bruised cheek said to have resulted from the child's slipping and falling against a toy box.

Trooper Marcia Barnhart interviewed defendant. At the pathologist's request, she also had defendant re enact events leading up to the fatality and sent the video tape to the doctor for consideration.

According to defendant's statement, given to the trooper, Casey slipped and fell, hitting the back of his head on a coffee table. Defendant said she attempted to comfort him, picked him up and dropped him three or four feet. The child again hit his head, this time on the floor. Defendant admitted shaking Casey after the second fall.

Casey was said to have fallen a third time, while standing by either a couch or a chair. Defendant described Casey as collapsing.

In his report, Dr. Isidore Mihalakis opined that Casey would not have been able to stand, in light of his injuries, as defendant described.

Numerous injuries were described. Circular contusions, in the face and cheek area, resembled finger pressure marks. The child suffered a fractured skull, and finger-type contusions also appeared on the child's arms. The doctor wrote that all injuries occurred at the same time and were fresh (incurred within the previous 24 hours). The report describes all injuries as acute and attributed death to the shaken baby syndrome. "The shaking is sufficiently violent and can be done only in the hands of someone strong such as an adult, and this adult would have known that the violence with which the head and neck are shaken could cause injury or possibly death." (page 2)

Defendant admitted to Trooper "that she knows what shaking a baby does to a child and that she learned about it on TV on Rescue 911, that TV show." (N.T. 50)

With these facts in mind, we turn to the specific elements of homicide. Supreme Court has held that a specific intent to kill is necessary for a conviction of murder in the first degree. Elements are: (1) the unlawful killing of another human being; (2) defendant did the killing; and (3) defendant acted deliberately, intentionally and with premeditation. *Commonwealth v. Williams (Kenneth)*, 537 Pa. 1, 640 A.2d 1251 (1994); *Commonwealth v. Williams (Roy)*, 541 Pa. 85, 660 A.2d 1316 (1995).

Premeditation and deliberation are established when there is a conscious purpose to cause death. Further, a specific intent to kill may be formed in a fraction of a second and a jury may infer that a person generally intends the natural and probable consequences of his or her act. *Commonwealth v. Donnelly*, 439 Pa.Super 703, 653 A.2d. 35 (1995).

Judge Cavonaugh, in his dissent, summarized the law in this area as follows:

With respect to a charge of third degree murder, the Commonwealth is not required to prove a specific intent to kill. (Citation omitted). Malice is the essential element or gravamen of third degree murder and the distinguishing factor between murder and manslaughter. (Citation omitted). Legal malice exists where there is a particular ill-will, or where there is wickedness of disposition, hardness of heart, wanton conduct, cruelty, recklessness of consequences and a mind regardless of social duty. (Citation omitted), Where malice is based on recklessness of consequences, it must be shown that the defendant consciously disregarded an unjustified and extremely high risk that his actions might cause death or serious bodily injury; mere recklessness, as codified by 18 Pa. C.S.A. § 302(b)(3) is not sufficient to establish the requisite malice for third degree murder. (Citation omitted).

*Commonwealth v. Scales*, 437 Pa.Super. 14, 24, 25, 648 A.2d. 1205, 1210 (1994), allocatur denied, 540 Pa. 640, 659 A.2d 559 (1995).

Perhaps we deal only with shaking. Although the autopsy refers to the skull fracture, it contains no opinion concerning blows. Even so, we find it helpful to analogize to cases involving that type of assault. When malice depends upon use only of fists, the relative sizes of defendant and the victim, the ferocity and duration of the attack, the manner hands or fists are used and provocation, if any, are considered. *Commonwealth v. McArthur*, 427 Pa.Super. 409, 629 A.2d 166 (1993).

Blows struck by an adult upon a child have been held sufficient to establish both first and third degree murder. Also, prior acts of violence or abuse are admissible to establish malice and/or intent. *Commonwealth v. Lytle*, 444 Pa.Super 126, 663 A.2d 707 (1995) (first degree); *Commonwealth v. Martin*, 433 Pa.Super. 280, 640 A.2d 921 (1994) (third degree).

Defendant's attack upon Casey could be described as intense, lethal and ferocious. It could be found that defendant tightly gripped the child not only on his arms, but also on his head. The record supports an inference that the skull injury was caused by a blow, not by a fall. Although there was evidence that a coffee table was in place, its edges were described as sharp. The autopsy described the fracture as resulting from a blunt impact. The report further stated that unconsciousness and death would have occurred in a very short time. Pressure marks on the arms and head are consistent with strength and purpose. A jury might reject defendant's explanation of prior injuries, especially the bruise that was said to have resulted from falling asleep on a teething ring. In short, evidence is not so insufficient that we can conclude, as a matter of law, that it cannot support both degrees of murder. Therefore the petition is denied.

#### ORDER OF COURT

AND NOW, this 26th day of February, 1996, the petition for habeas corpus is denied.

## ESTATE NOTICES

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

## FIRST PUBLICATION

## ESTATE OF ADELE M. KEECH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Dauphin Deposit Bank and Trust Company, 13 Baltimore Street, Hanover, PA 17331

Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

## ESTATE OF T. OPAL MAYS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

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

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

## ESTATE OF KATHLEEN SIPLING ROBERTS, DEC'D

Late of Gettysburg, Adams County, Pennsylvania

Executrix: Helen Sipling, 544 Baer Avenue, Hanover, PA 17331

Attorney: Muriel A. Crabbs, Esq., Attorney for the Estate, 202 Broadway, Hanover, PA 17331

## ESTATE OF CHARLES F. SHIELDS, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Charles R. Shields, 6590 Baltimore Pike, Littlestown, PA 17340

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

## SECOND PUBLICATION

## ESTATE OF M. GENEVIEVE LEFEVER, DEC'D

Late of Green Acres Nursing Home, Biglerville Rd., Gettysburg, PA 17325

Personal Representative: Jane Ann LeFever, 58 York St., Gettysburg, PA 17325

Attorney: Tracy M. Sheffer, P.O. Box 215, 20 West Main Street, Gettysburg, PA 17325

## ESTATE OF PAULINE H. MUMMERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Wayne H. Mummert, 693 Peepytown Road, East Berlin, PA 17316

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

## ESTATE OF CLAIR C. RICKRODE, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Sue Ann Miller, 134 W. Granger Street, Hanover, PA 17331

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

## ESTATE OF MILDRED D. SHOVER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: William K. Grove, P.O. Box 324, Boiling Springs, PA 17007; Dale E. Deardorff, 216 East Lincoln Avenue, Gettysburg, PA 17325

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

## ESTATE OF RUTH C. UTZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Raymond A. Williams, P.O. Box 374, Hanover, PA 17331

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

## THIRD PUBLICATION

## ESTATE OF DOROTHY MAY FOULK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix c.t.a.: Alice Fiscal Halter, 817 York Street, Hanover, PA 17331  
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MARIE K. HADLOCK, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrator: Thomas E. Hadlock, 42 North Stratton Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esquire, 28 East High Street, Gettysburg, PA 17325

## ESTATE OF JOHN L. C. HOAK, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Betty M. (Colbert) Hoak, 225 Low Dutch Rd., Gettysburg, PA 17325  
Attorney: John R. White, Campbell & White, 122 Baltimore St., Gettysburg, PA 17325

## ESTATE OF MILDRED R. HILDEBRAND, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executrix: Clara Louise Yohe, R.R.#2, Box 905, McAlisterville, PA 17049-9792

Attorney: Douglas C. Yohe, Esquire, Latsha & Capozzi, P.C., P.O. Box 825, Harrisburg, PA 17108-0825

## ESTATE OF DAVID A. HUTCHISON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Elizabeth J. Hutchison, 171 Rocky Grove Road, Gettysburg, PA 17325

Attorney: Donald G. Oyler, 112 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF VELMA K. RUPPERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Ray E. Ruppert, 361 Gooseville Road, New Oxford, PA 17350; Kathryn M. Myers, 2059 Lake Meade Road, York Springs, PA 17372  
Attorney: Jane M. Alexander, Esquire

## ESTATE OF MARY B. WAGNER, DEC'D

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

Administrator-Executor: Michael P. Wagner, 3443 Druck Valley Road, York, PA 17406

Attorney: Farley G. Holt, Esquire

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-354 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 757 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1 at page 5, and subject to all legal highways, easements, rights-of-way and restrictions of record.

UNDER AND SUBJECT to the restrictions of Lake Meade as contained in Deed recorded in Deed Book 263 at page 928, and to all those of record.

BEING the same premises which J.D. Wallen Investments, a Pennsylvania Partnership granted and conveyed unto Michael J. Proce and Angelina M. Proce by Deed dated June 04, 1993 and recorded in the Office of the Recorder of Deeds for Adams County on June 08, 1993 in Deed Book 735, Page 196.

SEIZED and taken into execution as the property of **Michael J. Proce and Angelina M. Proce**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 17, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-540 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 504 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 4, and subject to all legal highways, easements, rights-of-way, and restrictions of record, including all rules, restrictions, conditions and agreements which are set forth at length in the deed of Lake Meade, Inc. to Ralph E. Wantz (erroneously stated as Ralph F. Wantz in prior instruments of record) dated May 22, 1968, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 267 (erroneously stated as Book 367 in prior instruments of record), page 875.

The above-described lot of land has thereon erected a dwelling house which has the mailing address of 29 Jackson Drive, Lake Meade, East Berlin, PA 17316.

TOGETHER with the right in common with other owners of lot in said subdivision to use for all usual purposes the streets, ways, beaches, recreation areas, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing, and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

BEING the same premises which Dale Fetrow, widower, granted and conveyed unto Randy L. McDougle and Patricia S. McDougle by Deed dated December 2, 1993 and recorded in the Office of the Recorder of Deeds for Adams County on December 6, 1993 in Deed Book 816, Page 303.

SEIZED and taken into execution as the property of **Randy L. McDougle and Patricia S. McDougle**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, and distribution will be made in accordance with said schedule, unless ex-

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10/4, 11 & 18



# Adams County Legal Journal

Vol. 38

October 11, 1996

No. 20, pp. 121-126

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-354 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 757 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1 at page 5, and subject to all legal highways, easements, rights-of-way and restrictions of record.

UNDER AND SUBJECT to the restrictions of Lake Meade as contained in and recorded in Deed Book 263 at page 928, and to all those of record.

BEING the same premises which J.D. Wallen Investments, a Pennsylvania Partnership granted and conveyed unto Michael J. Proce and Angeline M. Proce by Deed dated June 04, 1993 and recorded in the Office of the Recorder of Deeds for Adams County on June 08, 1993 in Deed Book 735, Page 196.

SEIZED and taken into execution as the property of **Michael J. Proce and Angeline M. Proce**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 17, 1996.

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

schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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10/4, 11 & 18

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
NO. 96-S-603

CHARLES H. MORT and  
AGNES A. MORT, Plaintiff,

vs.

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

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

Date of Notice: September 27, 1996

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A

JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator  
Adams County Courthouse  
111 Baltimore Street  
Gettysburg, PA 17325  
(717) 334-6781 Ext. 213

Patrick W. Quinn, Esq.  
Attorneys for Plaintiffs  
47 West High Street  
Gettysburg, PA 17325

10/11

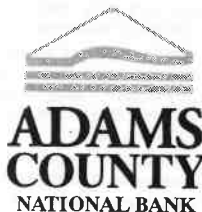
## LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT the shareholders and directors of DORIE, INC., a Pennsylvania corporation, with an address at 786 Burnside Drive, Gettysburg, Pennsylvania 17325, have approved a proposal that the corporation voluntarily dissolve, and that the Board of Directors is 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.

Hartman & Yannetti, Esqs.  
126 Baltimore Street  
Gettysburg, PA 17325  
Solicitors

10/11

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Pennsylvania "Fictitious Names Act," 54 Pa C.S.A. Section 301 et seq. of the filing of an Application of Registration for Fictitious Name under the said Act. The fictitious name is THIS & THAT TREASURES. The address of the principal office or place of business to be carried on under or through the fictitious name is 150 Carlisle Street, Rear, Gettysburg, Adams County, Pennsylvania 17325. The name and address of the entity interested in the business is Dorothy M. Tauchinbaugh, 141 W. Middle Street, P.O. Box 3912, Gettysburg, Adams County, Pennsylvania 17325. An Application for Registration of the said Fictitious Name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on September 20, 1996.

10/11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-45 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, 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 Borough of Bendersville, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin at the curb on the Northern right of way line of Rampike Lane at the point where it intersects with the Eastern curb line of Carlisle Street; THENCE running by the Eastern curb line of Carlisle Street, North 48 degrees 00 minutes 00 seconds East, 150 feet to a chisel mark on the Eastern curb line of Carlisle Street and at corner of land now or formerly of Rampike Industries Limited; THENCE running by land now or formerly of Rampike Industries Limited, South 42 degrees 04 minutes 00 seconds East, 126.02 feet to a point at land now or formerly of Richard Orner; THENCE by land now or formerly of Richard Orner, South 40 degrees 18 minutes 5 seconds West, 103.10 feet to an iron pin on the Northern edge of the paving at the right of way line of Rampike Lane and at the Southwestern corner of land now or formerly of Richard Orner (Tract No. 2 on the hereinafter referred to

survey); THENCE along the Northern right of way line of Rampike Lane, North 60 degrees 56 minutes 00 seconds West, 147.83 feet to an iron pin at the curb at the intersection of Carlisle Street, the point and place of BEGINNING. CONTAINING approximately 16,926 square feet.

BEING the same premises which Daniel I. Keys, a single man granted and conveyed unto Thomas H. Schriver and Linda A. Schriver, husband and wife, as tenants by the entireties by Deed dated October 25, 1988 and recorded in the Office of the Recorder of Deeds for ADAMS County on October 26, 1988 in Deed Book 504, Page 1144.

SEIZED and taken into execution as the property of Thomas H. Schriver and Linda A. Schriver, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 19, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-556 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, 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 Franklin Township, Adams County, Pennsylvania, being Lot No. 9 of Silver Meadows Subdivision, bounded and described as follows:

BEGINNING at an iron pin in U.S. Route 30 at Lot No. 8; THENCE by said lot North 44 degrees 38 minutes 2 sec-

onds East, 307 feet to an iron pin at Lot No. 16; THENCE by said lot and by Lot No. 15 South 45 degrees 21 minutes 58 seconds East, 150 feet to an iron pin at Lot No. 10; THENCE by said lot South 44 degrees 38 minutes 2 seconds West, 307 feet to an iron pin in said U.S. Route 30; THENCE in said U. S. Route 30 North 45 degrees 21 minutes 58 seconds West, 150 feet to the place of BEGINNING.

CONTAINING 1.057 acres, more or less.

The above description was taken from sheet 4 of a plan of lots labeled "Silver Meadows Subdivision," dated September 22, 1978, prepared by Boyer Surveys, and recorded in Adams County Plat Book 26 at page 19c.

SUBJECT to conditions, covenants, restrictions, reservations and easements as appear of record.

BEING the same premises wnic James E. Brown and Bonnie K. Brown, husband and wife, by Deed dated July 19, 1990 and recorded in the Adams County Recorder of Deeds' Office on July 20, 1990 in Deed Book 562, Page 281, granted and conveyed unto Eldridge G. Moses, single.

SEIZED and taken into execution as the property of Eldridge G. Moses, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## FLICKINGER VS. SPICER, ET AL.

1. No person can be sued for breach of contract unless that person has contracted personally or by an agent.
2. The doctrine of unjust enrichment is an equitable one which permits recovery where the claimant can show that a benefit was wrongly secured or passively received, and that it would be unconscionable for the party receiving the benefit to retain it without payment.
3. Where a subcontractor has provided services and chattels to an owner who had no direct contractual relationship to the subcontractor, (1) any benefit conferred must, for the purposes of recovery on an unjust enrichment theory, be measured by the value of the benefit to the owner, not by the value of the invoice submitted by the subcontractor; and (2) the owner's retention of the benefit without paying any compensation to the subcontractor would not be unjust if the owner did not contract directly with or mislead the subcontractor.
4. There is a two part test for determining whether one is an intended third party beneficiary: (1) the recognition of the beneficiary's right must be appropriate to effectuate the intention of the parties, and (2) the performance must satisfy an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.
5. For a would-be beneficiary to recover as a third party beneficiary, he/she must show a breach of the contract between the promisor and promisee.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-461, ROGER E. FLICKINGER, D/B/A ROGER FLICKINGER & SONS VS. JOHN SPICER, RAYMOND E. CLEARY, JR., AND LUCIE S. CLEARY VS. JAMES R. ANDERSON.

Scott A. Ruth, Esq., for Plaintiff  
Bernard A. Yannetti, Jr., Esq., for Defendant Spicer  
Robert Clofine, Esq., Defendants Clearys

### OPINION ON PRELIMINARY OBJECTIONS OF DEFENDANTS RAYMOND E. CLEARY, JR. AND LUCIE S. CLEARY

Kuhn, J., February 27, 1996.

The assumpsit complaint filed in this matter avers that Defendants, Raymond E. Cleary, Jr. and Lucie S. Cleary, were owners of real estate at Lot #1160 in the Lake Meade Subdivision. On July 17, 1992, the Clearys contracted to sell the real estate with a newly constructed residence to Mr. and Mrs. James Anderson. Defendant, John Spicer, was to act as the general contractor for the Clearys in the construction of the residence. In turn, Spicer orally contracted with Plaintiff, Roger E. Flickinger, for Plaintiff to construct the residence for a price of \$42,000.00. Plaintiff avers that he constructed the residence pursuant to specifications provided by Spicer but is due, after credits and charges

for additional work, the sum of \$5,945.00. Plaintiff seeks judgment for that amount against Spicer and the Clearys.

The Clearys filed preliminary objections in the nature of a demurrer and, in the alternative, for a more specific pleading, which are before the Court for disposition.

Clearys first argue that the Complaint fails to set forth any averments that Spicer was authorized to contract on their behalf for Plaintiff's services or that Clearys had any contractual arrangements with Plaintiff that would make them liable for unpaid sums.

After a careful review of the Complaint the Court is unable to ascertain the precise legal theory being advanced by Plaintiff. This, of course, does not prove fatal because a plaintiff is not obligated to identify the legal theory underlying his complaint. *Weiss v. Equibank*, 313 Pa. Super. 446, 453, 460 A.2d 271, 275 (1983). There is a requirement, however, to aver material facts in a concise and summary form. Pa. R.C.P. 1019(a). At suggestion of counsel the Court has examined several legal theories in attempt to determine whether the averments set forth support such a theory. One must be cognizant, however, of the further requirement each cause of action must be set forth in a different count. Pa. R.C.P. 1020(a). There is only one count in this Complaint, therefore, the Court will assume that Plaintiff is only advancing one legal theory.

First, Plaintiffs have not alleged that Spicer was acting as Clearys' agent when entering into the oral contract. No person can be sued for breach of contract unless that person has contracted personally or by an agent. *Roman Mosaic and Tile Co., Inc. v. Vollrath*, 226 Pa. Super. 215, 218, 313 A.2d 305, 307 (1974). Although Plaintiff argues that an unsigned notation on the bottom of the construction loan advance schedule is indicative of an agency relationship the Court finds that reasoning convoluted based on the pleadings. Perhaps additional pleading would allow that connection to be made but not on the Complaint as presently drafted. Therefore, Clearys cannot be liable under the contract on that theory.

The second theory suggested is that of a quasi-contractual theory of unjust enrichment. As stated in *State Farm Mutual Automobile Insurance Co. v. Jim Bowie & Sons, Inc.*, 372 Pa. Super. 186, 539 A.2d 391 (1988),

The doctrine of unjust enrichment is an equitable one...which permits recovery where the claimant can show that a benefit was wrongly secured or passively received, and that it would be unconscionable for the party

receiving the benefit to retain it without payment . . . However, the most significant requirement for recovery is that the enrichment is unjust . . . Therefore, we must focus not on the intention of the parties but on the extent to which the enrichment is unjust . . . 372 Pa. Super. at 190, 539 A.2d at 393 (citations omitted).

This type of action imposes a duty not as the result of an agreement but in spite of the absence of an agreement between the parties. In fact, the existence of an express contract, whether oral or written, precludes recovery for unjust enrichment. *Barlow v. Sutphin*, 33 Ad. Co. L.J. 105, 108 (1990). If a party fails to prove a cause of action under a breach of contract theory he may not recover for unjust enrichment unless the complaint alleges facts which support such a theory. *Salvino Steel & Iron Works, Inc. v. Fletcher & Sons, Inc.*, 398 Pa. Super. 86, 92-3, 580 A.2d 853, 856 (1990), *Alloc. gr.* 592 A.2d 45 (1990), dismissed 601 A.2d at 806 (1992).

Our Supreme Court set forth language in *D.A. Hill Company v. Clevetrust Realty Investors*, 524 Pa. 425, 573 A.2d 1005 (1990), which is instructive. There the Court stated,

this Court has held that in a case where a subcontractor has provided services and chattels to an owner who had no direct contractual relationship to the subcontractor, (1) any benefit conferred must, for purposes of recovery on an unjust enrichment theory, be measured by the value of the benefit to the owner, not be the value of the invoice submitted by the subcontractor; and (2) the owner's retention of the benefit without paying any compensation to the subcontractor would not be unjust if the owner did not contract directly with or mislead the subcontractor.

524 Pa. at 432, 573 A.2d at 1009.

Here, we can conclude that Plaintiff has failed to state a cause of action for unjust enrichment because he has both failed to set forth any misleading conduct on the part of the Clearys and failed to properly aver damages.

The third theory advanced is that Plaintiff is a third party beneficiary of the contract between the Andersons and Clearys or the one between Spicer and Clearys. Plaintiff suggests each contract contemplated that a subcontractor would perform the work and would be an intended beneficiary of that contract.

As observed in *Scarpetti v. Weborg*, 530 Pa. 366, 609 A.2d 147 (1992)

The current rule in Pennsylvania for designation of a party as a third party beneficiary was first articulated in the seminal case of *Spires v. Hanover Fire Insurance Co.*, 364 Pa. 52, 702 A.2d 828 (1950) (plurality opinion). In *Spires*, we held that in order for a third party beneficiary to have standing to recover on a contract, both contracting parties must have expressed an intention that the third party be a beneficiary, and that intention must have affirmatively appeared in the contract . . . But, in *Guy v. Liederbach*, 501 Pa. 47, 459 A.2d 744 (1983), we carried out an exception to the *Spires* rule, and allowed the beneficiary of a will to recover for legal malpractice against an attorney, despite the fact that the beneficiary was not in privity of contract with the attorney and was not named specifically as an intended beneficiary of the contract. In so doing, we adopted the Restatement (Second) of Contracts, §302 (1979), as a guide for analysis of third party beneficiary claims in Pennsylvania. Restatement (Second) of Contracts, §302 (1979) states:

#### Intended and Incidental Beneficiaries

(1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intentions of the parties and either

(a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or

(b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

(2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

Restatement (Second) of Contracts, §302 (1979).

Consequently, this Court in *Guy* concluded:

There is thus a two part test for determining whether one is an intended third party beneficiary:

(1) the recognition of the beneficiary's right must be "appropriate to effectuate the intention of the par-

ties,” and (2) the performance must “satisfy an obligation of the promisee to pay money to the beneficiary” or “the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.”

. . . The first part of the test sets forth a standing requirement which leaves discretion with the court to determine whether recognition of third party beneficiary status would be appropriate. The second part defines the two types of claimants who may be intended as third party beneficiaries. If a party satisfies both parts of the test a claim may be asserted under the contract.

530 Pa. at 370-1, 609 A.2d at 149-50.

Furthermore, in order for a would-be beneficiary to recover as a third party beneficiary, he/she must show a breach of the contract between the promisor and promisee. *Gregg v. Lindsay*, 437 Pa. Super. 206, 211, 649 A.2d 935, 938 (1994), Alloc. den. 661 A.2d 874 (1995).

This court finds no basis to sustain this theory on the averments pled in the Complaint. First, we find no reference from either the Anderson-Cleary contract or the Spicer-Cleary contract that Plaintiff was intended by both parties to be a beneficiary of that contract nor has such an averment been pled. Second, Plaintiff was not a creditor beneficiary of any party to the two contracts when they were entered. Third, Plaintiff has not averred a breach of the primary contracts which would entitle him to recover from Clearys as a third party beneficiary.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 27th day of February, 1996, the Preliminary Objections filed by Defendants, Raymond E. Cleary, Jr. and Lucie S. Cleary, are granted and the Complaint against them is dismissed.

Plaintiff is granted twenty (20) days from the date of mailing of this Order to file an amended complaint.

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#### COMMONWEALTH VS. MARSHALL

The grant of Probation Before Judgment in Maryland is considered a conviction for purposes of 75 Pa.C.S.A. §6146 and therefore PennDot acted properly in suspending Defendant's operating privileges in Pennsylvania.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-573, COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION VS. DAVID J. MARSHALL.

Matthew X. Haeckler, Esq., for DOT  
Barbara Jo Entwistle, Esq., for Defendant

### OPINION ON LICENSE SUSPENSION APPEAL

Spicer, P.J., February 29, 1996.

David J. Marshall has appealed a suspension of his operating privileges, imposed by the Department of Transportation (DOT). He has alleged that he was convicted of driving while intoxicated in Maryland, but was granted Probation Before Judgment (PBJ). He argues that PBJ is not really a conviction and that DOT should not have suspended his privileges based upon the Maryland action.

A hearing resulted in various documents and Marshall's official DOT record being introduced. Since issues were entirely legal, decision was deferred pending formal argument.

The precise issue presented is whether PBJ is considered a conviction for purposes of 75 Pa. C.S.A. § 6146. If it is, DOT acted properly and the suspension must be affirmed.

Commonwealth Court has analogized programs, similar to that utilized in Maryland, to Pennsylvania's A.R.D., and has ruled that admissions of guilt, required for entry, are tantamount to convictions. *Casey v. Department of Transportation*, 132 Pa. Cmwlth 332, 572 A.2d 865 (1990). In that case, Casey unsuccessfully argued there could be no conviction without a final judgment of sentence. The Delaware statute did not significantly differ from Maryland's Act 27, § 641, which authorizes PBJ "[w]henver a person accused of a crime pleads guilty or nolo contendere or is found guilty, a court exercising criminal jurisdiction .... may stay the entering of judgment .... and place the person on probation."

Finding the Casey decision dispositive, we affirm the agency's action and deny Marshall's appeal.

The attached order is entered.

### ORDER OF COURT

AND NOW, this 29th day of February, 1996, the Agency's action is affirmed.



## 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 RICHARD YOHN DAVIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania  
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325  
 Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF ROBERT G. KUHN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: Dennis E. Kuhn, 1245 Rentzel Road, Biglerville, PA 17307  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## ESTATE OF CLARA B. SANDERS, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania  
 Executrices: Viola K. Toms, Box 1104, Cascade, MD 21719; Bonny L. Harbaugh, P.O. Box 200, Fairfield, PA 17320; Georgie A. Cool, 4765 Fairfield Road, Fairfield, PA 17320  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF ADELE M. KEECH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Dauphin Deposit Bank and Trust Company, 13 Baltimore Street, Hanover, PA 17331  
 Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

## ESTATE OF T. OPAL MAYS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325  
 Attorney: David K. James, III, Esquire, 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF KATHLEEN SIPLING ROBERTS, DEC'D

Late of Gettysburg, Adams County, Pennsylvania  
 Executrix: Helen Sipling, 544 Baer Avenue, Hanover, PA 17331  
 Attorney: Muriel A. Crabbs, Esq., Attorney for the Estate, 202 Broadway, Hanover, PA 17331

## ESTATE OF CHARLES F. SHIELDS, DEC'D

Late of Germany Township, Adams County, Pennsylvania  
 Executor: Charles R. Shields, 6590 Baltimore Pike, Littlestown, PA 17340  
 Attorney: David K. James, III, Esquire, 234 Baltimore St., Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF M. GENEVIEVE LEFEVER, DEC'D

Late of Green Acres Nursing Home, Biglerville Rd., Gettysburg, PA 17325  
 Personal Representative: Jane Ann LeFever, 58 York St., Gettysburg, PA 17325  
 Attorney: Tracy M. Sheffer, P.O. Box 215, 20 West Main Street, Gettysburg, PA 17325

## ESTATE OF PAULINE H. MUMMERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania  
 Executor: Wayne H. Mummert, 693 Peepytown Road, East Berlin, PA 17316  
 Attorney: G. Steven McKonly, Attorney, 119 Baltimore Street, Hanover, PA 17331

## ESTATE OF CLAIR C. RICKRODE, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executrix: Sue Ann Miller, 134 W. Granger Street, Hanover, PA 17331  
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

## ESTATE OF MILDRED D. SHOVER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executors: William K. Grove, P.O. Box 324, Boiling Springs, PA 17007; Dale E. Deardorff, 216 East Lincoln Avenue, Gettysburg, PA 17325  
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## ESTATE OF RUTH C. UTZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Raymond A. Williams, P.O. Box 374, Hanover, PA 17331  
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

## INCORPORATION NOTICE

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

The name of the corporation is HAMILTON'S TAVERN, INC.

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

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

10/11

## INCORPORATION NOTICE

**NOTICE IS HEREBY GIVEN** that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation.

The name of the corporation organized under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented, is HANOVER EQUITIES I, INC.

Rhoads & Sinon LLP  
 Jack F. Hurlay, Jr., Esquire  
 Attorneys-at-Law  
 12th Floor  
 One S. Market Square  
 P. O. Box 1146  
 Harrisburg, PA 17108-1146

10/11

## INCORPORATION NOTICE

**NOTICE IS HEREBY GIVEN** that Articles of Incorporation have been filed with and approved by the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 23rd day of September, 1996, for the purpose of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the Pennsylvania Business Corporation Law of 1933, P. L. 364, as amended.

The name of the corporation is N.G.W.P., INC. The purpose of the corporation is to engage in and to do any and all business for which Pennsylvania business corporation may be lawfully formed, including but not limited to custom construction of cabinets, counter tops, kitchens and other architectural designs. The location and post office address of its initial registered office is 4661 Baltimore Pike, Littlestown, PA, 17340.

John J. Mooney, III, Esquire  
 250 York St.  
 Hanover, PA 17331

10/11

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-540 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 504 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 4, and subject to all legal highways, easements, rights-of-way, and restrictions of record, including all rules, restrictions, conditions and agreements which are set forth at length in the deed of Lake Meade, Inc. to Ralph E. Wantz (erroneously stated as Ralph F. Wantz in prior instruments of record) dated May 22, 1968, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 267 (erroneously stated as Book 367 in prior instruments of record), page 875.

The above-described lot of land has thereon erected a dwelling house which has the mailing address of 29 Jackson Drive, Lake Meade, East Berlin, PA 17316.

TOGETHER with the right in common with other owners of lot in said subdivision to use for all usual purposes the streets, ways, beaches, recreation areas, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing, and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

BEING the same premises which Dale Fetrow, widower, granted and conveyed unto Randy L. McDougle and Patricia S. McDougle by Deed dated December 2, 1993 and recorded in the Office of the Recorder of Deeds for Adams County on December 6, 1993 in Deed Book 816, Page 303.

SEIZED and taken into execution as the property of **Randy L. McDougle and Patricia S. McDougle**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## 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 Monday, October 21, 1996, at 9:00 o'clock a.m.

**LEMMON**—Orphans' Court Action Number OC-91-96. The First and Final Account of Catherine Mort, Executrix of the Estate of Uima M. Lemmon, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

**VISLA**—Orphans' Court Action Number OC-96-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Agitta Visla, deceased, late of Franklin Township, Adams County, Pennsylvania.

**ECK**—Orphans' Court Action Number OC-100-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Gervaise H. Eck, deceased, late of Borough of Arendtsville, Adams County, Pennsylvania.

**STORM**—Orphans' Court Action Number OC-101-96. The First and Final Account of Elizabeth L. Krumrine and Robert L. Krumrine, Executors of the Estate of Thomas R. Storm, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

**GEMMILL**—Orphans' Court Action Number OC-103-96. The First and Final Account of Russell W. Maitland, Executor of the Estate of Elizabeth M. Gemmill, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**SANDERS**—Orphans' Court Action Number OC-105-96. The First and Final Account of Mary Sanders Lawrence, Executrix of the Estate of Daniel D. Sanders, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

**WAGNER**—Orphans' Court Action Number OC-116-93. The First and Final Account of Curvin J. Wagner a/k/a Kervin J. Wagner, Executor of the Estate of Joseph C. Wagner, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**ULRICH**—Orphans' Court Action Number OC-110-96. The First and Final Ac-

count of Adams County National Bank, Executor of the Estate of Francis William Ulrich, deceased, late of Oxford Township, Adams County, Pennsylvania.

**BALTZLEY**—Orphans' Court Action Number OC-111-96 The First and Final Account of Nancy M. Herring, Executrix of the Last Will and Testament of Sara E. Baltzley, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**GILLAND**—Orphans' Court Action Number OC-112-96. The First and Final Account of Raymond Charles Gilland, Executor of the Last Will and Testament of Lucille W. Gilland, deceased, late of Hamilton Township, Adams County, Pennsylvania.

**HARTMAN**—Orphans' Court Action Number OC-113-96. The First and Final Account of B. Josephine Seemann, Executrix of the Estate of Robert R. Hartman, deceased, late of Straban Township, Adams County, Pennsylvania.

**ROBINSON**—Orphans' Court Action Number OC-115-96. The First and Final Account of James R. Robinson and Joseph A. Robinson, Jr., Executors of the Estate of Joseph A. Robinson, deceased, late of Borough of New Oxford, Adams County, Pennsylvania.

**GRIMES**—Orphans' Court Action Number OC-116-96. The First and Partial Account of Donald G. Oyer, Executrix under the Will of Vatus Emma Pauline Grimes a/k/a Vatus Emma Grimes, deceased, late of Butler Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

10/11, 18

## CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, by BoBoBo Incorporated, doing business in Pennsylvania under the Fictitious Name of THE GETTYSBURG CIVIL WAR AND ANTIQUE CENTER, a foreign corporation formed under the laws of the State of Maryland, where its principal office is located at 3300 Clipper Mill Road, Baltimore, MD 21211, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located care of C T Corporation System in Adams County.

Rosenberg Proutt Funk & Greenberg,  
LLP, P.C., Solicitors  
2115 First Maryland Building  
25 South Charles Street  
Baltimore, MD 21201

10/11

# Adams County Legal Journal

Vol. 38

October 18, 1996

No. 21, pp. 127-130

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
NO. 96-S-676

Action To Quiet Title

BLAINE A. ANDREW and  
RAQUEL M. ANDREW, Plaintiffs,

vs.

DENNIS R. CONNER and MARY ANN  
CONNER, their heirs, administrators,  
successors and assigns, Defendants.

TO: DENNIS R. CONNER and MARY  
ANN CONNER, their heirs, administra-  
tors, successors and assigns

You are notified that an Order has been entered on October 1, 1996, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiffs above to assert any claim you may have in and to the lands herein described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in Plaintiffs' Complaint with respect to the land herein described:

ALL that certain tract of land situated in Liberty Township, Adams County, Pennsylvania, being more particularly described as Lot No. 54 in Section D, on a plan of lots labeled "Section D, Charnita," dated April 11, 1969, and duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at Page 47, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING THE SAME which Charnita, Inc., a Pennsylvania corporation, by deed dated December 8, 1971, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 302 at Page 469, sold and conveyed unto Dennis R. Conner and Mary Ann Conner, husband and wife; and BEING THE SAME which the Adams County Tax Claim Bureau, by their deed dated September 24, 1984, and recorded in the aforementioned office in Record Book 387 at Page 804, sold and conveyed unto Elwood F. Hoffman; and BEING THE SAME which Elwood F. Hoffman and Margaret M. Hoffman, husband and wife, by their deed dated February 6, 1990, and recorded in the aforementioned office in Record Book 546 at Page 756, sold and conveyed unto Wayne

Andrew, single; and BEING THE SAME which Wayne Andrew and Donna Andrew, his wife, by their deed dated July 16, 1996, and recorded in the aforementioned office in Record Book 1231 at Page 201, sold and conveyed unto Blaine A. Andrew and Raquel M. Andrew, husband and wife, Plaintiffs herein.

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

10/18

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-321 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of November, 1996, 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 point in the centerline of Pennsylvania Route 34, Biglerville-Carlisle Road, at lands of Gettysburg Industrial Development Authority; THENCE by said lands and through a chisel mark in center of concrete headwall set back 14.80 feet on the line, South 64 Degrees 41 Minutes 10 seconds East, 308.90 feet to an existing iron pin; THENCE continuing by said lands South 48 degrees 7 Minutes East, 46.99 feet to a point at Lot Number 2 on the hereinafter recited draft; THENCE by said lot South 22 Degrees 2 Minutes 50 Seconds West, 506.02 feet to a point at lands of Billie W. and Sandra M. Haymaker; THENCE by said lands and through an existing steel stake in tree root set back 137.61 feet from the end of this course and through an existing iron pin set back 27.26 feet from the end of this course, North 62 Degrees 28 Minutes 45 Seconds West, 402.46 feet to a point in the centerline of said Pennsylvania Route 34; THENCE in said Pennsylvania Route 34 North 27 Degrees 31 Minutes 15 Seconds East, 503.47 feet to the place of beginning.

CONTAINING 4.421 acres, more or less.

BEING Lot Number 1 on a draft of survey dated August 5, 1985, prepared

by Boyer Surveys, and recorded in Adams County Plat Book 42 at 78.

BEING the same premises which Haris F. Gustafson and Betty M. Gustafson granted and conveyed unto Thomas B. Birks and Anita L. Birks by Deed dated September 26, 1986 and recorded in the Office of the Recorder of Deeds for Adams County on September 26, 1986 in Deed Book 437, Page 217.

SEIZED and taken into execution as the property of **Thomas B. Birks and Anita L. Birks**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
May 7, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 16, 1996, 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.

10/18, 25 & 11/1

## 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 September 13, 1996, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of **A SERENDIPITOUS WORLD FEATURING DANA'S PICTURE PERFECT POETRY**, with its principal place of business at 16 East Middle Street, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Dana DeSimon, residing at 1395 Fairfield Road, Gettysburg, PA 17325.

The character or nature of the business is promotion of arts; selling artwork, artistic crafts, poems, books, reading.

10/18

## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-45 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, 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 Borough of Bendersville, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin at the curb on the Northern right of way line of Rampike Lane at the point where it intersects with the Eastern curb line of Carlisle Street; THENCE running by the Eastern curb line of Carlisle Street, North 48 degrees 00 minutes 00 seconds East, 150 feet to a chisel mark on the Eastern curb line of Carlisle Street and at corner of land now or formerly of Rampike Industries Limited; THENCE running by land now or formerly of Rampike Industries Limited, South 42 degrees 04 minutes 00 seconds East, 126.02 feet to a point at land now or formerly of Richard Orner; THENCE by land now or formerly of Richard Orner, South 40 degrees 18 minutes 5 seconds West, 103.10 feet to an iron pin on the Northern edge of the paving at the right of way line of Rampike Lane and at the Southwestern corner of land now or formerly of Richard Orner (Tract No. 2 on the hereinafter referred to survey); THENCE along the Northern right of way line of Rampike Lane, North 60 degrees 56 minutes 00 seconds West, 147.83 feet to an iron pin at the curb at the intersection of Carlisle Street, the point and place of BEGINNING. CONTAINING approximately 16,926 square feet.

BEING the same premises which Daniel I. Keys, a single man granted and conveyed unto Thomas H. Schriver and Linda A. Schriver, husband and wife, as tenants by the entireties by Deed dated October 25, 1988 and recorded in the Office of the Recorder of Deeds for ADAMS County on October 26, 1988 in Deed Book 504, Page 1144.

SEIZED and taken into execution as the property of **Thomas H. Schriver and Linda A. Schriver**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 19, 1996.

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

schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-556 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, 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 Franklin Township, Adams County, Pennsylvania, being Lot No. 9 of Silver Meadows Subdivision, bounded and described as follows:

BEGINNING at an iron pin in U.S. Route 30 at Lot No. 8; THENCE by said lot North 44 degrees 38 minutes 2 seconds East, 307 feet to an iron pin at Lot No. 16; THENCE by said lot and by Lot No. 15 South 45 degrees 21 minutes 58 seconds East, 150 feet to an iron pin at Lot No. 10; THENCE by said lot South 44 degrees 38 minutes 2 seconds West, 307 feet to an iron pin in said U.S. Route 30; THENCE in said U. S. Route 30 North 45 degrees 21 minutes 58 seconds West, 150 feet to the place of BEGINNING.

CONTAINING 1.057 acres, more or less.

The above description was taken from sheet 4 of a plan of lots labeled "Silver Meadows Subdivision," dated September 22, 1978, prepared by Boyer Surveys, and recorded in Adams County Plat Book 26 at page 19c.

SUBJECT to conditions, covenants, restrictions, reservations and easements as appear of record.

BEING the same premises which James E. Brown and Bonnie K. Brown, husband and wife, by Deed dated July 19, 1990 and recorded in the Adams County Recorder of Deeds' Office on

July 20, 1990 in Deed Book 562, Page 281, granted and conveyed unto Eldridge G. Moses, single.

SEIZED and taken into execution as the property of **Eldridge G. Moses**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about October 1, 1996, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is STONESIFER & SONS SANITATION, INC., and the purpose for which it is being organized is to provide sanitation services for residential, commercial and industrial customers, the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 791 Sell's Station Road, Littlestown, Pennsylvania, 17340.

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

## COMMONWEALTH VS. TYLER

Where Defendant contends he was deprived of effective assistance of counsel, it is not the Court's function to second guess counsel or to substitute its determination for that of counsel, but must decide only whether there was a reasonable basis for counsel's strategy.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-551-92, COMMONWEALTH OF PENNSYLVANIA VS. DAVID JAMES TYLER.

Roy A. Keefer, Esq., District Attorney  
Kevin Robinson, Esq., for Defendant

### STATEMENT PURSUANT TO Pa. R.App.P. 1925

Spicer, P.J., January 24, 1996.

Defendant, David James Tyler, appeals from an order dismissing his first PCRA petition. This court's action immediately followed a hearing December 20, 1995.

Only one issue was presented for consideration at that hearing. Defendant contended that he was deprived of effective assistance of counsel during trial, which resulted a conviction for murder in the first degree. The contention was based upon withdrawal by trial counsel, Peter Foster, Esquire, of a request for the appointment of an expert to analyze tissue samples found under the victim's fingernails.

Defendant and several accomplices were charged with the murder of Doreen Proctor, a drug informant. Tyler's case was consolidated with that of Roberta Ronique Bell.<sup>1</sup> A jury was selected in Lancaster County, after defendant's request for a change of venire was granted. When jury selection began, Tyler's request for the appointment of an expert was still pending because of some difficulty in obtaining a person able and willing to testify.

Analysis of the tissue samples by Commonwealth's expert indicated that blood typings were compatible with those of defendant and forty percent of persons sharing Tyler's racial background. Thus, Commonwealth's evidence was inculpatory, but not critically so.

Mr. Foster stipulated with the District Attorney that the Commonwealth would withhold its evidence, in return for which Tyler withdrew his request for the appointment of an expert and an independent analysis.

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<sup>1</sup>Bell was acquitted by the jury that convicted Tyler. However, Bell has recently been convicted in federal court on charges relating to the Proctor murder.

It seemed a sensible bargain at the time and still does. Even if we were to conclude otherwise, that the stipulation served defendant poorly, we could not conclude that it was unreasonable. It is not the court's function to second guess counsel or to substitute its determination for that of counsel. All that must be decided is whether there was a reasonable basis for Mr. Foster's strategy. *Commonwealth v. Collins*, 519 Pa. 58, 545 A.2d 882 (1988).

It is difficult to see how Tyler was harmed by the agreement. Even if his expert excluded him as a tissue donor, the Commonwealth's case was hardly weakened in light of its theory that at least three other persons, besides Bell, participated in the murder. On the other hand, introduction of Commonwealth's evidence would have been an added circumstance tending to show defendant's guilt.

This statement is provided in accordance with Rule of Appellate Procedure 1925.

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#### GETTYSBURG INN, LTD. VS. MCCOY BROTHERS BRENNENBORG BROWN GROUP

1. Under common law arbitration, the arbitrator has the authority to decide all matters necessary to dispose of the claim, fact as well as law, and there is no authority to vacate his decision for a mistake of either.

2. Anyone taking an appeal from a common law arbitration must show by clear, precise and indubitable evidence that he was denied a hearing or that there was fraud, misconduct, corruption or some other irregularity of this nature on the part of the arbitrator which caused him to render an unjust, inequitable or unconscionable award.

In the Court of Common Pleas, Adams County, Pennsylvania,  
GETTYSBURG INN, LTD. VS. MCCOY BROTHERS AND  
BRENNENBORG BROWN GROUP, ET AL.

Donald B. Hoyt, Esq., for Plaintiff

Stephen Shible, Esq., for Defendant McCoy

Charles F. Perego, Esq., for Defendant Brennenborg

#### OPINION ON PLAINTIFF'S PETITION TO OPEN JUDGMENT AND DEFENDANT BRENNENBORG BROWN GROUP'S MOTION TO DISCHARGE RULE TO OPEN JUDGMENT

Kuhn, J., March 11, 1996.

This matter arises out of a Complaint filed by Plaintiff, Gettysburg Inn, Ltd., alleging that on April 20, 1988, it entered into an agreement with Defendant, Brennenborg Brown Group, to perform architectural

services in connection with the construction of a Days Inn Motel. A dispute arose concerning installation of fiberglass tubs. By Order dated November 4, 1994, the parties were directed to submit their dispute to arbitration per terms of their contract.

On August 31, 1995, the arbitrator appointed by the American Arbitration Association entered an award barring Plaintiff's claim against Defendant on the basis of the statute of limitations and awarded Defendant one half of the administrative fees. On October 10, 1995, Defendant filed an Application To Confirm Arbitration Award and an Order to that effect was entered the same day. On October 16, 1995, judgment was entered in favor of Defendant on the award and for refund of \$750.00 in administrative fees.

On November 27, 1995, Plaintiff filed a Petition To Open Judgment claiming that the award of the arbitration was contrary to law on the issue of the limitation of actions. Defendant filed an Answer with New Matter on December 12, 1995, contending that Plaintiff's petition was untimely. At the same time Defendant filed a Motion To Discharge Rule To Open Judgment alleging that Plaintiff's Petition was an improper procedure to contest an arbitration award. Plaintiff's replies to the new matter and motion to discharge were filed on January 2, 1996. The Petition and Motion were set for oral argument on February 28, 1996, and are before the Court for disposition.

The procedural rules for common law arbitration are set forth in the Uniform Arbitration Act, 42 Pa. C.S.A. §7301, et seq., and cases decided thereunder. Under common law arbitration the arbitrator has the authority to decide all matters necessary to dispose of the claim and he is the final judge of both fact and law. There is no authority to vacate his decision for a mistake of either. *Hassler v. Columbia Gas Transmission Corp.*, 318 Pa. Super. 302, 306, 464 A.2d 1354, 1356 (1983); *Giant Markets, Inc. v. Signa Marketing Systems, Inc.*, 313 Pa. Super. 115, 124, 459 A.2d 765, 769 (1983).<sup>1</sup> In addition, anyone taking an appeal from a common law arbitration must show by clear, precise and indubitable evidence that he was denied a hearing or that there was fraud, misconduct, corruption or some other irregularity of this nature on the part of the arbitrator which caused him to render an unjust, inequitable or unconscionable award. An irregularity refers to the process employed in reaching the result and not in the result itself. *Charvenak, Keane & Comp., Inc. v. Hotel Rittenhouse Associates, Inc.*, 328 Pa. Super. 357, 362, 477 A.2d 482, 485 (1984).

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<sup>1</sup>In *Merchants Mutual Insurance Company v. American Arbitration Association*, 433 Pa. 250, 248 A.2d 842 (1969) the court held that even the statute of limitation comes within an arbitrator's purview.

Plaintiff through the process of a petition to open seeks to re-litigate the legal and factual arguments presented to the arbitrator. There is no authority which would sanction such a review. Plaintiff has not alleged any procedural irregularities.

Furthermore, Plaintiff has waived its right to raise any issue concerning the propriety of the arbitrator's award. The law is clear that any issues a party wishes to raise must be raised within 30 days of the date of the arbitrator's award. *Berik v. Permagrain Products, Inc.*, 347 Pa. Super. 102, 105, 500 A.2d 178, 179 (1985). The Act provides at 42 Pa. C.S.A. §7342(b) that

On application of a party made more than 30 days after an award is made by an arbitrator under Section 7341 (relating to common law arbitration) the court shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order . . .

Here, the award was entered on August 31, 1995, and not until 40 days later did Defendant move to confirm the award. Plaintiff took no steps to challenge the arbitrator's decision until November 27, 1995, or 68 days after the date of the award. Any attempt to modify an arbitrator's award after the 30 day period is untimely. *Elkins & Co. v. Suplee*, 371 Pa. Super. 570, 538 A.2d 883 (1988).

Petitions to open are addressed to the sound discretion of the court. We fail to see that the court has any discretion to exercise under these circumstances.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 11th day of March, 1996, Plaintiff's Petition To Open Judgment filed on November 27, 1995 is denied and the Motion To Discharge Rule To Open Judgment filed on December 12, 1995 by Defendant, Brenenburg Brown Group, is granted.



## 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 PAULINE H. BENNEY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Henry Stock, 2 Berlin Road, New Oxford, PA 17350; Martha M. Stock, 2371 Carlisle Pike, Hanover, PA 17331

Attorney: Donald E. Albright, Esquire, 515 Carlisle Street, Hanover, PA 17331

## ESTATE OF JOHN B. CHISNELL, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Cheryl R. Putman, 2409 Hanover Road, Gettysburg, PA 17325

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

## ESTATE OF RUTH A. CONAWAY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Maurice G. Neiman, 257 Abbottstown Pike, Abbottstown, PA 17301; Bank of Hanover and Trust Company, Trust Dept., 25 Carlisle Street, Hanover, PA 17331

Attorney: Daniel M. Frey, Crabbs & Frey, 14 Center Square, Hanover, PA 17331

## ESTATE OF THEODORE C. DANIELS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Elizabeth W. Daniels, 232 North Fourth Street, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF WILLIAM C. MEARNS, SR., DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Carolyn T. Dorsett, 4 Crescent Place, Cranford, NJ 07016

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

## SECOND PUBLICATION

## ESTATE OF RICHARD YOHN DAVIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

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

Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF ROBERT G. KUHN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Dennis E. Kuhn, 1245 Rentzel Road, Biglerville, PA 17307

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

## ESTATE OF CLARA B. SANDERS, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executrices: Viola K. Toms, Box 1104, Cascade, MD 21719; Bonny L. Harbaugh, P. O. Box 200, Fairfield, PA 17320; Georgie A. Cool, 4765 Fairfield Road, Fairfield, PA 17320

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

## THIRD PUBLICATION

## ESTATE OF ADELE M. KEECH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Dauphin Deposit Bank and Trust Company, 13 Baltimore Street, Hanover, PA 17331

Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

## ESTATE OF T. OPAL MAYS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

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

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

## ESTATE OF KATHLEEN SIPLING ROBERTS, DEC'D

Late of Gettysburg, Adams County, Pennsylvania

Executrix: Helen Sipling, 544 Baer Avenue, Hanover, PA 17331

Attorney: Muriel A. Crabbs, Esq., Attorney for the Estate, 202 Broadway, Hanover, PA 17331

## ESTATE OF CHARLES F. SHIELDS, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Charles R. Shields, 6590 Baltimore Pike, Littlestown, PA 17340

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

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-354 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 757 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Book 1 at page 5, and subject to all legal highways, easements, rights-of-way and restrictions of record.

UNDER AND SUBJECT to the restrictions of Lake Meade as contained in Deed recorded in Deed Book 263 at page 928, and to all those of record.

BEING the same premises which J.D. Wallen Investments, a Pennsylvania Partnership granted and conveyed unto Michael J. Proce and Angeline M. Proce by Deed dated June 04, 1993 and recorded in the Office of the Recorder of Deeds for Adams County on June 08, 1993 in Deed Book 735, Page 196.

SEIZED and taken into execution as the property of **Michael J. Proce and Angeline M. Proce**, and to be sold by me Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA  
September 17, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-540 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 504 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 4, and subject to all legal highways, easements, rights-of-way, and restrictions of record, including all rules, restrictions, conditions and agreements which are set forth at length in the deed of Lake Meade, Inc. to Ralph E. Wantz (erroneously stated as Ralph F. Wantz in prior instruments of record) dated May 22, 1968, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 267 (erroneously stated as Book 367 in prior instruments of record), page 875.

The above-described lot of land has thereon erected a dwelling house which has the mailing address of 29 Jackson Drive, Lake Meade, East Berlin, PA 17316.

TOGETHER with the right in common with other owners of lot in said subdivision to use for all usual purposes the streets, ways, beaches, recreation areas, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing, and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

BEING the same premises which Dale Fetrow, widower, granted and conveyed unto Randy L. McDougle and Patricia S. McDougle by Deed dated December 2, 1993 and recorded in the Office of the Recorder of Deeds for Adams County on December 6, 1993 in Deed Book 816, Page 303.

SEIZED and taken into execution as the property of **Randy L. McDougle and Patricia S. McDougle**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
September 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 2, 1996, 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.

10/4, 11 & 18

## 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 Monday, October 21, 1996, at 9:00 o'clock a.m.

**LEMMON**—Orphans' Court Action Number OC-91-96. The First and Final Account of Catherine Mort, Executrix of the Estate of Uima M. Lemmon, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

**VISLA**—Orphans' Court Action Number OC-96-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Agitta Visla, deceased, late of Franklin Township, Adams County, Pennsylvania.

**ECK**—Orphans' Court Action Number OC-100-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Gervaise H. Eck, deceased, late of Borough of Arendtsville, Adams County, Pennsylvania.

**STORM**—Orphans' Court Action Number OC-101-96. The First and Final Account of Elizabeth L. Krumrine and Robert L. Krumrine, Executors of the Estate of Thomas R. Storm, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

**GEMMILL**—Orphans' Court Action Number OC-103-96. The First and Final Account of Russell W. Maitland, Executor of the Estate of Elizabeth M. Gemmill, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**SANDERS**—Orphans' Court Action Number OC-105-96. The First and Final Account of Mary Sanders Lawrence, Executrix of the Estate of Daniel D. Sanders, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

**WAGNER**—Orphans' Court Action Number OC-116-93. The First and Final Account of Curvin J. Wagner a/k/a Kervin J. Wagner, Executor of the Estate of Joseph C. Wagner, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**ULRICH**—Orphans' Court Action Number OC-110-96. The First and Final Ac-

count of Adams County National Bank, Executor of the Estate of Francis William Ulrich, deceased, late of Oxford Township, Adams County, Pennsylvania.

**BALTZLEY**—Orphans' Court Action Number OC-111-96. The First and Final Account of Nancy M. Herring, Executrix of the Last Will and Testament of Sarah E. Baltzley, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**GILLAND**—Orphans' Court Action Number OC-112-96. The First and Final Account of Raymond Charles Gilland, Executor of the Last Will and Testament of Lucille W. Gilland, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

**HARTMAN**—Orphans' Court Action Number OC-113-96. The First and Final Account of B. Josephine Seemann, Executrix of the Estate of Robert R. Hartman, deceased, late of Straban Township, Adams County, Pennsylvania.

**ROBINSON**—Orphans' Court Action Number OC-115-96. The First and Final Account of James R. Robinson and Joseph A. Robinson, Jr., Executors of the Estate of Joseph A. Robinson, deceased, late of Borough of New Oxford, Adams County, Pennsylvania.

**GRIMES**—Orphans' Court Action Number OC-116-96. The First and Partial Account of Donald G. Oyler, Executor under the Will of Vatus Emma Pauline Grimes a/k/a Vatus Emma Grimes, deceased, late of Butler Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

10/11, 18

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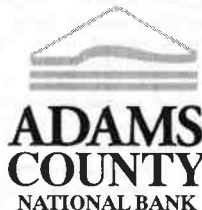
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## **IN THIS ISSUE**

**DUNCAN VS. PUTNAM**

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



Member FDIC

## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-N-321 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of November, 1996, 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 point in the centerline of Pennsylvania Route 34, Biglerville-Carlisle Road, at lands of Gettysburg Industrial Development Authority; THENCE by said lands and through a chisel mark in center of concrete headwall set back 14.80 feet on the line, South 64 Degrees 41 Minutes 10 seconds East, 308.90 feet to an existing iron pin; THENCE continuing by said lands South 48 degrees 7 Minutes East, 46.99 feet to a point at Lot Number 2 on the hereinafter recited draft; THENCE by said lot South 22 Degrees 2 Minutes 50 Seconds West, 506.02 feet to a point at lands of Billie W. and Sandra M. Haymaker; THENCE by said lands and through an existing steel stake in tree root set back 137.61 feet from the end of this course and through an existing iron pin set back 27.26 feet from the end of this course, North 62 Degrees 28 Minutes 45 Seconds West, 402.46 feet to a point in the centerline of said Pennsylvania Route 34; THENCE in said Pennsylvania Route 34 North 27 Degrees 31 Minutes 15 Seconds East, 503.47 feet to the place of beginning.

CONTAINING 4.421 acres, more or less.

BEING Lot Number 1 on a draft of survey dated August 5, 1985, prepared by Boyer Surveys, and recorded in Adams County Plat Book 42 at 78.

BEING the same premises which Harris F. Gustafson and Betty M. Gustafson granted and conveyed unto Thomas B. Birks and Anita L. Birks by Deed dated September 26, 1986 and recorded in the Office of the Recorder of Deeds for Adams County on September 26, 1986 in Deed Book 437, Page 217.

SEIZED and taken into execution as the property of **Thomas B. Birks and Anita L. Birks**, and to be sold by me  
Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
May 7, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 16, 1996, 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.

10/18, 25 & 11/1

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, the Fictitious Names Act (54 Pa. C.S.A. §311), there was filed in the office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on September 30, 1996, an Application for Registration of the fictitious name A & A INVESTMENTS, the address of the principal office or place of business of the business to be carried on, under or through said name being Rear 239 Chambersburg Street, P.O. Box 4775, Gettysburg, PA 17325. The names and addresses of all persons who are parties to the registration are: Andrew M. Larson, 476 Pleasanton Drive, Gettysburg, PA 17325, and Allen A. Larson, 126 Artillery Drive, Gettysburg, PA 17325.

Bigham & Puhl  
Attorneys

10/25

## NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Gladys M. Howard, appointed as such on February 5, 1965, has filed its First and Final Account and a Statement of Proposed Distribution with the Clerk of Courts of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on November 25, 1996, at 9:00 a.m.

Peggy J. Breighner, Clerk  
Hartman & Yannetti, Esqs.  
126 Baltimore Street  
Gettysburg, PA 17325

10/25, 11/1 & 8

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, that pursuant to the provisions of Section 311 of Act 1982-295 (54 Pa. C.S. 311), of intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about October 15, 1996, an Application for Registration of the Fictitious Name HICKORY RIDGE CLEANING SERVICE, the character of which is carpet, floor, and window cleaning and maintenance service. The address of the principal place of business is 1045 Frederick Pike, Littlestown, PA 17340, and the only person owning or interested in said business is Rickey J. Lenhart.

Thomas P. Dunchack P.C.

10/25

## DUNCAN VS. PUTNAM

1. The question of jurisdiction of a child custody proceeding is examined at the time the instant proceeding is commenced.
2. The Uniform Child Custody Jurisdiction Act treats as generally preferable the "home state" jurisdiction although there are certainly circumstances where the Court may determine that the home state is not the most appropriate forum.
3. Where two states have jurisdiction, only one can properly adjudicate custody of a child and for guidance, the Courts will look to the factors set forth in 23 Pa.C.S.A. 5348 (Inconvenient forum.)

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-1102, GERALDINE DUNCAN VS. MAURICE RAY PUTNAM, JR.

Sheryl Jackson, Esq., for Plaintiff  
Kevin Robinson, Esq., for Defendant

### MEMORANDUM OPINION

Kuhn, J., March 7, 1996.

Before the Court is a request by Geraldine Duncan, hereinafter "Mother," to dismiss a Motion To Modify Custody filed by Maurice Ray Putnam, Jr., hereinafter "Father," on February 1, 1996. Mother contends that the State of Maryland not Pennsylvania should have jurisdiction over the custody dispute.

The basic background is not in dispute. On December 21, 1994, Mother filed a complaint against Father for custody of the parties' minor child, Nicholas A. Putnam, born November 5, 1989. As was the case at the time of the filing, Mother now lives in Taneytown, Carroll County, Maryland and Father lives in Carroll Valley, Adams County, Pennsylvania. The Complaint averred that Nicholas had resided in Carroll Valley with Father for at least three years. Father had obtained primary custody pursuant to an agreement dated May 31, 1990, which had been incorporated into a divorce decree entered by a court in Frederick County, Maryland on July 30, 1991. He and Nicholas lived in Mt. Airy, Maryland until May, 1992, and then moved to Carroll Valley. On February 3, 1995, the parties entered a Custody Agreement which was adopted as an Order in the above captioned matter on February 6, 1995. Pursuant to that agreement Father retained primary physical custody until March 3, 1995, whereupon primary physical custody was transferred to Mother.

Father is seeking return of primary physical custody. He has generally averred that Mother's home, resources and caretaking are

inadequate and that his home would provide a better environment for Nicholas.

In determining whether Pennsylvania or Maryland has jurisdiction a court must examine the provisions of the Uniform Child Custody Jurisdiction Act, 23 Pa C.S.A. §5341, et seq. General jurisdictional rules are set forth in §5344 which provides, in pertinent part:

§5344. Jurisdiction.

(a) General rule - A court of this Commonwealth which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) that Commonwealth:

(i) is the home state of the child at the time of commencement of the proceeding;

...

(2) it is in the best interest of the child that a court of this Commonwealth assume jurisdiction because:

(i) the child and his parents, or the child and at least one contestant, have a significant connection with the Commonwealth; and

(ii) there is available in this Commonwealth substantial evidence concerning the present or future care, protection, training and personal relationships of the child.

The question of jurisdiction is examined at the time the instant proceeding is commenced. *Simpkins v. Disney*, 416 Pa. Super. 243, 250, 610 A.2d 1062, 1064 (1992). It is clear that Maryland was the home state of the child when the request for modification was filed. See 23 Pa. C.S.A. §5343. It is likewise clear that the child and at least one parent has a significant connection with Pennsylvania. Father has lived in Pennsylvania since May, 1992, Nicholas lived here up to March, 1995, and has visited Father regularly pursuant to a partial physical custody schedule. Because Father is seeking a modification, substantial evidence would be present in Pennsylvania regarding Nicholas' future care and relationships. On the contrary, evidence of Nicholas' present care and relationships are to be found in Maryland.

It thus appears that Maryland has jurisdiction on the basis that it is the "home state" and because it has "significant contacts" with the child whereas Pennsylvania can only claim jurisdiction on the latter basis. The UCCJA treats as generally preferable the "home state" jurisdiction, however, there are certainly circumstances where the court may determine that the home state is not the most appropriate forum. *Merman v. Merman*, 412 Pa. Super. 247, 252, 603 A.2d 201, 204 (1992); *Hattoum v. Hattoum*, 295 Pa. Super. 169, 175, 441 A.2d 403, 405-6 (1982).

Obviously, where two states have jurisdiction, only one can properly adjudicate custody. For guidance the courts will look to factors set forth in 23 Pa. C.S.A. §5348 (Inconvenient forum.) In reviewing the factors set forth therein, we note that 1) Maryland is the home state, 2) Maryland appears to have a closer connection with the child and Mother's family for the past year, and 3) more evidence concerning the child's present circumstances can be found in Maryland. For these reasons we believe Maryland is the more appropriate forum.

Before concluding we make three further comments. Although the original custody action was commenced by Mother in Pennsylvania our court took no active role in the case except to adopt the parties' agreement. This court did not hold a conference or have any direct contact with the parents or the child. At that time the parties apparently agreed that it would be in Nicholas' best interest to reside in Maryland. Second, Father is alleging deprivations which occurred in Maryland. It would seem that Maryland is best suited to adjudicate conduct occurring within its boundaries. Third, the Court had an opportunity to interview Nicholas in the presence of counsel to determine whether any exigent circumstances were revealed that would cause our court to intervene. Nicholas, on the surface, was a delightful and verbose child who seems to thrive on attention and affection. Although counsel was able to articulate certain areas of concern, which need not be detailed here, we did not find them to be so compelling that they had to be addressed immediately.

We certainly do not fault Father for filing his motion for modification in this jurisdiction because that is where the original order was entered, he has continued to reside here, and he seeks to move Nicholas here. If Mother had not objected to our jurisdiction there would have been ample reason to proceed here. However, objection having been

made, we believe the overall policy considerations of the UCCJA are promoted by having Maryland accept jurisdiction.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 7th day of March, 1996, Plaintiff's objection to this Court's jurisdiction over Defendant's Motion To Modify is granted on the basis that Maryland is the child's home state and a more appropriate forum.



## 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 NORMAN J. HOFFMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Robert M. Gillelan, P.O. Box 505, Biglerville, PA 17307

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

## ESTATE OF KATHRYN LORRAINE HOOVER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-executors: Fred M. Ensor, 5346 Carlisle Pike, New Oxford, PA 17350; Rosalie A. Davis, 335 Greenbrier Road, York Springs, PA 17372

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

## ESTATE OF NELLIE G. STAUB, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Adams County National Bank, Lincoln Square Office, P.O. Box 4566, Gettysburg, PA 17325; Louis T. Guthrie, Esquire, 40 York Street, Hanover, PA 17331

Attorney: Louis T. Guthrie, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

## SECOND PUBLICATION

## ESTATE OF PAULINE H. BENNEY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Henry Stock, 2 Berlin Road, New Oxford, PA 17350; Martha M. Stock, 2371 Carlisle Pike, Hanover, PA 17331

Attorney: Donald E. Albright, Esquire, 515 Carlisle Street, Hanover, PA 17331

## ESTATE OF JOHN B. CHISNELL, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Cheryl R. Putman, 2409 Hanover Road, Gettysburg, PA 17325

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

## ESTATE OF RUTH A. CONAWAY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Maurice G. Neiman, 257 Abbottstown Pike, Abbottstown, PA 17301; Bank of Hanover and Trust Company, Trust Dept., 25 Carlisle Street, Hanover, PA 17331

Attorney: Daniel M. Frey, Crabbs & Frey, 14 Center Square, Hanover, PA 17331

## ESTATE OF THEODORE C. DANIELS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Elizabeth W. Daniels, 232 North Fourth Street, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF WILLIAM C. MEARNS, SR., DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Carolyn T. Dorsett, 4 Crescent Place, Cranford, NJ 07016

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

## THIRD PUBLICATION

## ESTATE OF RICHARD YOHAN DAVIS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

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

Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF ROBERT G. KUHN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Dennis E. Kuhn, 1245 Rentzel Road, Biglerville, PA 17307

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

## ESTATE OF CLARA B. SANDERS, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executrices: Viola K. Toms, Box 1104, Cascade, MD 21719; Bonny L. Harbaugh, P.O. Box 200, Fairfield, PA 17320; Georgie A. Cool, 4765 Fairfield Road, Fairfield, PA 17320

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-N-622 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of November, 1996, 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 those two tracks or land situate in the Borough of Carroll Valley, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1: BEGINNING at a point in the center of Pennsylvania Route No. 116 at Lot No. 15CR; thence by said lot, South 60 degrees 32 minutes 40 seconds West 164.39 feet to Lot No. 37CR; thence by said lot, North 29 degrees 16 minutes West 136.15 feet to Lot No. 13CR; thence by said lot, North 63 degrees 54 minutes 40 seconds East 139.55 feet to a point in the center of said Pennsylvania Route No. 116; thence in said Pennsylvania Route No. 116, South 40 degrees 21 minutes East 130.32 feet to the place of BEGINNING. Being known as Lot No. 14CR in Section B, Charnita.

Tract No. 1 is SUBJECT TO restrictions as set forth in Adams County Deed Book 264 at page 1136.

TRACT NO. 2: BEGINNING at a point in the center of Pennsylvania Route No. 116 at Lot No. 16CR; thence by said lot, South 60 degrees 44 minutes West 181.29 feet to Lot No. 36CR; thence by said lot, North 29 degrees 16 minutes West 100 feet to Lot No. 14CR; thence by said lot, North 60 degrees 32 minutes 40 seconds East 164.39 feet to a point in the center of said Pennsylvania Route No. 116; thence in said Pennsylvania Route No. 116 by a curve to the right, the radius of which is 1,910.08 feet, for an arc distance of 101.96 feet to the place of BEGINNING. Being known as Lot No. 15CR in Section B, Charnita.

Tract No. 2 is SUBJECT TO restrictions as set forth in Adams County Deed Book 305 at page 1032.

The above descriptions were taken from a plan of lots labeled "Section B Supplemental 2, Charnita" and dated July 10, 1965, prepared by Gordon L. Brown, R. S., recorded in Adams County Miscellaneous Docket 5 at page 370.

BEING the same which William C. Garde and Barbara L. Garde, his wife, by deed dated February 10, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 514 at page 530, conveyed to Edward Ray Wachter, the Defendant herein.

TOGETHER WITH rights and SUBJECT TO restrictions, conditions, reservations and easements as contained in the above recited deed.

SEIZED and taken into execution as the property of **Edward Ray Wachter**, and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
October 4, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 16, 1996, 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.

10/25, 11/1 & 8