

# Adams County Legal Journal

Vol. 39

August 1, 1997

No. 10, pp. 51-54

## LEGAL NOTICE

### NOTICE IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY IN AND FOR THE COMMONWEALTH OF PENNSYLVANIA

#### CIVIL

IN RE: Dismissal of Action for Failure to Proceed Under Pa.R.J.A. 1901(c) and Local Rule of Court No. 10(e)

Pursuant to the provisions of Pa.R.J.A. 1901(c) and Local Rule of Court No. 10(e) notice is given hereby that the following cases will be listed by the Adams County Prothonotary for general call before the Adams County Court on Monday, September 23, 1997 at 9:00 a.m. to request the Court to dismiss for failure to proceed unless good cause for continuing the proceedings shall be given on or before that date.

Randy J. and Janis A. Miller, individually and as natural parents and guardians of Timothy Ryan Miller vs. Syntex Laboratories, Inc. - 85-S-708

Jared W. Nace vs. Tina Helm Hunt and Ralph Hunt - 91-S-1017

Joseph A. Sheaffer and Frederick W. Ecker, t/d/b/a Sheaffer and Ecker Builders vs. John D. Hertz and Donna R. Hertz - 91-S-1028

Walter O. Powell vs. Amelia Powell - 92-S-56

Adonis Designs Mfg., Inc. vs. Raymond E. Seigman, Sherry L. Devilbiss and Patrick S. Seigman - 92-S-237

Diane L. Hawbaker vs. Duane E. Hawbaker - 92-S-258

Rest Haven Cemetary Company vs. Richard F. and Penny A. Parsley - 92-S-978

Anthony J. Lawrence t/d/b/a L & L Builders vs. Joseph A. Lawrence, Larry G. Reynold, Robert S. Reynold, and Elaine L. Reynold, individually and t/d/b/a The Reynold & Lawrence Partnership - 92-S-1019

Baker's Dozen vs. Ronald D. Thieret and Sabrina M. Thieret - 92-S-1081

Stephen M. Hoffman vs. Michael Lawrence and Barbara Lawrence - 92-S-1111

Edward E. Merrill vs. Terry Snyder Eachus - 93-S-181

Hampton Plains Condominium Association vs. Ash-Mel Inc., Ward Investments, Inc., Barry Rauhauser and Susan Rauhauser, husband and wife, Home Town Realty and Reading Township - 93-S-188

Ronald D. Thieret and Sabrian M. Thieret vs. Bakers Dozen and Donald J. Little - 93-S-278

Richard Wood, Jr. vs. Ronald Thieret and Tri-Star Construction Corp. - 93-S-428

Robert Schroeder vs. Ronald Thieret and Tri-Star Construction Corp. - 93-S-429

Steven E. Agbaw vs. Krystal Cadillac-Oldsmobile-GMC Truck, Inc. - 93-S-575

Laura U. Schuller vs. Jerry D. Fairchild - 93-S-648

General Motors Acceptance Corp. vs. William Haney and Elizabeth Haney - 93-S-734

Danielle L. O'Brien vs. Charles M. Burgan, III - 93-S-829

Gloria Burr and Russell Burr vs. Ayanna L. Hill - 93-S-852

Richard L. Fink vs. Alan Ensor, t/d/b/a Ensor's Auto Sales - 93-S-855

Robert Adinolfi, individually and as the Parent and Natural Guardian of Emily Adinolfi, and Patricia Adinolfi, individually and as the Parent and Natural Guardian of Emily Adinolfi vs. Frock Brothers Trucking, Inc., Robert D. Pittenturf and Commonwealth of Pennsylvania, Pennsylvania Department of Transportation - 93-S-891

Kidbiz Pizza, Inc. t/a Kidbiz Pizza & Showplace vs. James Slee and Kathy Slee - 93-S-904

In Re: Appeal of Kinney Shoe Corporation from the Adams County Board of Assessment Appeals - 93-S-985

Betty Sue Mitchell vs. Andrew Ramon Mitchell - 93-S-998

Nancy L. Linn vs. Timon K. Linn - 93-S-1037

First Trust National Association as Trustee for Patten Corporation MidAtlantic vs. John A. Yost, Sr. and Evelyn M. Yost, his wife - 93-S-1067

Tammy Wagaman vs. Perry Sloat - 93-S-1071

Wendy Jackson vs. Gorman/Hill Partnership and William F. Hill - 93-S-1081

Jeffrey Littles and Joy Little vs. Benjamin D. Kendrick, Anna M. Kendrick, Patrick D. Jacoby, Carolyn A. Jacoby, Donald E. Worley and Christopher G. Trone - 93-S-1104

Margaret White and William H. White, Administrators of the Estate of Tammy White, deceased vs. Stonehenge Restaurant, Inc. t/d/b/a Big Boppers - 94-S-11

Donna J. Wilt vs. Jacob L. Wilt - 94-S-46  
Concepcion Ybarra Ramirez vs. Juan Ramirez Morales - 94-S-54

John W. Kulp vs. Thomas L. Thomas and Byron L. Good - 94-S-76

Angela Kathleen Harris vs. Phillip Bryan Harris - 94-S-87

Stella A. Earp vs. Charles E. Earp - 94-S-88

In Re: Wolfe Industrial Auctions, Inc. - 94-S-117

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Debra J. Baker vs. Walter E. Cheshier and Shirley E. Cheshier, husband and wife - 94-S-353

Heather L. Ernst vs. Mark A. Ernst - 94-S-367

Bob Swope d/b/a B & D Detail Shop vs. Curtis D. Gladfetter - 94-S-388

J. Michael Knoffley vs. Larry E. Larson and Marlene Larson - 94-S-402

Mary Kay Deptula vs. Thomas Clark Gaspard and Aimee Suzanne Gaspard - 94-S-408

Anna J. Grant vs. James L. Grant - 94-S-428

Maryland National Bank vs. Allstate Insurance Company, Jamie Lamb and Carrie A. Cavey - 94-S-447

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

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U & T, Inc. vs. Clarence W. Bowen and Evelyn L. Bowen, their heirs, devisees, administrators and assigns - 94-S-770

Daniel Keys vs. Stephen Olinger - 94-S-803

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Georgia M. Covington vs. Willia D. Covington - 94-S-890

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Steven S. Kagarise vs. David Hatfield - 94-S-988

Sheryl Bigham vs. Anthony Gibson - 94-S-1012

Christina L. Peters vs. Steven M. Peters - 94-S-1014

Edward Stultz vs. Charles Smith - 94-S-1047

Ruth N. Malone vs. James E. Malone - 94-S-1078

Dean A. Shultz vs. Ray Hock and Winifred A. Hock - 94-S-1081

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-142 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described tract of land,

SITUATE, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and limited as follows, to Wit:

BEGINNING for a point at the corner of a ten (10) feet wide right-of-way on the western side of a forty (40) feet wide street known as Commerce Street and Lot No. 11 on the subdivision plan hereinafter referred to; thence along Lot No. 11 and through the partition wall of a townhouse, South seventy-two (72) degrees twenty (20) minutes fifty-two (52) seconds West, one hundred fifty (150) feet to a point at lands now or formerly of R. M. Wolfe, Inc.; thence along lands now or formerly of R. M. Wolfe, Inc., North seventeen (17) degrees thirty-nine (39) minutes eight (8) seconds West, eighteen (18) feet to a point at Lot No. 9 on the subdivision plan hereinafter referred to; thence along Lot No. 9 and through the partition wall of a townhouse, North seventy-two (72) degrees twenty (20) minutes fifty-two (52) seconds East, one hundred fifty (150) feet to a point on the western side of the ten (10) feet wide right-of-way, aforesaid; thence in and along the western edge of the ten (10) feet wide right-of-way of Commerce Street, South seventeen (17) degrees thirty-nine (39) minutes eight (8) seconds East, eighteen (18) feet to the point and place of beginning.

BEING known as Lot No. 10 on the subdivision plan hereinafter referred to and numbered 33 Commerce Street.

The foregoing description was prepared in accordance with a subdivision plan prepared by Thomas & Associates, Surveyors, dated April 27, 1978, and revised June 19, 1978, and designated as file No. D-35, which said plan, as approved by the appropriate municipal authorities, is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania.

TAX PARCEL NUMBER: #5-209

PREMISES: 33 COMMERCE STREET  
NEW OXFORD, PA 17350

TITLE TO SAID PREMISES IS VESTED IN Allen L. Schaeffer and Sandra L. Schaeffer, his wife by Deed from Stacy N. Slonaker and Robert A. Slonaker, her husband dated 12/29/95, recorded 1/4/96, in Deed Book 1131 page 210.

SEIZED and taken into execution as the property of **Allen and Sandra Schaeffer** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
May 20, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

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## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on July 1, 1997, pursuant to the Fictitious Name Act, setting forth that Jerome E. Weaver will be the sole proprietor of a business, that which being the health club type, and that the designation under which the business will operate is YOUR FITNESS CENTER and the address of operation being 5395-C Carlisle Pike, New Oxford, PA 17350.

Jerome E. Weaver

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THERIT VS. ZONING HEARING BOARD OF  
CONEWAGO TOWNSHIP

1. In zoning appeals where the trial court takes no additional evidence, the scope of review is limited to determining whether the zoning hearing board committed an error of law or manifestly abused its discretion.

2. In order to establish a prior nonconforming use, the land owner must present objective evidence demonstrating that the subject land was devoted to such use at the time of the enactment of the zoning ordinance.

3. The party asserting an abandonment of a nonconforming use has the burden of proving that the owner or occupier of the land intended to abandon the use and that the use was actually abandoned.

4. The intent to abandon a nonconforming use must be shown by the owner or occupier's overt acts or the failure to act, such as written or oral statements evincing an intent to abandon the use, structural alterations to the building inconsistent with the continuance of the nonconforming use, or the failure to take some step such as license renewal necessary to the continuance of the use.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-663, IRL L. THERIT, JR. AND DENISE M. THERIT VS. ZONING HEARING BOARD OF CONEWAGO TOWNSHIP AND CONEWAGO TOWNSHIP AND RANDY C. LONG AND CHRISTINE LONG.

Joseph E. Erb, Jr., Esq., for Appellants  
Campbell & White, Esqs., for Appellee  
Clayton R. Wilcox, Esq., for Intervenor  
Deborah Ross, Esq., for Intervenors

OPINION ON ZONING APPEAL

Kuhn, J., October 3, 1996.

The Appellants, Irl L. Therit, Jr. and Denise M. Therit, own real estate located at 3588 Centennial Road, Conewago Township, Adams County, which they purchased in October, 1993. On March 24, 1995, the Appellants received written notice from the Township Manager to cease and desist from utilizing the premises as an automotive repair shop and motor vehicle storage and parking area. Appellants requested a hearing before the Zoning Hearing Board. The Board determined that Appellants' use of the property was in violation of the township's zoning ordinance and was not a pre-existing nonconforming use. This appeal followed. Subsequently, Conewago Township and Randy and Christine Long intervened in this action in opposition to the appeal. By agreement the matter was remanded to the Board for the taking of additional testimony while the Court retained jurisdiction. The Board's decision upholding the cease and desist order was mailed on January 5, 1996. The appeal to this Court is ripe for disposition.

In zoning appeals where, as here, the trial court takes no additional

evidence the scope of review is limited to determining whether the zoning hearing board committed an error of law or manifestly abused its discretion. *Borough of Fleetwood v. Zoning Hearing Board*, 538 Pa. 536, 540, 649 A.2d 651, 653 (1994). This Court may not substitute its judgment for that of the board unless the board manifestly abused its discretion. *Cullison v. McSherrystown Borough Zoning Hearing Board*, 31 Ad. Co. L.J. 258, 259 (1990). Abuse of discretion is found only if the board's findings are not supported by substantial evidence, meaning such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Valley View Civic Association v. Zoning Hearing Board of Adjustment*, 501 Pa. 550, 555, 462 A.2d 637, 639-40 (1983). See also 53 P.S. §11005-A.

The subject real estate lies within an agricultural zoning district within Conewago Township. The Township adopted its Zoning Ordinance on June 8, 1983. Appellants contend on appeal that the Board erred in not finding that the property had a pre-existing nonconforming use of automotive repair and vehicle storage accessory to the primary residential use. The Appellants do not otherwise question a finding that their current use of the property is in violation of the existing zoning regulations.

The law in this area provides,

In order to establish a prior nonconforming use, the landowner must present objective evidence demonstrating that the subject land was devoted to such use at the time of the enactment of the zoning ordinance...The burden of proving the existence or extent of a nonconforming use rests on the property owner who would claim the benefits of the rights accorded the property with that status...*Appeal of Lester M. Prange, Inc.*, 166 Pa. Comlth. Ct. 626, 631, 647 A.2d 279, 281 (1994).

In order to determine whether a current use is nonconforming the current use must first be identified. Here, Appellant, Irl Therit, Jr., testified that he bought the premises in October, 1993, without any prior knowledge of the zoning restrictions. He was previously engaged in the automotive repair business elsewhere and began moving his business to a 40 foot by 32 foot two bay structure on the subject premises in January, 1994. Currently he is operating an inspection station and automotive repair shop where he does anything from "replacing motors to brake jobs" for customers (T 1-22). He does this work without employees and works on two to four vehicles at anytime. Although there are no signs advertising the business Appellant is open from 8:30 a.m. to as late as 11:00 p.m. on a full-time basis (T 1-23). The number of daily customers varies. His tools include various hand tools, tire changers, wheel balancers and an anti-freeze recycler (T 1-22). In addition, Appellant allowed one of his customers, Matt Frederick, to store up to three triaxle

dump trucks on the property. These trucks are used by Mr. Frederick and his employees for hauling stone. Appellant performs "80%" of Mr. Frederick's mechanical work on these trucks (T 1-24).

Next the Court must determine how the property was being used before June 8, 1983. Jon Zinn testified that his grandfather built the garage so Mr. Zinn's father could have a shop to perform mechanical work on cars (T1-49). He noted that sometimes his father was serious about this automotive work (T1-49) but that sometime between 1976-8 his father quit working on cars for income and got into buying and selling horses (T 1-58). After that time the elder Mr. Zinn used the garage to work on his own cars (T 1-50). The elder Mr. Zinn died in 1982 (T 1-59) when his son was 18 years old (T 1-49).

From June, 1982, after he graduated from high school, through Spring 1983, Jon Zinn was employed full-time at a car dealership (T 1-60). Then during the balance of 1983 and into 1984 he tried to make a go of the automotive repair business in the garage on the subject premises (T 1-50). He would work on one car at a time and perhaps have another longer term project in the shop (T 1-61). He never had employees, a state inspection license, or as many as 4-5 customers at a time (T 1-62). The property was not leased for the storage of vehicles.

As noted above, the landowner (Appellants) have to present objective evidence showing the use of the premises before the ordinance was enacted. It is clear to the Court that from at least 1978 through the Spring of 1983 the garage was not being used as a business for automotive repairs. It is likewise clear that the storage of commercial vehicles was never a use exercised on the premises prior to enactment of the zoning ordinance. What isn't clear, however, is when Jon Zinn "tried to make a go" of an automotive repair business on the premises. Testimony reveals that it was sometime after the Spring of 1983 but otherwise the evidence is vague or nonexistent. The critical date is June 8, 1983, and Appellants have not objectively demonstrated that a nonconforming automotive business was in existence at that time. It's not unexpected that Mr. Zinn was unable to recall with exactitude what he was doing 13 years earlier when he was approximately 19 years old but a variance of several weeks would cause differing results. For this reason we conclude that the Board did not abuse its discretion in finding that "Prior to the adoption of the Conewago Township Zoning Ordinance, the property had not been used primarily as an auto and truck repair shop or a rental area for the storage of vehicles." (FOF #6) and in concluding that "The current use of the property is not a pre-existing nonconforming use." (Conclusion #5).

Even if the Board abused its discretion in reaching its conclusion that an automotive repair shop was not a pre-existing nonconforming use it is clear that use was abandoned prior to Appellants' purchase of the premises in October, 1993.

The party asserting an abandonment of a nonconforming use has the burden of proving that the owner or occupier of the land intended to abandon the use and that the use was actually abandoned. *Williams v. Salem Township*, 92 Pa. Comlth. Ct. 634, 636-7, 500 A.2d 933, 935 (1985), *Alloc. den.* 531 A.2d 781 (1987). It has been said that,

[w]hile nonuse or discontinuance of the use might be probative with respect to...actual abandonment - the intent to abandon could not be inferred from or established by a period of nonuse alone...Rather, the intent to abandon must be shown by the owner or occupier's overt acts or the failure to act, such as written or oral statements evincing an intent to abandon the use, structural alterations to the building inconsistent with continuance of the nonconforming use, or the failure to take some step such as license renewal necessary to the continuance of the use ...

*Smith v. Board of Zoning Appeals of the City of Scranton*, 74 Pa. Comlth. Ct. 405, 407-8, 459 A.2d 1350, 1352 (1983) (citations omitted).

Testimony revealed that in 1985, at age 21, Jon Zinn moved from the subject premises to an adjacent property (T 1-62). His mother continued to occupy the premises as the owner. After that time Jon Zinn used the garage occasionally for the next 5-6 years (T 1-54). Although Mr. Zinn secured a sales tax license in 1989, and perhaps earlier, that evidence is not crucial. It is clear that the premises were sold or leased to someone named "Dave" in May, 1990 or 1991 when the Zinn family moved out of the premises (T 1-63, 113). At that time, Mr. Zinn moved his business off the property and never used the premises for automotive repair work after that date (T 2-20). Subsequently, the property was sold to Mr. Moul who occupied the premises until October, 1993. Neither of the persons who occupied or owned the premises after the Zinn family vacated the premises conducted any automotive repair business (T 1-114-5). Thus, for anywhere from 29-41 months before Appellants bought the property no automotive repair business was conducted on the premises. These facts establish, at least circumstantially, the intent to abandon the nonconforming use.

It is recognized that denial of this appeal will work a substantial hardship on Appellants, however, they apparently purchased the property blindly and made no inquiry regarding the legality of their intended use.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 3rd day of October, 1996, the zoning appeal filed in the above matter 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 JAMES A. KIME, DEC'D**  
Late of 21 Stultz Road, Fairfield, Adams County, Pennsylvania  
Executrix: Nancy L. Wenschhof, 165 Crum Road, Fairfield, PA 17320  
Attorney: Matthew R. Battersby, Battersby & Sheffer, P. O. Box 215, 20 West Main Street, Fairfield, PA 17320

**ESTATE OF FLORENCE P. SHAFFER, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executor: Richard L. Shaffer, R. D. #3, Box 3421, Spring Grove, PA 17362-9461

**ESTATE OF DAVID F. SMITH, DEC'D**  
Late of the Borough of Abbottstown, Adams County, Pennsylvania  
Administrator: Michael C. Smith, R. D. #4, Box 4615, Spring Grove, PA 17362  
Attorney: Craig A. Diehl, Esquire, 402 North Main Street, Spring Grove, PA 17362

## SECOND PUBLICATION

**ESTATE OF AGNES CATHERINE BARNES, DEC'D**  
Late of Germany Township, Adams County, Pennsylvania  
Co-executors: Paul Robert Barnes, 4600 Muncaster Mill Road, Rockville, MD 20853; Lester Lee Barnes, 701 Littlestown Road, Littlestown, PA 17340; James Franklin Barnes, 12814 Sagamore Forest Drive, Reisterstown, MD 21136; Arthur Lou Barnes, 605 Prince Street, Littlestown, PA 17340; Darlene Agnes Guise, 675 Littlestown Road, Littlestown, PA 17340  
Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF GRACE E. MYERS, DEC'D**  
Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Administratrix c.t.a.: Mary Clare Russomanno, 517 Nye Avenue, Irvington, NJ 07111-3510  
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF GENEVA MAE ROTH, DEC'D**  
Late of Biglerville, Adams County, Pennsylvania  
Executor: James William Riley, 2921 Telican Avenue, Anchorage, Alaska 99515  
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF CLAIR E. SHERMEYER, a/k/a CLAIR EUGENE SHERMEYER, DEC'D**  
Late of Mt. Pleasant Township, Adams County, Pennsylvania  
Executors: Richard E. Shermeyer, 20 Cherry Lane, Abbottstown, PA 17301; Norma J. Woerner, 1380 Black Horse Tavern Road, Gettysburg, PA 17325  
Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

## THIRD PUBLICATION

**ESTATE OF DOROTHY R. MADDOX, DEC'D**  
Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Co-Executors: Joseph H. Maddox, 99 Park Heights, Hanover, PA 17331; Judith Ann Saylor, 1426 Shore Road, Linwood, NJ 08221

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-178 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike set in the centerline of Township Route T-423, at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence continuing in and along the center line of said Township Route, North 22 degrees 34 minutes 08 seconds East, 170 feet to a railroad spike at corner of Lot No. 3; thence by said Lot No. 3 South 67 degrees 25 minutes 52 seconds East, 405.50 feet to an iron pin at lands now or formerly of Merle C. Weant; thence by said lands of Merle C. Weant, South 18 degrees 42 minutes 53 seconds West, 170.39 feet to an iron pin at corner of Lot No. 1; thence by said Lot No. 1, North 67 degrees 25 minutes 52 seconds West, 416.95 feet to a railroad spike in the centerline of Township Route T-423, the point and place of BEGINNING. CONTAINING 1.605 acres

The above description was taken from a draft of survey prepared by Gettysburg

Engineering Company, Inc., dated November 14, 1974, and recorded in Plat Book 6 at page 9; revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 2.

IT BEING the same tract of land which Larry R. Kline and Phyllis M. Kline, husband and wife, by deed dated April 29, 1988, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 487 at page 1084 granted and conveyed unto Charles E. Stambaugh, Jr. and Judith Anne Stambaugh, husband and wife, the Defendants herein.

SUBJECT, NEVERTHELESS, to the restrictions as contained in Miscellaneous Book 30 at page 1.

IMPROVED WITH a single-family, brick frame split level dwelling with attached garage.

SEIZED and taken into execution as the property of **Charles E. Stambaugh, Jr. and Judith Anne Stambaugh** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 11, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

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## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Corporation Bureau of the Department of State of the Commonwealth of Pennsylvania for the purpose of incorporating a domestic business corporation.

1. The name of the corporation is L & M TIRE & WHEEL, INC. and its registered office is located at the following: 185 W. King Street, Abbottstown, PA 17301.

2. The Articles of Incorporation were filed pursuant to the provisions of the Pennsylvania Business Corporation Law, Act of December 21, 1988, P. L. 1444, as amended.

3. The business purpose of the corporation is: retail sales of tires, rims and hubcaps.

4. The Articles of Incorporation were filed with the Corporation Bureau of the Department of State on 07/02/97.

8/1

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-885 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain piece, parcel or tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to-wit:

BEGINNING at a point on the property line of Locust Lane, a fifty (50) foot street, at corner of Lot No. 580, on the hereinafter referred plan of lots; thence by said lot, South thirty-eight (38) degrees thirty-eight (38) minutes ten (10) seconds East, one hundred thirty and twelve hundredths (130.12) feet to a point at lands now or formerly of Bruce W. Stair; thence by said lands South forty-two (42) degrees twenty-five (25) minutes thirty-four (34) seconds West, one hundred sixteen and seven hundredths (116.07) feet to a point at corner of Lot No. 582 and lands now or formerly of Bruce W. Stair; thence by said lot North twenty-four (24) degrees three (03) minutes twenty (20) seconds West, one hundred fifty-nine and twenty-four hundredths (159.24) feet to a point at the property line of Locust Lane, aforesaid; thence by said street and by a curve to the right, the radius of which is one hundred eighty-five (185.00) feet, an arc length of forty-seven and eight hundredths (47.08) feet and having a long chord bearing and distance of North fifty-eight (58) degrees thirty-nine (39) minutes fifteen (15) seconds East, forty-six and ninety-five hundredths (46.95) feet to point on the property line of Locust Lane; aforesaid; thence by said street North fifty-one (51) degrees twenty-one (21) minutes fifty (50) seconds East, twenty-eight (28.00) feet to the point and place of BEGINNING. (CONTAINING 13,195 square feet and being known as Lot No. 581 on a plan of lots of Oxford Estates, Tract II - Phase Three, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 57, Page 42.)

BEING THE SAME PREMISES which Oxford Estates, a general partnership, by Mary Lee Kuhn, its Attorney-in-Fact, by deed dated May 29, 1992 and recorded June 2, 1992 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 0629, Page 0179, granted and conveyed unto Douglas R. Ream and Suzette R. Ream.

SEIZED and taken into execution as the property of **Douglas L. Ream, a/k/a Douglas R. Ream, a/k/a Douglas Lee Ream and Suzette R. Ream, a/k/a Suzette Renee Ream** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 16, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-122 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of the Lincoln Highway (U.S. Route 30) on line of lands now or formerly of C. W. Johnson; thence running in the center of said Lincoln Highway, North 39 degrees 39 minutes West, 150 feet to a point in the center of said Highway, at corner of lands now or formerly of Charles H. Drum; thence along said Drum lands, North 28 degrees 21 minutes East, 300 feet to a point; thence continuing by same, South 39 degrees 39 minutes East, 150 feet to an iron pin; thence by lands now or formerly of C. W. Johnson aforesaid, South 28 degrees 21 minutes West, 300 feet to the above described place of BEGINNING. CONTAINING 1 acre, more or less.

BEING the same tract of land which Rodney A. Rudisill and Judy G. Rudisill, husband and wife, by deed dated November 9, 1978, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 341 at page 952, sold and conveyed unto Paul E. Blough and Barbara A. Fissel, the Defendants herein.

IMPROVED WITH a two-bedroom rancher with a detached one-car garage.

SEIZED and taken into execution as the property of **Paul E. Blough and Barbara A. Fissel** and to be sold by me  
Bernard V. Miller  
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by

the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15



# *Adams County* Legal Journal

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Vol. 39

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No. 11, pp. 55-60

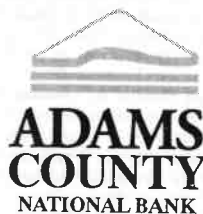
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## **IN THIS ISSUE**

**COLLINS VS.  
GETTYSBURG HOSPITAL AND SHAH**

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**Strong.  
Rooted Upon Traditional Values.  
Dedicated to Quality.  
Customer Service.  
Dependable.  
Branching Into The Future.  
Our Commitment Is You.**



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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-142 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described tract of land,

SITUATE, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and limited as follows, to Wit:

BEGINNING for a point at the corner of a ten (10) feet wide right-of-way on the western side of a forty (40) feet wide street known as Commerce Street and Lot No. 11 on the subdivision plan hereinafter referred to; thence along Lot No. 11 and through the partition wall of a townhouse, South seventy-two (72) degrees twenty (20) minutes fifty-two (52) seconds West, one hundred fifty (150) feet to a point at lands now or formerly of R. M. Wolfe, Inc.; thence along lands now or formerly of R. M. Wolfe, Inc., North seventeen (17) degrees thirty-nine (39) minutes eight (8) seconds West, eighteen (18) feet to a point at Lot No. 9 on the subdivision plan hereinafter referred to; thence along Lot No. 9 and through the partition wall of a townhouse, North seventy-two (72) degrees twenty (20) minutes fifty-two (52) seconds East, one hundred fifty (150) feet to a point on the western side of the ten (10) feet wide right-of-way, aforesaid; thence in and along the western edge of the ten (10) feet wide right-of-way of Commerce Street, South seventeen (17) degrees thirty-nine (39) minutes eight (8) seconds East, eighteen (18) feet to the point and place of beginning.

BEING known as Lot No. 10 on the subdivision plan hereinafter referred to and numbered 33 Commerce Street.

The foregoing description was prepared in accordance with a subdivision plan prepared by Thomas & Associates, Surveyors, dated April 27, 1978, and revised June 19, 1978, and designated as file No. D-35, which said plan, as approved by the appropriate municipal authorities, is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania.

TAX PARCEL NUMBER: #5-209

PREMISES: 33 COMMERCE STREET  
NEW OXFORD, PA 17350

TITLE TO SAID PREMISES IS VESTED IN Allen L. Schaeffer and Sandra L. Schaeffer, his wife by Deed from Stacy N. Slonaker and Robert A. Slonaker, her husband dated 12/29/95, recorded 1/4/96, in Deed Book 1131 page 210.

SEIZED and taken into execution as the property of **Allen and Sandra Schaeffer** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
May 20, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-178 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike set in the centerline of Township Route T-423, at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence continuing in and along the center line of said Township Route, North 22 degrees 34 minutes 08 seconds East, 170 feet to a railroad spike at corner of Lot No. 3; thence by said Lot No. 3 South 67 degrees 25 minutes 52 seconds East, 405.50 feet to an iron pin at lands now or formerly of Merle C. Weant; thence by said lands of Merle C. Weant, South 18 degrees 42 minutes 53 seconds West, 170.39 feet to an iron pin at corner of Lot No. 1; thence by said Lot No. 1, North 67

degrees 25 minutes 52 seconds West, 416.95 feet to a railroad spike in the centerline of Township Route T-423, the point and place of BEGINNING. CONTAINING 1.605 acres

The above description was taken from a draft of survey prepared by Gettysburg Engineering Company, Inc., dated November 14, 1974, and recorded in Plat Book 6 at page 9; revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 2.

IT BEING the same tract of land which Larry R. Kline and Phyllis M. Kline, husband and wife, by deed dated April 29, 1988, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 487 at page 1084 granted and conveyed unto Charles E. Stambaugh, Jr. and Judith Anne Stambaugh, husband and wife, the Defendants herein.

**SUBJECT, NEVERTHELESS, to the restrictions as contained in Miscellaneous Book 30 at page 1.**

IMPROVED WITH a single-family, brick frame split level dwelling with attached garage.

SEIZED and taken into execution as the property of **Charles E. Stambaugh, Jr. and Judith Anne Stambaugh** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 11, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

## COLLINS VS. GETTYSBURG HOSPITAL AND SHAH

1. Stating that one acted recklessly does not make it so and that conclusion must be supported by specific factual averment which are substantially greater than that required for negligent conduct.

2. There is support for the proposition that Plaintiff should be given greater leeway in his pleading where and adverse party has exclusive or superior knowledge of crucial facts however, to obtain that latitude, he should plead the existence of that superior knowledge.

3. While there are three approaches which could be taken if response to motions for more specificity filed to general allegations of negligence, the one this Court finds most worthy is to permit only specific allegations on the theory that one should not be permitted to "discover" their way to a lawsuit.

4. If there are separate causes of action, there must be separate counts.

5. The duties are sufficiently different under vicarious and corporate negligence theories because of the identity of the initial tortfeasor so that Rule 1020 (d) (1) requires those theories to be set forth in separate counts.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-507, JOHN COLLINS AS ADMINISTRATOR OF THE ESTATE OF JOHANNA COLLINS AND INDIVIDUALLY IN HIS OWN RIGHT VS. GETTYSBURG HOSPITAL AND SATISH A. SHAH, M.D.

Joseph Messa, Esq., for Plaintiff

Evan Black, Esq., for Defendant Hospital

Michael M. Badowski, Esq., for Defendant Shah

### OPINION ON PRELIMINARY OBJECTIONS FILED BY DEFENDANT, GETTYSBURG HOSPITAL

Kuhn, J., October 10, 1996.

Plaintiff, John Collins, filed a multi-count Complaint against Gettysburg Hospital and Satish A. Shah, M.D. Therein Plaintiff alleges that on June 4, 1992, his wife, Johanna Collins, began procedures which eventually led to the discovery of a cancerous mass. She donated her own blood for use during surgical procedures which tested negative for the Hepatitis B surface antigen. She underwent surgery in February, 1993. Chemotherapy treatments began on April 12, 1993, under the supervision of Dr. Shah. On three subsequent occasions she presented complaints of complications to Dr. Shah and upon admission to Gettysburg Hospital on June 24, 1993, she was diagnosed with acute Hepatitis B. Eventually Mrs. Collins died on July 22, 1993 of complications resulting from the acute Hepatitis B.

Count I is a Wrongful Death claim and Count II is a Survival Action against both defendants in which it is alleged that the defendants negligently, carelessly and recklessly exposed Mrs. Collins to the

Hepatitis B and then failed to timely diagnose and treat the condition. Count IV is a negligence claim against Gettysburg Hospital.

Gettysburg Hospital has filed several preliminary objections which are before the Court for disposition.

First, Gettysburg Hospital demurs to any claim for punitive damages. Specifically, Defendant is concerned that allegations that it acted “negligently, carelessly and recklessly,” or with “negligence, carelessness and recklessness,” or with “gross negligence” in Paragraphs 25, 27, 36, 41, 41(n), 44 and 45 would permit Plaintiff to assert a claim for punitive damages even though no such request is made in the Complaint.

With respect to a demurrer, the law is well settled. A demurrer admits all well pleaded and material facts set forth in a complaint as well as all inferences reasonably deducible therefrom. It does not admit conclusions of law but does test the legal sufficiency of the pleadings. Therefore, the demurrer will only be sustained where the law says with certainty that the plaintiff has failed to state a cause of action for which relief can be granted. *Seils v. Gettysburg Area Industrial Development Authority*, 37 Ad. Co. L.J. 67, 69 (1995).

Defendant’s concern regarding allegations of gross negligence is misplaced. Allegations of gross negligence are insufficient for the awarding of punitive damages. *Smith v. Celotex Corp.*, 387 Pa. Super. 340, 345, 564 A.2d 209, 211 (1989); *Harvey v. Hassinger*, 315 Pa. Super. 97, 104, 461 A.2d 814, 817 (1983).

Next we point out that Plaintiff is not entitled to punitive damages under the Wrongful Death count, *Harvey v. Hassinger*, supra.

Punitive damages are awarded only when a defendant’s conduct is outrageous or involves reckless indifference. §908 Restatement (Second) Torts. Where punitive damages have not been requested terms such as “reckless” could be ignored as surplusage.

Here, however, as noted, Defendant fears amendment. Stating that one acted recklessly does not make it so and that conclusion must be supported by specific factual averments which are substantially greater than that required for negligent conduct. *Moran v. G. & W.H. Corson, Inc.*, 402 Pa. Super. 101, 113-4, 586 A.2d 416, 422-3 (1991), Alloc. den. 602 A.2d 860 (1992). A review of the Complaint reveals no such averments. Therefore, even if punitive damages were requested the state of the record would not support such a claim. Under the circumstances it seems proper to strike all references to variations of the word “reckless” in the aforementioned paragraphs. If Plaintiff can support this claim with factual averments amendment may be sought.

Next Defendant moves to strike reference to “inter alia” in the introductory portion of Paragraph 41 as well as subparts (b), (d), (h),

(j), (k), (l), (m) and (n) for failure to set forth allegations of negligence with specificity. The averments at issue are:

41. The negligence, carelessness, recklessness and/or other liability producing conduct of the Defendant, Gettysburg, by and through its agents (actual, apparent, ostensible), servants, workers and employees consisted of, inter alia, the following:

...

(b) Failing to properly train and supervise personnel under its control in the performance of the treatment and medical care provided to Plaintiff's decedent, Johanna Collins;

...

(d) Failing to possess the skill, training, knowledge and judgment of members of the medical community similarly situated;

...

(h) failing to adequately and properly train, supervise, hire and/or otherwise be responsible for the actions of specialists, doctors, nurses, technicians and other medical personnel treating and caring for Johanna Collins;

(j) Failing to provide reasonable medical care to Johanna Collins;

(k) Failing to adequately instruct, supervise and control those persons who participated in the care and treatment of Johanna Collins;

(l) Failing to supply, furnish or provide reasonable and skilled medical care to Johanna Collins;

(m) Failing to formulate, adopt and enforce adequate rules and policies to insure care to Johanna Collins;

(n) such other actions of negligence, careless and/or recklessness as may be discovered during the course of discovery or at the trial in this case.

A motion to strike is appropriate where a pleading fails to conform to law or rule of court. Pa. R.C.P. 1028(a)(2). Pleading rules require that material facts on which a cause of action is based must be stated in a concise and summary form. Pa. R.C.P. 1019(a). The rules also permit preliminary objections challenging the sufficiency of the specificity in the pleading. In this case both motions are so intertwined they must be considered together.

Superior Court in *Baker v. Rangos*, 229 Pa. Super. 333, 324 A.2d 498 (1974) set forth the standard for pleading material facts. It stated,

Rule 1019(a) requires fact pleading . . . “The purpose of [1019(a)] is to require the pleader to disclose the ‘material facts’ sufficient to enable the adverse party to prepare his case.” . . . A complaint therefore must do more than “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” . . . It should formulate the issues by fully summarizing the material facts. “Material facts” are “ultimate facts,” i.e. those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged . . . Allegations will withstand challenge under 1019(a) if (1) they contain averments of all of the facts the plaintiff will eventually have to prove in order to recover . . . and (2) they are “sufficiently specific so as to enable defendant to prepare his defense,” . . .

229 Pa. Super. at 349-50, 324 A.2d at 505-6 (citations omitted).

More recently Superior Court added that,

Pa. R.C.P. 1019(a) has been construed to mean that the complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim . . . We recognize the proposition that the Rules of Civil Procedure are to be liberally interpreted. See Pa. R.C.P. 126. “However, liberal construction does not entail total disregard of those rules concerning pleading” . . .

*Krajsa v. Key punch, Inc.*, 424 Pa. Super. 230, 235, 622 A.2d 355, 357 (1993).

The hospital argues that the allegations of negligence recited above are so general that they fail to specifically inform it of its alleged negligent activities. Plaintiff counters that in a medical malpractice case he should be given more leniency because the hospital and doctor have superior knowledge about details of the medical procedures and records involved. There is certainly support for the proposition that Plaintiff should be given greater leeway where an adverse party has exclusive or superior knowledge of crucial facts, however, to obtain that latitude he should plead the existence of that superior knowledge. *Baker v. Rangos*, supra., 324 A.2d at 506, n. 4. Here, Plaintiff did not plead superior knowledge so he ordinarily would not be entitled to special leniency. *Id.*

Gettysburg Hospital relies upon *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983). In that case the court observed in footnote #3 that a defendant must move to strike or seek a more specific pleading when the plaintiff avers a general allegation of negligence<sup>1</sup> otherwise it is assumed that the defendant understood the allegation well enough to respond. We have reviewed numerous cases discussing general allegations of negligence. Consensus is difficult to discern.

In our opinion Judge Dowling's decision in *Starr v. Myers*, 109 Dauphin 147 (1988), offers perhaps the best analysis and approach. He articulately noted that,

Perhaps the most prolific source of preliminary objections are those demurrers, motions to strike, and motions for more specificity filed to general allegations of negligence. Behind this facade of conclusion pleading lies a far more fundamental concern than averment exactitude or allegata exuberance. Beneath the veneer is the specter of statute of limitations, amplified by the substantive discovery principle and augmented by the procedural rules of discovery. 109 Dauphin 147-8.

Judge Dowling suggested three approaches which could be taken in response to the issue. The first course is to "permit boilerplate allegations and allow the parties to have recourse to discovery to flesh out the non-specific allegations." P. 153. The second approach is "to allow general averments of negligence so long as they relate back to the specific allegations." P. 153-4. The third avenue "is to permit only specific allegations on the theory that one should not be permitted to 'discover' their way to a lawsuit." P. 154.

The latter procedure was adopted in *Starr* 'and is the one we find most worthy. Even if the second approach would be utilized we find no specific allegations which support the general averments at issue. We will, therefore, strike those paragraphs at issue. Discovery has been ongoing and Plaintiff is well aware of his right to amend.

Finally, Gettysburg Hospital contends that Count III involves two distinct negligent theories which must be delegated to separate counts. Pa. C.S.P. 1020(d)(1) requires that separate causes of action arising out of the same occurrence shall be joined in separate counts against the defendant. Plaintiff acknowledges that in Count III he is alleging the hospital's vicarious liability for the negligence of its employees or agents as well as liability for corporate negligence. Plaintiff argues, however, that there is but a single cause of action for negligence in

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<sup>1</sup>In that case an averment that the defendant "otherwise fail[ed] to use care and caution under the circumstances."

Count III even though he has alleged several theories under which the hospital can be found negligent.

The resolution of this issue revolves about an understanding of the term "cause of action" because if there are separate causes of action there must be separate counts, if not, a single count is permissible. A "cause of action" is the unlawful violation of a duty which the facts pleaded disclose no matter how many breaches there may be of that single duty.

In both the vicarious and corporate theories of hospital liability there is a duty owed to a patient. However, there is a distinct difference between the theories on who initially owes the duty to the patient. For vicarious liability to be imposed it is the breach of a duty by an individual for whom the hospital is responsible under a theory of respondeat superior or ostensible agency. A theory of corporate liability requires a plaintiff to show that the hospital itself is breaching a duty. *Edwards v. Brandywine Hospital*, 438 Pa. Super. 673, 682, 652 A.2d 1382, 1386 (1995); *Thompson v. Nason Hospital*, 527 Pa. 330, 591 A.2d 703 (1991).

We have found little guidance in this area but we conclude that the duties are sufficiently different under vicarious and corporate negligence theories because of the identity of the initial tortfeasor that Rule 1020(d)(1) requires those theories to be set forth in separate counts. Amendment rather than dismissal is appropriate. *MacGreagor v. Medig, Inc.*, 395 Pa. Super. 221, 576 A.2d 1123 (1990).

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 10th day of October, 1996, in consideration of Preliminary Objections filed by Defendant, Gettysburg Hospital, it is directed that:

1. The words "recklessness" or "recklessly" in Paragraphs 25, 27, 36, 41, 41(n), 44 and 45 are stricken.
2. The words "inter alia" in the introductory portion of Paragraph 41 is stricken.
3. Paragraphs 41(b), (d), (h), (j), (k), (l), (m) and (n) are stricken.
4. Plaintiff is directed to set forth its theories of vicarious liability and corporate liability as against Defendant, Gettysburg Hospital, in separate counts.
5. Plaintiff is granted leave to amend the Complaint within 20 days after the date of mailing of this Order.



## 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 EMMA P. COVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: James E. Cover, Jr., 406 Wirt Avenue, Hanover, PA 17331; Maryann Krentler, 319 E. Pleasant Street, Hanover, PA 17331  
 Attorney: William W. Hafer, 215 Baltimore Street, Hanover, PA 17331

## ESTATE OF DENNIS A. EPLEY, a/k/a DENNIS ALLEN EPLEY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania  
 Co-Executors: William D. Epley, 1327 East Walnut Street, Hanover, PA 17331; Larry S. Epley, 904 Armstrong Road, Carlisle, PA 17013  
 Attorney: Neil Hendershot, Esquire, Goldberg, Katzman & Shipman, P.C., 320 Market Street, P.O. Box 1268, Harrisburg, PA 17108-1268

## ESTATE OF ALLENA LARSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania  
 Administratrix: Lee Ann Larson, 126 Artillery Drive, Gettysburg, PA 17325  
 Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF ROBERT A. M. WAY-BRIGHT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: John R. Waybright, 911 Stoverstown Road, York, PA 17404  
 Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF JAMES A. KIME, DEC'D

Late of 21 Stultz Road, Fairfield, Adams County, Pennsylvania  
 Executrix: Nancy L. Wenschhof, 165 Crum Road, Fairfield, PA 17320  
 Attorney: Matthew R. Battersby, Battersby & Sheffer, P.O. Box 215, 20 West Main Street, Fairfield, PA 17320

## ESTATE OF FLORENCE P. SHAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Richard L. Shaffer, R. D. #3, Box 3421, Spring Grove, PA 17362-9461

## ESTATE OF DAVID F. SMITH, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania  
 Administrator: Michael C. Smith, R. D. #4, Box 4615, Spring Grove, PA 17362  
 Attorney: Craig A. Diehl, Esquire, 402 North Main Street, Spring Grove, PA 17362

## THIRD PUBLICATION

## ESTATE OF AGNES CATHERINE BARNES, DEC'D

Late of Germany Township, Adams County, Pennsylvania  
 Co-executors: Paul Robert Barnes, 4600 Muncaster Mill Road, Rockville, MD 20853; Lester Lee Barnes, 701 Littlestown Road, Littlestown, PA 17340; James Franklin Barnes, 12814 Sagamore Forest Drive, Reisterstown, MD 21136; Arthur Lou Barnes, 605 Prince Street, Littlestown, PA 17340; Darlene Agnes Guise, 675 Littlestown Road, Littlestown, PA 17340

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

## ESTATE OF GRACE E. MYERS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Administratrix c.t.a.: Mary Clare Russomanno, 517 Nye Avenue, Irvington, NJ 07111-3510  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF GENEVA MAE ROTH, DEC'D

Late of Biglerville, Adams County, Pennsylvania  
 Executor: James William Riley, 2921 Telican Avenue, Anchorage, Alaska 99515  
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF CLAIR E. SHERMEYER, a/k/a CLAIR EUGENE SHERMEYER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania  
 Executors: Richard E. Shermeyer, 20 Cherry Lane, Abbottstown, PA 17301; Norma J. Woerner, 1380 Black Horse Tavern Road, Gettysburg, PA 17325  
 Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

## FICTITIOUS NAME NOTICE

**NOTICE IS HEREBY GIVEN** that an Application for Registration of a Fictitious Name, WDR SERVICE, for the conduct of business in Cumberland County, Pennsylvania, with a principal place of business being 2022 Baltimore Pike, East Berlin, Pennsylvania, 17316 was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on July 30, 1997 pursuant to the Act of Assembly of December 16, 1982, Act 295. The name and address of the interested party in said business is Douglas Replogle, 2022 Baltimore Pike, East Berlin, Pennsylvania, 17316.

8/8

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-885 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain piece, parcel or tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to-wit:

BEGINNING at a point on the property line of Locust Lane, a fifty (50) foot street, at corner of Lot No. 580, on the hereinafter referred plan of lots; thence by said lot, South thirty-eight (38) degrees thirty-eight (38) minutes ten (10) seconds East, one hundred thirty and twelve hundredths (130.12) feet to a point at lands now or formerly of Bruce W. Stair; thence by said lands South forty-two (42) degrees twenty-five (25) minutes thirty-four (34) seconds West, one hundred sixteen and seven hundredths (116.07) feet to a point at corner of Lot No. 582 and lands now or formerly of Bruce W. Stair; thence by said lot North twenty-four (24) degrees three (03) minutes twenty (20) seconds West, one hundred fifty-nine and twenty-four hundredths (159.24) feet to a point at the property line of Locust Lane, aforesaid; thence by said street and by a curve to the right, the radius of which is one hundred eighty-five (185.00) feet, an arc length of forty-seven and eight hundredths (47.08) feet and having a long chord bearing and distance of North fifty-eight (58) degrees thirty-nine (39) minutes fifteen (15) seconds East, forty-six and ninety-five hundredths (46.95) feet to point on the property line of Locust Lane; aforesaid; thence by said street North fifty-one (51) degrees twenty-one (21) minutes fifty (50) seconds East, twenty-eight (28.00) feet to the point and place of BEGINNING. (CONTAINING 13,195 square feet and being known as Lot No. 581 on a plan of lots of Oxford Estates, Tract II - Phase Three, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 57, Page 42.)

BEING THE SAME PREMISES which Oxford Estates, a general partnership, by Mary Lee Kuhn, its Attorney-in-Fact, by deed dated May 29, 1992 and recorded June 2, 1992 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 0629, Page 0179, granted and conveyed unto Douglas R. Ream and Suzette R. Ream.

SEIZED and taken into execution as the property of **Douglas L. Ream, a/k/a Douglas R. Ream, a/k/a Douglas Lee Ream and Suzette R. Ream, a/k/a Suzette Renee Ream** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 16, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-122 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of the Lincoln Highway (U.S. Route 30) on line of lands now or formerly of C. W. Johnson; thence running in the center of said Lincoln Highway, North 39 degrees 39 minutes West, 150 feet to a point in the center of said Highway, at corner of lands now or formerly of Charles H. Drum; thence along said Drum lands, North 28 degrees 21 minutes East, 300 feet to a point; thence continuing by same, South 39 degrees 39 minutes East, 150 feet to an iron pin; thence by lands now or formerly of C. W. Johnson aforesaid, South 28 degrees 21 minutes West, 300 feet to the above described place of BEGINNING. CONTAINING 1 acre, more or less.

BEING the same tract of land which Rodney A. Rudisill and Judy G. Rudisill, husband and wife, by deed dated November 9, 1978, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 341 at page 952, sold and conveyed unto Paul E. Blough and Barbara A. Fissel, the Defendants herein.

IMPROVED WITH a two-bedroom rancher with a detached one-car garage.

SEIZED and taken into execution as the property of **Paul E. Blough and Barbara A. Fissel** and to be sold by me

Bernard V. Miller  
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless ex-

ceptions 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.

8/1, 8 & 15

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-629 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or land SITUATE in Mt. Joy Township, Adams County, Pennsylvania, being more particularly described as Lot No. 260-A on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Deed Book 4, Page 427.

SUBJECT to all legal highways, easements, rights of way and restrictions of record.

TOGETHER with the rights and privileges, and SUBJECT to the restrictions, conditions and agreements contained in the prior Deeds of conveyance.

BEING Map 4, Parcel 71.

HAVING thereon erected a dwelling house know as 260 Thomas Drive, Gettysburg, PA 17325.

TITLE to said premises is vested in George R. Cathcart, Jr. and Linda D. Cathcart, husband and wife, by Deed from Robert J. McGeehan and Carol A. McGeehan, dated 6/18/92 and recorded 6/19/92 in Record Book 631, Page 622.

SEIZED and taken into execution as the property of **George R. Cathcart, Jr. and Linda D. Cathcart** and to be sold by me

Bernard V. Miller  
Sheriff  
Sheriff's Office, Gettysburg, PA  
July 23, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/8, 15 & 22

# Adams County Legal Journal

Vol. 39

August 15, 1997

No. 12, pp. 61-66

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-97 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four (4) tracts of land situated, lying and being in Carroll Valley (formerly Liberty Township), Adams County, Pennsylvania, being Lots 148, 149, 150, and 201, all in Section B, Charnita, Inc., more particularly bounded and described as follows:

### Lot No. 148

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 147; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 202; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 149; thence by said lot North 3 degrees 21 minutes 40 seconds West 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section B Supplemental, Charnita," dated July 10, 1965, and prepared by Gordon L. Brown, R.S., and which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Docket 4 at Page 654.

### Lot No. 149

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 148, thence

by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 201; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 150; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East, 100 feet to the place of BEGINNING.

### Lot No. 150

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 149; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 200; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 151; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East 100 feet to the place of BEGINNING.

### Lot No. 201

BEGINNING at a point in the center of Eagles Trail at Lot No. 200; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to Lot No. 149; thence by said lot North 86 degrees 38 minutes 20 seconds East, 100 feet to Lot No. 202; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to a point in the center of said Eagles Trail; thence in said Eagles Trail South 86 degrees 38 minutes 20 seconds West, 100 feet to the place of BEGINNING.

BEING THE SAME LOTS OF LAND WHICH Jack B. Williams and Pansy L. Williams, husband and wife, by their Deed dated December 30, 1986, and recorded

December 30, 1986 in the Office of the Recorder of Deeds of Adams County at Deed Book Volume 445, page 955, granted and conveyed to Cheryl J. Shew, a single woman.

SUBJECT TO notations, easements and conditions as set forth on the plan in Miscellaneous Book 4, Page 654, and which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania. AND SUBJECT TO reservations and restrictions contained in Deed Book 259 at page 872.

IMPROVED with a dwelling known as 29 Meadowlark Trail, Fairfield, PA 17320.

MAP NO.: 29-158

SEIZED and taken into execution as the property of Cheryl J. Shew and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 6, 1997.

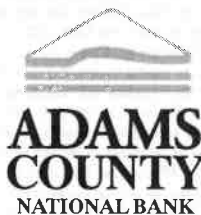
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 20, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/15, 22 & 29

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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-142 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described tract of land,

SITUATE, lying and being in the Borough of New Oxford, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a point at the corner of a ten (10) feet wide right-of-way on the western side of a forty (40) feet wide street known as Commerce Street and Lot No. 11 on the subdivision plan hereinafter referred to; thence along Lot No. 11 and through the partition wall of a townhouse, South seventy-two (72) degrees twenty (20) minutes fifty-two (52) seconds West, one hundred fifty (150) feet to a point at lands now or formerly of R. M. Wolfe, Inc.; thence along lands now or formerly of R. M. Wolfe, Inc., North seventeen (17) degrees thirty-nine (39) minutes eight (8) seconds West, eighteen (18) feet to a point at Lot No. 9 on the subdivision plan hereinafter referred to; thence along Lot No. 9 and through the partition wall of a townhouse, North seventy-two (72) degrees twenty (20) minutes fifty-two (52) seconds East, one hundred fifty (150) feet to a point on the western side of the ten (10) feet wide right-of-way, aforesaid; thence in and along the western edge of the ten (10) feet wide right-of-way of Commerce Street, South seventeen (17) degrees thirty-nine (39) minutes eight (8) seconds East, eighteen (18) feet to the point and place of beginning.

BEING known as Lot No. 10 on the subdivision plan hereinafter referred to and numbered 33 Commerce Street.

The foregoing description was prepared in accordance with a subdivision plan prepared by Thomas & Associates, Surveyors, dated April 27, 1978, and revised June 19, 1978, and designated as file No. D-35, which said plan, as approved by the appropriate municipal authorities, is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania.

TAX PARCEL NUMBER: #5-209

PREMISES: 33 COMMERCE STREET  
NEW OXFORD, PA 17350

TITLE TO SAID PREMISES IS VESTED IN Allen L. Schaeffer and Sandra L. Schaeffer, his wife by Deed from Stacy N. Slonaker and Robert A. Slonaker, her husband dated 12/29/95, recorded 1/4/96, in Deed Book 1131 page 210.

SEIZED and taken into execution as the property of **Allen and Sandra Schaeffer** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
May 20, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-178 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike set in the centerline of Township Route T-423, at corner of Lot No. 1 on the hereinafter referred to draft of survey; thence continuing in and along the center line of said Township Route, North 22 degrees 34 minutes 08 seconds East, 170 feet to a railroad spike at corner of Lot No. 3; thence by said Lot No. 3 South 67 degrees 25 minutes 52 seconds East, 405.50 feet to an iron pin at lands now or formerly of Merle C. Weant; thence by said lands of Merle C. Weant, South 18 degrees 42 minutes 53 seconds West, 170.39 feet to an iron pin at corner of Lot No. 1; thence by said Lot No. 1, North 67

degrees 25 minutes 52 seconds West, 416.95 feet to a railroad spike in the centerline of Township Route T-423, the point and place of BEGINNING. CONTAINING 1.605 acres

The above description was taken from a draft of survey prepared by Gettysburg Engineering Company, Inc., dated November 14, 1974, and recorded in Plat Book 6 at page 9; revised January 8, 1979, and re-recorded in Plat Book 26 at page 30, designating the above as Lot No. 2.

IT BEING the same tract of land which Larry R. Kline and Phyllis M. Kline, husband and wife, by deed dated April 29, 1988, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 487 at page 1084 granted and conveyed unto Charles E. Stambaugh, Jr. and Judith Anne Stambaugh, husband and wife, the Defendants herein.

SUBJECT, NEVERTHELESS, to the restrictions as contained in Miscellaneous Book 30 at page 1.

IMPROVED WITH a single-family, brick frame split level dwelling with attached garage.

SEIZED and taken into execution as the property of **Charles E. Stambaugh, Jr. and Judith Anne Stambaugh** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 11, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

## COLLINS VS. GETTYSBURG HOSPITAL AND SHAH

1. Pa. R.C.P. 1019 (a) has been construed to mean that the complaint must not only apprise the Defendant of the claim being asserted but it must also summarize the essential facts to support the claim.
2. The Court will permit only specific allegations of negligence on a theory that one should not be permitted to "discover" their way to a lawsuit.
3. Allegations of gross negligence are insufficient for the awarding of punitive damages.
4. Plaintiff is not entitled to punitive damages under the Wrongful Death count.
5. Stating that one acted recklessly does not make it so and that conclusion must be supported by specific factual averments which are substantially greater than that required for negligent conduct.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-507, JOHN COLLINS AS ADMINISTRATOR OF THE ESTATE OF JOHANNA COLLINS AND INDIVIDUALLY IN HIS OWN RIGHT VS. GETTYSBURG HOSPITAL AND SATISH A. SHAH, M.D.

Joseph Messa, Esq., for Plaintiff

Evan Black, Esq., for Defendant Hospital

Michael M. Badowski, Esq., for Defendant Shah

### OPINION ON PRELIMINARY OBJECTIONS FILED BY DEFENDANT, SATISH A. SHAH, M.D.

Kuhn, J., October 10, 1996.

Plaintiff, John Collins, filed a multi-count Complaint against Gettysburg Hospital and Satish A. Shah, M.D. Therein Plaintiff alleges that on June 4, 1992, his wife, Johanna Collins, began procedures which eventually led to the discovery of a cancerous mass. She donated her own blood for use during surgical procedures which tested negative for the Hepatitis B surface antigen. She underwent surgery in February, 1993. Chemotherapy treatments began on April 12, 1993, under the supervision of Dr. Shah. On three subsequent occasions she presented complaints of complications to Dr. Shah and upon admission to Gettysburg Hospital on June 24, 1993, she was diagnosed with acute Hepatitis B. Eventually Mrs. Collins died on July 22, 1993 of complications resulting from the acute Hepatitis B.

Count I is a Wrongful Death claim and Count II is a Survival Action against both defendants in which it is alleged that the defendants negligently, carelessly and recklessly exposed Mrs. Collins to the Hepatitis B and then failed to timely diagnose and treat the condition. Count IV is a negligence claim against Dr. Shah.

Dr. Shah has filed several preliminary objections which are before the Court for disposition.

First, Dr. Shah argues that Paragraphs 49(b), (e), (i), (k), (l), (m) and (r) of the Complaint should be stricken for failure to set forth allegations of negligence with specificity or at least that Plaintiff be required to replead with more specificity. The averments at issue are:

49. The negligence, carelessness, gross negligence of the Defendant, Dr. Shah, consisted of:

...

(b) Failing to properly train and supervise personnel who are under its control in the performance of the treatment and medical care provided to Plaintiff's decedent, Johanna Collins;

...

(e) Failing to possess the skill, training, knowledge and judgment of members in the medical community similarly situated;

...

(c) Failing to adequately and properly train, supervise, hire and/or otherwise be responsible for the actions of specialists, doctors, nurses, technicians and other medical personnel treating and caring for Johanna Collins;

...

(k) Failing to provide reasonable medical care to Johanna Collins;

(l) Failing to adequately instruct, supervise and control those persons who participated in the care and treatment of Johanna Collins;

(m) Failing to supply, furnish or provide reasonable and skilled medical care to Johanna Collins;

...

(r) Such other actions of negligence, careless and/or recklessness as may be discovered during the course of discovery or at the trial in this case.

A motion to strike is appropriate where a pleading fails to conform to law or rule of court. Pa. R.C.P. 1028(a)(2). Pleading rules require that material facts on which a cause of action is based must be stated in a concise and summary form. Pa. R.C.P. 1019(a). The rules also permit preliminary objections challenging the sufficiency of the specificity in the pleading. In this case both motions are so intertwined they must be considered together.

Superior Court in *Baker v. Rangos*, 229 Pa. Super. 333, 324 A.2d 498 (1974) set forth the standard for pleading material facts. It stated,

Rule 1019(a) requires fact pleading . . . “The purpose of [1019(a)] is to require the pleader to disclose the ‘material facts’ sufficient to enable the adverse party to prepare his case.” . . . A complaint therefore must do more than “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” . . . It should formulate the issues by fully summarizing the material facts. “Material facts” are “ultimate facts,” i.e. those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged . . . Allegations will withstand challenge under 1019(a) if (1) they contain averments of all of the facts the plaintiff will eventually have to prove in order to recover . . . and (2) they are “sufficiently specific so as to enable defendant to prepare his defense,” . . .

229 Pa. Super. at 349-50, 324 A.2d at 505-6 (citations omitted).

More recently Superior Court added that,

Pa. R.C.P. 1019(a) has been construed to mean that the complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim . . . We recognize the proposition that the Rules of Civil Procedure are to be liberally interpreted. See Pa. R.C.P. 126. “However,

liberal construction does not entail total disregard of those rules concerning pleading” . . .

*Krajsa v. Keypunch, Inc.*, 424 Pa. Super. 230, 235, 622 A.2d 355, 357 (1993).

Dr. Shah argues that the allegations of negligence recited above are so general that they fail to specifically inform him of his alleged negligent activities. Plaintiff counters that in a medical malpractice case he should be given more leniency because the hospital and doctor have superior knowledge about details of the medical procedures and records involved. There is certainly support for the proposition that Plaintiff should be given greater leeway where an adverse party has exclusive or superior knowledge of crucial facts, however, to obtain that latitude he should plead the existence of that superior knowledge. *Baker v. Rangos*, supra., 324 A.2d at 506, n. 4. Here, Plaintiff did not plead superior knowledge so he ordinarily would not be entitled to special leniency. *Id.*

Dr. Shah relies upon *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983). In that case the court observed in footnote #3 that a defendant must move to strike or seek a more specific pleading when the plaintiff avers a general allegation of negligence<sup>1</sup> otherwise it is assumed that the defendant understood the allegation well enough to respond. We have reviewed numerous cases discussing general allegations of negligence. Consensus is difficult to discern.

In our opinion Judge Dowling’s decision in *Starr v. Myers*, 109 Dauphin 147 (1988), offers perhaps the best analysis and approach. He articulately noted that,

Perhaps the most prolific source of preliminary objections are those demurrers, motions to strike, and motions for more specificity filed to general allegations of negligence. Behind this facade of conclusion pleading lies a far more fundamental concern than averment exactitude or allegata exuberance. Beneath the veneer is the specter of statute of limitations, amplified by the substantive discovery principle and augmented by the procedural rules of discovery. 109 Dauphin 147-8.

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<sup>1</sup>In that case an averment that the defendant “otherwise fail[ed] to use care and caution under the circumstances.”



Judge Dowling suggested three approaches which could be taken in response to the issue. The first course is to “permit boilerplate allegations and allow the parties to have recourse to discovery to flesh out the non-specific allegations.” P. 153. The second approach is “to allow general averments of negligence so long as they relate back to the specific allegations.” P. 153-4. The third avenue “is to permit only specific allegations on the theory that one should not be permitted to ‘discover’ their way to a lawsuit.” P. 154.

The latter procedure was adopted in *Starr* and is the one we find most worthy. Even if the second approach would be utilized we find no specific allegations which support the general averments at issue. We will, therefore, strike those paragraphs at issue. Discovery has been ongoing and Plaintiff is well aware of his right to amend.

Next Dr. Shah requests that Paragraphs 25, 27, 36, 48, 49, 49(r), 52, 53 and 54 be stricken from the Complaint. Each paragraph refers to the defendant’s negligent, careless and reckless conduct and Paragraphs 36, 48, and 49 add the words gross negligence. Defendant fears that by allowing these allegations to remain Plaintiff will be able to later amend to seek punitive damages. The Complaint at present, does not specifically seek punitive damages.

Defendant’s concern regarding allegations of gross negligence is misplaced. Allegations of gross negligence are insufficient for the awarding of punitive damages. *Smith v. Celotex Corp.*, 387 Pa. Super. 340, 345, 564 A.2d 209, 211 (1989), Alloc. den. 571 A.2d 383 (19\_\_); *Harney v. Hassinger*, 315 Pa. Super. 97, 104, 461 A.2d 814, 817 (1983).

Next we point out that Plaintiff is not entitled to punitive damages under the Wrongful Death count, *Harvey v. Hassinger*, supra.

Punitive damages are awarded only when a defendant’s conduct is outrageous or involves reckless indifference. §908 Restatement (Second) Torts. Where punitive damages have not been requested terms such as “reckless” could be ignored as surplusage.

Here, however, as noted, Defendant fears amendment. Stating that one acted recklessly does not make it so and that conclusion must be supported by specific factual averments which are substantially greater than that required for negligent conduct. *Moran v. G. & W.H. Corson, Inc.*, 402 Pa. Super. 101, 113-4, 586 A.2d 416, 422-3 (1991), Alloc. den. 602 A.2d 860 (1992). A review of the

Complaint reveals no such averments. Therefore, even if punitive damages were requested the state of the record would not support such a claim. Under the circumstances it seems proper to strike all references to variations of the word "reckless" in the aforementioned paragraphs. If Plaintiff can support this claim with factual averments amendment may be sought.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 10th day of October, 1996, in consideration of Preliminary Objections filed by Defendant, Statish A. Shah, M.D., Paragraphs 49(b), (e), (i), (k), (l), (m) and (r) are stricken from the Complaint as well as the words "recklessly" and/or "recklessness" in Paragraphs 25, 27, 36, 48, 51, 52, 53 and 54. Plaintiff is granted twenty (20) days from the date of mailing of this Order to file an amended complaint.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-874 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, the following Real Estate, viz.:

ALL THAT TRACT OF LAND SITUATE, LYING AND BEING IN HUNTINGTON TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a pin in the centerline of Pa. S.R. 0034 (Carlisle Road to Biglerville) at corner of land now or formerly of Wayne B. and Darlene M. Weidner; thence in said centerline North 11 degrees 41 minutes 06 seconds East 30.00 feet to pin in said centerline at corner of Lot No. 1 on the hereinafter referred to Plan; thence by Lot No. 1 South 81 degrees 32 minutes 35 seconds East, 318.79 feet to an iron pipe set; thence by same South 63 degrees 00 minutes 03 seconds east 104.00 feet to an existing iron pipe; thence by same South 81 degrees 44 minutes 32 seconds East, 50.19 feet to a steel pin set; thence by same South 85 degrees 15 minutes 13 seconds East, 637.07 feet to an existing iron pipe at stones at corner of land now or formerly of Crestmont Orchards, Inc; thence by same South 20 degrees 09 minutes 19 seconds West, 325.90 feet to concrete monument; thence by same North 82 degrees 00 minutes 02 seconds West, 623.01 feet to a concrete monument at corner of land now or formerly of Larry M. and Connie J. Kuhn; thence by same North 09 degrees 09 minutes 00 seconds East, 159.15 feet to an existing iron pipe; thence by same North 79 degrees 57 minutes 11 seconds West, 191.91 feet to an existing steel pin at corner of land now or formerly of Wayne B. and Darlene M. Weidner; thence by same North 09 degrees 31 minutes 39 seconds East, 124.74 feet to an existing steel pin; thence by same North 79 degrees 35 minutes 50 seconds West, 113.92 feet to an existing steel pin; thence by same and running along an existing drainage scale, North 85 degrees 09 minutes 19 seconds West, 114.73 feet, through an existing chisel mark in concrete headwall set back 15.06 feet from the terminus of this course, to a point in the centerline of Pa. S.R. 0034, the point and place of BEGINNING. CONTAINING 5.251 Acres, more or less.

The above description was taken from a Plan of Clifford G. Jr. and Margaret R. McCormick, dated August 7, 1991 as prepared by Boyer Surveys and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 59 at page 81, and being known as Lot No. 6 thereon.

BEING the same premises which Clifford C. McCormick and Margaret R. McCormick, husband and wife, by their deed dated June 4, 1992 and recorded in

the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on June 5, 1992 in Record Book 629, Page 829, granted and conveyed unto Keith A. Funt and Sharon L. Funt, husband and wife, the Defendants herein.

SEIZED and taken into execution as the property of **Keith A. Funt and Sharon L. Funt** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 28, 1997.

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

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

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

8/15, 22 & 29

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-516 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stone for a corner in the center of public road leading from Hanover Road to Berlin Junction; thence by lands of Maurice Rinedollar, North 36 degrees West, 20.92 perches to a stone at lands of Lloyd Eckert; thence along said lands of Lloyd Eckert, North 59 degrees East, 6.04 perches to a stone at lands of William H. Shrader; thence along lands of William H. Shrader, South 36 1/4 degrees East, 20 perches to a stone in the center of the public road leading from the Hanover Road to Berlin Junction; thence along said road, South 50 1/2 degrees West, 6.04 perches to a stone, the place of BEGINNING. CONTAINING 123 perches.

BEING that same lot of ground which by Deed dated February 20, 1975 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Book 317, page 525 was granted and conveyed by Corinne B. Shrader unto Corinne B. Shrader and Joseph T. Shrader. The said Corinne B. Shrader having since departed this life on or about January 12, 1983 thereby vesting title in said remainderman Joseph T. Shrader.

SEIZED and taken into execution as the property of **Joseph T. Shrader** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 6, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 20, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/15, 22 & 29



**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 ONEIDA K. LIPPY, DEC'D**  
Late of Conewago Township, Adams County, Pennsylvania

Executrices: Ruby Caskey, 545 Rife Street, Chambersburg, PA 17201; Beatrice Scott, 1795 Barlow-Two Taverns Road, Gettysburg, PA 17325

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

**ESTATE OF RUTH A. MYERS, DEC'D**

Late of the Borough of Biglerville, Adams County, Pennsylvania

Administrators C.T.A.: Michael W. Myers, 147 South Main Street, Biglerville, PA 17307; Joseph A. Myers, 8250 Lincolnway East, Fayetteville, PA 17222

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

**ESTATE OF ANDREW S. PROKOPOVITSH, DEC'D**

Late of Littlestown, Adams County, Pennsylvania

Executrix: Imelda Prokopovitch, 5117 Western Avenue., N.W., Washington, D.C. 20016

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

**SECOND PUBLICATION**

**ESTATE OF EMMA P. COVER, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania

Executors: James E. Cover, Jr., 406 Wirt Avenue, Hanover, PA 17331; Maryann Krentler, 319 E. Pleasant Street, Hanover, PA 17331

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

**ESTATE OF DENNIS A. EPLEY, a/k/a DENNIS ALLEN EPLEY, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: William D. Epley, 1327 East Walnut Street, Hanover, PA 17331; Larry S. Epley, 904 Armstrong Road, Carlisle, PA 17013

Attorney: Neil Hendershot, Esquire, Goldberg, Katzman & Shipman, P.C., 320 Market Street, P.O. Box 1268, Harrisburg, PA 17108-1268

**ESTATE OF ALLENA LARSON, DEC'D**  
Late of Straban Township, Adams County, Pennsylvania

Administratrix: Lee Ann Larson, 126 Artillery Drive, Gettysburg, PA 17325

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

**ESTATE OF ROBERT A. M. WAY-BRIGHT, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: John R. Waybright, 911 Stoverstown Road, York, PA 17404  
Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

**THIRD PUBLICATION**

**ESTATE OF JAMES A. KIME, DEC'D**  
Late of 21 Stultz Road, Fairfield, Adams County, Pennsylvania

Executrix: Nancy L. Wenschhof, 165 Crum Road, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Battersby & Sheffer, P. O. Box 215, 20 West Main Street, Fairfield, PA 17320

**ESTATE OF FLORENCE P. SHAFFER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard L. Shaffer, R. D. #3, Box 3421, Spring Grove, PA 17362-9461

**ESTATE OF DAVID F. SMITH, DEC'D**  
Late of the Borough of Abbottstown, Adams County, Pennsylvania

Administrator: Michael C. Smith, R. D. #4, Box 4615, Spring Grove, PA 17362

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

**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, August 25, 1997, at 9:00 o'clock a.m.

**SHULTZ**—Orphans' Court Action Number OC-79-97. The First and Final Account of Brenda K. Kime and Gary L. Shultz, Co-Executors of the Estate of Francis Paul Shultz, deceased, late of Cumberland Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

8/15, 22

**FICTITIOUS NAME NOTICE**

NOTICE IS HEREBY GIVEN that pursuant to the Fictitious Name Act, an application was filed with the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on July 15, 1997, for the registration of the name THE BOOTH, a Used-CD store located at 18 North Washington Street, Gettysburg, PA 17325. The names and addresses of the persons who are parties to the registration are: George and John Spangler, 22 West Main Street, Fairfield, Pennsylvania 17320 and Jenny McClintock, 6506 Smokehouse Court, Columbia, Maryland 21045.

8/15

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN, pursuant to the Pennsylvania Business Corporation Law, 15 Pa.C.S.A. § 1307, of the intention to file Articles of Incorporation. The name of the proposed corporation is FAIRFIELD CHURCH OF CHRIST, INC. The proposed corporation is to be organized under the Business Corporation Law of 1988.

Wolfe & Rice  
47 West High Street  
Gettysburg, PA 17325  
Attorneys for Applicant

8/15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-885 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain piece, parcel or tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to-wit:

BEGINNING at a point on the property line of Locust Lane, a fifty (50) foot street, at corner of Lot No. 580, on the hereinafter referred plan of lots; thence by said lot, South thirty-eight (38) degrees thirty-eight (38) minutes ten (10) seconds East, one hundred thirty and twelve hundredths (130.12) feet to a point at lands now or formerly of Bruce W. Stair; thence by said lands South forty-two (42) degrees twenty-five (25) minutes thirty-four (34) seconds West, one hundred sixteen and seven hundredths (116.07) feet to a point at corner of Lot No. 582 and lands now or formerly of Bruce W. Stair; thence by said lot North twenty-four (24) degrees three (03) minutes twenty (20) seconds West, one hundred fifty-nine and twenty-four hundredths (159.24) feet to a point at the property line of Locust Lane, aforesaid; thence by said street and by a curve to the right, the radius of which is one hundred eighty-five (185.00) feet, an arc length of forty-seven and eight hundredths (47.08) feet and having a long chord bearing and distance of North fifty-eight (58) degrees thirty-nine (39) minutes fifteen (15) seconds East, forty-six and ninety-five hundredths (46.95) feet to point on the property line of Locust Lane; aforesaid; thence by said street North fifty-one (51) degrees twenty-one (21) minutes fifty (50) seconds East, twenty-eight (28.00) feet to the point and place of BEGINNING. (CONTAINING 13,195 square feet and being known as Lot No. 581 on a plan of lots of Oxford Estates, Tract II - Phase Three, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 57, Page 42.)

BEING THE SAME PREMISES which Oxford Estates, a general partnership, by Mary Lee Kuhn, its Attorney-in-Fact, by deed dated May 29, 1992 and recorded June 2, 1992 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 0629, Page 0179, granted and conveyed unto Douglas R. Ream and Suzette R. Ream.

SEIZED and taken into execution as the property of **Douglas L. Ream, a/k/a Douglas R. Ream, a/k/a Douglas Lee Ream and Suzette R. Ream, a/k/a Suzette Renee Ream** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 16, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/1, 8 & 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-122 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of the Lincoln Highway (U.S. Route 30) on line of lands now or formerly of C. W. Johnson; thence running in the center of said Lincoln Highway, North 39 degrees 39 minutes West, 150 feet to a point in the center of said Highway, at corner of lands now or formerly of Charles H. Drum; thence along said Drum lands, North 28 degrees 21 minutes East, 300 feet to a point; thence continuing by same, South 39 degrees 39 minutes East, 150 feet to an iron pin; thence by lands now or formerly of C. W. Johnson aforesaid, South 28 degrees 21 minutes West, 300 feet to the above described place of BEGINNING. CONTAINING 1 acre, more or less.

BEING the same tract of land which Rodney A. Rudisill and Judy G. Rudisill, husband and wife, by deed dated November 9, 1978, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 341 at page 952, sold and conveyed unto Paul E. Blough and Barbara A. Fissel, the Defendants herein.

IMPROVED WITH a two-bedroom rancher with a detached one-car garage.

SEIZED and taken into execution as the property of **Paul E. Blough and Barbara A. Fissel** and to be sold by me  
Bernard V. Miller  
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 29, 1997, and distribution will be made in accordance with said schedule, unless ex-

ceptions 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.

8/1, 8 & 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-629 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or land SITUATE in Mt. Joy Township, Adams County, Pennsylvania, being more particularly described as Lot No. 260-A on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Deed Book 4, Page 427.

SUBJECT to all legal highways, easements, rights of way and restrictions of record.

TOGETHER with the rights and privileges, and SUBJECT to the restrictions, conditions and agreements contained in the prior Deeds of conveyance.

BEING Map 4, Parcel 71.

HAVING thereon erected a dwelling house know as 260 Thomas Drive, Gettysburg, PA 17325.

TITLE to said premises is vested in George R. Cathcart, Jr. and Linda D. Cathcart, husband and wife, by Deed from Robert J. McGeehan and Carol A. McGeehan, dated 6/18/92 and recorded 6/19/92 in Record Book 631, Page 622.

SEIZED and taken into execution as the property of **George R. Cathcart, Jr. and Linda D. Cathcart** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 23, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 2, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/8, 15 & 22

# Adams County Legal Journal

Vol. 39

August 22, 1997

No. 13, pp. 67-76

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-97 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four (4) tracts of land situate, lying and being in Carroll Valley (formerly Liberty Township), Adams County, Pennsylvania, being Lots 148, 149, 150, and 201, all in Section B, Charnita, Inc., more particularly bounded and described as follows:

### Lot No. 148

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 147; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 202; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 149; thence by said lot North 3 degrees 21 minutes 40 seconds West 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section B Supplemental, Charnita," dated July 10, 1965, and prepared by Gordon L. Brown, R.S., and which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Docket 4 at Page 654.

### Lot No. 149

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 148, thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 201; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 150; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East, 100 feet to the place of BEGINNING.

### Lot No. 150

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 149, thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 200; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 151; thence by said lot North 3 degrees 21 minutes 40 seconds West,

200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East 100 feet to the place of BEGINNING.

### Lot No. 201

BEGINNING at a point in the center of Eagles Trail at Lot No. 200; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to Lot No. 149; thence by said lot North 86 degrees 38 minutes 20 seconds East, 100 feet to Lot No. 202; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to a point in the center of said Eagles Trail; thence in said Eagles Trail South 86 degrees 38 minutes 20 seconds West, 100 feet to the place of BEGINNING.

BEING THE SAME LOTS OF LAND WHICH Jack B. Williams and Pansy L. Williams, husband and wife, by their Deed dated December 30, 1986, and recorded December 30, 1986 in the Office of the Recorder of Deeds of Adams County at Deed Book Volume 445, page 955, granted and conveyed to Cheryl J. Shew, a single woman.

SUBJECT TO notations, easements and conditions as set forth on the plan in Miscellaneous Book 4, Page 654, and which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania. AND SUBJECT TO reservations and restrictions contained in Deed Book 259 at page 872.

IMPROVED with a dwelling known as 29 Meadowlark Trail, Fairfield, PA 17320.

MAP NO.: 29-158

SEIZED and taken into execution as the property of **Cheryl J. Shew** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 6, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 20, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/15, 22 & 29

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-629 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or land SITUATE in Mt. Joy Township, Adams County, Pennsylvania, being more particularly described as Lot No. 260-A on a plan of lots of Lake Heritage Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Misc. Deed Book 4, Page 427.

SUBJECT to all legal highways, easements, rights of way and restrictions of record.

TOGETHER with the rights and privileges, and SUBJECT to the restrictions, conditions and agreements contained in the prior Deeds of conveyance.

BEING Map 4, Parcel 71.

HAVING thereon erected a dwelling house known as 260 Thomas Drive, Gettysburg, PA 17325.

TITLE to said premises is vested in George R. Cathcart, Jr. and Linda D. Cathcart, husband and wife, by Deed from Robert J. McGeehan and Carol A. McGeehan, dated 6/18/92 and recorded 6/19/92 in Record Book 631, Page 622.

SEIZED and taken into execution as the property of **George R. Cathcart, Jr. and Linda D. Cathcart** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 23, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/8, 15 & 22

## 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-874 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT OF LAND SITUATE, LYING AND BEING IN HUNTINGTON TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a pin in the centerline of Pa. S.R. 0034 (Carlisle Road to Biglerville) at corner of land now or formerly of Wayne B. and Darlene M. Weidner; thence in said centerline North 11 degrees 41 minutes 06 seconds East 30.00 feet to pin in said centerline at corner of Lot No. 1 on the hereinafter referred to Plan; thence by Lot No. 1 South 81 degrees 32 minutes 35 seconds East, 318.79 feet to an iron pipe set; thence by same South 63 degrees 00 minutes 03 seconds east 104.00 feet to an existing iron pipe; thence by same South 81 degrees 44 minutes 32 seconds East, 50.19 feet to a steel pin set; thence by same South 85 degrees 15 minutes 13 seconds East, 637.07 feet to an existing iron pipe at stones at corner of land now or formerly of Crestmont Orchards, Inc; thence by same South 20 degrees 09 minutes 19 seconds West, 325.90 feet to concrete monument; thence by same North 82 degrees 00 minutes 02 seconds West, 623.01 feet to a concrete monument at corner of land now or formerly of Larry M. and Connie J. Kuhn; thence by same North 09 degrees 09 minutes 00 seconds East, 159.15 feet to an existing iron pipe; thence by same North 79 degrees 57 minutes 11 seconds West, 191.91 feet to an existing steel pin at corner of land now or formerly of Wayne B. and Darlene M. Weidner; thence by same North 09 degrees 31 minutes 39 seconds East, 124.74 feet to an existing steel pin; thence by same North 79 degrees 35 minutes 50 seconds West, 113.92 feet to an existing steel pin; thence by same and running along an existing drainage scale, North 85 degrees 09 minutes 19 seconds West, 114.73 feet, through an existing chisel mark in concrete headwall set back 15.06 feet from the terminus of this course, to a point in the centerline of Pa. S.R. 0034, the point and place of BEGINNING. CONTAINING 5.251 Acres, more or less.

The above description was taken from a Plan of Clifford G. Jr. and Margaret R. McCormick, dated August 7, 1991 as prepared by Boyer Surveys and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 59 at page 81, and being known as Lot No. 6 thereon.

BEING the same premises which Clifford C. McCormick and Margaret R. McCormick, husband and wife, by their deed dated June 4, 1992 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on June 5, 1992 in Record Book 629, Page 829, granted and conveyed unto Keith A. Funt and Sharon L. Funt, husband and wife, the Defendants herein.

SEIZED and taken into execution as the property of **Keith A. Funt and Sharon L. Funt** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
July 28, 1997.

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

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

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

8/15, 22 & 29

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-516 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stone for a corner in the center of public road leading from Hanover Road to Berlin Junction; thence by lands of Maurice Rinedollar, North 36 degrees West, 20.92 perches to a stone

at lands of Lloyd Eckert; thence along said lands of Lloyd Eckert, North 59 degrees East, 6.04 perches to a stone at lands of William H. Shrader; thence along lands of William H. Shrader, South 36 1/4 degrees East, 20 perches to a stone in the center of the public road leading from the Hanover Road to Berlin Junction; thence along said road, South 50 1/2 degrees West, 6.04 perches to a stone, the place of BEGINNING. CONTAINING 123 perches.

BEING that same lot of ground which by Deed dated February 20, 1975 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Book 317, page 525 was granted and conveyed by Corinne B. Shrader unto Corinne B. Shrader and Joseph T. Shrader. The said Corinne B. Shrader having since departed this life on or about January 12, 1983 thereby vesting title in said remainderman Joseph T. Shrader.

SEIZED and taken into execution as the property of **Joseph T. Shrader** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 6, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 20, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/15, 22 & 29



## HERR VS. SNELGROVE

1. Summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses.

2. When an injured party is fully compensated for a particular loss by her underinsurance carrier, her right to sue the tortfeasor is extinguished and by operation of law, the underinsurance carrier acquires the right to sue the tortfeasor to recover the amount it paid its insured.

3. Unliquidated claims "owned" by the judgment debtor, either in tort or contract, are not deemed to be debts due and thus subject to attachment, unless the claim is readily calculable.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 88-S-93, RONALD R. HERR AND SUSAN HERR VS. NORMAN ELI SNELGROVE VS. ALLSTATE INSURANCE COMPANY.

Richard C. Angino, Esq., for Plaintiffs

James G. Nealon, Esq., for Garnishee

### OPINION ON MOTIONS FOR SUMMARY JUDGMENT

Kuhn, J., October 16, 1996.

The current posture of this case is a garnishment action. Although referenced in earlier Opinions the background will be repeated. Plaintiff, Ronald R. Herr, sustained serious injuries on May 22, 1986, when he was struck by a vehicle driven by Defendant, Norman E. Snelgrove, while acting as a flagman at an intersection. Snelgrove was insured by Allstate Insurance Company with policy limits of \$25,000.00. At the time of the accident Defendant was a physician beginning his practice.

By letter dated July 1, 1986, Plaintiff's counsel demanded that Allstate offer its policy limits. Allstate offered to tender policy limits upon receipt of a general or joint tortfeasor's release with a pro-rata agreement to protect Defendant. Plaintiff responded on August 7, 1986, with a proposed partial release which would protect Defendant for Allstate's policy limits and any excess beyond underinsured subrogation limits. On August 12, 1986, Allstate transmitted Plaintiff's August 7 response to Defendant's personal attorney, Melvin H. Hess, and recommended acceptance. Initially, on September 5, 1986, Hess's office declined to accept the offer because of the exposure to underinsurance subrogation claims. It was known that Erie Insurance Exchange was providing underinsurance coverage for Plaintiff in the amount of \$200,000 and that it was unwilling to waive its subrogation

rights. USF&G also provided underinsurance coverage of \$35,000. In June, 1987, Allstate hired Attorney Hess to represent Defendant at a deposition to be taken in conjunction with an arbitration hearing involving underinsured coverage.

By January 25, 1988, Allstate was aware that the underinsurance arbitration proceeding resulted in an award of \$350,000 with Defendant being considered 90% liable. Shortly thereafter on February 2, 1988, Erie tendered its check of \$200,000 to Plaintiff. Erie also advised Allstate in writing that it was not pursuing subrogation. Allstate was still aware that USF&G was declining to waive subrogation. Also on February 2, 1988, Plaintiff advised Allstate in writing that in light of Erie's waiver Plaintiff would accept \$135,000 to settle his claim and any subrogation rights of USF&G. On February 5, 1988, Plaintiff executed a release with USF&G in exchange for policy limits of \$35,000.00. Subrogation was not waived. It was not until November 13, 1992, however, that USF&G waived its subrogation rights. On February 8, 1988, Plaintiff filed a Complaint against Defendant. By April 1, 1988, Allstate was made aware that Defendant was willing to commit \$30,000-35,000 and "maybe as high as \$50,000" of his personal funds toward settlement. This information was never communicated to Plaintiff.

On October 5, 1989, a jury awarded Plaintiff \$275,821 and his wife \$10,000 in damages. A motion for delay damages was filed. Allstate paid its policy limits of \$25,000 to Plaintiff on February 5, 1990. By Order dated January 15, 1991, the verdict was molded to reduce Plaintiff's award to \$260,821 plus delay damages of \$40,841.67 for a total of \$301,662.67. Delay damages of \$1,562.06 was added to Mrs. Herr's verdict for a total of \$11,562.06.

At some point it appeared that Plaintiff also had underinsurance coverage with Cincinnati Insurance Company in the amount of \$110,000. On April 1, 1991, in exchange for the receipt of \$50,000 from Defendant, the plaintiffs executed a "Limited Release" releasing Defendant from personal liability and from any subrogation rights assigned to the Plaintiffs by Cincinnati and from any claims by USF&G. The release also stated that Defendant was assigning to the plaintiffs all claims or demands he has against Allstate for "unreasonable failure to settle" and for "payment of interest to the Plaintiffs." The copy of that release set forth in the record does not contain Defendant's signature.

Purportedly Plaintiff released Cincinnati on April 10, 1991, upon receipt of \$110,000 for underinsurance coverage. The record contains an unsigned copy of a release as to Cincinnati and a separate signed assignment from Cincinnati to Plaintiffs of its subrogation rights against Defendant.

In summary Plaintiffs have recovered the following amounts on their combined judgments of \$313,224.73:

1. Allstate Insurance Company	\$25,000
2. Norman E. Snelgrove	\$50,000
3. Erie Insurance Exchange	\$200,000
4. USF&G	\$35,000
5. Cincinnati Insurance Company	<u>\$110,000</u>
	\$420,000

Procedurally, Plaintiffs commenced a garnishment proceeding against Allstate on July 11, 1991, by filing a praecipe for writ of execution which was issued on July 23, 1991. Plaintiffs caused Interrogatories to be served upon Allstate. On August 28, 1991, Allstate filed an Answer With New Matter to the interrogatories and one day later Plaintiffs filed a Reply to New Matter.

Allstate has filed two motions for summary judgment (March 11, 1995 and June 28, 1996) and Plaintiffs have filed a single motion for summary judgment (June 12, 1995). Each is before the Court for disposition.

It has often been stated that,

Summary judgment may be granted if the pleadings, depositions, answers to interrogatories and admissions on file show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law . . . Summary judgment may be entered only in cases that are clear and free from doubt . . . The moving party . . . has the burden of proving that no material issue of fact exists. . . Allstate Insurance Co. v. McFadden, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991); Alloc. den. 602 A.2d 855 (1991) (citations omitted).

In addition, the record must be examined in a light most favorable to the non-moving party, accepting as true all well-pleaded facts in the pleadings and giving that party the benefit of all reasonable inferences drawn therefrom. Godlewski v. Pars Manufacturing Company, 408 Pa. Super. 425, 430, 597 A.2d 106, 109 (1991). Finally, pursuant to the

Nanty-Glo rule, summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses. *Johnson v. Johnson*, 410 Pa. Super. 631, 637, 600 A.2d 965, 968 (1991).

The Court focuses first on the issues raised by Allstate regarding the applicability of *Johnson v. Beane*, 541 Pa. 449, 664 A.2d 96 (1995) to these proceedings. In *Johnson* the plaintiff was injured in an automobile accident caused by Beane who was insured by State Auto Mutual Insurance Company with policy limits of \$25,000. Beane admitted liability but State Auto refused to offer policy limits. A jury awarded Johnson \$200,000 which was reduced by the trial court to \$75,000 following post-trial motions. State Auto then paid the policy limits. Johnson then settled with her underinsurance carrier, Erie Insurance Group, for \$50,000 and executed a release which subrogated Erie to recovery against "any person or party legally liable to me" for the amount paid and which authorized her counsel to "proceed with a bad faith/excess action against State Auto." Erie later waived its subrogation rights. Johnson then instituted a "bad faith garnishment action" against State Auto by filing a writ of execution for \$50,000 plus interest based upon the judgment against Beane and naming State Auto as garnishee. Johnson alleged that State Auto acted in bad faith with Beane by failing to settle the claim for policy limits. The trial court eventually dismissed the garnishment proceeding, holding that Johnson had effectively assigned her right to recover to Erie in exchange for the payment of the entire sum due her. On appeal our Supreme Court affirmed.

The first issue arising out of *Johnson* is whether Plaintiffs are entitled to recover anymore than they have already received. Allstate points to the opening language in *Johnson*.

This case requires us to determine the effect of payment received by an injured accident victim from her own underinsured motorist carrier on any claims the victim has against the tortfeasor. For the reasons enumerated herein, we hold that when an injured party is fully compensated for a particular loss by her underinsurance carrier, her right to sue the tortfeasor is extinguished. By operation of law, the

underinsurance carrier acquires the right to sue the tortfeasor to recover the amount it paid its insured.

541 Pa. at 451, 664 A.2d at 98 (emphasis added).

Allstate argues that because Plaintiffs have been fully compensated Johnson holds that they have no claim against Allstate. Johnson held that there was no debt owing from Beane to Johnson because Johnson had been fully compensated by Erie. Whatever claim Johnson had then passed to Erie when Erie paid the judgment and it was up to Erie whether to pursue that claim. Applied sub judice this means that there is no debt owing from Snelgrove to Plaintiffs because Plaintiffs have been fully compensated to the extent those payments were made by the underinsurers. Plaintiffs' claim against Snelgrove then passed to the underinsurers.

Plaintiffs countered, however, that the instant case differs from Johnson in that here Snelgrove assigned all his rights against Allstate to Plaintiffs. The Supreme Court expressly recognized a tortfeasor's right to assign a bad faith claim to the plaintiff when it stated,

Beane could have expressly assigned his bad faith claim to Appellant pursuant to Gray v. Nationwide Mutual Insurance Co., 422 Pa. 500, 223 A.2d 8 (1966). Had that suit been successful, Appellant would have merely executed on the judgment rather than initiated a garnishment proceeding.

541 Pa. at 454, 664 A.2d at 97, n. 2 (emphasis supplied).

We agree therefore that the central holding in Johnson does not preclude Plaintiffs from pursuing the bad faith claim against Allstate because Plaintiffs are hereby pursuing a claim possessed by the insured against his insurer which has been contractually assigned to the injured party rather than the injured party attempting to pursue a claim relinquished to an underinsurer.

Next Allstate challenges whether a garnishment action is the proper procedure to be used to pursue the bad faith claim. Before discussing the merits of that argument the Court must address Plaintiffs' contention that Allstate has waived its right to raise this issue. Plaintiffs argue that Pa. R.C.P. 3142 and 3145 required Allstate to raise objections to jurisdiction or procedure in preliminary objections or by new matter.

Procedurally, Rule 3144 allows a plaintiff to serve interrogatories directed to the garnishee respecting property of the defendant in his possession. The interrogatories must contain a notice to answer within 20 days after service. Rule 3145 provides that the interrogatories and

the answers, including any new matter thereto, shall be treated as though they were a complaint and answer in a civil action. Under new matter the garnishee may raise any defense he could have raised against the defendant if sued by him as well as defenses of immunity or exemption. Rule 3142 allows for the filing of preliminary objections but provides that a question of jurisdiction must be raised by preliminary objection before the filing of an answer or it is waived.

Allstate did not file preliminary objections but, as stated, filed an answer with new matter. Specifically, in Paragraph 20 under new matter Allstate averred that Plaintiffs "lack standing to pursue this garnishment action." This court believes that reference is sufficiently broad to be considered a challenge not only to the garnishment procedure but also to an issue which will be discussed later concerning whether Snelgrove was contractually prohibited from assigning a bad faith claim to Plaintiffs.

Allstate believes that the Supreme Court in dicta in Johnson has strongly hinted that a garnishment action is not procedurally proper in these circumstances. In referencing the garnishment procedure the Court stated,

There is no basis in law for such a procedure since State Auto does not owe money to Beane, nor does it have in its possession assets belonging to Beane. State Auto fulfilled its contractual obligation and paid the limits of its policy. There is therefore nothing in the hands of State Auto which is subject to garnishment. Beane's right to bring an action for bad faith refusal to settle is not a debt but an unliquidated claim. The alleged debt is contingent upon proof that State Auto breached some duty to Beane in failing to settle. 541 Pa. at 453, 664 A.2d at 98, n. 2.

As mentioned above, the same footnote discussed the defendant's right to assign his bad faith claim against the insurer to the plaintiff and to execute upon the judgment rather than initiate garnishment. The Court pointedly observed that "Curiously, however, State Auto never objected to the proceedings on these grounds." *Id.*

However, Justice Cappy pointed out in his concurring opinion that garnishment proceedings have been used to initiate bad faith claims on other occasions. See *Shearer v. Reed*, 286 Pa. Super. 188, 428 A.2d 635 (1981); *Beck v. Roach*, 9 D & C3d 594 (York Co. 1978). In *Shearer* plaintiff obtained a judgment against defendant for approximately \$34,000 after which defendant's insurer paid policy limits of

\$10,000 leaving a balance owing of \$24,000. The plaintiff pursued garnishment action against the insurer on a bad faith claim. Likewise, in Beck plaintiff obtained a judgment against defendant for \$145,000 after which defendant's insurer paid policy limits of \$25,000. The plaintiff initiated a garnishment action against the insurer for the balance on a bad faith claim. These cases did not involve assignments and in neither case did the insurance company challenge the garnishment proceeding. Each case involves a scenario identical to Shaw v. Botens, 403 F.2d 150 (3rd Cir. 1968) and a procedure which Johnson rejected, albeit in dicta.

Generally, garnishment proceedings are initiated by a plaintiff who has secured a judgment against a defendant to claim property of the defendant in possession of the garnishee. In this context the "plaintiff" is the holder of a judgment, the "defendant" is a party against whom a judgment has been entered, and a "garnishee" is one who has possession of defendant's property or who owes a debt to the defendant. Pa. R.C.P. 3101. Thus, the normal scenario involves a plaintiff, who is owed money by a defendant because of the entry of a judgment proceeding, against a garnishee to satisfy that judgment with property of or debt owed to a defendant in possession of the garnishee or a debt owed to the defendant by a garnishee.

What debt, if any, does Snelgrove owe to Plaintiffs which Plaintiffs could try to collect from Allstate? According to Johnson the answer is nothing because the debt owed to Plaintiff by Snelgrove has been paid in full by the underinsurance carrier. However, to the extent Plaintiffs have been assigned a right to pursue subrogation claims by the underinsurer Johnson would not prevent the assignee from seeking subrogation from Snelgrove. Here Erie expressly waived its subrogation rights in February, 1988 and USF&G did likewise in January, 1992. Cincinnati assigned its subrogation rights of \$110,000 to Plaintiffs in April, 1991. At most, therefore, Plaintiffs have a right to that amount from Snelgrove. At that point Plaintiffs could garnish up to \$110,000 of Snelgrove's "property" in the hands of Allstate.

Also in April, 1991, Snelgrove paid Plaintiffs the sum of \$50,000 thereby reducing what was owed Plaintiffs on Cincinnati's claim to \$60,000. In further consideration of being released from Cincinnati's claim Snelgrove also assigned his right to pursue a bad faith claim against Allstate.<sup>1</sup>

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<sup>1</sup> A point not raised by Allstate was the lack of Snelgrove's signature on the release. How can Snelgrove's alleged assignment of his bad faith claim be valid without his signature?

There is very little direction on how to answer whether this garnishment proceeding can continue. Johnson, n. 2, characterized the claim which Snelgrove assigned to Plaintiffs as an unliquidated claim. One source addresses unliquidated claims in this fashion:

Unliquidated claims "owned" by the judgment debtor, either in tort or contract, are not deemed to be debts due and thus subject to attachment, unless the claim is readily calculable. The reason advanced for rendering unliquidated claims unattachable is that the demand made by the judgment debtor as plaintiff against another is in most such cases too indefinite to be classified as personal property. This reason, in turn, rests upon the implicit assumption that a "debt" is a fixed sum of money owing under an express or implied contract. Viewed pragmatically, the result is a good one. Unliquidated claims are likely to be speculative, dependent upon the cooperation of the judgment debtor who must in the usual case take an active role in prosecuting the claim, and thus difficult of administration.

8 Goodrich Amram 2d §3101(b):6.

We are inclined to predict that our Supreme Court would reject a garnishment proceeding under these circumstances and would require Plaintiffs to proceed on an assumpsit claim, obtain judgment and execute on that judgment. While this conclusion may seem harsh at this point we nevertheless feel compelled to follow the suggestion of our Supreme Court. Plaintiffs should not be prejudiced because they could initiate that claim immediately.<sup>2</sup> As a further aside, in the independent bad faith claim Plaintiffs would not be limited to the \$60,000 balance owed under the Cincinnati claim as they would be in a garnishment action. There, instead, they would enjoy all remedies to which Snelgrove would have been entitled.<sup>3</sup>

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<sup>2</sup> We make no comment upon whether there may be a statute of limitations problem.

<sup>3</sup> There may, however, be some question about the limits of Allstate's potential exposure. Plaintiffs would probably argue that they are entitled to pursue the entire judgment exceeding Allstate's coverage. However, the posture of this case is that Snelgrove is no longer exposed to the entire excess judgment. Certainly he is no longer exposed to the Erie and USF&G payments totalling \$235,000. One might argue that had Snelgrove's offer to tender up to \$50,000 of his own funds to settle been extended by Allstate to Plaintiffs the case may have settled for that limit of personal exposure. Snelgrove has actually paid \$50,000. Therefore, has he suffered any loss of this \$50,000 because of the alleged bad faith? If the maximum judgment is \$313,224.73 and Plaintiffs received \$310,000 from Erie, USF&G, Allstate and Snelgrove, the maximum remaining excess liability is \$3,224.73 even if Mrs. Herr's portion of the judgment is included.



In passing we comment upon several other issues. The first one, raised by Allstate, contends that Snelgrove was contractually prohibited from assigning any rights he had under his insurance policy with Allstate. That policy reads, in pertinent part, "This policy cannot be transferred to anyone without our written consent." Allstate has not consented to the transfer from Snelgrove to Plaintiffs. Allstate points out that in *High-Tech Enterprises, Inc. v. General Accident Insurance Company*, 430 Pa. Super. 605, 635 A.2d 639 (1993) a policy provision preventing the insured from assigning his "rights and duties under this policy" was upheld against an assignment by the insured to an automotive repair shop for repair bills which the insurer alleged were unreasonable. The Court stated that "The non-assignment language of the insurance policy is clear and unambiguous, and therefore, must be applied here." 430 Pa. Super. at 609, 635 A.2d at 641. We find very little distinction between the prohibition in *High-Tech* against assigning "rights" under the policy and the prohibition here against assigning "this policy."

An act of bad faith on the part of an insurer constitutes a breach of the insurance contract. *Gray v. Nationwide Mutual Insurance Comp.*, 422 Pa. 500, 507, 223 A.2d 8, 11 (1966). If the insured is prohibited from assigning the contract it follows that he would be prohibited from assigning his rights under the contract including his right to expect the insurer to act in good faith in representing his interests. See *Fran and John's Doylestown Auto Center*, 432 Pa. Super. 449, 638 A.2d 1023 (1994). Therefore, it would appear that Plaintiffs have no right to pursue a bad faith claim assigned from Snelgrove.<sup>4</sup>

Allstate has also argued that it cannot be held liable on a bad faith claim because of the acts of independent counsel it hired in failing to transmit settlement offers. At this juncture we reject this argument. There is ample authority nationwide, as cited in Plaintiffs' brief, which holds contrary to Allstate's position.

Finally, in consideration of the disposition rendered above the court need not address Plaintiffs' motion for summary judgment which urges a finding that because of counsel's failure to transmit settlement offers Allstate did act in bad faith.

Accordingly, the attached Order is entered.

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<sup>4</sup>This result raises an interesting question about the validity of Snelgrove's Limited Release. If it is invalid perhaps Plaintiffs could pursue Cincinnati's entire claim against Snelgrove.

## ORDER OF COURT

AND NOW, this 16th day of October, 1996, in accordance with the attached Opinion, summary judgment is granted in favor of Allstate Insurance Company.

It is further ordered that this case be removed from the civil trial term beginning October 28, 1996.

## 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. All persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

## SECOND PUBLICATION

**ESTATE OF ONEIDA K. LIPPY, DEC'D**  
Late of Conewago Township, Adams County, Pennsylvania

Executrices: Ruby Caskey, 545 Rife Street, Chambersburg, PA 17201; Beatrice Scott, 1795 Barlow-Two Taverns Road, Gettysburg, PA 17325

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

**ESTATE OF RUTH A. MYERS, DEC'D**

Late of the Borough of Biglerville, Adams County, Pennsylvania

Administrators C.T.A.: Michael W. Myers, 147 South Main Street, Biglerville, PA 17307; Joseph A. Myers, 8250 Lincolnway East, Fayetteville, PA 17222

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

**ESTATE OF ANDREW S. PROKOPOVITSH, DEC'D**

Late of Littlestown, Adams County, Pennsylvania

Executrix: Imelda Prokopovitch, 5117 Western Avenue., N.W., Washington, D.C. 20016

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

## THIRD PUBLICATION

**ESTATE OF EMMA P. COVER, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania

Executors: James E. Cover, Jr., 406 Wirt Avenue, Hanover, PA 17331; Maryann Krentler, 319 E. Pleasant Street, Hanover, PA 17331

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

**ESTATE OF DENNIS A. EPLEY, a/k/a DENNIS ALLEN EPLEY, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: William D. Epley, 1327 East Walnut Street, Hanover, PA 17331; Larry S. Epley, 904 Armstrong Road, Carlisle, PA 17013

Attorney: Neil Hendershot, Esquire, Goldberg, Katzman & Shipman, P.C., 320 Market Street, P.O. Box 1268, Harrisburg, PA 17108-1268

**ESTATE OF ALLEN A. LARSON, DEC'D**  
Late of Straban Township, Adams County, Pennsylvania

Administratrix: Lee Ann Larson, 126 Artillery Drive, Gettysburg, PA 17325

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

**ESTATE OF ROBERT A. M. WAYBRIGHT, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: John R. Waybright, 911 Stoverstown Road, York, PA 17404

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

## 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, August 25, 1997, at 9:00 o'clock a.m.

**SHULTZ**—Orphans' Court Action Number OC-79-97. The First and Final Account of Brenda K. Kime and Gary L. Shultz, Co-Executors of the Estate of Francis Paul Shultz, deceased, late of Cumberland Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

8/15, 22

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-557 issued out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece or parcel of land, with the improvement thereon erected, situats in Conewago Township, Adams County, Pennsylvania, and is more particularly described as follows, to wit:

**BEGINNING** at a corner at a point on the northwestern edge of a sixty (60) foot right-of-way for Seneca Drive at the southwestern corner of Lot No. 70 as shown on the hereinafter referred to Subdivision Plan, thence along said last mentioned northwestern edge of a sixty (60) foot right-of-way for Seneca Drive by a curve to the left having a radius of five hundred five and zero hundredths (505.00) feet the long chord of which is South sixty (60) degrees, forty-three (43) minutes, forty-four (44) seconds West, seventy-

five and zero hundredths (75.00) feet an arc distance of seventy-five and seven hundredths (75.07) feet to a point at Lot No. 72 as shown on the hereinafter referred to Subdivision Plan, thence along said last mentioned Lot No. 72, North thirty-three (33) degrees, thirty-one (31) minutes, forty-seven (47) seconds West, one hundred thirty-seven and eight hundredths (137.08) feet to a point at Future Phase Three as shown on the hereinafter referred to Subdivision Plan, thence alongside last mentioned Future Phase Three, within a forty (40) foot Met Ed right-of-way, North seventy-three (73) degrees, six (6) minutes, fifteen (15) seconds East, ninety-six and six hundredths (96.06) feet to a point at Lot No. 70 as shown on the hereinafter referred to Subdivision Plan, thence along said last mentioned Lot No. 70, South twenty-five (25) degrees, zero (0) minutes, forty-five (45) seconds East, one hundred sixteen and forty-four hundredths (116.44) feet to a point on the northwestern edge of a sixty (60) foot right-of-way for Seneca Drive as shown on the hereinafter referred to Subdivision Plan, **being the point and place of BEGINNING. CONTAINING 10,593 square feet.**

The above description was taken from a plan of lots entitled "Final Plan Phase One - Indian Ridge," prepared by Worley Surveying, dated May 20, 1993 and revised June 15, 1993, File No. C-1287, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 63, Page 81 and designated thereon as Lot No. 71.

BEING the same premises which J C P Inc., by Deed Dated November 9, 1994 and recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania on December 5, 1994 in Record Book 973, Page 214, granted and conveyed unto Nancy L. Stottlemeyer and Mildred M. Herring, (Mildred M. Herring now deceased), Defendant herein. This is a two story single family dwelling residence.

SEIZED and taken into execution as the property of **Nancy L. Stottlemeyer, a/k/a Nancy L. Stottlemeyer** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 11, 1997.

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

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

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

8/22, 29 & 9/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-568 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center line of Plank Road at the Southwestern corner of Lot No. 4 land now or formerly of E. Eugene Palmer; thence by said Lot No. 4 South 44 degrees, 50 minutes, 45 seconds East 743.00 feet to a point on line of Lot No. 5, land now or formerly of LeRoy W. Bish; thence by said Lot No. 5 South 45 degrees, 09 minutes, 15 seconds West 586.42 feet to a point at corner of Lot No. 2 other land now or formerly of LeRoy Bish; thence by said Lot No. 2 North 44 degrees, 50 minutes, 45 seconds West 743.60 feet to a point in the center line of Plank Road aforesaid; thence in said center line of Plank Road North 45 degrees, 09 minutes, 15 seconds East 461.20 feet to a steel nail and washer; thence continuing in same North 45 degrees, 26 minutes, 08 seconds East 125.22 feet to a point, the place of beginning. CONTAINING 10.009 acres.

The above description was taken from a draft of survey by Boyer-Price Surveys, Inc. dated August 8, 1974 designating the above as Lot No. 3 in a development known as "Black Horse Farms."

TITLE TO SAID PREMISES IS VESTED IN Randolph Neil Smith and Cynthia J. Smith, husband and wife by Deed from James E. Widner and Matilda V. Widner, husband and wife dated 6/30/89 recorded 7/3/89 in Deed Book 527 page 69 and re-recorded 7/3/92 in Deed Book 633 page 774.

SEIZED and taken into execution as the property of **Randolph Neil Smith and Cynthia J. Smith** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 4, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/22, 29 & 9/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-468 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following tract of land.

SITUATE, lying and being in Union Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING for a point at Lots No. 8 and 10 as shown on the hereinafter referenced Final Subdivision Plan; thence along and with said Lot No. 10, North sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds West, one hundred and twenty-six hundredths (100.26) feet to a point on the Easterly side of Meadowview Drive; thence along and with said Easterly side of Meadowview Drive, North twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds East, one hundred twenty-seven (127.00) feet to a point; thence by a curve to the right, the radius of which is thirteen (13.00) feet, an arc distance of twenty and forty-two hundredths (20.42) feet and a chord bearing and distance of North seventy-three (73) degrees twenty-five (25) minutes twenty-two (22) seconds East, eighteen and thirty-eight hundredths (18.38) feet to a point on the Southerly side of Basehoar School Road; thence along and with said Basehoar School Road, South sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds East, eighty-seven and twenty-six hundredths (87.26) feet to a point at Lot No. 8 aforesaid; thence along and with said Lot No. 8, South twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds West, one hundred forty (140.00) feet to a point in common with Lots No. 8 and 10, the point and place of beginning.

CONTAINING 14,000 square feet or 0.321 acres.

THE above description is taken from a Final Subdivision Plan, Phase I, Meadowview Estates, dated 3/21/89, as recorded in Plat Book 54, at Page 75, and known thereon as Lot No. 9.

TAX PARCEL NUMBER: 301-1

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Bruce A. Blevins and Diane E. Blevins, husband and wife by Deed from Modern Builders Jr., Inc., a Pa. Corp. dated 8/30/93 recorded 9/2/93 in Record Book 774 Page 334.

SEIZED and taken into execution as the property of **Bruce A. Blevins and Diane E. Blevins** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
June 24, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/22, 29 & 9/5

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing with the Department of State of the Commonwealth of Pennsylvania, on August 1, 1997, under the Fictitious Name Act, of an Application for the registration of the fictitious name BATTLEFIELD MOTEL with its principal office or place of business at 2075 Old Harrisburg Road, Gettysburg, PA 17325. The name and address of the persons who are party to the registration are: Jayesh V. Patel and Usha J. Patel, 2075 Old Harrisburg Road, Gettysburg, PA 17325.

Donald G. Oyler  
112 Baltimore Street  
Gettysburg, PA 17325

8/22

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name, TRANSITIONAL CARE CENTER OF THE GETTYSBURG HOSPITAL, for the conduct of business in Adams County, Pennsylvania, with a principal place of business being 147 Gettysburg Street, Gettysburg, Pennsylvania, 17325 was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on July 22, 1997 pursuant to the Act of Assembly of December 16, 1982, Act 295. The name and address of the interested party in said business is The Gettysburg Hospital Corporation, 147 Gettysburg Street, Gettysburg, Pennsylvania 17325.

8/22

# Adams County Legal Journal

Vol. 39

August 29, 1997

No. 14, pp. 77-80

## ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Tough Problems in Estate Planning.*  
Wednesday, September 17, 1997—9:00 a.m.—5:00 p.m.  
Room 307, Adams County Courthouse  
Substantive Law—5 credits. Ethics—1 credit.
2. *A Practical Approach to Pennsylvania Mechanics' Liens.*  
Friday, September 26, 1997—9:00 a.m.—12:30 p.m.  
Room 307, Adams County Courthouse  
Substantive Law—2.5 credits. Ethics—.5 credit.
3. *Direct and Cross Examination in the Civil Case.*  
Thursday, October 30, 1997—9:00 a.m.—5:00 p.m.  
Room 307, Adams County Courthouse  
Substantive Law—5 credits. Ethics—1 credit.
4. *Estate Planning for Subsequent Marriages.*  
Tuesday, November 25, 1997—9:00 a.m.—1:30 p.m.  
Room 307, Adams County Courthouse  
Substantive Law—4 credits.

Registration through P.B.I. 800-932-4637

### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-568 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center line of Plank Road at the Southwest corner of Lot No. 4 land now or formerly of E. Eugene Palmer; thence by said Lot No. 4 South 44 degrees, 50 minutes, 45 seconds East 743.00 feet to a point on line of Lot No. 5, land now or formerly of LeRoy W. Bish; thence by said Lot No. 5 South 45 degrees, 09 minutes, 15 seconds West 586.42 feet to a point at corner of Lot No. 2 other land now or for-

merly of LeRoy Bish; thence by said Lot No. 2 North 44 degrees, 50 minutes, 45 seconds West 743.60 feet to a point in the center line of Plank Road aforesaid; thence in said center line of Plank Road North 45 degrees, 09 minutes, 15 seconds East 461.20 feet to a steel nail and washer; thence continuing in same North 45 degrees, 26 minutes, 08 seconds East 125.22 feet to a point, the place of beginning. CONTAINING 10.009 acres.

The above description was taken from a draft of survey by Boyer-Price Surveys, Inc. dated August 8, 1974 designating the above as Lot No. 3 in a development known as "Black Horse Farms."

TITLE TO SAID PREMISES IS VESTED IN Randolph Neil Smith and Cynthia J. Smith, husband and wife by Deed from James E. Widner and Matilda V. Widner, husband and wife dated 6/30/89 recorded 7/3/89 in Deed Book 527 page 69 and re-recorded 7/3/92 in Deed Book 633 page 774.

SEIZED and taken into execution as the property of **Randolph Neil Smith and Cynthia J. Smith** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 4, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/22, 29 & 9/5

## 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-874 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT OF LAND SITUATE, LYING AND BEING IN HUNTINGTON TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING at a pin in the centerline of Pa. S.R. 0034 (Carlisle Road to Biglerville) at corner of land now or formerly of Wayne B. and Darlene M. Weidner; thence in said centerline North 11 degrees 41 minutes 06 seconds East 30.00 feet to pin in said centerline at corner of Lot No. 1 on the hereinafter referred to Plan; thence by Lot No. 1 South 81 degrees 32 minutes 35 seconds East, 318.79 feet to an iron pipe set; thence by same South 63 degrees 00 minutes 03 seconds east 104.00 feet to an existing iron pipe; thence by same South 81 degrees 44 minutes 32 seconds East, 50.19 feet to a steel pin set; thence by same South 85 degrees 15 minutes 13 seconds East, 637.07 feet to an existing iron pipe at stones at corner of land now or formerly of Crestmont Orchards, Inc; thence by same South 20 degrees 09 minutes 19 seconds West, 325.90 feet to concrete monument; thence by same North 82 degrees 00 minutes 02 seconds West, 623.01 feet to a concrete monument at corner of land now or formerly of Larry M. and Connie J. Kuhn; thence by same North 09 degrees 09 minutes 00 seconds East, 159.15 feet to an existing iron pipe; thence by same North 79 degrees 57 minutes 11 seconds West, 191.91 feet to an existing steel pin at corner of land now or formerly of Wayne B. and Darlene M. Weidner; thence by same North 09 degrees 31 minutes 39 seconds East, 124.74 feet to an existing steel pin; thence by same North 79 degrees 35 minutes 50 seconds West, 113.92 feet to an existing steel pin; thence by same and running along an existing drainage scale, North 85 degrees 09 minutes 19 seconds West, 114.73 feet, through an existing chisel mark in concrete headwall set back 15.06 feet from the terminus of this course, to a point in the centerline of Pa. S.R. 0034, the point and place of BEGINNING. CONTAINING 5.251 Acres, more or less,

The above description was taken from a Plan of Clifford G. Jr. and Margaret R. McCormick, dated August 7, 1991 as prepared by Boyer Surveys and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 59 at page 81, and being known as Lot No. 6 thereon.

BEING the same premises which Clifford C. McCormick and Margaret R. McCormick, husband and wife, by their deed dated June 4, 1992 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania on June 5, 1992 in Record Book 629, Page 829, granted and conveyed unto Keith A. Funt and Sharon L. Funt, husband and wife, the Defendants herein.

SEIZED and taken into execution as the property of **Keith A. Funt and Sharon L. Funt** and to be sold by me

Bernard V. Miller

Sheriff

Sheriff's Office, Gettysburg, PA  
July 28, 1997.

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

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

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

8/15, 22 & 29

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-516 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stone for a corner in the center of public road leading from Hanover Road to Berlin Junction; thence by lands of Maurice Rinedollar, North 36 degrees West, 20.92 perches to a stone

at lands of Lloyd Eckert; thence alc. said lands of Lloyd Eckert, North 59 degrees East, 6.04 perches to a stone at lands of William H. Shrader; thence along lands of William H. Shrader, South 36 1/4 degrees East, 20 perches to a stone in the center of the public road leading from the Hanover Road to Berlin Junction; thence along said road, South 50 1/2 degrees West, 6.04 perches to a stone, the place of BEGINNING. CONTAINING 123 perches.

BEING that same lot of ground which by Deed dated February 20, 1975 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Book 317, page 525 was granted and conveyed by Corinne B. Shrader unto Corinne B. Shrader and Joseph T. Shrader. The said Corinne B. Shrader having since departed this life on or about January 12, 1983 thereby vesting title in said remainderman Joseph T. Shrader.

SEIZED and taken into execution as the property of **Joseph T. Shrader** and to be sold by me

Bernard V. Miller

Sheriff

Sheriff's Office, Gettysburg, PA  
August 6, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 20, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/15, 22 & 29

## CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN, in compliance with the requirements of 15 Pa. C.S. 4124, that application for Certificate for Authority has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, by FOX RIDGE COMMUNICATIONS, INC., a Virginia corporation, for the purpose of consulting and other legal activities, at 17 East Middle Street, Gettysburg, PA 17325.

8/29

## COMMONWEALTH VS. DUPERT

1. In order to prevail on a claim of ineffectiveness of trial counsel, Defendant has the burden of proving (1) the underlying claims are of arguable merit; (2) the course chosen by trial counsel had no reasonable basis designed to effectuate Defendant's interest and; (3) prejudice.

2. Competency of counsel is not judged by the highest caliber of criminal defense skills and a minimum level of competency is the standard.

3. Whether failure to call character witnesses amounts to ineffectiveness of counsel must be determined on the particular facts of a case.

4. When credibility is critical, an unexplained failure to call character witnesses may amount to ineffectiveness.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-732-94, COMMONWEALTH OF PENNSYLVANIA VS. DENNIS J. DUPERT.

Martha J. Duvall, Esq., Assistant District Attorney  
Garrett D. Page, Esq., for Defendant

### OPINION ON PCRA PETITION

Spicer, P. J., October 16, 1996.

We deal with defendant's first PCRA petition, in which he asserts three grounds for relief. Initially, he argued that trial counsel was ineffective for failing to do the following: (a) call a fact witness; (b) file a motion to modify sentences and; (c) call character witnesses.

The court conducted a hearing August 13, 1996 and heard various witnesses, including Mandy Bordner, the person identified by defendant as a fact witness. PCRA counsel then requested a transcript and an opportunity to brief legal issues. We now have the benefit of briefs from both defendant and the Commonwealth and will proceed to adjudicate this matter.

In order to prevail, defendant has the burden of proving the following: (1) the underlying claims are of arguable merit; (2) the course chosen by trial counsel had no reasonable basis designed to effectuate defendant's interest and; (3) prejudice. Counsel is presumed to have been effective and it is defendant's burden to prove otherwise. Competency is not judged by the highest caliber of criminal defense skills. A minimum level of competency is the standard. *Commonwealth v. Glover*, 422 Pa. Super. 543, 619 A.2d 1357 (1993); *Commonwealth v. Cook*, \_\_\_ Pa. \_\_\_, 676 A.2d 639 (1996).

Two claims, (a) and (b), can be dismissed without a great deal of discussion. Ms. Bordner provided no information favorable to defendant, and no prejudice occurred.

There may be occasions when sentences may be challenged through PCRA petitions, but this is not one of them. Defendant has not argued that occasions when sentences may be challenged though he has been deprived of appeal rights, credit for time served, or raised constitutional issues. Generally, discretionary sentences do not involve the truth determining process and are not cognizable in PCRA proceedings. *Commonwealth v. Gaerttner*, 437 Pa. Super 84, 649 A.2d 139 (1994), *Alloc. den.* 657 A.2d 488; *Commonwealth v. Hickman*, 434 Pa. Super 633, 644 A.2d 787 (1994).

Even so, we think it appropriate to offer a few comments. Defendant was convicted of several offenses, including rape and aggravated indecent assault. Because of the age of the victim, rape required a mandatory minimum of five years. Standard guidelines for aggravated indecent assault began with twenty four months. The sentencing transcript clearly indicates that the court, instead of imposing consecutive sentences, added two years to the rape minimum and ran all sentences concurrently. Had consecutive sentences been imposed, defendant's maximum term would have increased. Not only were the sentences lawful and justified, defendant was benefited, not prejudiced by the structure adopted by the court.

Defendant's third claim is troublesome and difficult. In order to appreciate it, one must understand what occurred at trial. Four minor girls, MB, BD, LB, and JJ testified that they were long time friends of defendant's daughter, AD. After a week of band camp, they decided to have a party at defendant's and to get drunk. Mrs. Dupert procured the alcohol. Two girls remained in the basement, while others went to an upstairs bedroom. MB said she passed out several times, fell asleep and awoke to find defendant having intercourse with her. He complied with her request to desist, but then proceeded to engage in cunnilingus. After being repelled, he crossed the room and lay on JJ, awakening her. She said he began kissing her legs and moved up toward her vagina. She escaped further indignity by curling herself into a ball.

Defendant presented no evidence.

At the PCRA hearing, defendant again elected to remain silent. He relied upon the testimony of his father, Clarence E. Dupert, who said he discussed character witnesses with trial counsel, Allen C. Welch, Esq. According to him, he approached Mr. Welch and offered to provide a list of character witnesses. Mr. Welch is described as saying "I'll tell you when I want them, if I want them." (NT 68, 8-13-96). Mr. Dupert said trial counsel never told him he wanted the list.

Defendant produced witnesses who said they were ready, willing and able to give favorable character testimony, had they been called at trial.



This writer commented, during the PCRA hearing, that the trial took on the character of a slow plea because of the defendant's expression.

Which is what it was.

Mr. Welch, who suffered from impaired memory<sup>1</sup>, could not remember details about character evidence, but did say that defendant was remorseful, clearly knew what had happened, understood what he had done was wrong and was willing to face whatever punishment would come his way. (NT 19, 20, 8-13-96). He also said that defendant was unwilling to face the mandatory five year minimum sentence and would not plead guilty.

Defendant was entitled to produce evidence of his previous reputation for good character at his trial. Traits must relate to the criminal behavior for which defendant is being tried. *Commonwealth v. Bowser*, 425 Pa. Super. 24, 624 A.2d 125 (1993), *Alloc. den* 644 A.2d 161 (1994), U.S. cert. den. 130, L.Ed.2d (1994). Witnesses must describe Defendant's reputation, as opposed to their personal views. *Commonwealth v. Blount*, 538 Pa. 156, 647 A.2d 199 (1994). Whether failure to call such witnesses amounts to ineffectiveness of counsel must be determined on the particular facts of a case, *Commonwealth v. Weiss*, supra. There is not per se rule that failure will be equated with ineffectiveness. *Commonwealth v. Blount*, supra. Our appellate courts have said character evidence is especially important when only the defendant and the victim knows what happened and guilt rests entirely on credibility. *Commonwealth v. Smolko*, 446 Pa. Super. 156, 666 A.2d 672 (1995). Indeed, when credibility is critical, an unexplained failure to call such witnesses may amount to ineffectiveness. *Commonwealth v. Gillespie*, 423 Pa. Super 128, 620 A.2d 1143 (1993). Lastly, it is not counsel's function to assess credibility and ineffectiveness may be determined by failure to call witnesses counsel judges as "garbage witnesses." *Commonwealth v. Weiss*, supra.

All cases in this area involve trials where defendant testified and hotly disputed facts. All holdings could be interpreted as pertaining to credibility issues between defendant and victims. Defendant argues that this interpretation should not be adopted because he was "miscounseled" not to testify. (Brief, page 5). As the trial transcript will indicate, this statement flies in the face of the record. The court, in fact, interviewed defendant to ascertain that his decision not to take the stand was his. (NT 110 et seq.).

Mr. Welch testified as to his usual habits, but could not remember what occurred in this case. He frankly admitted that he was generally

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<sup>1</sup> After reading *Commonwealth v. Weiss*, 530 Pa. 1, 606 A.2d 439 (1992), one might wonder if this is an occupational hazard for lawyers defending sexual assault charges.

opposed to calling fewer than five witnesses, but said the final decision was his client's. However, that is not an issue in this case, because defendant's list was well in excess of that number.

He also said that many potential witnesses will not qualify because they are prepared to express personal opinions, not reputation testimony.

Although we are disappointed in Mr. Welch's memory and records keeping, we are not persuaded that defendant has overcome the presumption of competency. We can infer that Mr. Welch followed his customary procedure. There is no real dispute that he discussed character evidence with defendant and his family. Defendant would have us believe that counsel thereafter totally ignored the subject and the efforts of defendant's father. We find this extremely unlikely, in light of the fact that Mr. Welch is an experienced trial lawyer who is well aware of the benefit of what he called a beautiful jury instruction. PCRA counsel prevented him from explaining reasons for the approach he took at trial and the other person best able to describe what occurred in the way of decisions did not testify.

We are not willing to accept the truthfulness of testimony by defendant's father. According to him, he compiled an extensive witness list, then sat through trial without saying a word, because Mr. Welch did not ask for the information. That seems neither reasonable nor probable. A much more plausible explanation is that Mr. Dupert said nothing because he had nothing.

In summary, we find that favorable reputation testimony could have been available at trial, but has not shown that he or anyone on his behalf made Mr. Welch aware of the availability of witnesses. This is crucial, because defendant undertook the task of finding the witnesses. Defendant has not shown that the decision to forego such evidence was anyone's but his own.

#### ORDER ON PCRA PETITION

AND NOW, October 16, 1996, the court dismisses defendant's PCRA petition in accordance with the attached opinion.

Defendant is notified that he has the right to appeal to Superior Court within thirty days from this order.

The Clerk of Courts is directed to forthwith mail to defendant a copy of this order and its accompanying opinion, by certified mail, return receipt requested.

## 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 CATHERINE PRETE CLARK, DEC'D

Late of Straban Township, Adams County, Pennsylvania  
 Administratrix: Frances Carol Clark, c/o Todd A. Dorsett, 130 West Main Street, Waynesboro, PA 17268

Attorney: Todd A. Dorsett, 130 West Main Street, Waynesboro, PA 17268

## ESTATE OF ALBERT E. GAFFNEY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Frieda Ehrhart, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331

Attorney: Douglas H. Gent, Esquire

## ESTATE OF ROBERT CRAIG ORNER, DEC'D

Late of Frederick County, Maryland

Administrator: Douglas D. Orner, P. O. Box 561, Emmitsburg, MD 21727

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

## ESTATE OF LUTHER M. WETZEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator d.b.n.c.t.a.: Paul Wendell Wetzel, Box 55, Aspers, PA 17304

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

## THIRD PUBLICATION

## ESTATE OF ONEIDA K. LIPPY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Ruby Caskey, 545 Rife Street, Chambersburg, PA 17201; Beatrice Scott, 1795 Barlow-Two Taverns Road, Gettysburg, PA 17325

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

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

Late of the Borough of Biglerville, Adams County, Pennsylvania

Administrators C.T.A.: Michael W. Myers, 147 South Main Street, Biglerville, PA 17307; Joseph A. Myers, 8250 Lincolnway East, Fayetteville, PA 17222

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

## ESTATE OF ANDREW S. PROKOPOVITSH, DEC'D

Late of Littlestown, Adams County, Pennsylvania

Executrix: Imelda Prokopovitch, 5117 Western Avenue., N.W., Washington, D.C. 20016

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

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-97 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four (4) tracts of land situate, lying and being in Carroll Valley (formerly Liberty Township), Adams County, Pennsylvania, being Lots 148, 149, 150, and 201, all in Section B, Charnita, Inc., more particularly bounded and described as follows:

Lot No. 148

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 147; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 202; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 149; thence by said lot North 3 degrees 21 minutes 40 seconds West 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East, 100 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section B Supplemental, Charnita," dated July 10, 1965, and prepared by Gordon L. Brown, R.S., and which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Docket 4 at Page 654.

Lot No. 149

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 148, thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 201; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 150; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East, 100 feet to the place of BEGINNING.

Lot No. 150

BEGINNING at a point in the center of Meadow Lark Trail at Lot No. 149; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to Lot No. 200; thence by said lot South 86 degrees 38 minutes 20 seconds West, 100 feet to Lot No. 151; thence by said lot North 3

degrees 21 minutes 40 seconds West, 200 feet to a point in the center of said Meadow Lark Trail; thence in said Meadow Lark Trail North 86 degrees 38 minutes 20 seconds East 100 feet to the place of BEGINNING.

Lot No. 201

BEGINNING at a point in the center of Eagles Trail at Lot No. 200; thence by said lot North 3 degrees 21 minutes 40 seconds West, 200 feet to Lot No. 149; thence by said lot North 86 degrees 38 minutes 20 seconds East, 100 feet to Lot No. 202; thence by said lot South 3 degrees 21 minutes 40 seconds East, 200 feet to a point in the center of said Eagles Trail; thence in said Eagles Trail South 86 degrees 38 minutes 20 seconds West, 100 feet to the place of BEGINNING.

BEING THE SAME LOTS OF LAND WHICH Jack B. Williams and Pansy L. Williams, husband and wife, by their Deed dated December 30, 1986, and recorded December 30, 1986 in the Office of the Recorder of Deeds of Adams County at Deed Book Volume 445, page 955, granted and conveyed to Cheryl J. Shew, a single woman.

SUBJECT TO notations, easements and conditions as set forth on the plan in Miscellaneous Book 4, Page 654, and which is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania. AND SUBJECT TO reservations and restrictions contained in Deed Book 259 at page 872.

IMPROVED with a dwelling known as 29 Meadowlark Trail, Fairfield, PA 17320.

MAP NO.: 29-158

SEIZED and taken into execution as the property of **Cheryl J. Shew** and to be sold by me

Bernard V. Miller  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 August 6, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 20, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/15, 22 & 29

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-468 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following tract of land.

SITUATE, lying and being in Union Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING for a point at Lots No. 8 and 10 as shown on the hereinafter referenced Final Subdivision Plan; thence along and with said Lot No. 10, North sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds West, one hundred and twenty-six hundredths (100.26) feet to a point on the Easterly side of Meadowview Drive; thence along and with said Easterly side of Meadowview Drive, North twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds East, one hundred twenty-seven (127.00) feet to a point; thence by a curve to the right, the radius of which is thirteen (13.00) feet, an arc distance of twenty and forty-two hundredths (20.42) feet and a chord bearing and distance of North seventy-three (73) degrees twenty-five (25) minutes twenty-two (22) seconds East, eighteen and thirty-eight hundredths (18.38) feet to a point on the Southerly side of Basehoar School Road; thence along and with said Basehoar School Road, South sixty-one (61) degrees thirty-four (34) minutes thirty-eight (38) seconds East, eighty-seven and twenty-six hundredths (87.26) feet to a point at Lot No. 8 aforesaid; thence along and with said Lot No. 8, South twenty-eight (28) degrees twenty-five (25) minutes twenty-two (22) seconds West, one hundred forty (140.00) feet to a point in common with Lots No. 8 and 10, the point and place of beginning.

CONTAINING 14,000 square feet or 0.321 acres.

The above description is taken from a Final Subdivision Plan, Phase I, Meadowview Estates, dated 3/21/89, as recorded in Plat Book 54, at Page 75, and known thereon as Lot No. 9.

TAX PARCEL NUMBER: 301-1

## RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Bruce A. Blevins and Diane E. Blevins, husband and wife by Deed from Modern Builders Jr., Inc., a Pa. Corp. dated 8/30/93 recorded 9/2/93 in Record Book 774 Page 334.

SEIZED and taken into execution as the property of **Bruce A. Blevins and Diane E. Blevins** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
June 24, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/22, 29 & 9/5

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-557 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of September, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece or parcel of land, with the improvement thereon erected, situate in **Conewago Township, Adams County, Pennsylvania**, and is more particularly described as follows, to wit:

BEGINNING at a corner at a point on the northwestern edge of a sixty (60) foot right-of-way for Seneca Drive at the southwestern corner of Lot No. 70 as shown on the hereinafter referred to Subdivision Plan, thence along said last mentioned northwestern edge of a sixty (60) foot right-of-way for Seneca Drive by a curve to the left having a radius of five hundred five and zero hundredths (505.00) feet the long chord of which is South sixty (60) degrees, forty-three (43) minutes, forty-four (44) seconds West, seventy-five and zero hundredths (75.00) feet an arc distance of seventy-five and seven hundredths (75.07) feet to a point at Lot No. 72 as shown on the hereinafter referred to Subdivision Plan, thence along said last mentioned Lot No. 72, North thirty-three (33) degrees, thirty-one (31) minutes, forty-seven (47) seconds West, one hundred thirty-seven and eight hundredths (137.08) feet to a point at Future Phase Three as shown on the hereinafter referred to Subdivision Plan, thence alongside last mentioned Future Phase Three, within a forty (40) foot Met Ed right-of-way, North seventy-three (73) degrees, six (6) minutes, fifteen (15) seconds East, ninety-six and six hundredths (96.06) feet to a point at Lot No. 70 as shown on the hereinafter referred to Subdivision Plan, thence along said last mentioned Lot No. 70, South twenty-five (25) degrees, zero (0) minutes, forty-five (45) seconds East, one hundred sixteen and forty-four hundredths (116.44) feet to a point on the northwestern edge of a sixty (60) foot right-of-way for Seneca Drive as shown on the hereinafter referred to Subdivision Plan, being the point and place of BEGINNING. CONTAINING 10,593 square feet.

The above description was taken from a plan of lots entitled "Final Plan Phase One - Indian Ridge," prepared by Worley Surveying, dated May 20, 1993 and revised June 15, 1993, File No. C-1287, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 63, Page 81 and designated thereon as Lot No. 71.

BEING the same premises which J C P Inc., by Deed Dated November 1994 and recorded in the Office of Recorder of Deeds for Adams County, Pennsylvania on December 5, 1994 in Record Book 973, Page 214, granted and conveyed unto Nancy L. Stottlemeyer and Mildred M. Herring, (Mildred M. Herring now deceased), Defendant herein. This is a two story single family dwelling residence.

SEIZED and taken into execution as the property of **Nancy L. Stottlemeyer, a/k/a Nancy L. Stottlemeyer** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
August 11, 1997.

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

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

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

8/22, 29 & 9/5