

Adams County Legal Journal

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No. 37, pp. 222-231

IN THIS ISSUE

NATIONWIDE VS. DUPERT ET AL

This opinion continues to next issue (2/13/2004)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-12 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground with improvements thereon, situate, lying and being in the Borough of New Oxford, County of Adams and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a corner of Orange and High Streets, on the South West side of W.M.R.R. thence along said High Street North 71 degrees East, about 120 feet to center of said Railroad; thence along said railroad Westward to Orange Street; thence along said Orange Street, South 19 degrees East, 150 feet to the place of BEGINNING.

BEING KNOWN AS 130 West High Street, New Oxford, PA 17350

PROPERTY ID NO. 4-95

TITLE TO SAID PREMISES IS VESTED IN Thomas Morgan, by Deed from Donald A. Bixler, dated 08/31/01, recorded 09/04/01, in Deed Book 2393, Page 304.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are

filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/30, 2/6 & 13

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 04-S-39
Action to Quiet Title

JOHN E. HIEBER, Plaintiff

vs.

LAKE MEADE, INC., its successors
and/or assigns, Defendant

TO: Lake Meade, Inc., its successors
and/or assigns

NOTICE

TAKE NOTICE that on the 14th day of January, 2004, Plaintiff, John E. Hieber, filed a Complaint endorsed with a Notice to Defend against you in the Court of Common Pleas of Adams County, Pennsylvania docketed to No. 04-S-39. The Complaint seeks to establish Plaintiff's title to a certain parcel or tract of land known as Lot 425, Lake Meade Subdivision, Reading Township, Adams County, Pennsylvania.

YOU ARE HEREBY notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a judgment will be entered against you for the relief requested in the Complaint.

The Court of Common Pleas of Adams County, Pennsylvania, has ordered service of the Complaint be made on the Defendant by publication once a week for three successive weeks in the Adams Legal Journal and a newspaper of general circulation in the County of Adams, Pennsylvania. Plaintiff will request the Court to enter a final judgment ordering that any possible legal interest that the Defendant might have in said property be extinguished.

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the Complaint, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Name: Adams County Referral Officer
Address: Adams County Courthouse
111 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone: 334-6781

1/30, 2/6 & 13

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1229 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a P.K. nail in the center line of Pennsylvania Route 97, said P.K. nail being South 52 degrees 15 minutes 00 seconds East, 384 feet, more or less from corner of land now or formerly of James Martin; thence in said center line of Pennsylvania Route 97, South 52 degrees 15 minutes 00 seconds East, 478.40 feet to a P.K. nail in said center line at corner of other land now or formerly of John P. Randall; thence by said other land of John P. Randall and passing through U.T.C. Pole #96 set back 23 feet from the last mentioned point, South 29 degrees 30 minutes 00 seconds West, 463.00 feet to a steel fence post; thence by same, North 52 degrees 15 minutes 00 seconds West, 478.40 feet to a pipe; thence continuing by same, and passing through U.T.C. #94, set back 25.00 feet from the next mentioned point, North 29 degrees 30 minutes 00 seconds East, 463.00 feet to a P.K. nail, the place of BEGINNING CONTAINING 5.031 acres.

Address: 2779 Baltimore Pike, Gettysburg, PA 17325

Tax Map or Parcel ID No.: (30)H15-047

SEIZED and taken into execution as the property of **Barry N. Poole & Kelly A. Poole** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing

thereof, Purchaser must settle for property on or before filing date.

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

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

1/23, 30 & 2/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1113 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike found in the center line of Township Road T-355, Hilltown Road, at corner of land now or formerly of Donald Miller; thence by said land now or formerly of Donald Miller, and passing through a pipe found twenty-five (25) feet from the last mentioned point, South nineteen (19) degrees eleven (11) minutes eight (08) seconds West, three hundred seven and ninety-five one-hundredths (307.95) feet to a pipe found at a corner of Lot No. 1 on the hereinafter referred to draft of survey; thence by said Lot No. 1, North eighty-four (84) degrees forty-eight (48) minutes five (05) seconds West, forty-nine and seventy-three one-hundredths (49.73) feet to a wood corner post; thence by the same, South sixty-four (64) degrees thirty-seven (37) minutes twenty-five (25) seconds West, seventy-seven and forty-one one-hundredths (77.41) feet to a wood corner post; thence by same, South twenty-five (25) degrees thirteen (13) minutes forty-five (45) seconds West, forty-two and fifty one-hundredths (42.50) feet to a 5/8 inch rebar (set); thence continuing by said Lot No. 1, North sixty-four (64) degrees forty-six (46) minutes fifteen (15) seconds

West, thirty-six and seventy-six one-hundredths (36.76) feet to a 5/8 inch rebar (set); thence by same, and entering an existing gravel driveway, and passing through a 5/8 inch rebar set back twenty-five (25) feet from the next mentioned point, North twenty-five (25) degrees thirteen (13) minutes forty-five (45) seconds East, three hundred ninety-seven (397) feet to a railroad spike set in the center line of Township Road T-355, Hilltown Road, aforesaid; thence in Township Road T-355, Hilltown Road, South sixty-six (66) degrees forty-nine (49) minutes twenty-six (26) seconds East, one hundred fifteen and twenty-six one-hundredths (115.26) feet to a railroad spike found in the center line of Township Road T-355, Hilltown Road, the point and place of BEGINNING, CONTAINING .977 acre.

BEING KNOWN as 1290 Hilltown Road, Lot 2, Biglerville (Franklin Twp.), PA 17307

Property ID No.: D-10-89

TITLE TO SAID PREMISES IS VESTED IN Brian Lewis Poole, single person, by Deed from M. Susan Mann, formerly M. Susan Poole, individual, dated 07/07/97, recorded 07/07/97, in Deed Book 1402, Page 101.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/23, 30 & 2/6

NATIONWIDE VS. DUPERT ET AL

1. An insurer has both a duty to defend third party claims against an insured which are covered by the policy of insurance, regardless of whether they are groundless, and a duty to indemnify the insured for successful third party claims up to the policy limits.

2. If the complaint alleges an injury which is actually or potentially within the scope of the policy, then Plaintiff must defend the action until the claim is limited to a recovery which the policy does not cover.

3. In determining whether there is a duty to defend, the court must accept the factual allegations as true and, if true, decide whether those facts bring the claim within the policy's coverage.

4. An insurer's duty to defend and indemnify an insured may be resolved by a declaratory judgment action. In such a proceeding, the court must first determine the scope of the policy's coverage and then examine the underlying complaint to determine whether it triggers coverage.

5. Any (policy) provision limiting coverage which is ambiguous must be interpreted in favor of the insured and against the insurer.

6. The Superior Court adopted the "inferred intent rule" for liability insurance cases involving the sexual abuse of a child by an insured adult.

7. The inferred intent to harm is an irrebuttable presumption that "harm to children in sexual molestation cases is inherent in the very act of sexual assault committed on a child, regardless of the motivation for or nature of assault, and that the resulting injuries are, as a matter of law, intentional...."

8. Where the inferred intent rule is applicable, the conduct is deemed intentional for insurance purposes regardless of the label applied to it. (Thus) in sexual molestation of minors cases it does not matter whether the causes of action are artfully framed in the language of negligence. The sexual conduct is nevertheless considered to be intentional and thus excluded from coverage.

9. Where the inferred intent rule applies, intent to harm exists as a matter of law and voluntary intoxication by the insured cannot be used as a wedge to pry open a door to insurance coverage closed by the exclusions in the policy.

10. The phrase "an insured" is generally equated with "any insured" and triggers the exclusionary clause when any insured causes harm intentionally.

11. Public policy suggests that an insurer should not be required to provide coverage for the consequences of the insured's intention or willful criminal conduct.

12. Intentionally or willfully providing alcohol to minors in the face of those risks should not be encouraged, endorsed or rewarded on the assumption that the provider is economically protected with the cloak of insurance. This conclusion is not intended to deny the innocent victim compensation for the harm suffered. Instead it is intended to limit who must provide that compensation for the results of willful criminal behavior.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 99-S-877, NATIONWIDE MUTUAL INSURANCE COMPANY VS. DENNIS J. DUPERT, LORI D. DUPERT, JEAN-NA A. JOHNSON, AND MARY A. BRADBURN.

Dennis J. Bonetti, Esq., for Plaintiff
David M. Pollick, Esq., for Defendants Johnson and Bradburn
Thomas B. Sponaugle, Esq., for Defendants Dupert
Kuhn, P.J., February 12, 2003

OPINION ON MOTIONS FOR SUMMARY JUDGMENT
FILED BY PLAINTIFF AND DEFENDANTS
JOHNSON AND BRADBURN

On September 27, 1999, Plaintiff filed a Complaint for Declaratory Judgment against Dennis J. Dupert, Lori D. Dupert, Jeanna A. Johnson and Mary A. Bradburn.

Before the Court for disposition is a Motion for Summary Judgment filed by Defendants, Johnson and Bradburn, on January 22, 2002, and a Motion for Summary Judgment filed by Plaintiff on February 12, 2002. For the reasons set forth herein, Plaintiff's motion is granted and Defendants' motion is denied.

Legal Standard

Our Superior Court has recently set forth the standard for summary judgment as follows:

Initially, we note that our standard for reviewing a grant of summary judgment is well settled.

[S]ummary judgment is properly entered where the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits demonstrate that no genuine, triable issue of fact exists and that the moving party is entitled to judgment as a matter of law. Pa.R.Civ.P. 1035(b); *Cosmas v. Bloomingdales Bros., Inc.*, 442 Pa. Super. 476, 480, 660 A.2d 83, 85 (1995) (citation omitted); *Aetna Casualty and Surety Company v. Roe*, 437 Pa. Super. 414, 419-20, 650 A.2d 94, 97 (1994) (citations omitted); *Accu-Weather, Inc. v. Prospect Communications, Inc.*, 435 Pa. Super. 93, 98-99, 644 A.2d 1251, 1254 (1994) (citation omitted); *Stidham v. Millvale Sportsmen's Club*, 421 Pa. Super. 548, 558, 618 A.2d 945, 950 (1992), *allocatur denied*, 536 Pa. 630, 637 A.2d 290 (1993) (citation omitted). The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving

party. *Aetna Casualty and Surety Company v. Roe*, supra; *Accu-Weather v. Prospect Communications*, supra; *Stidham v. Millvale Sportsmen's Club*, supra. Moreover, the burden is on the moving party to prove that no genuine issue of material fact exists. *Accu-Weather v. Prospect Communications*, supra (citing *Overly v. Kass*, 382 Pa. Super. 108, 111, 554 A.2d 970, 972 (1989)).... *Butterfield v. Giuntoli*, 448 Pa. Super. 1, 10, 670 A.2d 646, 650 (1995). *Accord Roselli v. General Electric Co.*, 410 Pa. Super. 223, 226, 599 A.2d 685, 687 (1991), *allocatur granted*, 530 Pa. 645, 607 A.2d 255 (1992), *appeal discontinued* (1993). See also Pa.R.Civ.P. 1035.1-1035.4 (effective July 1, 1996).

Long v. Yingling, 700 A.2d 508, 512 (Pa.Super. 1997).

Background

The relevant background is as follows. On May 5, 1994, Plaintiff issued a mobile home policy to the Duperts who were husband and wife, living at 769 Bermudian Creek Road, East Berlin, Adams County, Pennsylvania. Subsequently, on August 12, 1994, Ms. Johnson and Ms. Bradburn, both age 15, were guests at the Dupert residence. The Duperts allegedly provided alcohol to their guests who, as a result, became intoxicated and passed out. Ms. Johnson claims that she awoke to find Mr. Dupert kissing and touching her legs and moving his head toward her pelvic area. She curled into a ball and Mr. Dupert ceased his actions toward her. Ms. Bradburn also awoke to find Mr. Dupert engaging in sexual intercourse with her. After being asked to stop, Mr. Dupert began performing oral sex upon Ms. Bradburn. Her resistance consequently led to Mr. Dupert stopping.

Criminal complaints were filed against the Duperts. On February 14, 1995, Mr. Dupert was convicted of Rape, Aggravated Indecent Assault and Indecent Assault against Ms. Bradburn and Indecent Assault against Ms. Johnson (CC-732-94). The case was eventually returned to the trial court where on September 2, 1999, Mr. Dupert entered pleas of guilty to Aggravated Indecent Assault (18 Pa. C.S.A. §3125) and Indecent Assault (18 Pa. C.S.A. §3126) as to Ms. Bradburn, and Corruption of Minors (18 Pa. C.S.A. §6301).

Mrs. Dupert entered into the Accelerated Rehabilitative Disposition Program on November 22, 1996, for criminal charges

filed against her arising out of providing alcohol to the minors (CC-587-96).

In 1998, Ms. Johnson (98-S-782) and Ms. Bradburn (98-S-783) filed civil complaints against the Duperts. Each Complaint alleged causes of action for (I) Assault and Battery against Mr. Dupert, (II) Intentional Infliction of Emotional Distress against Mr. Dupert, (III) Punitive Damages against Mr. Dupert, (IV) Negligent Infliction of Emotional Distress against Mr. Dupert, (V) Negligence against Mr. Dupert, and (VI) Negligence against Mrs. Dupert.

The Duperts notified Plaintiff of the civil complaints and requested coverage under the policy. Plaintiff contends that the policy excludes coverage for the acts complained of and filed this declaratory action seeking a determination whether it has a duty to defend or to indemnify the Duperts.

INSURER'S DUTY TO DEFEND AND INDEMNIFY

An insurer has both a duty to defend third party claims against an insured which are covered by the policy of insurance, regardless of whether they are groundless, and a duty to indemnify the insured for successful third party claims up to the policy limits. *Aetna Casualty and Surety v. Roe*, 650 A.2d 94, 98 (Pa. Super. 1994). The former is a distinct and broader obligation than the latter. *Id.*

The duty to defend does not arise simply because allegations have been made against an insured. *Erie Insurance Exchange v. Claypoole*, 673 A.2d 348, 355 (Pa. Super. 1996). The duty to defend the action against the Duperts is fixed solely by the allegations in the underlying complaint. If the complaint alleges an injury which is actually or potentially within the scope of the policy, then Plaintiff must defend the action until the claim is limited to a recovery which the policy does not cover. *Erie Insurance Exchange v. Fidler*, 808 A.2d 587, 590 (Pa. Super. 2002); *Erie Insurance Exchange v. Claypoole, supra.*, 673 A.2d at 356. The factual allegations set forth in the complaint rather than the cause of action averred determines whether coverage is triggered. *Minnesota Fire and Casualty Comp. V. Greenfield*, 805 A.2d 622, 625 (Pa. Super. 2002). Therefore, in determining whether there is a duty to defend, the court must accept the factual allegations as true and, if true, decide whether those facts bring the claim within the policy's coverage. *Aetna Casualty and Surety Comp. v. Roe, supra.*, 650 A.2d at 99.

An insurer's duty to defend and indemnify an insured may be resolved by a declaratory judgment action. *Erie Insurance Exchange v. Claypoole*, *supra.*, 673 A.2d at 355; *Aetna Casualty and Surety Company v. Roe*, *supra.*, 650 A.2d at 99. In such a proceeding, the court must first determine the scope of the policy's coverage and then examine the underlying complaint to determine whether it triggers coverage. *Erie Insurance Exchange v. Fidler*, *supra.*, 808 A.2d at 589.

THE INSURANCE POLICY

The specific policy provisions at issue state,

COVERAGE – PERSONAL LIABILITY

We will pay damages the **insured** is legally obligated to pay due to **bodily injury** . . .

EXCLUSIONS

SECTION II

1. **Coverage E – Personal Liability** . . . do not apply to **bodily injury** . . . :

- a. caused intentionally by or at direction of an **insured**, including willful acts the result of which the **insured** knows or ought to know will follow from the **insured's** conduct.

(Bold print in the original.)

Bodily injury is defined in the policy as “bodily harm, sickness, or disease, required care, loss of services, and death.”

In deciding whether the injuries alleged by the juveniles are within the coverage of the policy, the specific contract of insurance must be interpreted. However, in determining whether an insurance contract provides coverage for the underlying claim, the court's focus must be the reasonable expectations of the insured. Those expectations are determined after examining the totality of the particular insurance transaction. If the limitations of the policy are clear and unambiguous, the insured may not complain if the claim is not covered. However, any provision limiting coverage which is ambiguous must be interpreted in favor of the insured and against the insurer. *Britamco Underwriters, Inc. v. Weiner*, 636 A.2d 649, 651 (Pa. Super. 1994).

Plaintiff does not question whether the conduct of the Duperts caused bodily injury to the juveniles as that term is defined in the policy. Furthermore, Plaintiff does not contest, for the purpose of

this action, that the Duperts are legally obligated to pay for that injury. Instead, Plaintiff contends that all the injuries suffered by the juveniles were caused by the Duperts' intentional conduct or resulted from their willful conduct. If that position is legally tenable, then Plaintiff would be relieved of defending the underlying claim and indemnifying the Duperts.

Obligation to Defend Dennis Dupert

The allegations against Mr. Dupert are that he sexually abused the juveniles and that his actions caused "embarrassment, humiliation, severe mental and emotional pain and suffering and a severe shock to her nerves and nervous system." Plaintiff contends that the instant matter is governed by *Aetna Casualty and Surety Comp. v. Roe, supra.*, and its progeny.

In *Aetna Casualty and Surety Comp. v. Roe, supra.*, the Superior Court adopted the "inferred intent rule" for liability insurance cases involving the sexual abuse of a child by an insured adult, as utilized by the Third Circuit in *Wiley v. State Farm Fire and Casualty Co.*, 995 F.2d 457 (3rd Cir. 1993). In *Roe*, a civil action was filed on behalf of three minor children who allegedly were sexually, physically and mentally abused by their day school teacher and her husband. Aetna filed a declaratory judgment action seeking a determination that it was not required to defend or indemnify the defendants in the underlying complaint based upon its policy provision which excluded coverage for "bodily injury . . . which is expected or intended by the insured."

The *Roe* court explained that,

The Court in *Wiley* noted that the inferred intent to harm is an irrebuttable presumption . . . The criminalization of child abuse additionally serves to place the insured on notice of the societal understanding that the harm from such conduct is inseparable from its performance . . . The court concluded that "harm to children in sexual molestation cases is inherent in the very act of sexual assault committed on a child, regardless of the motivation for or nature of such assault, and that the resulting injuries are, as a matter of law, intentional . . . We agree.

650 A.2d at 102.

The court then concluded that Aetna was not obligated to defend the defendants “because the underlying complaints alleged the intentional harms of assault and battery,” 650 A.2d at 102, and because the underlying complaints “on their face . . . state no factual allegations to which [defendants’] insurance policy actually or potentially applies.” 650 A.2d at 103.

The inferred intent rule adopted in *Roe* was followed two years later in *Erie Insurance Exchange v. Claypoole*, *supra*. There, a civil action was filed on behalf of several minor children alleging that they were sexually abused by their school bus driver. The complaint which the court addressed alleged assault and battery by the bus driver for negligent, intentional and unlawful touching, and for negligent hiring by Claypoole. Claypoole owned the bus and requested Erie to defend. Erie declined coverage on the basis of an exclusion for intentional conduct. The only issue decided by the Superior Court was whether Erie was obligated to defend Myers. Based upon the inferred intent rule, the Court granted Erie’s motion for summary judgment in this declaratory judgment action and ruled that Erie had no duty to defend or indemnify Myers.

The same situation arose in *General Accident Insurance Comp. of America in Allen*, 708 A.2d 828 (Pa. Super. 1998) and the same result followed. There, it was alleged that Mr. Allen had photographed three minor children in sexually explicit positions and fondled them. A civil action set forth causes of action against Mr. Allen for battery and intentional and negligent infliction of emotional distress. Mr. Allen’s homeowner insurer argued it had no duty to defend the civil action. Based upon the inferred intent rule, the Superior Court also granted the insurer’s motion for summary judgment in this declaratory judgment action and held that there was no duty to defend Mr. Allen.

Recently, in *Minnesota Fire and Casualty Comp. v. Greenfield*, *supra.*, the inferred intent rule was extended to a situation where Greenfield provided heroin to Angela Smith. Ms. Smith subsequently died as a result of her usage of the drug. A wrongful death and survival action was filed against Greenfield alleging negligence. Minnesota had issued a homeowner’s policy covering Greenfield for negligence. Minnesota argued that Greenfield’s conduct was intentional and excluded from coverage. The court agreed and expounded.

We believe that an intent to cause injury existed as a matter of law due to the nature of Greenfield's conduct of providing Angela Smith with what tragically, and all too predictably, proved to be a fatal dose of heroin. Minnesota's policy issued to Greenfield excluded intentionally caused injuries from its coverage.

Our Court adopted the idea of inferred intent in child abuse cases in . . . *Roe* . . . Inferred intent results when there is an intentional act on the part of the insured as it is inherent in that act that harm will occur. In child abuse cases, the actor's abuse will frequently cause long-term harm to the child. Therefore, although the offender may not intend to cause long-term harm to the child, since it is likely to occur, the act is considered intentional and there is no insurance coverage for policies that merely cover general negligence. Courts have noted that the criminalization of the act puts the offender on notice that harm may well occur.

Just as it is certain that frequently long-term harm will follow from abusing a child, it is certain that frequently harm will occur to the buyer if one sells heroin. Not only is it criminalized because of the great risk of harm, but in this day and age, everyone realizes the dangers of heroin use . . .

805 A.2d 624 (citations omitted).

Based upon these cases, it appears that Plaintiff is not required to defend or indemnify for Mr. Dupert's conduct. Ms. Johnson and Ms. Bradburn argue, however, that the cases cited above are distinguishable and not dispositive in this case.

First, they argue that the complaint in *Roe* only alleged intentional conduct whereas here there are also allegations of negligent conduct. Nevertheless, the instant defendants should not be surprised that the outcome of this issue is against them. The *Roe* court hinted as much when it discussed an attempt by the minor plaintiffs to amend the underlying civil complaint to add a claim for negligence after the statute of limitations had expired. It noted that,

No precedent exists for recovery in negligence for injuries suffered as a result of the intentional torts of

assault and battery. To characterize as negligence the children's physical and mental injuries alleged as a result of sexual, physical and mental abuse would be to create a legal oxymoron as an extension of tort law we are not inclined to create.

650 A.2d at 103.

The underlying plaintiffs in *Roe* had unsuccessfully suggested that the case of *Britamco Underwriters, Inc. v. Weiner, supra.*, decided 10 months earlier, was applicable. In *Weiner*, Davis filed suit against *Weiner*, a co-owner of the Eagle Bar, and *Tucker*, an employee of the bar, who struck him in the neck. His complaint alleged assault and battery, intentional, reckless and/or negligent infliction of emotional distress, and negligence for failing to provide adequate protection for business invitees. *Britamco* filed a declaratory judgment action seeking a declaration that it had no duty to defend or indemnify the bar because the policy excluded coverage for claims arising out of assault and battery. Superior Court held that because *Davis* alternatively alleged that his injuries were caused by negligent conduct and because the injuries could have resulted from negligent, as opposed to intentional, conduct, *Britamco* was required to defend until such time as the claim was limited to a recovery that the policy did not cover. 636 A.2d at 652. The *Roe* court distinguished *Weiner* because that underlying complaint contained specific allegations of negligence, in addition to allegations of intentional harm.¹

However, since *Roe*, the Superior Court has consistently held, in cases where the inferred intent rule is applicable, that the conduct is deemed intentional for insurance purposes regardless of the label applied to it. In *Erie Insurance Exchange v. Claypoole, supra.*, the Court made it clear that in sexual molestation of minors cases it does not matter whether the causes of action are artfully framed in the language of negligence. The sexual conduct is nevertheless considered to be intentional and thus excluded from coverage. In *Claypoole*, the underlying plaintiffs alleged that *Myers'* sexual molestation of the minor children was negligent, as well as intentional. The court's

¹ Furthermore, the physical and emotional injuries suffered by the victim in *Weiner* are in fact the type which can result from negligent or intentional conduct. However, one does not unintentionally commit sexual molestation of children no matter what the legal theory averred in the complaint.

response to the argument that allegations of negligence are sufficient to trigger the insurer's duty to defend was that,

The characterization of the horrific injuries suffered by the children who are the victims of sexual molestation as resulting from negligence "would . . . create a legal oxymoron as an extension of tort law . . ."

. . . pursuant to the inferred intent rule, injuries resulting from sexual assault committed on children in cases of sexual molestation are intentional as a matter of law. Hence, despite the wording of the plaintiffs' complaint, only allegations of injuries resulting from Myers' intentional conduct towards the minor children were raised by the plaintiffs . . .

. . . we conclude that Erie possesses no legal obligation to defend or indemnify . . . To hold otherwise would be the equivalent of characterizing the sexual molestation of children as a negligent act caused by being in the wrong place at the wrong time instead of characterizing it as an intentional act resulting from the repugnant conduct of the molester. We refuse to take such a benign view of sexual molestation.

673 A.2d at 356.

Continued to next issue (2/13/2004)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1074 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 12th day of March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those certain four (4) tracts of land, together with the improvements thereon erected, situate, lying and being in Hamilton Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

TRACT NO. 1: BEGINNING for a point at an iron pin at lands now or formerly of Cora B. Eckert and Emerson Eckert, her husband, which point is approximately ten (10) feet North of a public road leading from Abbottstown to Brown's Dam, thence along lands now or formerly of Cora B. Eckert and Emerson Eckert, her husband, North sixty-two and one-half (62-1/2) degrees West, one hundred twenty-two (122) feet to Conewago Creek at low water mark; thence in, through and along Conewago Creek, North thirty-four (34) degrees East, fifty-one and five-tenths (51.5) feet to a point at lands now or formerly of Cora B. Eckert and Emerson Eckert, her husband, thence along said lands now or formerly of Eckerts, South fifty-six and one-half (56-1/2) degrees East, one hundred seventeen (117) feet three (3) inches to an iron pin at lands now or formerly of Cora B. Eckert and Emerson Eckert, her husband; thence along said lands now or formerly of Eckerts, South twenty-five (25) degrees fifty (50) minutes West, forty (40) feet to an iron pin for a point, the place of BEGINNING.

TOGETHER with a right-of-way in the Grantee hereto, his heirs, executors, administrators and assigns, to use for a driveway or means of egress, ingress and regress in, upon, over and through a strip of land, said strip of land to be twelve (12) feet wide and to extend from the public road leading from Abbottstown to Brown's Dam to the cottage of the Grantee hereon erected.

TRACT NO. 2: BEGINNING for a point at an iron pin at lands now or formerly of Percy R. Coulson and Mary A. Coulson, which point is approximately ten (10) feet North of a public road leading from Abbottstown to Brown's Dam, thence South fifty-one (51) degrees twenty (20) minutes West, thirty (30) feet to an iron pin at lands now or formerly of Cora B. Eckert, thence along said last mentioned lands, North fifty-nine (59) degrees fifty (50) minutes West, one hundred eleven and four-tenths (111.4) feet to Conewago Creek at low water mark; thence in,

through and along said Conewago Creek, North thirty-one (31) degrees fifteen (15) minutes East, eighteen (18) feet to lands now or formerly of Percy R. Coulson and Mary A. Coulson, aforesaid; thence along the last mentioned land, South sixty-two and one-half (62-1/2) degrees East, one hundred twenty-two (122) feet to a point, the place of BEGINNING.

TRACT NO. 3: BEGINNING at a stake at low water mark on Big Conewago Creek at lands now or formerly of Francis E. Devine; thence along Big Conewago Creek, North thirty-four (34) degrees East, forty-nine and fifty-six hundredths (49.56) feet to a stake at lands now or formerly of David B. Eckert, thence by the same, South fifty-six (56) degrees thirty (30) minutes East, through two iron pins, one hundred ten and fifteen hundredths (110.15) feet to an iron pin; thence by land now or formerly of David B. Eckert, South twenty-five (25) degrees fifty (50) minutes West, fifty (50.00) feet to an iron pin at lands now or formerly of Francis E. Devine, aforesaid; thence by the same, North fifty-six (56) degrees thirty (30) minutes West, one hundred seventeen and twenty-five hundredths (117.25) feet to a stake, the place of BEGINNING. (CONTAINING 5634 square feet more or less.)

TRACT NO. 4: BEGINNING at the Westernmost (Southwestern) corner of the lot hereby conveyed at a point on the water's edge of Conewago Creek, said point being at other lands now or formerly of Margaret Snyder Bowling; thence by said Conewago Creek, North thirty-six (36) degrees two (2) minutes fifty-one (51) seconds East, one hundred ten and eight hundredths (110.08) feet to the Northernmost (Northwest) corner of the lot hereby conveyed; thence by lands now or formerly of David B. Eckert, South forty-eight (48) degrees thirty (30) minutes East, and through a steel pin set sixty (60) feet from the beginning of this course, one hundred thirty-five (135) feet to a steel pin at the Easternmost (Northeastern) corner thereof, thence continuing along lands now or formerly of David B. Eckert, South forty-one (41) degrees thirty (30) minutes West, one hundred (100) feet to a steel pin at the Southernmost (Southeastern) corner hereof, said steel pin being also located at the Northeastern corner of the access right-of-way hereinafter referred to; thence running along the Northeastern end of said access right-of-way, being lands now or formerly of David B. Eckert, North forty-eight (48) degrees thirty (30) minutes West, twenty-five (25) feet to a point at the Northwestern corner of said access right-of-way, said point being also the Northeastern corner of other lands now or formerly of Margaret Snyder Bowling, aforesaid; thence by other

lands now or formerly of the said Margaret Snyder Bowling, North fifty-four (54) degrees, West one hundred (100) feet to the hereinabove described place of BEGINNING. (CONTAINING 0.3100 acres neat measure.) The foregoing description was taken from a draft of survey made by J. H. Rife, Registered Engineer, dated July 22, 1968, being the Surveyor's File No. A-1448.)

TOGETHER with an approximately twenty-five (25) foot wide right-of-way unto the Grantee herein, his/her/their heirs and assigns, for purposes of perpetual ingress, egress and regress from Pennsylvania Legislative Route 01037, and running thence North Northeasterly along the East Southeastern end of other lands now or formerly of Margaret Snyder Bowling and M. Virginia H. Bowling Childs, for a distance of at least one hundred (100) feet to the Southwestern side of the lot hereinabove described.

SUBJECT. NEVERTHELESS, to the right-of-way of the Pennsylvania Legislative Route which traverses portions of Tracts No. 1 and 2 hereinabove described.

HAVING THEREON ERECTED a dwelling house known as: 796 Peeply Towne Road, East Berlin, Pennsylvania 17316

BEING THE SAME PREMISES WHICH Gregory A. McMaster, by Deed dated 9/27/00 and recorded 9/28/00 in Adams County Deed Book 2134, Page 168, granted and conveyed unto Craig B. Rutters and Cynthia L. Rutters.

SEIZED IN EXECUTION AS THE PROPERTY OF CRAIG RUTTERS AND CYNTHIA RUTTERS UNDER ADAMS COUNTY JUDGMENT NO. 02-S-1074

Map & Parcel (17) K8-110

SEIZED and taken into execution as the property of **Craig Rutters & Cynthia Rutters** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 5, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/23, 30 & 2/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-788 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of a fifty (50.00) foot right-of-way known as Bonnie Field Circle at corner of Lot No. 73 on the draft of survey hereinafter referred to; thence along Lot No. 73 South sixty (60) degrees forty-one (41) minutes forty-one (41) seconds West, one hundred sixteen and thirty-six hundredths (116.36) feet to a point at Lot No. 67; thence along a portion of Lot Nos. 67 and 66 North thirty-five (35) degrees forty-one (41) minutes twenty-one (21) seconds West, seventy-four and forty-eight hundredths (74.48) feet to a point at corner of Lot No. 75; thence along Lot No. 75 North sixty (60) degrees forty-one (41) minutes forty-one (41) seconds East, one hundred thirty-six and forty-one hundredths (136.41) feet to a point on the Western edge of a fifty (50.00) foot right-of-way known as Bonnie Field Circle; thence along the Western edge of such fifty (50.00) foot right-of-way by a curve to the left, the radius of which is two hundred forty and nineteen hundredths (240.19) feet an arc distance of seventy-five and twenty-three hundredths (75.23) feet and having a long chord bearing and distance of South twenty (20) degrees nineteen (19) minutes fifty-seven (57) seconds East, seventy-four and ninety-two hundredths (74.92) feet to a point; the place of BEGINNING. CONTAINING 9,205.8 square feet.

The above description was taken from a draft of survey dated February 26, 1976, prepared by Edward H. Richardson Associates, Inc., labeled "Final Plat Bonnie Field", revised April 14, 1976, and designated thereon as Lot No. 74 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 9 at Page 24.

UNDER AND SUBJECT, NEVERTHELESS, to restrictive covenants as contained in Misc. Book 27 at Page 302.

BEING KNOWN and numbered as 40 Bonniefield Circle, Gettysburg, PA 17325

TAX PARCEL NUMBER: 10619-88.

BEING the same property William Walls, Jr. a/k/a William Frank Walls, Jr.

and Sherrie Lynn Walls, husband and wife, granted and conveyed to William Walls, Jr. a/k/a William Frank Walls, Jr., by Deed dated June 12, 2001 and recorded July 18, 2001, in the Recorder of Deeds Office, Adams County, Pennsylvania in Deed Book Volume 2346, Page 235.

Grenen & Birsic, P.C.
By: /s/Kristine M. Anthon, Esq.
Pa. I.D. #77991
Attorneys for Plaintiff
One Gateway Center, Ninth Floor
Pittsburgh, PA 15222
(412) 281-7650

DBV 2346

Page 235

Tax Parcel No. 10619-88

SEIZED and taken into execution as the property of William Walls, Jr. a/k/a William Frank Walls, Jr. and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/23, 30 & 2/6

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that AIN KARIM, INC., filed on or about the 29th day of January, 2004, Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, for the purpose of voluntary dissolution. Any persons with claims against the corporation must be presented in writing and contain sufficient information to identify the claimant and substance of the claim. All claims may be mailed to: 631-A Tract Road, Fairfield, Adams County, Pennsylvania 17320. All claims must be received no later than the 31st day of March, 2004. The corporation may make distribution to other claimants, creditors, or interested persons or entities without further notice to claimants.

David K. James, III, Esq.
Attorney for Corporation

2/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1172 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Reading Township, Adams County, Pennsylvania, designated Lot 2 on a Plan recorded in Plan Book 79, Page 32, known as and numbered 150 Rife Road, more particularly described as follows, to wit:

BEGINNING at a point at a nail set on the centerline of Rife Road (T-574) at a corner of lands now or formerly of K. David Bahn; thence along said lands S. 36° 8' 51" W. 260.78 feet to an iron pin at other lands of Grantors; thence along said lands N. 60° 35' 56" W. 172.37 feet to an iron pin; thence continuing along said lands N. 29° 24' 4" E. 259 feet to a point in the centerline of Rife Road (T-574); thence along the centerline of said Road S. 60° 35' 56" E. 202.96 feet to a nail set, the point and place of BEGINNING.

CONTAINING 1.000 acre.

TITLE TO SAID PREMISES IS VESTED IN Lynn A. Beaver, Single Woman by Deed from Marlin C. Bortner and Georgine M. Bortner, husband and wife dated 5/18/2001 and recorded 5/31/2001 in Record Book 2299, Page 208.

Premises being: 150 Rife Road, East Berlin, PA 17316

Tax Parcel No. L7-20A

SEIZED and taken into execution as the property of Lynn A. Beaver and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/30, 2/6 & 13

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 JACOB M. BREAM, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Wayne E. Mickley, 15 Jack Road, Orttanna, PA 17353

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

ESTATE OF FLO M. FRANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James Knaub, c/o Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

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

ESTATE OF ROBERT E. KEEFER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Kenneth F. Keefer, 31 Edgegrove Road, Hanover, PA 17331

Attorney: Daniel M. Frey, Esq., Barley Snyder, 14 Center Square, Hanover, PA 17331

ESTATE OF EMORY G. KINDER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Wilma Jean Crawford, 77 North Street, McSherrystown, PA 17344

Attorney: Jered L. Hock, Esq., Metzger, Wickersham, Knauss & Erb, P.C., P.O. Box 5300, 3211 North Front Street, Harrisburg, PA 17110-0300

ESTATE OF MARGARET E. KING, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Charles Biesecker, 305 Meade Avenue, Hanover, PA 17331

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

ESTATE OF HENRIETTA B. LENHART, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: PNC Bank NA, P.O. Box 308, Camp Hill, PA 17001-0308

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

ESTATE OF ELVA L. ROLAND, DEC'D

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

Executor: John R. Roland, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, P.C., 29 North Duke Street, York, PA 17401

ESTATE OF NITA WEANER SCHRIVER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Phyllis W. Horick, P.O. Box 192, 170 Park Street, Bendersville, PA 17306

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

ESTATE OF ROY C. SNYDER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: R. Glenn Snyder, 209 California Road, Littlestown, PA 17340; Kay R. Stuffle, 90 Kensington Drive, Littlestown, PA 17340

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

SECOND PUBLICATION

ESTATE OF MARY L. BROWN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Ruth E. Weaver, 248 South Jefferson Street, Hanover, PA 17331; Edna E. King, 110 South Blettner Avenue, Hanover, PA 17331

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

ESTATE OF RALPH L. HIKES, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Adams County National Bank, Attn: Paul H. Ketterman, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF WILDA B. SHEAFFER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Terry J. Sheaffer, 1663 Wensville Road, Biglerville, PA 17307

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

THIRD PUBLICATION

ESTATE OF BLANCHE E. ARNOLD, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Mr. Timothy Arnold, 9401 SE 174th Loop, Summerfield, FL 34491; Ms. Florence E. (Arnold) Wilson, 3011 F West Long Ct., Littleton, CO 80120

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

ESTATE OF PHYLLIS J. FLENNER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Vickie D. Dean, 980 Orttanna Road, Orttanna, PA 17353; Douglas A. Flenner, 4308 Fairfield Road, Fairfield, PA 17320

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

ESTATE OF ROLAND E. ORNER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Co-Executors: Robert E. Orner, P.O. Box 366, Arendtsville, PA 17303; Samuel C. Orner, 805 North West Street, Carlisle, PA 17013

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

ESTATE OF JOHN H. RAVENSCROFT, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: John James Mooney, III, Esq., 230 York Street, Hanover, PA 17331

Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-421 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE CERTAIN lots, with improvements thereon erected,

TRACT ONE:

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

BEGINNING at a stone at corner of land now or formerly of William Smith Heirs; thence along land now or formerly of William Smith Heirs, South 45 degrees West. 519 feet to a stone at corner of land now or formerly of Grace E. Fox and Raymond B. Fox; thence along land now or formerly of Grace E. Fox and Raymond B. Fox, crossing State Highway Route 01015 leading from Fairfield to Greenstone and crossing Tom's Creek, North 36-1/2 degrees West. 250 feet to center of a big rock at line of land now or formerly of William Smith Heirs; thence by land now or formerly of William Smith Heirs, North 45 degrees East, 519 feet to a stone; thence by land now or formerly of same, crossing Tom's Creek and crossing the aforesaid State Highway, South 36-1/2 degrees East, 250 feet to a stone, the place of BEGINNING.

CONTAINING 2 acres and 156 perches and 159 square feet.

EXCEPTING, HOWEVER, THEREFROM, that certain lot or piece of land otherwise conveyed by Warren R. Dannelley and Laura M. Dannelley, husband and wife, to Paul C. McGlaughlin and wife, dated April 9, 1963 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 243 at page 1023.

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

BEGINNING at the corner of lands of Grantors and said land known as Lot No. 2 on a certain subdivision, thence South 45 degrees, 00 minutes, 00 seconds East, 50.00 feet to a point; thence South 45 degrees, 03 minutes, 21 seconds West, 435.05 feet to a point; thence North 45 degrees, 00 minutes, 00 seconds West, 50.00 feet to a point at the corner of Lot No. 5; thence continuing along Lot No. 5 North 45 degrees, 06

minutes, 51 seconds East, 213.05 feet to a point at the corner of Lots No. 4 and 5; thence continuing by Lot No. 4 North 45 degrees, 00 minutes, 00 seconds East, 70.00 feet to a point at the corner of Lots No. 3 and 4; thence continuing by Lot No. 3 North 45 degrees, 00 minutes, 00 seconds East, 100.00 feet to a point at the corner of Lots No. 2 and 3; thence continuing by Lot No. 2 North 45 degrees, 00 minutes, 00 seconds East, 52.00 feet to the place of BEGINNING.

CONTAINING 21,705.48 square feet.

Map #B16, Parcel #61

Map #B16, Parcel 61A

SEIZED and taken into execution as the property of **Mary A. Nicholas, George William Nicholas a/k/a George W. Nicholas & Indian Trail Inn** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 26, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1076 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land.

SITUATE on the West side of Hanover-Carlisle State Highway in Hamilton Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the center of the State Highway, aforesaid at other land now or formerly of Rosa H. Griffin, widow, also known as Lot No. 3; thence by the same and through an iron pin at the side of the Highway, South 70 degrees West 661.14 feet to an iron pin at land now or formerly of Roy A. Garber; thence by the same North 19 degrees 30

minutes West 105.32 feet to an iron pin; thence by the same North 38 degrees 30 minutes West 624.36 feet to an iron pin; thence by the same North 46 degrees East 938.52 feet through an iron pin at the side of said Highway to a point in the center of the State Highway; thence by the same, South 20 degrees East 1,079.5 feet to a point, the place of BEGINNING.

CONTAINING 15 acres and 107.7 perches, more or less.

SAID tract of land sometimes being known as Lot No. 4 on a Plan of Lots of Rosa H. Griffin as prepared by George M. Wildasin, R. S. in September, 1953 and being the same premises which was set forth on the draft of George M. Wildasin, R. S. on October 10, 1953.

BEING Tax Parcel No. (17) K10 Parcel 57

SEIZED and taken into execution as the property of **Richard A. Dell, Carolyn S. Dell n/k/a Carolyn S. Harlacher, R.C.B. Partnership f/k/a R.R.J.C. Partnership & DeImanson, Inc. d/b/a R.C. Dells, Inc., n/k/a R.C. Dells, Inc. t/a The Pixie Restaurant & Motel** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/6, 13 & 20

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that a Certificate of Organization was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about November 13, 2003 for the purpose of organizing BATTLEFIELD AIRCRAFT, LLC. The initial registered office of the company is 21 Cavalry Field Road, Gettysburg, Pennsylvania 17325.

Bernard A. Yannetti, Jr., Esq.
Hartman & Yannetti
Solicitors

2/6

Adams County Legal Journal

Vol. 45

February 13, 2004

No. 38, pp. 232-240

IN THIS ISSUE

NATIONWIDE VS. DUPERT ET AL

This opinion continued from last issue (2/6/2004)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Kevin Drive at Lot No. 115 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 115, North eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds West, one hundred forty-five and thirteen hundredths (145.13) feet to a point at Lot No. 137 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 137 and Lot No. 136 as shown on the hereinafter referenced subdivision plan, North eighty-one (81) degrees, twenty-seven (27) minutes, twenty (20) seconds East, one hundred

(100.00) feet to a point at Lot No. 117 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 117, South eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds East, one hundred forty-five and thirty hundredths (145.30) feet to a point on the right-of-way line of Kevin Drive; thence along the right-of-way line of Kevin Drive, South eighty-one (81) degrees, thirty-three (33) minutes, eleven (11) seconds West, one hundred (100.00) feet to a point, the point and place of BEGINNING, CONTAINING 14,521 square feet.

THE above description being Lot No. 116 on the Final Subdivision Plan for Delbert Piper "Colonial Acres", prepared by Mort, Brown and Associates, dated April 1, 1993, which said subdivision plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 64, Page 93.

TITLE TO SAID PREMISES IS VESTED IN M. Christopher Taylor and Robin A. Taylor, his wife by Deed from Jonathan A. Weaver, etal dated 2/24/1999 and recorded 3/2/1999, in Record Book 1775, Page 270.

Premises being: 120 Kevin Drive, New Oxford, PA 17350

Tax Parcel No. Map 13, Parcel 65

SEIZED and taken into execution as the property of **Christopher M. Taylor & Robin A. Taylor** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-12 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground with improvements thereon, situate, lying and being in the Borough of New Oxford, County of Adams and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a corner of Orange and High Streets, on the South West side of W.M.R.R. thence along said High Street North 71 degrees East, about 120 feet to center of said Railroad; thence along said railroad Westward to Orange Street; thence along said Orange Street, South 19 degrees East, 150 feet to the place of BEGINNING.

BEING KNOWN AS 130 West High Street, New Oxford, PA 17350

PROPERTY ID NO.: 4-95

TITLE TO SAID PREMISES IS VESTED IN Thomas Morgan, by Deed from Donald A. Bixler, dated 08/31/01, recorded 09/04/01, in Deed Book 2393, Page 304.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/30, 2/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-421 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE CERTAIN lots, with improvements thereon erected,

TRACT ONE:

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

BEGINNING at a stone at corner of land now or formerly of William Smith Heirs, thence along land now or formerly of William Smith Heirs, South 45 degrees West, 519 feet to a stone at corner of land now or formerly of Grace E. Fox and Raymond B. Fox; thence along land now or formerly of Grace E. Fox and Raymond B. Fox, crossing State Highway Route 01015 leading from Fairfield to Greenstone and crossing Tom's Creek, North 36-1/2 degrees West, 250 feet to center of a big rock at line of land now or formerly of William Smith Heirs; thence by land now or formerly of William Smith Heirs, North 45 degrees East, 519 feet to a stone; thence by land now or formerly of same, crossing Tom's Creek and crossing the aforesaid State Highway, South 36-1/2 degrees East, 250 feet to a stone, the place of BEGINNING.

CONTAINING 2 acres and 156 perches and 159 square feet.

EXCEPTING, HOWEVER, THEREFROM, that certain lot or piece of land otherwise conveyed by Warren R. Dannelley and Laura M. Dannelley, husband and wife, to Paul C. McLaughlin and wife, dated April 9, 1963 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 243 at page 1023.

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

BEGINNING at the corner of lands of Grantors and said land known as Lot No. 2 on a certain subdivision; thence South 45 degrees, 00 minutes, 00 seconds East, 50.00 feet to a point; thence South 45 degrees, 03 minutes, 21 seconds West, 435.05 feet to a point; thence North 45 degrees, 00 minutes, 00 seconds West, 50.00 feet to a point at the corner of Lot No. 5; thence continuing along Lot No. 5 North 45 degrees, 06 minutes, 51 seconds East, 213.05 feet to a point at the corner of Lots No. 4 and 5; thence continuing by Lot No. 4 North 45 degrees, 00 minutes, 00 seconds East, 70.00 feet to a point at the corner of Lots No. 3 and 4; thence continuing by Lot No. 3 North 45 degrees, 00 minutes, 00 seconds East, 100.00 feet to a point at the corner of Lots No. 2 and 3; thence continuing by Lot No. 2 North 45 degrees, 00 minutes, 00 seconds East, 52.00 feet to the place of BEGINNING.

CONTAINING 21,705 48 square feet.

Map #B16, Parcel #61

Map #B16, Parcel #61A

SEIZED and taken into execution as the property of **Mary A. Nicholas, George William Nicholas a/k/a George W. Nicholas & Indian Trail Inn** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 26, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/6, 13 & 20

In *Minnesota Fire and Casualty Comp. v. Greenfield, supra.*, the underlying complaint was clearly couched in negligence language. The policy precluded coverage for bodily injury which is expected or intended by the insured. Greenfield was not able to prevent Minnesota from exorcising itself from defending and indemnifying him. In addressing Greenfield's alleged negligence for supplying Ms. Smith with heroin, the court observed,

While Greenfield may not have intended that Angela Smith die, the risk of adverse effects from taking heroin is not unexpected, be those adverse effects, sickness or even death. Under the policy language, we find that Greenfield's conduct in supplying her with heroin was intentional. Her death may not have been intentional, but because of the known risks, an adverse reaction is an expected occurrence and the situation would not occur because of the degree of the adverse reaction, even when it results in death.

805 A.2d at 626. (emphasis in original)

The rationale for this legal position was clearly expressed later in the opinion when the court stated,

There exist also compelling public policy reasons for denying a claim such as this. In effect, the courts are being asked to help provide insurance for heroin dealers. While it is true that an insurer can put in its policy specific language to exclude such behavior, there should be no reason to do so . . . It should not be the public policy of this Commonwealth to insure the sale of such a notoriously dangerous and illegal narcotic, limited only by an express clause denying such coverage.

805 A.2d at 630.

Undaunted, the Greenfield plaintiffs contended that even if harm resulting from the selling of heroin is not covered, insurance coverage should nevertheless be available for Greenfield's act of leaving Ms. Smith alone and not checking on her condition. This argument was rejected because

The actions of Greenfield throughout this entire episode, are inseparable from the original intentional act.

Just as the action and evil of the sale of heroin are inseparable, all consequences that naturally flow from that original act must be deemed part of the intentional act.²

Id.

Finally, only four months ago in *Erie Insurance Exchange v. Fidler*, *supra.*, the Superior Court revealed how entrenched it had become in excluding intentional conduct from coverage no matter how it was disguised. There, Denslow instituted a civil suit sounding in negligence against Fidler for throwing the minor plaintiff “with such great force that the Plaintiff’s head struck the wall and a desk causing him to fall unconscious to the floor.”

The *Fidler* court noted that it is possible to write insurance policies to cover intentional conduct but as a rule it is not done. “To apply to intentional acts, policies must clearly provide such coverage,” 808 A.2d at 591, because the courts do not require an insurer to defend against intentional or criminal acts of an insured. Throwing a child against a wall is just as much intentional conduct as a matter of law, 808 A.2d at 590, as sexual molestation and heroin distribution. Therefore, despite the allegation of negligence, coverage was not required because,

If we were to allow the manner in which the complainant frames the request for damages to control the coverage question, we would permit insureds to circumvent exclusions that are clearly part of the policy of insurance.

Id.

Ms. Johnson and Ms. Bradburn also attempt to distinguish *Roe* by pointing out that Mr. Dupert was allegedly intoxicated and, therefore, unable to form the requisite intent to harm the juveniles. They argue that the instant case is more akin to *Stidham v. Millvale Sportsmen’s Club*, 618 A.2d 945 (Pa. Super. 1993). There, McLaughlin became

² Lest the reader concludes that the law is callous toward unsuspecting victims, Superior Court pointed out that,

“There is no doubt that Greenfield has committed an actionable offense against Angela Smith and her family. Nothing in this opinion is meant to signify that Smiths have no cause of action or rights against Greenfield. However, the nature of the action compels a finding of intent to cause harm, negating any duty of Minnesota Fire and Casualty to either defend or indemnify such conduct.”

Id.

extremely intoxicated while at a bar, obtained a shotgun from his truck, shot and killed Stidham, and drove away. He did not know nor had he ever spoken to the victim. McLaughlin had no history of violent behavior. He rarely consumed alcohol but had experienced alcohol blackout before this date. McLaughlin had little or no recollection of the incident in the bar. He eventually entered a plea of guilty to third degree murder and aggravated assault.

When McLaughlin was joined in a civil action arising out of the shooting, Aetna Casualty and Surety Company, his homeowners insurance carrier, was asked to defend the claim against him. Aetna declined. A judgment was entered against McLaughlin and he assigned to the Stidham estate any cause of action he had against Aetna for failing to defend him. The issue before the appellate court was “the extent to which a guilty plea by an insured to third degree murder in a prior criminal proceeding forecloses the victim of the harmful conduct from litigating, in an underlying civil action, the issue of the insured’s intent.”

Aetna’s policy excluded coverage for bodily injury “expected or intended” by the insured. Aetna argued that by pleading guilty to third degree murder the issue of intent was resolved. Third degree murder in Pennsylvania does not require proof of a specific intent to kill and in this case because of his inebriation the guilty plea colloquy never established whether McLaughlin had the specific intent to kill the victim. In other words, because the plea “did not establish the extent of his conscious awareness of his actions or the substantial likelihood of the results” it did not constitute a bar to recovery under the homeowner’s policy. 618 A.2d at 956.

The Court discussed the interplay of intent and intoxication in the insurance coverage context by observing that,

For the purposes of the insurance policy provision excluding coverage for expected or intended injuries by the insured, “an insured intends an injury if he desired to cause the consequences of his act or if he acted knowing that such consequences were substantially certain to result.” . . . Moreover, imbibed intoxicants must be considered in determining if the actor has the ability to formulate an intent . . . If the actor does not have the ability to formulate an intent, the resulting act cannot be

intentional . . . Finally, intent to become intoxicated does not prove an intent to commit an offense . . .

618 A.2d at 953. (emphasis in original).

Because the term “expected or intended” connotes an element of conscious awareness on the part of the insured the civil complaint was deemed one which potentially fell within Aetna’s coverage.

Interestingly, however, just two years after *Stidham* the Superior Court had another opportunity to discuss the interplay of intent and intoxication in *State Farm Mutual Automobile Insurance Comp. v. Martin*, 660 A.2d 66 (Pa. Super. 1995). There, while under the influence of alcohol Martin drove to the home of his estranged wife and struck her with his vehicle when she emerged from her house. Under Martin’s automobile policy with State Farm, he was covered for bodily injury “caused by accident.” In an action for declaratory judgment, State Farm contended that Martin acted intentionally and, therefore, his wife’s injuries were not the result of an accident.

The Superior Court noted the clarity of Pennsylvania law on the issue that a “willful and malicious assault, being an intentional tort, is not an accident” and, therefore, such conduct is not covered by a policy that only covers damages caused by an accident. 660 A.2d at 67. The court then addressed the issue of intoxication in language seemingly at odds with *Stidham*,

Whether an act is accidental or intentional must, for purposes of determining coverage, be determined from the viewpoint of the insured. A policy of liability insurance is a contract intended to protect and benefit the insured from liability resulting from unintentional conduct . . . If the bodily injury is caused by an intentional assault and not by accident, the policy does not provide coverage.

Appellees argue that the insured’s conduct was unintentional (and, therefore, accidental) because he was under the influence of alcohol. It is correct that Martin’s speech was slurred, he smelled of alcohol, and a blood test disclosed an alcoholic blood content of .26 percent. However, “while voluntary intoxication may so cloud the mind as to deprive it of the power of pre-meditation and deliberation [], it will not prevent the formation of the

general intent necessary for the commission of assault and battery.”

660 A.2d at 68.

The court concluded that Martin’s act was deemed an intentional act for which there was no coverage under the State Farm policy.

Neither of these cases deals with intoxication in sexual molestation cases of minors. However, a careful study of a portion of the discussion in *Minnesota Fire and Casualty Comp. v. Greenfield, supra.*, on the inferred intent rule is revealing.

There can be no question that the abuse of a child produces a terrible harm. As a matter of law this harm is deemed to have been caused intentionally regardless of any claim by a defendant of lack of intent or even the inability to form the intent.

[The presumption of harm] offers the better rule because in exceptional cases such as sexual child abuse, where the insured’s conduct is both intentional and of such a nature and character that harm inheres in it, that conduct affords a sufficiently clear demonstration of intent to harm subsuming any need for a separate inquiry into capacity. Once it is determined, strictly by examining the nature and character of the act in question, that it is appropriate to apply the inferred intent rule, then the actor’s actual subjective intent becomes irrelevant. 805 A.2d at 626, quoting *Wiley v. State Farm, supra.* (emphasis added).

I draw from these cases a conclusion that where the inferred intent rule applies, intent to harm exists as a matter of law and voluntary intoxication by the insured can not be used as a wedge to pry open a door to insurance coverage closed by the exclusions in the policy. To hold otherwise would encourage persons to consume alcohol before engaging in criminal behavior considered repugnant by any reasonable person.

Thus, this Court rules that Plaintiff had no duty to defend or indemnify Mr. Dupert on the claims filed by Ms. Johnson and Ms. Bradburn.

Obligation To Defendant Mrs. Dupert

The sole count filed against Mrs. Dupert in the underlying complaint alleges that she was negligent in providing alcohol to the juveniles which led to them becoming intoxicated and thereby exposing them to Mr. Dupert's sexual abuse. Specifically, it is alleged that Mrs. Dupert "knew or should have known" that the juveniles "would be subjected to an unreasonable risk of harm from consuming alcohol" (Para. 32 of the underlying complaints) and that her conduct was done in "willful and wanton disregard" of the rights of the juveniles (Para. 34 of the underlying complaints).

Initially, we wish to make clear that the underlying complaints do not allege that Mrs. Dupert is liable for participating in her husband's conduct or for negligently permitting it to occur as was the situation in *General Accident Insurance Comp. of America v. Allen*, 708 A.2d 828 (Pa. Super. 1998). There, Mrs. Allen was allegedly "careless, reckless and negligent" in failing to warn the minor children of the danger they faced from her husband and for her failure to prevent him from being alone with the children who were victimized.

The policy in *Allen* excluded coverage for bodily injury "expected or intended by the insured." (emphasis added). The Superior Court reasoned that the averments set forth in the complaint alleging the bodily injury suffered by the children at the hands of Mr. Allen did not involve the bodily injury "expected or intended" by Mrs. Allen. The court went on to describe the distinction between policies which exclude intentional acts of "the insured" rather than "any insured" as follows,

Whether the intentional acts of a co-insured will defeat an "innocent" co-insured's ability to collect or be indemnified under a policy has, for the most part, turned upon the exclusionary language used in the policy. Virtually all casualty and indemnity insurance policies issued exclude coverage for damages or liability for damages or injury which was intended by the insured or insureds. However, not all policies contain language that unambiguously excludes coverage for all such damage or liability regardless of whether the insured seeking coverage is the same insured who intended the damage or injury. The policies

which contain such language have been enforced accordingly and coverage has been excluded for the “innocent” co-insured despite the fact that that party did not intend the damage or harm that resulted.

Examples of exclusionary policy language producing this result include bodily injury which was expected or intended by “any insured” and “anyone we protect.” Less clear in the usage of “an insured,” although generally this phrase has been construed to equate to “any insured.” On the other hand, the cases here, and elsewhere, dealing with the usage of the term “the insured” have held that for coverage to be excluded under the “intentional act” or “intended and expected” exclusion the damage or injury had to be intended by the insured in question, not another insured under the policy.

708 A.2d at 832.

Thus, because the policy excluded coverage for harm resulting from the intentional conduct of “the insured” Mrs. Allen was not barred by the exclusion.

In the matter sub judice, Plaintiff’s policy precludes coverage for the bodily injury caused intentionally by “an insured.” As pointed out in *Allen*, the phrase “an insured” is generally equated with “any insured” and triggers the exclusionary clause when any insured causes harm intentionally. Considering the fact that all the harm allegedly suffered by the juveniles was done at the hands of Mr. Dupert and that it is not alleged that the alcohol consumption in and of itself caused illness or injury this Court is compelled to conclude that the exclusion for harm done intentionally by “any insured” precludes coverage for Mrs. Dupert’s liability in this case.

In the alternative, application of the inferred intent rule leads to the conclusion that the harm Mrs. Dupert allegedly caused was intentional. Once that rule was extended to the act of illegally supplying another person with heroin, it is logical to extend it to any harm which flows from the act of illegally supplying a minor with alcohol.³ The same justifications and policy reasons for the rule in drug cases are applicable in alcohol cases. We need not set forth a litany of

³ 18 Pa. C.S.A. §6310.1 (Furnishing Alcohol to Minors).

harm that can result from alcohol consumption by minors. However, alcohol often frequents the lips of those seeking to discard sexual inhibitions in themselves or to lessen the resistance of others. Public policy suggests that an insurer should not be required to provide coverage for the consequences of the insured's intentional or willful criminal conduct.

While Mrs. Dupert may not have intended that the girls be sexually molested, the risk of being sexually vulnerable while intoxicated is not unexpected.

Finally, we can arrive at the same result by examining other language in the exclusionary provision of Plaintiff's policy. The policy also excludes coverage for the "willful acts" of Mrs. Dupert, the result of which she "knows or ought to know will follow from [her] conduct."

As noted earlier, the duty to defend is fixed by the allegations of the underlying complaint. The pleading in this case avers that

1. Mrs. Dupert procured alcoholic beverages with the "intention of providing alcohol" to the juvenile (Para. 4).
2. Mrs. Dupert "knew" each juvenile would be unable to exercise sound judgment in her consumption of alcohol (Para. 31).
3. Mrs. Dupert "knew; or should have known," that the juveniles would be subjected to an unreasonable risk of harm from consuming alcohol (Para. 32).
4. Mrs. Dupert's breach of her duty to the juveniles was "done in willful and wanton disregard" of their rights (Para. 34).
5. As a direct result of Mrs. Dupert's breach, the juvenile was sexually assaulted by Mr. Dupert (Para. 34).

It is clear that the complaint avers that Mrs. Dupert acted willfully in providing alcohol to persons underage and that she knew or should have known that the juveniles could become more vulnerable to sexual aggression if they were under the influence, intoxicated or rendered unconscious.

Social host liability for an adult who knowingly serves alcohol to a minor, *Congini v. Portersville Valve Co.*, 470 A.2d 515 (Pa. 1983), is premised upon the recognition that persons under the age of 21 are incompetent to handle alcohol. 470 A.2d at 517. Every competent adult in our society has been bombarded with information about the

adverse effects of alcohol on minors. These general risks are what the underlying plaintiffs aver that Mrs. Dupert knew about or should have known about.

Although not faced with this precise scenario, the Court is aware that some well meaning parents justify providing alcohol to minors in their home upon the premise that it is better to have control over the environment in which they are drinking rather than the children being in an unsupervised setting. While most responsible adults disagree with the logic of that approach, there is no disagreement about the reason that parents try to maintain some control. They all recognize that combining alcohol and minors too often leads to tragic consequences, whether that be death by over-indulgence, injury from vehicular accidents, or victimization from sexual aggression. Intentionally or willfully providing alcohol to minors in the face of those risks should not be encouraged, endorsed or rewarded on the assumption that the provider is economically protected with the cloak of insurance. This conclusion is not intended to deny the innocent victim compensation for the harm suffered. Instead, it is intended to limit who must provide that compensation for the results of willful criminal behavior.

Therefore, this Court concludes that Plaintiff has no duty to defend or indemnify Mrs. Dupert in the actions brought on behalf of Ms. Johnson and Ms. Bradburn.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 10th day of February, 2003, Plaintiff's Motion for Summary Judgment, filed February 12, 2002, is granted, and Defendants' Motion for Summary Judgment, filed January 22, 2002, is denied.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1203 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin located 11 feet North of the center line of Township Road T-430, known as Plunkert Road, at corner of land now or formerly of Nicholas N. Boccabella and wife; thence by land of the said Nicholas N. Boccabella and wife, and running through an iron pin located 20 feet from the place of BEGINNING, North 4 degrees 47 minutes 2 seconds West, 225 feet to an iron pin; thence by land now or formerly of Raymond G. Boccabella, North 35 degrees 12 minutes 58 seconds East, 141.67 feet to an iron pin; thence by the same and running through an iron pin located 20 feet from the end of this line South 55 degrees 26 minutes 9 seconds East, 377.66 feet to a point located 2 feet West of the center line of Plunkert Road; thence in Plunkert Road, South 46 degrees 34 minutes 12 seconds West, 87.47 feet to a point in said road located 1 foot North of the center line thereof; thence continuing in Plunkert Road, South 89 degrees 48 minutes 2 seconds West, 265.88 feet to an iron pin, the place of BEGINNING. The above description was taken from a draft of survey made by Gettysburg Engineering Company, Inc., dated March 9, 1976 and recorded in Plat Book 10 at Page 17, designating the above as Lot No. 2.

TITLE TO SAID PREMISES IS VESTED IN Neil James Crouse, an unmarried man and Michele L. Rorrer, an unmarried woman, their heirs and assigns by Deed from Neil James Crouse, an unmarried man dated 10/24/2002 and recorded 11/6/2002 in Record Book 2867 Page 173.

Premises being: 202 Plunkert Road, Littlestown, PA 17340

Tax Parcel No. 7C Map 1-16

SEIZED and taken into execution as the property of **Neil James Crouse & Michele L. Rorrer** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and

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

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN property situated in the Township of Hamiltonban in the County of Adams and Commonwealth of Pennsylvania, being described as follows:

CONTAINING 10.02 Acres. Being more fully described in a fee simple deed dated 03/23/1992 and recorded 11/23/1992, among the land records of the County and State set forth above, in Volume 657 Page 239.

Tax Parcel ID: B13-1C

Address: 2885 Cold Spring Road, Orrtanna, PA 17353

SEIZED and taken into execution as the property of **Randell E. Naugle & Rebecca J. Naugle** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1172 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 March, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Reading Township, Adams County, Pennsylvania, designated Lot 2 on a Plan recorded in Plan Book 79, Page 32, known as and numbered 150 Rife Road, more particularly described as follows, to wit:

BEGINNING at a point at a nail set on the centerline of Rife Road (T-574) at a corner of lands now or formerly of K. David Bahn; thence along said lands S. 36° 8' 51" W. 260.78 feet to an iron pin at other lands of Grantors; thence along said lands N. 60° 35' 56" W. 172.37 feet to an iron pin; thence continuing along said lands N. 29° 24' 4" E. 259 feet to a point in the centerline of Rife Road (T-574); thence along the centerline of said Road S. 60° 35' 56" E. 202.96 feet to a nail set, the point and place of BEGINNING.

CONTAINING 1.000 acre.

TITLE TO SAID PREMISES IS VESTED IN Lynn A. Beaver, Single Woman by Deed from Marlin C. Bortner and Georgine M. Bortner, husband and wife dated 5/18/2001 and recorded 5/31/2001 in Record Book 2299, Page 208.

Premises being: 150 Rife Road, East Berlin, PA 17316

Tax Parcel No. L7-20A

SEIZED and taken into execution as the property of **Lynn A. Beaver** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 19, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/30, 2/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1076 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land,

SITUATE on the West side of Hanover-Carlisle State Highway in Hamilton Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the center of the State Highway, aforesaid at other land now or formerly of Rosa H. Griffin, widow, also known as Lot No. 3; thence by the same and through an iron pin at the side of the Highway, South 70 degrees West 661.14 feet to an iron pin at land now or formerly of Roy A. Garber; thence by the same North 19 degrees 30 minutes West 105.32 feet to an iron pin; thence by the same North 38 degrees 30 minutes West 624.36 feet to an iron pin; thence by the same North 46 degrees East 938.52 feet through an iron pin at the side of said Highway to a point in the center of the State Highway; thence by the same, South 20 degrees East 1,079.5 feet to a point, the place of BEGINNING.

CONTAINING 15 acres and 107.7 perches, more or less.

SAID tract of land sometimes being known as Lot No. 4 on a Plan of Lots of Rosa H. Griffin as prepared by George M. Wildasin, R. S. in September, 1953 and being the same premises which was set forth on the draft of George M. Wildasin, R. S. on October 10, 1953.

BEING Tax Parcel No. (17) K10 Parcel 57

SEIZED and taken into execution as the property of **Richard A. Dell, Carolyn S. Dell n/k/a Carolyn S. Harlacher, R.C.B. Partnership f/k/a R.R.J.C. Partnership & Dellmanson, Inc. d/b/a R.C. Dells, Inc., n/k/a R.C. Dells, Inc. t/a The Pixie Restaurant & Motel** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/6, 13 & 20

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 04-S-39
Action to Quiet Title

JOHN E. HIEBER, Plaintiff
vs.

LAKE MEADE, INC., its successors
and/or assigns, Defendant

TO: Lake Meade, Inc., its successors
and/or assigns

NOTICE

TAKE NOTICE that on the 14th day of January, 2004, Plaintiff, John E. Hieber, filed a Complaint endorsed with a Notice to Defend against you in the Court of Common Pleas of Adams County, Pennsylvania docketed to No. 04-S-39. The Complaint seeks to establish Plaintiff's title to a certain parcel or tract of land known as Lot 425, Lake Meade Subdivision, Reading Township, Adams County, Pennsylvania.

YOU ARE HEREBY notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a judgment will be entered against you for the relief requested in the Complaint.

The Court of Common Pleas of Adams County, Pennsylvania, has ordered service of the Complaint be made on the Defendant by publication once a week for three successive weeks in the Adams Legal Journal and a newspaper of general circulation in the County of Adams, Pennsylvania. Plaintiff will request the Court to enter a final judgment ordering that any possible legal interest that the Defendant might have in said property be extinguished.

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the Complaint, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any

money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Name: Adams County Referral Officer
Address: Adams County Courthouse
111 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone: 334-6781

1/30, 2/6 & 13

NOTICE

NOTICE IS HEREBY GIVEN that John J. Murphy III intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania on the 6th day of April, 2004, and that he intends to continue practice with the law firm of Patrono & Associates, LLC and Apple Leaf Abstracting & Settlement Company, 30 West Middle Street, Gettysburg, PA 17325.

2/13, 20 & 27

INCORPORATION NOTICE

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

The name of the corporation is CHAD D. BUOHL, PC.

The corporation has been incorporated under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania Act of December 22, 1988.

Chad D. Buehl, PC
P.O. Box 1010
East Berlin, PA 17316

2/13

FICTITIOUS NAME NOTICE

An application for registration of a fictitious name, NEW EUROPE ARTISTS AGENCY, was filed under the Fictitious Names Act, 54 Pa. CSA Par. 311 by Dagmar E. McCardle, 120 Artillery Drive, Gettysburg, PA 17325. New Europe Artists Agency will be located at 120 Artillery Drive, Gettysburg, PA 17325.

2/13

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 ENDAMA V. EASLEY, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Vicki A. Easley, 217 Heritage Drive, Gettysburg, PA 17325

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

ESTATE OF RICHARD H. HIGINBOTHAM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David H. Higinbotham, 134 Windsor Circle, Ocean Isle Beach, NC 28469

Attorney: Larry W. Wolf, Esq., 215 Broadway, Hanover, PA 17331

ESTATE OF MICHAELA A. LAURO, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Michelle A. Rineman, 451 Parkview Lane, Hanover, PA 17331

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

ESTATE OF VIOLA LUCKENBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executrices: Betty Thomas, 992 Hilltop Drive South, Spring Grove, PA 17362; Shirley Thoman, 671 E Walnut Street, Hanover, PA 17331; Katie Sanders, 6144 Hilltop Drive East, Spring Grove, PA 17362

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

ESTATE OF STEPHEN B. MANN a/k/a STEPHEN BARKER MANN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David L. Spiese, 10 Lincoln Way West, New Oxford, PA 17350

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

ESTATE OF CHARLES E. MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Raymond E. Miller, 153 George Street, Hanover, PA 17331; Eugene P. Miller, 684 Cedar Ridge Road, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF ARLINE NORMA OTT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Yvonne M. Starbuck, 2145 Mt. Hope Road, Fairfield, PA 17320

Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF JOYCE A. PHILIPS, DEC'D

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

Executor: Charles H. Philips, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, P.C., 29 North Duke Street, York, PA 17401

ESTATE OF THOMAS A. PUTMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Marvin J. Putman, 590 South Franklin Street, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF MARGARET E. TAWNEY a/k/a MARGARET ELLA TAWNEY a/k/a MARGARET JANE TAWNEY, DEC'D

Late of Volusia County, Florida

Personal Representative: Sue Anne DaCamara, 5406 Beach Drive, St. Leonard, MD 20685

Attorney: Cindy Lou Franke, Esq., Maxwell Law Offices, Wayne Building, 92 West Main Street, Waynesboro, PA 17268

ESTATE OF ROBERT G. TAYLOR, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Jean V. Taylor, 161 Brysonia School Road, Biglerville, PA 17307

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

SECOND PUBLICATION

ESTATE OF JACOB M. BREM, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Wayne E. Mickley, 15 Jack Road, Orrtanna, PA 17353

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

ESTATE OF FLO M. FRANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James Knaub, c/o Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

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

ESTATE OF ROBERT E. KEEFER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Kenneth F. Keefer, 31 Edgegrove Road, Hanover, PA 17331

Attorney: Daniel M. Frey, Esq., Barley Snyder, 14 Center Square, Hanover, PA 17331

ESTATE OF EMORY G. KINDER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Wilma Jean Crawford, 77 North Street, McSherrystown, PA 17344

Attorney: Jered L. Hock, Esq., Metzger, Wickersham, Knauss & Erb, P.C., P.O. Box 5300, 3211 North Front Street, Harrisburg, PA 17110-0300

ESTATE OF MARGARET E. KING, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Charles Biesecker, 305 Meade Avenue, Hanover, PA 17331

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

ESTATE OF HENRIETTA B. LENHART, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: PNC Bank NA, P.O. Box 308, Camp Hill, PA 17001-0308

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

(continued on page 6)

SECOND PUBLICATION (continued)**ESTATE OF ELVA L. ROLAND, DEC'D**

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

Executor: John R. Roland, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF NITA WEANER SCHRIVER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Phyllis W. Horick, P.O. Box 192, 170 Park Street, Bendersville, PA 17306

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

ESTATE OF ROY C. SNYDER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: R. Glenn Snyder, 209 California Road, Littlestown, PA 17340; Kay R. Stuffle, 90 Kensington Drive, Littlestown, PA 17340

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

THIRD PUBLICATION**ESTATE OF MARY L. BROWN, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Ruth E. Weaver, 248 South Jefferson Street, Hanover, PA 17331; Edna E. King, 110 South Blettner Avenue, Hanover, PA 17331

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

ESTATE OF RALPH L. HIKES, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Adams County National Bank, Attn: Paul H. Ketterman, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF WILDA B. SHEAFFER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Terry J. Sheaffer, 1663 Wenksville Road, Biglerville, PA 17307

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-705 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT improved real estate situate in Straban Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin on the Southeastern side of State Highway Route 394 running between Hunterstown and New Chester; thence running along the Southeastern side of said State Highway and by land now or formerly of Herbert Blye, South 50 degrees West, 211.10 feet to an iron pin at lands now or formerly of Jere W. Taughlinbaugh; thence by said lands and through a rebar (set) set back 35 feet on the line and running through said State Highway North 40 degrees West; 200 feet to a rebar (fd.) at lands now or formerly of Harry Zabolinsky; thence by said lands North 50 degrees East, 133 feet to a rebar in concrete (fd.) at lands now or formerly of James L. Greentree; thence by said lands and through a rebar (set) set back 37.58 feet from the end of this course and running through said State Highway South 61 degrees 19 minutes 50 seconds East, 214.71 feet to the place of BEGINNING.

CONTAINING 34,419 square feet.

The above description was taken from a draft of survey dated May 4, 1981, prepared by John R. Williams, R.S.

IT BEING the same tract of land which Jack A. Himes by his deed dated January 9, 1992 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 677 at page 313, granted and conveyed unto Jack A. Himes and Suzanne M. Himes, his wife, mortgagors herein.

SEIZED IN EXECUTION as the property of Jack A. Himes and Suzanne M. Himes on Judgment No. 03-S-705.

SEIZED and taken into execution as the property of **Jack A. Himes & Suzanne M. Himes** and to be sold by me.

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

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

Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Sarah M. Caldwell, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that she intends to practice law as an Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Brian R. Sinnett, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that he intends to practice law as an Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Shawn C. Wagner, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that he intends to practice law as the District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

Adams County Legal Journal

Vol. 45

February 20, 2004

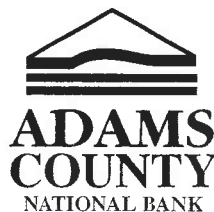
No. 39, pp. 241-248

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This opinion continues to next issue (2/27/2004)

Commitment:
The philosophy upon which
Adams County National Bank is
founded and upon which we are planning
for your future financial needs today.



Member FDIC

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-344 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 260 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County at Plan Book 1, Page 1, and subject to all legal highways, easements, rights-of-way, and restrictions of record.

TITLE TO SAID PREMISES IS VESTED IN Jill A. Fissel by Deed from Michael J. Fissel and Jill A. Fissel formerly known as Jill A. Angel, husband and wife dated 12/22/1994 and recorded 12/28/1994 in Record Book 980, Page 165.

Premises being: 85 Schofield Drive, East Berlin, PA 17316

Tax Parcel No. 11-100

SEIZED and taken into execution as the property of **Michael J. Fissel & Jill A. Fissel** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/20, 27 & 3/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-421 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 2nd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THOSE CERTAIN lots, with improvements thereon erected,

TRACT ONE:

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

BEGINNING at a stone at corner of land now or formerly of William Smith Heirs; thence along land now or formerly of William Smith Heirs, South 45 degrees West, 519 feet to a stone at corner of land now or formerly of Grace E. Fox and Raymond B. Fox; thence along land now or formerly of Grace E. Fox and Raymond B. Fox, crossing State Highway Route 10115 leading from Fairfield to Greenstone and crossing Tom's Creek, North 36-1/2 degrees West, 250 feet to center of a big rock at line of land now or formerly of William Smith Heirs; thence by land now or formerly of William Smith Heirs, North 45 degrees East, 519 feet to a stone; thence by land now or formerly of same, crossing Tom's Creek and crossing the aforesaid State Highway, South 36-1/2 degrees East, 250 feet to a stone, the place of BEGINNING.

CONTAINING 2 acres and 156 perches and 159 square feet.

EXCEPTING, HOWEVER, THEREFROM, that certain lot or piece of land otherwise conveyed by Warren R. Dannelley and Laura M. Dannelley, husband and wife, to Paul C. McLaughlin and wife, dated April 9, 1963 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 243 at page 1023.

ALL THAT CERTAIN tract of land lying, situate and being in Hamiltonban Township, Adams County, Pennsylvania,

more particularly bounded and described as follows:

BEGINNING at the corner of lands of Grantors and said land known as Lot No. 2 on a certain subdivision; thence South 45 degrees, 00 minutes, 00 seconds East, 50.00 feet to a point; thence South 45 degrees, 03 minutes, 21 seconds West, 435.05 feet to a point; thence North 45 degrees, 00 minutes, 00 seconds West, 50.00 feet to a point at the corner of Lot No. 5; thence continuing along Lot No. 5 North 45 degrees, 06 minutes, 51 seconds East, 213.05 feet to a point at the corner of Lots No. 4 and 5; thence continuing by Lot No. 4 North 45 degrees, 00 minutes, 00 seconds East, 70.00 feet to a point at the corner of Lots No. 3 and 4; thence continuing by Lot No. 3 North 45 degrees, 00 minutes, 00 seconds East, 100.00 feet to a point at the corner of Lots No. 2 and 3; thence continuing by Lot No. 2 North 45 degrees, 00 minutes, 00 seconds East, 52.00 feet to the place of BEGINNING.

CONTAINING 21,705.48 square feet.

Map #B16, Parcel #61

Map #B16, Parcel 61A

SEIZED and taken into execution as the property of **Mary A. Nicholas, George William Nicholas a/k/a George W. Nicholas & Indian Trail Inn** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 26, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/6, 13 & 20

CRIMMINS ET AL VS. PENNDOT

1. Evidentiary privileges are not favored.
2. Trial courts (should) accept testimonial privileges only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.
3. Subparagraphs (a) and (b) of 75 Pa. Cons. Stat. Ann. §3754 (West 1996) relate to the same class of persons or things and, therefore, they are *in pari materia* and must be construed as a single provision.
4. In-depth accident investigations or safety studies are rendered undiscoverable only to the extent that they are compiled by PennDOT in association with the Pennsylvania State Police, and are done for the specific purpose of determining the causes of traffic accidents and the improvements which may help prevent similar types of accidents.
5. Protecting documents that are not an integral part of a safety study but which find their way into a safety study file, would frustrate other statutory provisions and can potentially be abused as a shield to liability in contravention of the express intent of the legislature.
6. When a Plaintiff is alleging that PennDOT had a governmental duty connected with the implementation of traffic controls, the burden of proof rests with the Plaintiffs to establish that the pertinent device would have constituted an appropriate remedial measure.
7. The protections of privilege are waived when the privileged information is provided to a third party.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 96-S-1080, JO ROBEY CRIMMINS AND WILLIAM F. CRIMMINS ET AL VS. THE DEPARTMENT OF TRANSPORTATION OF THE COMMONWEALTH OF PENNSYLVANIA.

Shawn P. McLaughlin, Esq., for Plaintiffs

Jay W. Stark, Esq., for Defendant

George, J., February 13, 2003

OPINION

This matter comes before the Court on the Plaintiffs' Motion to Compel Discovery. During depositions of representatives from the Defendant, Pennsylvania Department of Transportation (hereinafter referred to as "PennDOT"), the Plaintiffs¹ attempted to inquire into a number of correspondences forwarded to or offered by PennDOT

¹ The pleadings identify the Plaintiffs as Jo Robey Crimmins and William F. Crimmins as co-administrators of the estate of Melissa L. Crimmins, deceased, and Kenneth E. Taylor, Jr., and Bonnie Taylor, individually and as co-administrators of the estate of Kenneth M. Taylor, deceased, and Danielle Crimmins, a minor by Jo Robey Crimmins, her guardian.

agents. PennDOT has objected to this inquiry on the claim that the correspondence is protected from discovery by the provisions of 75 PA. CONS. STAT. ANN. § 3754 (West 1996). A brief summary of the factual background of this matter will aid in disposition of this issue.

The Plaintiffs' Complaint alleges that on September 2, 1995, Jo Robey Crimmins was driving her 1984 Buick LeSabre on Cashtown Road, Adams County, after leaving the South Mountain Fair.² Melissa Crimmins, Kenneth Taylor, Danielle Crimmins and Jamie Herbst were passengers in her vehicle at the time. At the intersection of Cashtown Road and State Route 30, the Crimmins' vehicle was involved in a tragic accident as the vehicle attempted to enter State Route 30 from Cashtown Road. The force and magnitude of the collision caused the vehicle to burst into flames killing Melissa Crimmins and Kenneth Taylor and causing, according to Plaintiffs' Complaint, severe physical injuries to the remaining occupants of the vehicle. The Plaintiffs' Complaint alleges that Route 30 is a state-maintained road and that PennDOT has jurisdiction and control of the intersection where this accident occurred. Additionally, the Complaint alleges that PennDOT was aware of the dangerous conditions of this intersection and that PennDOT was negligent in its supervision and maintenance of this intersection.³

²The South Mountain Fair is an annual event held each fall in Adams County.

³Plaintiffs' Complaint alleges that PennDOT was negligent, reckless and careless in:

- a) Failing to keep the intersection . . . in a reasonably safe condition for motor vehicles;
- b) Failing to properly design, construct, inspect and maintain . . . the . . . intersection;
- c) Failing to place adequate traffic control devices . . . at or near the intersection, . . . such as . . .
 - 1) Failing to have or install street lights . . . ;
 - 2) Failing to have or install rumble strips . . . ;
 - 3) Failing to install traffic signal at the intersection . . . ;
 - 4) Failing to install blinking yellow or red light . . . ;
 - 5) Failing to reduce the maximum, posted speed limit on Route 30 in the vicinity of the intersection; and
 - 6) Failing to provide sufficient and safe advance notice . . . of the dangerous intersection . . .
- d) Failing to comply with state and federal regulations and statutes pertaining to highway construction and maintenance;

(footnote 3 continued to next page)

During the course of discovery in preparation for trial, Plaintiffs' counsel attempted to question PennDOT District Engineer, Barry Hoffman, concerning a letter dated June 28, 1994, directed to Richard J. Bell, Jr., a PennDOT employee. After the letter was identified, PennDOT's counsel objected and instructed Mr. Hoffman not to answer any further inquiry concerning the correspondence. PennDOT raised similar objections in regard to three other pieces of correspondence. Generally, the four correspondences at issue consist of the following:

- i. A letter dated June 28, 1994, from Craig A. Hartley, Vice-Chairman of the Franklin Township Board of Supervisors to Richard J. Bell, Jr., PennDOT (hereinafter referred to as "Hartley letter") – the letter references Franklin Township's concern in regard to the Route 30/Cashtown Road intersection. The correspondence references numerous accidents at the intersection that resulted in injuries and several fatalities. It indicates that the Cashtown Community Fire Department Chief believes that the intersection is responsible for most of the accidents. The correspondence goes on to suggest a number of possible solutions, including rumble strips and blinking traffic control devices;

-
- f) Notwithstanding prior notice of the dangerous design and condition of the intersection . . . failing to remedy the existing dangerous design and condition;
 - g) Placing a 40 mile-per-hour speed limit sign along Cashtown Road within a few hundred feet of the Route 30 intersection . . . ;
 - h) Placing several road signs in proximity to each other along the southern approach of Cashtown Road to Route 30 and immediately before the Route 30 intersection;
 - i) Placing a stop sign for southbound, Cashtown Road traffic on the left side of Cashtown Road and in a traffic island and behind another sign using similar or deceptively similar colors;
 - j) Placing a stop sign for the Route 30 intersection on the right side of the southbound lane of Cashtown Road such that it is hidden from motorists approaching Route 30 around the curve of Cashtown Road;
 - k) Finding, in a 1993 corridor study of Route 30 to identify dangerous intersections, that the Cashtown Road intersection was "wide-open" with no sight obstructions;
 - l) Failing to provide warnings to motorists of the dangerous intersection because of Defendant's belief that motorists might not obey the warnings;
 - m) Failing to perform an adequate and reasonable study of the intersection until more accidents occurred at that intersection;

By Stipulation filed with the Court, ¶'s 29e and 29n of the Complaint were stricken.

- ii. Correspondence dated July 28, 1994, from Barry G. Hoffman, PennDOT District Engineer to Craig A. Hartley, Vice-Chairman of the Franklin Township Board of Supervisors (hereinafter referred to as “Hoffman letter 1”) – the correspondence essentially acknowledges receipt of the June 27, 1994, letter and indicates that it was forwarded to the “District Traffic Unit” for review. The letter affirms that the District Traffic Unit will conduct a study at the intersection to determine the appropriate course of action.
- iii. Correspondence dated February 10, 1995, from Barry G. Hoffman, PennDOT District Engineer, to Craig A. Hartley, Vice-Chairman of the Franklin Township Board of Supervisors (hereinafter referred to as “Hoffman letter 2”) – this letter is a follow-up letter to the July 28, 1994, correspondence concerning the intersection that is the subject of the litigation. The letter indicates that a safety study at the intersection has been completed and that the installation of over-sized stop signs “may prove to be an effective remedy to the accident problem” The letter advises the Supervisors that a work order has been issued and that the signs will be installed as soon as materials are available and the work can be scheduled. The letter opines that the over-sized signs “will be effective and should be thoroughly evaluated before proceeding with your request for a flashing warning device.” It further indicates that installation of any flashing warning device would be at the expense of the Township. The letter rejects the use of rumble strips at the intersection due to “noise pollution” and the recognition that drivers sometimes drive “around the rumble strips by using the shoulder or the opposing traffic lane”; and
- iv. Correspondence dated October 12, 1995, from Barry Hoffman, PennDOT District Engineer, to Pennsylvania State Senator Terry Punt (hereinafter referred to as “Punt letter”). This letter is apparently in response to a letter from Senator Punt to PennDOT dated October 3, 1995.⁴ The correspondence also generally references the accident that is

⁴ Senator Punt’s letter to PennDOT is apparently not at issue and is not part of the current record.

the subject of this suit. In the correspondence, PennDOT acknowledges that safety improvements at the intersection are needed and that the following steps would be taken to address the accidents at that location: 1) PennDOT would fund the installation of a flashing intersection control beacon; 2) red flashers would remain in place as interim measures until the control beacon is operational; 3) twenty-four (24) inch white plastic stop bars would be installed on both approaches to the Cashtown Road; and 4) PennDOT would be considering the installation of rumble strips on the southbound approach of Cashtown Road.

PennDOT urges that these correspondences are protected from discovery and that PennDOT officers and employees are protected from providing evidence pertaining to these correspondences since they are part of an in-depth accident investigation and are protected by the statutory provisions of 75 PA. CONS. STAT. ANN. § 3754 (West 1996). In support thereof, PennDOT has presented the Affidavit of Devang D. Patel, Assistant District Traffic Manager-Safety for PennDOT Engineering District 8-0⁵, which indicates that the Hartley letter is contained in the safety file for the intersection at State Route 30 and Cashtown Road. Moreover, the Affidavit indicates that the Hartley letter served as a basis for generating an engineering and traffic study at the intersection; that the traffic study was concluded on February 10, 1995; that as a result of the subject accident, a second traffic study was commenced in September, 1995, and ran through December 1, 1995; and that the "Punt letter" referenced improvements to the intersection as a result of the latter safety study.

Section 3754 of the Pennsylvania Vehicle Code provides as follows:

(a) General rule. – The department, in association with the Pennsylvania State Police, may conduct in-depth accident investigations and safety studies of the human, vehicle and environmental aspects of traffic accidents for the purpose of determining the causes of traffic accidents and the improvements which may help prevent similar types of accidents or increase the overall safety of roadways and bridges.

⁵ The subject intersection is located within the district identified by PennDOT as Engineering District 8-0.

(b) Confidentiality of reports. – In-depth accident investigations and safety studies and information, records and reports used in their preparation shall not be discoverable nor admissible as evidence in any legal action or other proceeding, nor shall officers or employees or the agencies charged with the development, procurement or custody of in-depth accident investigations and safety study records and reports be required to give depositions or evidence pertaining to anything contained in such in-depth accident investigations or safety study records or reports in any legal action or other proceeding.

75 PA. CONS. STAT. ANN. § 3754 (West 1996).

In analyzing the scope of the statutory privilege, I am mindful that evidentiary privileges are not favored. *Commonwealth v. Stewart*, 690 A.2d 195, 197 (Pa. 1997). “[E]xceptions to the demand for every man’s evidence are not lightly created nor expansively construed, for they are in derogation of the search for the truth.” *Id.*, quoting *Hutchison v. Luddy*, 606 A.2d 905, 909 (Pa. Super. Ct. 1992), quoting *Herbert v. Lando*, 441 U.S. 153, 175 (1979). Pennsylvania appellate authority cautions trial courts to accept testimonial privileges “only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.” *Stewart*, 690 A.2d at 197, quoting *In re Grand Jury Investigation*, 918 F.2d 374, 383 (3d. Cir. 1990), quoting *Trammel v. United States*, 445 U.S. 40, 46 (1980). Consequently, I must narrowly construe the provisions of any privilege that operates to hamper a party’s access to information potentially admissible in court. *Commonwealth v. Hall*, 744 A.2d 1287, 1289 (Pa. Super. Ct. 2000). In doing so, the circumstances under which the privilege is proposed to be applied must be scrutinized in order to ascertain whether the information sought to be protected falls within the scope of the enabling legislation. My inquiry, therefore, commences with an examination of the purpose of the statute. *See* 1 PA. CONS. STAT. ANN. §§ 1921, 1922 (West 1995) (in interpreting legislative enactments, we are to ascertain and effectuate the intention of the legislature).

The legislative intent of 75 PA. CONS. STAT. ANN. § 3754 (West 1996) has evolved since the Act was originally adopted by the legislature on June 17, 1976.⁶ At that time, the Pennsylvania Supreme Court had not yet abolished the doctrine of sovereign immunity. *See Mayle v. Pennsylvania Dept. of Highways*, 388 A.2d 709 (Pa. 1978) (abolishing sovereign immunity). Accordingly, courts interpreting the original statute found that it was enacted “so that individuals would cooperate in the in-depth investigation [of accidents] without fear of being liable themselves.” *Shoyer v. City of Philadelphia*, 506 A.2d 522, 525 (Pa. Commw. Ct. 1986). Apparently, in response to the decision in *Shoyer*, the legislature amended Section 3754 to its current form on December 11, 1986.⁷ Subsequent to the amendment, courts interpreting this section have found an expanded purpose of the legislation in that it effects “‘a safe and efficient system of motor vehicle transportation in the Commonwealth’ by providing its officers and employees ‘an unbiased, honest and accurate body of information regarding motor vehicle accidents.’” *Commonwealth, Department of Transportation v. Taylor*, 746 A.2d 626, 630, quoting *Mayfield v. PennDOT*, 23 Pa. D. & C.3d 79, 81-82 (C.C.P. of Fayette County 1982). The plain language of the section demonstrates the legislature’s desire to improve traffic safety by enhancing PennDOT’s access to information. *Taylor*, 746 A.2d at 630. Our appellate court’s finding of the legislature’s objective has been adopted by PennDOT and is not at issue. This stated objective is consistent with the objective of the statute as urged by PennDOT during argument.

However, our appellate courts have gone further in ascertaining the meaning and operation of this particular statute. The Superior Court has instructed that subsections (a) and (b) must be read together when interpreting this Act. Citing the Statutory Construction Act

⁶Unlike the current section, the original Act only prohibited the use of information, records and reports associated with in-depth accident investigations from being “admissible as evidence in any legal action or other proceeding” 75 PA. CONS. STAT. ANN. § 3754 (West 1996), Historical and Statutory Notes.

⁷The amendments to this statute read, in relevant portion, “[i]n-depth accident investigations and safety studies and information, records and reports used in their preparation shall not be **discoverable** nor admissible as evidence in any legal action or other proceeding” 75 PA. CONS. STAT. ANN. § 3754(b) (West 1996) (emphasis added). This amendment overrides the Commonwealth Court’s opinion in *Shoyer*, supra, which allowed discovery of this information.

of 1932, 1 PA. CONS. STAT. ANN. § 1932 (West 1995), the Superior Court has determined that subparagraphs (a) and (b) of 75 PA. CONS. STAT. ANN. § 3754 (West 1996) relate to the same class of persons or things and, therefore, they are in *pari materia* and must be construed together as a single provision. *Hall*, 744 A.2d at 1290. Upon reading the two subsections in *pari materia*, the Superior Court concluded that in-depth accident investigations or safety studies are rendered undiscoverable only to the extent that they are compiled by PennDOT in association with the Pennsylvania State Police, and are done for the specific purpose of determining the causes of traffic accidents and the improvements which may help prevent similar types of accidents. *Id.* With this guidance, I will now address the specific issue before the Court.

Continued to next issue (2/27/2004)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1203 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin located 11 feet North of the center line of Township Road T-430, known as Plunkert Road, at corner of land now or formerly of Nicholas N. Boccabella and wife; thence by land of the said Nicholas N. Boccabella and wife, and running through an iron pin located 20 feet from the place of BEGINNING, North 4 degrees 47 minutes 2 seconds West, 225 feet to an iron pin; thence by land now or formerly of Raymond G. Boccabella, North 35 degrees 12 minutes 58 seconds East, 141.67 feet to an iron pin; thence by the same and running through an iron pin located 20 feet from the end of this line South 55 degrees 26 minutes 9 seconds East, 377.66 feet to a point located 2 feet West of the center line of Plunkert Road; thence in Plunkert Road, South 46 degrees 34 minutes 12 seconds West, 87.47 feet to a point in said road located 1 foot North of the center line thereof; thence continuing in Plunkert Road, South 89 degrees 48 minutes 2 seconds West, 265.88 feet to an iron pin, the place of BEGINNING. The above description was taken from a draft of survey made by Gettysburg Engineering Company, Inc., dated March 9, 1976 and recorded in Plat Book 10 at Page 17, designating the above as Lot No. 2.

TITLE TO SAID PREMISES IS VESTED IN Neil James Crouse, an unmarried man and Michele L. Rorrer, an unmarried woman, their heirs and assigns by Deed from Neil James Crouse, an unmarried man dated 10/24/2002 and recorded 11/6/2002 in Record Book 2867 Page 173.

Premises being: 202 Plunkert Road, Littlestown, PA 17340

Tax Parcel No. 7C Map 1-16

SEIZED and taken into execution as the property of **Neil James Crouse & Michele L. Rorrer** and to be sold by me,

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

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

Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN property situated in the Township of Hamiltonban in the County of Adams and Commonwealth of Pennsylvania, being described as follows:

CONTAINING 10.02 Acres. Being more fully described in a fee simple deed dated 03/23/1992 and recorded 11/23/1992, among the land records of the County and State set forth above, in Volume 657 Page 239.

Tax Parcel ID: B13-1C

Address: 2885 Cold Spring Road, Orrtanna, PA 17353

SEIZED and taken into execution as the property of **Randell E. Naugle & Rebecca J. Naugle** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1191 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land and improvements thereon erected, all situate in the Township of Reading, County of Adams, and Commonwealth of Pennsylvania being more particularly described as Lot No. 321 on a Plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Miscellaneous Deed Book 1, at Page 1.

TITLE TO SAID PREMISES IS VESTED IN Timothy J. Lemmon and Catherine J. Lemmon formerly known as Catherine J. Miller, husband and wife by Deed from Eugene O. Meyers and Anna M. Meyers, husband and wife, Julie R. Stremmel Costella and Michael Costella, husband and wife dated 10/23/2000 and recorded 11/6/2000 in Record Book 2158, Page 124.

Premises being: 516 Lake Meade Drive, East Berlin, PA 17316

Tax Parcel No. 14-36

SEIZED and taken into execution as the property of **Timothy J. Lemmon & Catherine J. Lemmon f/k/a Catherine J. Miller** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/20, 27 & 3/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1076 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land.

SITUATE on the West side of Hanover-Carlisle State Highway in Hamilton Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at a point in the center of the State Highway, aforesaid at other land now or formerly of Rosa H. Griffin, widow, also known as Lot No. 3; thence by the same and through an iron pin at the side of the Highway, South 70 degrees West 661.14 feet to an iron pin at land now or formerly of Roy A. Garber; thence by the same North 19 degrees 30 minutes West 105.32 feet to an iron pin; thence by the same North 38 degrees 30 minutes West 624.36 feet to an iron pin; thence by the same North 46 degrees East 938.52 feet through an iron pin at the side of said Highway to a point in the center of the State Highway; thence by the same, South 20 degrees East 1,079.5 feet to a point, the place of BEGINNING.

CONTAINING 15 acres and 107.7 perches, more or less.

SAID tract of land sometimes being known as Lot No. 4 on a Plan of Lots of Rosa H. Griffin as prepared by George M. Wildasin, R. S. in September, 1953 and being the same premises which was set forth on the draft of George M. Wildasin, R. S. on October 10, 1953.

BEING Tax Parcel No. (17) K10 Parcel 57

SEIZED and taken into execution as the property of **Richard A. Dell, Carolyn S. Dell n/k/a Carolyn S. Harlacher, R.C.B. Partnership f/k/a R.R.J.C. Partnership & Dellmanson, Inc. db/a R.C. Dells, Inc., n/k/a R.C. Dells, Inc. t/a The Pixie Restaurant & Motel** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Kevin Drive at Lot No. 115 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 115, North eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds West, one hundred forty-five and thirteen hundredths (145.13) feet to a point at Lot No. 137 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 137 and Lot No. 136 as shown on the hereinafter referenced subdivision plan, North eighty-one (81) degrees, twenty-seven (27) minutes, twenty (20) seconds East, one hundred (100.00) feet to a point at Lot No. 117 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 117, South eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds East, one hundred forty-five and thirty hundredths (145.30) feet to a point on the right-of-way line of Kevin Drive; thence along the right-of-way line of Kevin Drive, South eighty-one (81) degrees, thirty-three (33) minutes, eleven (11) seconds West, one hundred (100.00) feet to a point, the point and place of BEGINNING, CONTAINING 14,521 square feet.

THE above description being Lot No. 116 on the Final Subdivision Plan for Delbert Piper "Colonial Acres", prepared by Mort, Brown and Associates, dated April 1, 1993, which said subdivision plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 64, Page 93.

TITLE TO SAID PREMISES IS VESTED IN M. Christopher Taylor and Robin A. Taylor, his wife by Deed from

Jonathan A. Weaver, etal dated 2/24/1999 and recorded 3/2/1999, in Record Book 1775, Page 270.

Premises being: 120 Kevin Drive, New Oxford, PA 17350

Tax Parcel No. Map 13, Parcel 65

SEIZED and taken into execution as the property of **Christopher M. Taylor & Robin A. Taylor** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that John J. Murphy III intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania on the 6th day of April, 2004, and that he intends to continue practice with the law firm of Patrono & Associates, LLC and Apple Leaf Abstracting & Settlement Company, 30 West Middle Street, Gettysburg, PA 17325.

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Shawn C. Wagner, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that he intends to practice law as the District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-705 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT improved real estate situate in Straban Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin on the Southeastern side of State Highway Route 394 running between Hunterstown and New Chester; thence running along the Southeastern side of said State Highway and by land now or formerly of Herbert Blye, South 50 degrees West, 211.10 feet to an iron pin at lands now or formerly of Jere W. Taughlinbaugh; thence by said lands and through a rebar (set) set back 35 feet on the line and running through said State Highway North 40 degrees West; 200 feet to a rebar (fd.) at lands now or formerly of Harry Zabolinsky; thence by said lands North 50 degrees East, 133 feet to a rebar in concrete (fd.) at lands now or formerly of James L. Greentree; thence by said lands and through a rebar (set) set back 37.58 feet from the end of this course and running through said State Highway South 61 degrees 19 minutes 50 seconds East, 214.71 feet to the place of BEGINNING.

CONTAINING 34,419 square feet.

The above description was taken from a draft of survey dated May 4, 1981, prepared by John R. Williams, R.S.

IT BEING the same tract of land which Jack A. Himes by his deed dated January 9, 1992 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 677 at page 313, granted and conveyed unto Jack A. Himes and Suzanne M. Himes, his wife, mortgagors herein.

SEIZED IN EXECUTION as the property of Jack A. Himes and Suzanne M. Himes on Judgment No. 03-S-705.

SEIZED and taken into execution as the property of **Jack A. Himes & Suzanne M. Himes** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are

filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

NOTICE CONCERNING
TERMINATION OF YOUR
PARENTAL RIGHTS

TO: ROBERT DIXON

A Petition has been filed asking the Court to put an end to all rights you have to your child, Baby Girl Becker, also known as Anna Elizabeth Becker. The Court has set a hearing to consider ending your rights to your child. That hearing will be held at the Lancaster County Courthouse, Courtroom No. 6, 50 North Duke Street, Lancaster, Pennsylvania, on **Thursday, March 11, 2004, at 9:40 A.M.** Your rights may be subject to termination pursuant to Section 2511 of the Adoption Act if you fail to file either an acknowledgment of paternity or a claim of paternity pursuant to Section 5103 of the Adoption Act (relating to acknowledgment and claim of paternity), and you fail to either appear at the hearing for the purpose of objecting to the termination of your rights or file a written objection to such termination with the Court prior to the hearing. **You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present.** If your rights are terminated at this hearing, you will not receive notice of the later adoption proceedings concerning the child. **You have a right to be represented at the hearing by a lawyer.** You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help:

Court Administrator
Court Administrator's Office
Lancaster County Courthouse
50 North Duke Street
Lancaster, PA 17602
(717) 299-8041

Section 2504 or 2511 Notice to Putative Birth Father

2/20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Sarah M. Caldwell, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that she intends to practice law as an Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Brian R. Sinnamon, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that he intends to practice law as an Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on January 12, 2004, for the purpose of obtaining a Certificate of Incorporation organized under the provisions of the Pennsylvania Business Corporation Law, approved December 21, 1988, P.L. 1444, as amended. The name of the corporation is CASHTOWN INN PROPERTIES, INC. The purpose or purposes for which the corporation is incorporated is that the corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under said Business Corporation Law.

Pyle and Entwistle
Attorneys for the Corporation

2/20

IN THE COURT OF
COMMON PLEAS
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 04-S-20
Action to Quiet Title

JAMES E. TEMCHACK and NANCY T. TEMCHACK, husband and wife, and SHERMAN H. ROE and GLADYS ROE, husband and wife, Plaintiffs
vs.

W. CLAYTON JESTER and MYRA E. JESTER, their respective heirs, successors and assigns, Defendants

TO: W. Clayton Jester and Myra E. Jester, their respective heirs, successors and assigns.

TAKE NOTICE that on January 8, 2004, James E. Temchack and Nancy T. Temchack, husband and wife, and Sherman H. Roe and Gladys Roe, husband and wife, filed a Complaint initiating an Action to Quiet Title against W. Clayton Jester and Myra E. Jester, their respective heirs, successors and assigns, averring that James E. Temchack and Nancy T. Temchack and/or Sherman H. Roe and Gladys Roe are the owners of certain real property described herein. The Complaint requests the Court to extinguish any possible interest you may have in said real property. The real property which is the subject of this Action to Quiet Title consists of three (3) tracts of land, which tracts are situate in the Borough of Biglerville, Adams County, Pennsylvania, and are more particularly bounded and described as follows:

Lot A:

BEGINNING at a magnetic spike on the edge of East York Street (S.R. 0234) and at corner of land of James E. Temchack as shown on the attached survey; thence along said land of Temchack South 34 degrees 27 minutes 50 seconds East, 180.00 feet to a corner of Lot B; thence along said Lot B South 34 degrees 27 minutes 50 seconds East, 1.9 feet to an existing steel rod; thence along same South 34 degrees 27 minutes 50 seconds East, 10.9 feet to a steel rod along line of land of Lester Vanardsdale, Jr.; thence along said Vanardsdale land, South 55 degrees 29 minutes 15 seconds West, 12.00 feet to a steel rod at corner of Lot C; thence along said Lot C North 34 degrees 27 minutes 50 seconds West, 12.72 feet to a point at corner of land of Sherman H. Roe; thence along said Roe land North 34 degrees 27 minutes 50 seconds West, 180.00 feet to a magnetic spike on the edge of East York Street (S.R. 0234); thence along said East York Street North 55 degrees 04 minutes 45 seconds East,

12.00 feet to a magnetic spike on the edge of East York Street (S.R. 0234) and at corner of land of James E. Temchack, the point and place of BEGINNING. CONTAINING 2,310 square feet and designated as Lot A.

Lot B:

BEGINNING at a point at corner of land of Donald Trostle and at corner of land of James E. Temchack as shown on the attached survey; thence South 34 degrees 27 minutes 50 seconds East, 1.51 feet to an existing bolt; thence along same South 34 degrees 27 minutes 50 seconds East, 11.72 feet to a steel rod along line of land of Lester Vanardsdale, Jr.; thence along said Vanardsdale land South 55 degrees 29 minutes 15 seconds West, 60.00 feet to a steel rod at corner of Lot A; thence along said Lot A North 34 degrees 27 minutes 50 seconds West, 10.9 feet to an existing steel rod; thence along same North 34 degrees 27 minutes 50 seconds West, 1.9 feet to a point at corner of land of James E. Temchack; thence along said Temchack land North 55 degrees 04 minutes 45 seconds East, 60.00 feet to a point at corner of land of Donald Trostle and at corner of land of James E. Temchack, the point and place of BEGINNING. CONTAINING 780 square feet and designated as Lot B.

Lot C:

BEGINNING at a point at corner of land of Viola Griffie and at corner of land of Sherman H. Roe as shown on the attached survey; thence South 34 degrees 27 minutes 45 seconds East, 12.29 feet to a steel rod on line of land of Lester Vanardsdale, Jr.; thence along said Vanardsdale land North 55 degrees 29 minutes 15 seconds East, 60.00 feet to a steel rod at corner of Lot A; thence along said Lot A North 34 degrees 27 minutes 50 seconds West, 12.72 feet to a point at corner of land of Sherman H. Roe; thence along said Roe land South 55 degrees 04 minutes 45 seconds West, 60.00 feet to a point at corner of land of Viola Griffie and at corner of land of Sherman H. Roe, the point and place of BEGINNING. CONTAINING 750 square feet and designated as Lot C.

The above descriptions were taken from a survey prepared by Adams County Surveyors, J. Riley Redding, P.L.S., dated June 24, 2001, a copy of which is attached to the Complaint as Exhibit "L" and is incorporated herein by reference.

The Court of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendants, their respective heirs, successors and assigns, by publication. Plaintiffs will request the Court to

enter a final judgment ordering that any possible legal interest the Defendants might have had in the real property described herein be extinguished.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the Complaint filed in the Adams County Court of Common Pleas at No. 04-S-20 and described hereinabove, you must take action within **twenty (20) days** after this publication by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Telephone Number: 717-337-9846
Toll Free: 1-888-337-9846

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Attorneys for Plaintiffs
Sherman H. Roe and
Gladys Roe

2/20

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 LEWIS J. KLUNK, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Nadine M. Klunk, 5955 Hanover Road, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF GERALDINE E. LARKIN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrators: Dana L. Sauers and Kent L. Sauers, c/o Timothy J. Shultis, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

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

ESTATE OF JEAN E. THOMAS, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Marion T. Harbaugh, c/o Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

SECOND PUBLICATION**ESTATE OF ENDAMA V. EASLEY, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Vicki A. Easley, 217 Heritage Drive, Gettysburg, PA 17325

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

ESTATE OF RICHARD H. HIGINBOTHAM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David H. Higinbotham, 134 Windsor Circle, Ocean Isle Beach, NC 28469

Attorney: Larry W. Wolf, Esq., 215 Broadway, Hanover, PA 17331

ESTATE OF MICHAELA LAURO, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Michelle A. Rineman, 451 Parkview Lane, Hanover, PA 17331

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

ESTATE OF VIOLA LUCKENBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executrices: Betty Thomas, 992 Hilltop Drive South, Spring Grove, PA 17362; Shirley Thoman, 671 E. Walnut Street, Hanover, PA 17331; Katie Sanders, 6144 Hilltop Drive East, Spring Grove, PA 17362

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

ESTATE OF STEPHEN B. MANN a/k/a STEPHEN BARKER MANN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David L. Spiese, 10 Lincoln Way West, New Oxford, PA 17350

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

ESTATE OF CHARLES E. MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Raymond E. Miller, 153 George Street, Hanover, PA 17331; Eugene P. Miller, 684 Cedar Ridge Road, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF ARLINE NORMA OTT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Yvonne M. Starbuck, 2145 Mt. Hope Road, Fairfield, PA 17320

Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF JOYCE A. PHILIPS, DEC'D

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

Executor: Charles H. Philips, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF THOMAS A. PUTMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Marvin J. Putman, 590 South Franklin Street, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF MARGARET E. TAWNEY a/k/a MARGARET ELLA TAWNEY a/k/a MARGARET JANE TAWNEY, DEC'D

Late of Volusia County, Florida

Personal Representative: Sue Anne DaCamara, 5406 Beach Drive, St. Leonard, MD 20685

Attorney: Cindy Lou Franke, Esq., Maxwell Law Offices, Wayne Building, 92 West Main Street, Waynesboro, PA 17268

ESTATE OF ROBERT G. TAYLOR, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Jean V. Taylor, 161 Brysonia School Road, Biglerville, PA 17307

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

THIRD PUBLICATION**ESTATE OF JACOB M. BREAM, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Wayne E. Mickley, 15 Jack Road, Orrtanna, PA 17353

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

ESTATE OF FLO M. FRANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James Knaub, c/o Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

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

ESTATE OF ROBERT E. KEEFER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Kenneth F. Keefer, 31 Edgemoor Road, Hanover, PA 17331

Attorney: Daniel M. Frey, Esq., Barley Snyder, 14 Center Square, Hanover, PA 17331

(continued on page 8)

THIRD PUBLICATION (continued)**ESTATE OF EMORY G. KINDER, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Wilma Jean Crawford, 77 North Street, McSherrystown, PA 17344

Attorney: Jered L. Hock, Esq., Metzger, Wickersham, Knauss & Erb, P.C., P.O. Box 5300, 3211 North Front Street, Harrisburg, PA 17110-0300

ESTATE OF MARGARET E. KING, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Charles Biesecker, 305 Meade Avenue, Hanover, PA 17331

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

ESTATE OF HENRIETTA B. LENHART, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: PNC Bank NA, P.O. Box 308, Camp Hill, PA 17001-0308

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

ESTATE OF ELVA L. ROLAND, DEC'D

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

Executor: John R. Roland, c/o 29 North Duke Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF NITA WEANER SCHRIVER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Phyllis W. Horick, P.O. Box 192, 170 Park Street, Bendersville, PA 17306

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

ESTATE OF ROY C. SNYDER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: R. Glenn Snyder, 209 California Road, Littlestown, PA 17340; Kay R. Stuffle, 90 Kensington Drive, Littlestown, PA 17340

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1045 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being known as and located at 42 Prince Street in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an Ex. Bolt at the Western edge of the concrete sidewalk along the West side of the right-of-way of Prince Street, at corner of land now or formerly of Carol A. Hippensteel; thence along said land now or formerly of Carol A. Hippensteel, South 60 degrees 03 minutes 00 seconds West, 100.02 feet to an Ex. Steel Pin at or near the Eastern edge of Rebecca Alley, at corner of said land now or formerly of Carol A. Hippensteel; thence by or near the Eastern edge of said Rebecca Alley, North 30 degrees 15 minutes 35 seconds West, 29.68 feet to a R.R. Spike set at or near the Eastern edge of said Rebecca Alley, at corner of land now or formerly of Cynthia S. Payne (Lot 2, known as 44 Prince Street, depicted in and upon the below-mentioned draft of survey and final subdivision plan); thence by said land now or formerly of Cynthia S. Payne, North 59 degrees 30 minutes 00 seconds East, 100.02 feet to a Steel Pin set at the Western edge of the concrete sidewalk along the West side of the right-of-way of Prince Street, at corner of said land now or formerly of Cynthia S. Payne; thence along the Western edge of said concrete sidewalk, South 30 degrees 15 minutes 00 seconds East, 30.64 feet to an Ex. Bolt at the Western edge of the concrete sidewalk along the West side of the right-of-way of Prince Street, the point and place of BEGINNING. CONTAINING 3,016 Square Feet, more or less.

The above description was taken from a draft of survey and final subdivision plan, dated January 5, 1998, by Boyer Surveys, recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 73 at Page 32; the above-described tract is labeled as Lot 1 in and upon said draft of survey and final subdivision plan.

BEING A PART OF THE SAME which Dawn F. Fields, now Dawn F. Wertz, Executrix of the Estate of J. Harvey

Pettyjohn, deceased, by Deed dated December 12, 1997 and recorded December 31, 1997, in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1498 at Page 268, sold and conveyed unto HIJ Partnership, the GRANTOR herein.

SUBJECT, NEVERTHELESS, to existing public rights-of-way; utility easements; deed covenants, conditions and restrictions, if any; and the NOTES, conditions, requirements and contents of the above-referenced draft of survey and final subdivision plan; SUBJECT, NEVERTHELESS, FURTHER, to the rights and duties pertaining to the party (common) wall within the duplex home in and upon the lot hereby conveyed.

A provision is made for the repair and maintenance of utilities for permanent right of access for the maintenance and repair of utilities (sewer, water, gas and electric).

AND the said Grantor does hereby covenant that it will warrant specially the property hereby conveyed.

HAVING thereon erected a dwelling house known as: 42 Prince Street, Littlestown, Pennsylvania 17340

BEING THE SAME PREMISES WHICH HIJ Partnership, by Deed dated 8/31/98 and recorded 9/2/98 in Adams County Deed Book 1654, Page 115, granted and conveyed unto Robert F. Frye.

SEIZED IN EXECUTION as the property of Robert F. Frye under Adams County Judgment No. 03-S-1045.

Map & Parcel 27-8-109A

SEIZED and taken into execution as the property of **Robert F. Frye** and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/20, 27 & 3/5

Adams County Legal Journal

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February 27, 2004

No. 40, pp. 249-254

IN THIS ISSUE

CRIMMINS ET AL VS. PENNDOT

This opinion continued from last issue (2/20/2004)

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1171 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land, situate in the Township of Tyrone, County of Adams and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a point on the Easternmost edge of the cul-de-sac of Mandy Lane, a fifty (50) foot wide street, said point marking the common point of adjoiner of Lots #9 and #10 on the hereinafter mentioned plan with the cul-de-sac of Mandy Lane; thence departing from the aforementioned cul-de-sac and extending along Lot #10, South eighty-seven (87) degrees fifty-five (55) minutes twenty-five (25) seconds East for a distance of three hundred nine and ninety-three hundredths (309.93) feet to a steel pin; thence South twenty-one (21) degrees four (04) minutes ten (10) seconds East for a distance of one hundred fifty and no hundredths (150.00) feet toward a corner marked by planted stones at lands now or formerly of Vernon J. Franklin; thence extending along lands now or formerly of Vernon J. Franklin for the following two courses and distances: North eighty-two (82) degrees thirteen (13) minutes fifty (50) seconds West for a distance of eighty-six and eight hundredths (86.08) feet to a seventeen (17) inch walnut tree; thence continuing South fifty-four (64) degrees four (04) minutes fifty (50) seconds West, for a distance of three hundred sixty-nine and fifty-one hundredths (369.51) feet to a steel pin at Lot #8; thence extending along Lot #8 North twenty-five (25) degrees fifty-five (55) minutes ten (10) seconds West, for a distance of two hundred fifteen and fifty-three hundredths (215.53) feet to a steel pin on the Southern edge of the cul-de-sac of Mandy Lane; thence extending in and along the Southern edge of the cul-de-sac of Mandy Lane by an arc or curve

to the left having a radius of sixty (60) feet, a chord of sixty-five and sixty-three hundredths (65.63) feet on a bearing North thirty-five (35) degrees fourteen (14) minutes zero (00) seconds East, for an arc distance of sixty-nine and forty-four hundredths (69.44) feet to a point on said cul-de-sac at Lot #10 said point marking the place of BEGINNING.

CONTAINING 1.423 acres and being designated as Lot #9 on a final plan of subdivision of Foxwood Section III prepared for Harmon-Graves Company by Rodney Lee Decker and Associates dated June 2, 1981 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 36, at page 10.

BEING THE SAME premises which Harry H. Fox, Jr. and Ann G. Fox, his wife by Deed dated 11/6/1998 and recorded 11/18/1998 in the County of Adams in Record Book 1705 page 86 conveyed unto Rodney G. Shaw, III and Kimberly S. Shaw, his wife, in fee.

Map #H6, Parcel 131

Premises being: 75 Mandy Lane, Gettysburg, PA 17325

Tax Parcel No. Map #H6, Parcel 131

SEIZED and taken into execution as the property of **Rodney G. Shaw, III a/k/a Rodney Gerald Shaw & Kimberly S. Shaw a/k/a Kimberly Sue Shaw** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/27, 3/5 & 12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-344 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 260 on a Plan of Lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County at Plan Book 1, Page 1, and subject to all legal highways, easements, rights-of-way, and restrictions of record.

TITLE TO SAID PREMISES IS VESTED IN Jill A. Fissel by Deed from Michael J. Fissel and Jill A. Fissel formerly known as Jill A. Angel, husband and wife dated 12/22/1994 and recorded 12/28/1994 in Record Book 980, Page 165.

Premises being: 85 Schofield Drive, East Berlin, PA 17316

Tax Parcel No. 11-100

SEIZED and taken into execution as the property of **Michael J. Fissel & Jill A. Fissel** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/20, 27 & 3/5

CRIMMINS ET AL VS. PENNDOT

Continued from last issue (2/20/2004)

In regard to the Hartley correspondence, PennDOT argues that since this letter triggered the safety study at the intersection in question, and since it is included as part of the safety file, it is subject to the protections of Section 3754. PennDOT reasons that since the statutory privilege protects information, records and reports used in the preparation of safety studies, the privilege must include all correspondence which directly relates to those studies. I am not persuaded by PennDOT's argument.

The letter in question, according to the Affidavit of PennDOT, served as a basis for and generated the engineering study of the subject intersection. Notably, the Affidavit does not indicate that this letter was something relied upon or used by PennDOT in the preparation of the study. There is a distinct difference between the triggering mechanism of a study and information accessed or developed during a study. I believe the statutory privilege is aimed at protecting the latter. *See Taylor*, supra. Since it is the burden of PennDOT to establish the applicability of a statutory privilege, the evidence before this Court is insufficient to protect the Hartley letter.

As noted by the Superior Court in *Hall*, supra:

A conclusion to the contrary, as urged by PennDOT, would expand a disfavored evidentiary privilege and more importantly, contravene clear limitations on the scope of [S]ection 3754 imposed by subsection (a). Every police report or investigation, regardless of its origin, would be subject to the full panoply of protections otherwise due only "in-depth accident investigations and safety studies" conducted by "the [D]epartment, in association with the Pennsylvania State Police." All accident reports submitted to PennDOT would become privileged documents merely because they came into possession of PennDOT, without legislative scrutiny or any consideration of the utility or harm inherent in proscribing disclosure. Such a result is in clear derogation of the plain language of Section 3754(a). We cannot, by judicial fiat, expand this statutory privilege where the legislature has itself not chosen to do so.

Hall, 744 A.2d at 1290.

Moreover, protecting documents that are not an integral part of a safety study but which find their way into a safety study file, would frustrate other statutory provisions and can potentially be abused as a shield to PennDOT liability in contravention of the express intent of the legislature. For instance, 42 PA. CONS. STAT. ANN. § 8522 (West 1998) requires that a Commonwealth agency have prior written notice of the dangerous condition of a highway that was created by potholes, sink holes or other similar conditions as a triggering device to the waiver of sovereign immunity. Under PennDOT's interpretation of the safety study privilege, conceivably such a written notice would be inadmissible at trial simply by PennDOT commencing a safety study or placing the written notice in a safety study file. Such a result is absurd and an overly broad interpretation of Section 3754. As previously mentioned, courts have interpreted the intent behind the privilege to allow for an unbiased, honest and accurate body of information in order to address highway safety. This section is not meant as a shield to liability, thereby insulating PennDOT for a failure to act in response to notice of a dangerous condition.

A close reading of the Hartley letter confirms that the letter is not reasonably related to the type of material intended to be protected by Section 3754. I fail to discern how allowing inquiry into this particular correspondence will have a chilling effect on the legislative goal of the frank discussion of safety issues within PennDOT. On the other hand, barring the letter under an expansive reading of a statutory privilege will have the effect of decreasing PennDOT's accountability to the public, which potentially may have the negative effect of decreasing PennDOT's responsiveness to safety issues. Of course, such a result would fly in the face of the legislature's goal. Accordingly, the Harley letter is not protected by the privilege.

Similarly, the record is absolutely void of any support for PennDOT's argument that the provisions of Section 3754 protect the two Hoffman letters. As mentioned above, the party exerting a privilege has the burden of establishing the applicability of that privilege to the factual circumstances at issue. Despite the opportunity to present testimony at hearing, PennDOT relied upon the Affidavit of Devang Patel. That Affidavit is noticeably absent of any reference to the Hoffman letters. Accordingly, I find that PennDOT has not satisfied its burden in regard to the two Hoffman letters and will allow inquiry into these pieces of correspondence.

Moreover, the language of the statutory privilege protects “accident investigations and safety studies and information, records and reports used in their **preparation** . . .” 75 PA. CONS. STAT. ANN. § 3754(b) (West 1996) (emphasis added). The Hoffman correspondences, however, are neither actual investigations nor studies and clearly were not used “in the preparation” of such studies. The first Hoffman letter is nothing more than an acknowledgement of receipt of the Hartley letter. The second Hoffman correspondence indicates that the safety study was completed prior to preparation of the letter.⁸ Narrowly construing the provisions of the Section 3754 privilege, I find that it is inapplicable to this correspondence.

PennDOT argues that allowing inquiry into this correspondence discourages PennDOT’s frank discussion of the results of its safety studies with municipal agencies. Although this argument is clearly misplaced as it relates to the first Hoffman letter, it deserves further inquiry as it relates to the second Hoffman letter. In particular, two references in that letter present intriguing issues. Specifically, the second Hoffman letter expresses the opinion that members of the District Traffic Unit “have concluded that the installation of oversized [s]top signs may prove to be an effective remedy to the accident problem . . .” at the intersection in question. Later, the letter opines that “[w]e do not feel rumble strips should be installed at this location at this time.” In effect, PennDOT is providing the municipality with the results of their accident investigation and safety study. While I acknowledge the concern of PennDOT in this regard, I cannot expand the statutory language of the privilege beyond the express provisions of the statutory section at issue. If the legislature had intended to protect correspondence between PennDOT and municipal agencies, they would have expressly stated so in the legislation. I cannot, by judicial fiat, expand this privilege where the legislature has itself not chosen to do so. *See Hall*, 744 A.2d at 1290.

Moreover, I fail to grasp how disclosure of the Hoffman letters will frustrate the legislative goal of Section 3754. Allowing inquiry into the results of a traffic analysis is quite different than permitting inquiry into information, sources of information, or opinions obtained during the course of conducting a study. In fact, the results of the safety study

⁸Paragraph two of the February 10, 1995, letter reads: “Members of the District Traffic Unit have completed their safety study at this intersection . . .”

are fairly evident to anyone travelling State Route 30. The correspondence sheds no great input on any dark secret but rather is written confirmation of actual remedial efforts taken at this location.⁹

In analyzing this issue, it is important to keep in mind that when a Plaintiff is alleging that PennDOT had a governmental duty connected with the implementation of traffic controls, the burden of proof rests with the Plaintiffs to establish that the pertinent device would have constituted an appropriate remedial measure. *Starr v. Veneziano*, 747 A.2d 867 (Pa. 2000).¹⁰ The Plaintiffs must prove, therefore, that an effective traffic control device exists that PennDOT did not implement even though it was reasonable to do so. Inquiry into the results reached by PennDOT, and shared with third parties, without permitting inquiry into the actual studies, neither prejudices PennDOT nor deters an unbiased, honest and accurate body of information being provided to PennDOT in effectuating a safe and efficient system of transportation. Therefore, inquiry limited solely to the correspondence(s) will be permitted.

The final correspondence at issue is the "Punt letter". Once again, for the reasoning set forth hereinabove, this letter is not subject to protection from discovery based upon the statutory privilege of Section 3754. This letter postdates any traffic study and clearly is not part of the documentation used in **preparation of a traffic study**. As such, I cannot extend the limitations of the statutory privilege to encompass this correspondence.

Although, I recognize the chilling effect that this ruling may have on the frequency and substance of PennDOT communications to municipalities or other public agencies, if protection is needed in this area, it should be specifically provided for by the legislature. Significantly, the documents in question are not internal documents but rather are correspondence forwarded to parties independent of

⁹Although there may be other evidentiary objections to the admission of this proffered line of inquiry at trial, those issues are not before the Court nor are they a proper basis to preclude discovery in this area. *See* PA. R. CIV. P. 4003.1(b).

¹⁰In *Starr*, *supra*, the Pennsylvania Supreme Court held that in order to establish a duty of care on the part of a municipality related to the installation of traffic control device, "a plaintiff must demonstrate that: 1) the municipality had actual or constructive notice of the dangerous condition that caused the plaintiff's injury; 2) the pertinent device would have constituted an appropriate remedial measure and 3) the municipality's authority was such that it can fairly be charged with the failure to install the device". *Id.* at 873.

PennDOT. In construing privileges in other areas, our appellate courts have consistently held that the protections of a privilege are waived when the privileged information is provided to a third party. See *Commonwealth v. Davis*, 674 A.2d 214, 216 (Pa. 1996) (statutory sexual assault counselor privilege waived where the victim provides the prosecution access to the records); *Joe v. Prison Health Services, Inc.* 782 A.2d 24, 31 (Pa. Commw. Ct. 2001) (once attorney-client communications have been disclosed to a third party, the privilege is deemed waived); *Rost v. State Bd. of Psychology*, 659 A.2d 626, 629 (Pa. Commw. Ct. 1995) (Psychologist-client privilege may be waived where client has made information known to third persons). Like the privilege currently under scrutiny, each of the privileges addressed by our appellate courts are aimed at encouraging frank and open discussion among the respective parties. Even presuming that the correspondence at issue falls within the protections of Section 3754, PennDOT's decision to provide this information to third parties has effectively waived any protection. I will not extend protections to the disclosure of this correspondence which have not been legislatively authorized.

For the foregoing reasons, the attached Order is entered.¹¹

ORDER OF COURT

AND NOW, this 13th day of February, 2003, it is Ordered that the Pennsylvania Department of Transportation shall produce District

¹¹ In a supplemental memorandum, the Plaintiffs have requested that the Court direct PennDOT to provide access to its investigative file concerning the subject intersection. They argue that Section 3754 protects only in-depth accident investigations conducted by the department "in association with the Pennsylvania State Police". This argument apparently finds its genesis in language contained in the Pennsylvania Superior Court's Opinion in *Hall*, supra. Although the argument is intriguing, it is premature. Specifically, the Plaintiffs have neither made a formal discovery request of PennDOT's investigative files nor has PennDOT objected to discovery of this information. Although I suspect PennDOT will vehemently object to disclosure of its actual investigative reports, and counsel so much indicated the same during argument, I am uncomfortable with making a decision on an issue with statewide ramifications in light of the current status of the record in this matter. PennDOT has had neither the opportunity to establish a factual record nor properly brief and argue the issue. Although I recognize that judicial economy may be furthered by disposing of this issue since it is destined to arise, it is more important that a proper record be established. The parties are welcome to present a framed issue in this regard to the Court so that an evidentiary hearing limited to the parameters of that issue may be scheduled.

Engineer Barry Hoffman for purposes of completing inquiry by the Plaintiffs into the correspondence referenced in the Plaintiffs' Motion to Compel. It is further Ordered that Mr. Bell, and any other PennDOT employee subject to deposition, shall answer questions limited to the correspondence. Said depositions shall be immediately scheduled at the convenience of the parties, however, shall take place within 45 days of this order unless the Plaintiffs otherwise agree to an extension. At this time, the Court renders no opinion as to whether the actual investigative files of the Pennsylvania Department of Transportation are discoverable.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1203 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin located 11 feet North of the center line of Township Road T-430, known as Plunkert Road, at corner of land now or formerly of Nicholas N. Boccabella and wife; thence by land of the said Nicholas N. Boccabella and wife, and running through an iron pin located 20 feet from the place of BEGINNING, North 4 degrees 47 minutes 2 seconds West, 225 feet to an iron pin; thence by land now or formerly of Raymond G. Boccabella, North 35 degrees 12 minutes 58 seconds East, 141.67 feet to an iron pin; thence by the same and running through an iron pin located 20 feet from the end of this line South 55 degrees 26 minutes 9 seconds East, 377.66 feet to a point located 2 feet West of the center line of Plunkert Road; thence in Plunkert Road, South 46 degrees 34 minutes 12 seconds West, 87.47 feet to a point in said road located 1 foot North of the center line thereof; thence continuing in Plunkert Road, South 89 degrees 48 minutes 2 seconds West, 265.88 feet to an iron pin, the place of BEGINNING. The above description was taken from a draft of survey made by Gettysburg Engineering Company, Inc., dated March 9, 1976 and recorded in Plat Book 10 at Page 17, designating the above as Lot No. 2.

TITLE TO SAID PREMISES IS VESTED IN Neil James Crouse, an unmarried man and Michele L. Rorrer, an unmarried woman, their heirs and assigns by Deed from Neil James Crouse, an unmarried man dated 10/24/2002 and recorded 11/6/2002 in Record Book 2867 Page 173.

Premises being: 202 Plunkert Road, Littlestown, PA 17340

Tax Parcel No. 7C Map 1-16

SEIZED and taken into execution as the property of **Neil James Crouse & Michele L. Rorrer** and to be sold by me.

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

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

Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-983 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN property situated in the Township of Hamiltonban in the County of Adams and Commonwealth of Pennsylvania, being described as follows:

CONTAINING 10.02 Acres. Being more fully described in a fee simple deed dated 03/23/1992 and recorded 11/23/1992, among the land records of the County and State set forth above, in Volume 657 Page 239.

Tax Parcel ID: B13-1C

Address: 2885 Cold Spring Road, Orrtanna, PA 17353

SEIZED and taken into execution as the property of **Randell E. Naugle & Rebecca J. Naugle** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1191 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land and improvements thereon erected, all situate in the Township of Reading, County of Adams, and Commonwealth of Pennsylvania being more particularly described as Lot No. 321 on a Plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Miscellaneous Deed Book 1, at Page 1.

TITLE TO SAID PREMISES IS VESTED IN Timothy J. Lemmon and Catherine J. Lemmon formerly known as Catherine J. Miller, husband and wife by Deed from Eugene O. Meyers and Anna M. Meyers, husband and wife, Julie R. Stremmel Costella and Michael Costella, husband and wife dated 10/23/2000 and recorded 11/6/2000 in Record Book 2158, Page 124.

Premises being: 516 Lake Meade Drive, East Berlin, PA 17316

Tax Parcel No. 14-36

SEIZED and taken into execution as the property of **Timothy J. Lemmon & Catherine J. Lemmon f/k/a Catherine J. Miller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/20, 27 & 3/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Kevin Drive at Lot No. 115 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 115, North eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds West, one hundred forty-five and thirteen hundredths (145.13) feet to a point at Lot No. 137 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 137 and Lot No. 136 as shown on the hereinafter referenced subdivision plan, North eighty-one (81) degrees, twenty-seven (27) minutes, twenty (20) seconds East, one hundred (100.00) feet to a point at Lot No. 117 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 117, South eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds East, one hundred forty-five and thirty hundredths (145.30) feet to a point on the right-of-way line of Kevin Drive; thence along the right-of-way line of Kevin Drive, South eighty-one (81) degrees, thirty-three (33) minutes, eleven (11) seconds West, one hundred (100.00) feet to a point, the point and place of BEGINNING, CONTAINING 14,521 square feet.

THE above description being Lot No. 116 on the Final Subdivision Plan for Delbert Piper "Colonial Acres", prepared by Mort, Brown and Associates, dated April 1, 1993, which said subdivision plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 64, Page 93.

TITLE TO SAID PREMISES IS VESTED IN M. Christopher Taylor and Robin A. Taylor, his wife by Deed from Jonathan A. Weaver, et al dated 2/24/1999 and recorded 3/2/1999, in Record Book 1775, Page 270.

Premises being: 120 Kevin Drive, New Oxford, PA 17350

Tax Parcel No. Map 13, Parcel 65

SEIZED and taken into execution as the property of **Christopher M. Taylor & Robin A. Taylor** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-834 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of land, situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point on the Southern right-of-way line of Poplar Street, a sixty (60) feet wide right-of-way, at corner of Lot No. 40 on the subdivision plan hereinafter referred to; thence along the Southern right-of-way line of Poplar Street, South fifty-nine (59) degrees, thirty-one (31) minutes, twenty-one (21) seconds East, seventy-nine and ninety-three hundredths (79.93) feet to a point at the intersection of Poplar Street and Dogwood Lane; thence along the right-of-way line of Dogwood Lane, the following three (3) courses and distances: (1) South fourteen (14) degrees, thirty-one (31) minutes, twenty-one (21) seconds East, twenty-one and twenty-one hundredths (21.21) feet to a point; (2) by a curve to the right having a radius of one hundred twenty-five (125) feet, the long chord bearing and distance of which is South forty-seven (47) degrees, forty-two (42) minutes, thirty-five (35) seconds West, seventy-four and six hundredths (74.06) feet for an arc distance of seventy-five and nineteen hundredths (75.19) feet to a point; and (3) by curve to the left having a radius of four hundred twenty-five (425) feet, the long chord bearing and distance of which is South sixty-one (61) degrees, forty-six (46) minutes, forty-two (42) seconds West, forty-six and ninety-one hundredths (46.91) feet

to an arc distance of forty-six and ninety-three hundredths (46.93) feet to a point at Lot No. 26 on the subdivision plan hereinafter referred to; thence along Lot No. 26, North fifty-nine (59) degrees, ten (10) minutes, fifty-seven (57) seconds West, forty-eight and sixty-one hundredths (48.61) feet to a point at Lot No. 40 on the subdivision plan hereinafter referred to; thence along Lot No. 40, North thirty (30) degrees, twenty-eight (28) minutes, forty-one (41) seconds East, one hundred twenty-five and fifty-three hundredths (125.53) feet to a point on the Southern right-of-way line of Poplar Street, the point and place of BEGINNING.

(CONTAINING 9,928 square feet and being Lot No. 41 on a final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 14, 1987, revised October 8, 1987, designated as File No. G-97 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, page 44.)

SEIZED and taken into execution as the property of **William L. Blubaugh & Lisa Ann Blubaugh** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 24, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/27, 3/5 & 12

NOTICE

NOTICE IS HEREBY GIVEN that John J. Murphy III intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania on the 6th day of April, 2004, and that he intends to continue practice with the law firm of Patrono & Associates, LLC and Apple Leaf Abstracting & Settlement Company, 30 West Middle Street, Gettysburg, PA 17325.

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-705 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 23rd day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT improved real estate situate in Straban Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin on the Southeastern side of State Highway Route 394 running between Hunterstown and New Chester; thence running along the Southeastern side of said State Highway and by land now or formerly of Herbert Blye, South 50 degrees West, 211.10 feet to an iron pin at lands now or formerly of Jere W. Taughlinbaugh; thence by said lands and through a rebar (set) set back 35 feet on the line and running through said State Highway North 40 degrees West; 200 feet to a rebar (fd.) at lands now or formerly of Harry Zabotinsky; thence by said lands North 50 degrees East, 133 feet to a rebar in concrete (fd.) at lands now or formerly of James L. Greentree; thence by said lands and through a rebar (set) set back 37.58 feet from the end of this course and running through said State Highway South 61 degrees 19 minutes 50 seconds East, 214.71 feet to the place of BEGINNING.

CONTAINING 34,419 square feet.

The above description was taken from a draft of survey dated May 4, 1981, prepared by John R. Williams, R.S.

IT BEING the same tract of land which Jack A. Himes by his deed dated January 9, 1992 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 677 at page 313, granted and conveyed unto Jack A. Himes and Suzanne M. Himes, his wife, mortgagors herein.

SEIZED IN EXECUTION as the property of Jack A. Himes and Suzanne M. Himes on Judgment No. 03-S-705.

SEIZED and taken into execution as the property of **Jack A. Himes & Suzanne M. Himes** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 17, 2004, and distribution will be made in accordance with said schedule, unless exceptions are

filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/13, 20 & 27

NOTICE CONCERNING
TERMINATION OF YOUR
PARENTAL RIGHTS

TO: ROBERT DIXON

A Petition has been filed asking the Court to put an end to all rights you have to your child, Baby Girl Becker, also known as Anna Elizabeth Becker. The Court has set a hearing to consider ending your rights to your child. That hearing will be held at the Lancaster County Courthouse, Courtroom No. 6, 50 North Duke Street, Lancaster, Pennsylvania, on **Thursday, March 11, 2004, at 9:40 A.M.** Your rights may be subject to termination pursuant to Section 2511 of the Adoption Act if you fail to file either an acknowledgment of paternity or a claim of paternity pursuant to Section 5103 of the Adoption Act (relating to acknowledgment and claim of paternity), and you fail to either appear at the hearing for the purpose of objecting to the termination of your rights or file a written objection to such termination with the Court prior to the hearing. **You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present.** If your rights are terminated at this hearing, you will not receive notice of the later adoption proceedings concerning the child. **You have a right to be represented at the hearing by a lawyer.** You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help:

Court Administrator
Court Administrator's Office
Lancaster County Courthouse
50 North Duke Street
Lancaster, PA 17602
(717) 299-8041

Section 2504 or 2511 Notice to Putative Birth Father

2/20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Sarah M. Caldwell, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that she intends to practice law as an Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Brian R. Sinnott, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that he intends to practice law as an Assistant District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

NOTICE

NOTICE IS HEREBY GIVEN that Shawn C. Wagner, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 6th day of April, 2004, and that he intends to practice law as the District Attorney in the Office of the District Attorney, County of Adams, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania.

2/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1217 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN unit in the property known, named and identified in the Declaration referred to below as Oxford Commons Condominiums, located in the Borough of New Oxford, Adams County, Pennsylvania, which has heretofore been submitted to the provisions of the Pennsylvania Uniform Condominium Act, 68 P.S.A. Section 3101, et seq., by the recording in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, of a Declaration dated September 13, 1996 and recorded October 18, 1996 in Record Book 50 Page 41. (Together with all amendments and supplements thereto recorded on or before the date hereof) being all designated in such Declaration as Unit No. 33 as more fully bounded and described in such Declaration, together with a proportionate undivided interest in the Common Elements as defined in such Declaration.

TITLE TO SAID PREMISES IS VESTED IN Jessica L. Myers by Deed from Philip R. Garland t/d/b/a Garland Construction dated 3/17/2000 and recorded 9/21/2000 in Record Book 2129, Page 209.

Premises being: 29 Oxford Court, New Oxford, PA 17350

Tax Parcel No. 184A-33

SEIZED and taken into execution as the property of **Jessica L. Myers** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 24, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/27, 3/5 & 12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1045 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 16th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being known as and located at 42 Prince Street in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an Ex. Bolt at the Western edge of the concrete sidewalk along the West side of the right-of-way of Prince Street, at corner of land now or formerly of Carol A. Hippensteel; thence along said land now or formerly of Carol A. Hippensteel, South 60 degrees 03 minutes 00 seconds West, 100.02 feet to an Ex. Steel Pin at or near the Eastern edge of Rebecca Alley, at corner of said land now or formerly of Carol A. Hippensteel; thence by or near the Eastern edge of said Rebecca Alley, North 30 degrees 15 minutes 35 seconds West, 29.68 feet to a R.R. Spike set at or near the Eastern edge of said Rebecca Alley, at corner of land now or formerly of Cynthia S. Payne (Lot 2, known as 44 Prince Street, depicted in and upon the below-mentioned draft of survey and final subdivision plan); thence by said land now or formerly of Cynthia S. Payne, North 59 degrees 30 minutes 00 seconds East, 100.02 feet to a Steel Pin set at the Western edge of the concrete sidewalk along the West side of the right-of-way of Prince Street, at corner of said land now or formerly of Cynthia S. Payne; thence along the Western edge of said concrete sidewalk, South 30 degrees 15 minutes 00 seconds East, 30.64 feet to an Ex. Bolt at the Western edge of the concrete sidewalk along the West side of the right-of-way of Prince Street, the point and place of BEGINNING. CONTAINING 3,016 Square Feet, more or less.

The above description was taken from a draft of survey and final subdivision plan, dated January 5, 1998, by Boyer Surveys, recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 73 at Page 32; the above-described tract is labeled as Lot 1 in and upon said draft of survey and final subdivision plan.

BEING A PART OF THE SAME which Dawn F. Fields, now Dawn F. Wertz, Executrix of the Estate of J. Harvey Pettyjohn, deceased, by Deed dated

December 12, 1997 and recorded December 31, 1997, in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1498 at Page 268, sold and conveyed unto HIJ Partnership, the GRANTOR herein.

SUBJECT, NEVERTHELESS, to existing public rights-of-way; utility easements; deed covenants, conditions and restrictions, if any; and the NOTES, conditions, requirements and contents of the above-referenced draft of survey and final subdivision plan; SUBJECT, NEVERTHELESS, FURTHER, to the rights and duties pertaining to the party (common) wall within the duplex home in and upon the lot hereby conveyed.

A provision is made for the repair and maintenance of utilities for permanent right of access for the maintenance and repair of utilities (sewer, water, gas and electric).

AND the said Grantor does hereby covenant that it will warrant specially the property hereby conveyed.

HAVING thereon erected a dwelling house known as: 42 Prince Street, Littlestown, Pennsylvania 17340

BEING THE SAME PREMISES WHICH HIJ Partnership, by Deed dated 8/31/98 and recorded 9/2/98 in Adams County Deed Book 1654, Page 115, granted and conveyed unto Robert F. Frye.

SEIZED IN EXECUTION as the property of Robert F. Frye under Adams County Judgment No. 03-S-1045.

Map & Parcel 27-8-109A

SEIZED and taken into execution as the property of **Robert F. Frye** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 10, 2004, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/20, 27 & 3/5

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 FRANCES J. BROOKS, DEC'D

Late of the Borough of Abbotstown, Adams County, Pennsylvania

Executor: Betty Neal deBarbadillo, 1765 Wallace, York, PA 17402

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

ESTATE OF EMMA M. COOLEY, DEC'D

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

Executors: Kevin R. Cooley, 27 Clear Spring Road, Biglerville, PA 17307; Braxton W. Cooley, 2704 Wood-spring Drive, York, PA 17402

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

ESTATE OF DORIS L. CRAWFORD, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Susan E. Crawford, 1775 Argyle Drive, York, PA 17402

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

ESTATE OF MARGARET M. LIVELSBERGER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Kenneth F. Livelsberger, 1008 Lee Jackson Drive, Lothian, MD 20711; Patrick A. Livelsberger, 1510 Indian Valley Trail, Westminster, MD 21158

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

ESTATE OF MARY R. MILLER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Jennings Brian Martin, 4880 Harney Road, Taneytown, MD 21787

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

ESTATE OF FRED C. SENTZ, a/k/a FRED CALVIN SENTZ, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Wanda Louise Goulden, 312 North Queen Street, Littlestown, PA 17340

Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF EDWARD A. TOPPER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Rev. Msgr. Vincent J. Topper, 4000 Dery Street, Harrisburg, PA 17111-2237

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

SECOND PUBLICATION

ESTATE OF LEWIS J. KLUNK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Nadine M. Klunk, 5955 Hanover Road, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF GERALDINE E. LARKIN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrators: Dana L. Sauers and Kent L. Sauers, c/o Timothy J. Shultz, Esq., Miller & Shultz, P.C., 249 York Street, Hanover, PA 17331

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

ESTATE OF JEAN E. THOMAS, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Marion T. Harbaugh, c/o Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

Attorney: Richard W. Stevenson, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108

THIRD PUBLICATION

ESTATE OF ENDAMA V. EASLEY, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Vicki A. Easley, 217 Heritage Drive, Gettysburg, PA 17325

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

ESTATE OF RICHARD H. HIGINBOTHAM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David H. Higinbotham, 134 Windsor Circle, Ocean Isle Beach, NC 28469

Attorney: Larry W. Wolf, Esq., 215 Broadway, Hanover, PA 17331

ESTATE OF MICHAELA A. LAURO, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Michelle A. Rineman, 451 Parkview Lane, Hanover, PA 17331

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

ESTATE OF VIOLA LUCKENBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executrices: Betty Thomas, 992 Hilltop Drive South, Spring Grove, PA 17362; Shirley Thoman, 671 E. Walnut Street, Hanover, PA 17331; Katie Sanders, 6144 Hilltop Drive East, Spring Grove, PA 17362

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

ESTATE OF STEPHEN B. MANN a/k/a STEPHEN BARKER MANN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: David L. Spiese, 10 Lincoln Way West, New Oxford, PA 17350

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

ESTATE OF CHARLES E. MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Raymond E. Miller, 153 George Street, Hanover, PA 17331; Eugene P. Miller, 684 Cedar Ridge Road, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF ARLINE NORMA OTT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Yvonne M. Starbuck, 2145 Mt. Hope Road, Fairfield, PA 17320

Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

(continued on page 8)

THIRD PUBLICATION (continued)

ESTATE OF JOYCE A. PHILIPS, DEC'D
Late of the Borough of East Berlin, Adams County, Pennsylvania
Executor: Charles H. Phillips, c/o 29 North Duke Street, York, PA 17401
Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

ESTATE OF THOMAS A. PUTMAN, DEC'D
Late of Reading Township, Adams County, Pennsylvania
Executor: Marvin J. Putman, 590 South Franklin Street, Hanover, PA 17331
Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF MARGARET E. TAWNEY a/k/a MARGARET ELLA TAWNEY a/k/a MARGARET JANE TAWNEY, DEC'D
Late of Volusia County, Florida
Personal Representative: Sue Anne DaCamara, 5406 Beach Drive, St. Leonard, MD 20685
Attorney: Cindy Lou Franke, Esq., Maxwell Law Offices, Wayne Building, 92 West Main Street, Waynesboro, PA 17268

ESTATE OF ROBERT G. TAYLOR, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Executrix: Jean V. Taylor, 161 Brysonia School Road, Biglerville, PA 17307
Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-1018 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 30th day of April, 2004, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN property situated in the Township of Reading in the County of Adams and Commonwealth of Pennsylvania, being more fully described in a deed dated August 15, 1992 and recorded on August 24, 1992 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 638, Page 1059.

IMPROVEMENTS thereon consisting of a residential dwelling.

BEING KNOWN AS 1275 Green Ridge Road, East Berlin, PA 17316.

BEING Tax Parcel No. 36-K08-0002F.

BEING the same premises which Kevin S. Holtzinger and Karen L. Holtzinger, husband and wife, by Deed dated August 19, 1992 and recorded on August 24, 1992 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 638, Page 1059, granted and conveyed unto Guy I. Brown and Lori A. Brown, husband and wife, in fee.

SEIZED AND TAKEN in execution as the property of Guy I. Brown and Lori A. Brown under Judgment No. 03-S-1018.

SEIZED and taken into execution as the property of Guy I. Brown & Lori A. Brown and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 24, 2004, 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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CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that a Certificate of Organization was filed with the Department of State of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania on January 22, 2004 for the purpose of creating a domestic limited liability company.

The name of the limited liability company organized under the Pennsylvania Limited Liability Company Law is: CHESTNUT HALL BED AND BREAKFAST, LLC.

The purpose for which the limited liability company was organized was to operate a bed and breakfast, and to conduct any other activity permitted under the Pennsylvania Limited Liability Company Law of 1994.

James M. Robinson, Esq. Turo Law Offices 28 South Pitt Street Carlisle, PA 17013

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act", 54 Pa. C.S.A. §§ 301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is T & T REALTY ENTERPRISES. The address of the principal office or place of business to be carried on under or through the fictitious name is 80 Skyline Court, Gettysburg, Adams County, Pennsylvania 17325. The names and addresses of the persons who are parties to the registration are Thomas R. Campbell and Tamara M. Brush-Campbell of 80 Skyline Drive, Gettysburg, Adams County, Pennsylvania 17325. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on January 5, 2004.

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

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