

# Adams County Legal Journal

Vol. 37

March 1, 1996

No. 40, pp. 215-218

## MEDIA ADVISORY

### Villanova University School of Law

**Who:** Villanova Center for Information Law and Policy (VCLIP)

**What:** The State Court Locator

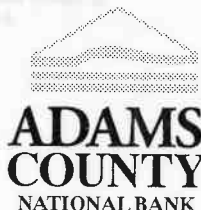
**Where:** <http://www.law.vill.edu/State-Ct/>

**Background:** The Villanova Center for Information Law and Policy announces the availability of the State Court Locator. This service is the home page for state court systems on the World Wide Web, providing links to all opinions offered by state judiciaries on the Internet. Users may conveniently view and download state opinions through their Web browsers. Currently, 19 state judiciaries post their opinions on the World Wide Web and the list continues to grow. The State Court Locator is carefully maintained to provide the most up-to-date and accurate locations of state court opinions.

**Listing of States Available:** Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Missouri, New York, North Carolina, Ohio, Oklahoma, Texas, Utah, Vermont and Washington.

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for your future financial needs today.



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

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Business Office - 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1067 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of March, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of real estate located in Hamiltonban Township Adams County, Pennsylvania, and more particularly described in accordance with a subdivision plan prepared by Adams County Surveyors dated April 4, 1984, Drawing E-464, as follows:

BEGINNING at a steel rod located within the right-of-way of the Mt. Hope Road, L.R. 01016, at lands of Hiram J. Lentz; thence by same North two (2) degrees forty-three (43) minutes thirty-five (35) seconds West two hundred twenty-two and seventy-five one hundredths (222.75) feet to a steel rod; thence by same South eighty-seven (87) degrees sixteen (16) minutes twenty-five (25) seconds West one hundred ninety-eight (198) feet to a pipe at lands of Karen Grout; thence by same North two (2) degrees forty-three (43) minutes thirty-five (35) seconds West twenty (20) feet to a point at land of David J. Mickley; thence by same North twenty-three (23) degrees forty (40) minutes thirty (30) seconds East four hundred seventy-three and sixty-four hundredths (473.64) feet to a steel rod at other lands of the Grantors herein; thence by same South seventy-seven (77) degrees forty-one (41) minutes zero (0) seconds East six hundred fifty-three and twenty-five hundredths (653.25) feet to a steel rod and stones at other lands of the Grantees herein; thence by same South twenty-five (25) degrees twenty-three (23) minutes twenty (20) seconds West three hundred forty-one and twenty hundredths (341.20) feet to a point at the lands of Dennis R. Reeher; thence by same and other lands about to be conveyed by Grantors to Reeher South eighty-eight (88) degrees four (4) minutes thirty (30) seconds West two hundred nineteen and twenty-four hundredths (219.24) feet to a steel rod; thence by same and through an existing eye bolt located fifteen and two tenths (15.2) feet from the terminus of this course South eleven (11) degrees twenty-two (22) minutes forty (40) seconds West two hundred seven and twenty hundredths (207.20) feet to a point in the right-of-way of Mt. Hope Road; thence

through said right-of-way South eighty-seven (87) degrees thirty-nine (39) minutes zero (0) seconds West two hundred twelve and ninety-seven hundredths (212.97) feet to a steel rod at the point and place of beginning.

CONTAINING 7.230 Acres and shown as Lot No. 3 on the aforesaid subdivision plan.

BEING 1765 Mount Hope Road, Fairfield, PA 17320.

PARCEL NO. B-14-40

SEIZED and taken into execution as the property of **Michael Sites and Shirley Sites and to be sold by me**

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
January 25, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 8, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

2/23 & 3/1, 8

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on February 8, 1996, a certificate was filed under the Fictitious Name Act, Act of December 16, 1982, P.L. 1309, No. 295, 52, 54 Pa.C.S.A. §301, et seq., in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Andrew T. Myers is the only person owning or interested in a business known as MAPLE GROVE MILLWORKS, and the location where the business is and will be located is 286 Maple Grove Road.

G. Steven McKonly,  
Esquire

3/1

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 19th day of September, 1995, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania of 1988, as amended.

The name of the Corporation is PARK HOTEL, INC. The purpose for which said Corporation is organized is to engage in and do any lawful act concerning any or all business for which corporations may be incorporated under the Business Corporation Law of 1988, December 21, P.L. 1444, No. 177 Section 103, effective October 1, 1989 including but not limited to the ownership and operation of a Restaurant and Liquor Establishment.

Stonesifer and Kelley  
209 Broadway  
Hanover, Pa. 17331  
717-632-0163

3/1

CHANGE OF NAME  
COURT OF COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

NOTICE IS HEREBY GIVEN that on the 14th day of February, 1996, the Petition of Rickey Walter Marshall and Angela Marie Marshall was filed in the Court of Common Pleas of Adams County, Pennsylvania praying for a Decree to change the names of the Petitioners respectively from Rickey Walter Marshall to Rickey Walter Sartori and from Angela Marie Marshall to Angela Marie Sartori. The Court has fixed the 12th day of April, 1996 at 9:00 A.M. in Courtroom No. 1 of the Adams County Courthouse as the time and place for Hearing on said Petition. Any lawful objection should be advanced at that time.

By: John M. Crabbs & Crabbs  
Attorneys for Petitioners  
202 Broadway  
Hanover, PA 17331

3/1

## MOORE VS. SLAYBAUGH

1. No formal or written agreement is necessary to create a valid partnership and agreements may be oral or may be found to exist by implication from all attending circumstances, such as the way the parties conducted their business.
2. In determining the existence of a partnership, prima facie effect is to be given to the sharing of profits.
3. For purposes of determining the legal sufficiency of allegations in the Amended Complaint, the Court must assume their truth and give Plaintiff the benefit of all reasonable inferences deducible therefrom.
4. A constructive trust is an equitable remedy to avoid unjust enrichment.
5. Although unjust enrichment normally involves some element of fraud, undue influence, duress or mistake, the remedy has been applied to effectuate a partnership agreement breached by one of the partners.
6. An equitable lien may be imposed where evidence clearly and unambiguously establishes an intent that specific real estate serve as security for a specific debt.
7. Although the right to an equitable lien is usually asserted when one party has furnished the purchase price for realty, the elements necessary are (a) an obligation from one party to another; (b) a res to which that obligation attaches and; (c) an intent by the parties that the property serve as security for the payment of the obligation.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-663, BRENDA MOORE VS. RANDALL L. SLAYBAUGH.

Clayton R. Wilcox, Esq., for Plaintiff  
Mark D. Beauchat, Esq., for Defendant

### OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., September 5, 1995.

Defendant, through preliminary objections, attempts to raise numerous legal obstacles to plaintiff's attempts to either subject real estate to a partnership or recover money said to have been transferred by plaintiff to him.

According to the amended complaint, the parties began a romantic relationship<sup>1</sup> in 1989. Assuming the truth of allegations in that pleading, we find that she began advancing money to defendant in 1990, for the dual purpose of reducing his "existing debt"<sup>2</sup> and improving real estate owned by defendant. The property is described as 970 Bull Valley Road, Aspers, Pennsylvania, which is also defendant's address. The amended complaint mentions two mobile homes, which

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<sup>1</sup>We must confess to taking liberties in expression. Romance is not mentioned, not even once, by plaintiff. Her amended complaint refers to the relationship as "social," (¶13), "intimate social" (¶14) and the parties as "social partners", (¶ 15). Her counsel's brief refers to the parties as "social intimates." (page 1).

<sup>2</sup>We cannot determine whether the allegation refers to one, specific obligation or whether plaintiff uses the singular to mean all debt owed by defendant.

were located on the premises. One was described as a "12x60 Buddy mobile home," (¶15), and the other as a "previously burned out 10x50 mobile home." (¶11). The amended complaint does not identify where defendant resided, which is somewhat confusing because of references to two homes (¶10), both of which were rented.

At any rate, the Buddy mobile home was apparently improved and rented and, later, another mobile home was placed on the site of the burned out mobile home and also rented.

The parties discussed means by which payments could be secured and agreed to establish an equal partnership, with the Bull Valley property becoming partnership property. An allegation, which defendant argues is unnecessarily vague, states that an agreement was written on a "specific date being unknown to plaintiff," (¶18), but never signed. Since plaintiff does not base her suit on this writing, we do not consider the lack of specificity important. In fact, the court is unable to determine, at this stage, the relevance of the single-paged memorandum.

After the oral agreement, plaintiff parted with and defendant received the sum of \$9,300.00. The date of this payment is described as February 20, 1991.

Exhibit "A", attached to the amended complaint, lists six payments, beginning January 12, 1990, and ending March 8, 1991, totaling \$20,510.62. An explanatory note recites that "[t]he figures used in this complaint are based on information currently available to plaintiff and may need to be adjusted once discovery is completed."

After improvements were accomplished, the mobile home was rented. Plaintiff received some \$3,500.00 in rent, which she said reduced her capital contribution to \$18,500.00.<sup>3</sup>

The social relationship ended in February, 1992, and the business arrangement in August of that year. Allegations in ¶22, that "Defendant continued to make payments on account of his obligation to Plaintiff until December, 1992, at which time he stopped making further payments despite his promise to do so," could be read to indicate a debt relationship. On the other hand, other allegations specifically describe a partnership and ¶23 unequivocally states that plaintiff has demanded an accounting and distribution of partnership assets, including the real estate.

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<sup>3</sup> As we will see, later, plaintiff argues the prima facie effect of sharing profits on the issue of creation and existence of a partnership. The allegation in ¶9 would seem to negate this argument. However, there are other allegations, concerning other rents, which support the argument. At any rate, defendant has not made an issue of this particular averment.

This discussion brings us to objections to Count I. Defendant concedes that plaintiff's request for an accounting is proper, if a partnership exists. Despite some problems, to which we have briefly alluded, allegations are sufficient. In addition to describing an oral agreement, plaintiff alleges that the parties equally split income from the second rental property, which replaced a burned "10x50 mobile home" on the Bull Valley real estate. (¶11, 13).

A partnership is an association of two or more people to carry on a business for profit. 15 Pa. C.S.A. §8311(a). No formal or written agreement is necessary to create a valid partnership. Agreements may be oral or may be found to exist by implication from all attending circumstances, such as the way the parties conducted their business. *DeMarchis v. D'Amico*, 432 Pa. Super. 152, 637 A.2d 1029 (1994) In that case, Superior Court emphasized 15 Pa. C.S.A. 8312 and the prima facie effect given to the sharing of profits. Prima facie evidence is that which is good and sufficient on its face and which, if not rebutted, will remain sufficient. *id.*

Of course, the statute contains numerous exceptions to the prima facie effect of profit sharing, including payments of debts or interest on a loan. However, it is defendant's burden to show that payments fall into a category listed in §8312(4). *DeMarchis*, *supra*. Furthermore, for purposes of determining the legal sufficiency of allegations in the amended complaint, we must assume their truth and give plaintiff the benefit of all reasonable inferences deducible therefrom. *County of Allegheny v. Commonwealth*, 507 Pa. 360, 490 A.2d 402 (1985).

Defendant argues that the Statute of Frauds prohibits plaintiff's acquisition of any interest in his real estate through an oral contract. This is an affirmative defense which should be raised in new matter. Pa. R.C.P. 1028. At this stage, we think it unwise to consider the defense, but think it proper to mention that singly owned real estate was held to be partnership property in *DeMarchis*, *supra*. We do not mean to indicate that the same results will necessarily follow in the case before us, because it was appellants, in *DeMarchis*, who lost their bid to establish a partnership at the trial level, and who owned real estate titled in their names alone. It is doubtful that the Statute of Frauds was raised, or became an issue.

Although plaintiff's rights cannot be described as free from doubt, that is not the test. She has pleaded sufficient facts, which if not refuted and if believed, would entitle her to an accounting.

She also seeks to impose a constructive trust on the Bull Valley real estate and subject it to an equitable lien. A constructive trust is an equitable remedy to avoid unjust enrichment. In such a situation, the

law will recognize an equitable duty on the part of the title holder to convey it to another. Although unjust enrichment normally involves some element of fraud, undue influence, duress or mistake, the remedy was applied to effectuate a partnership agreement breached by one of the partners in *DeMarchis v. D'Amico*, supra. An equitable lien may be imposed when evidence clearly and unambiguously establishes an intent that specific real estate serve as security for a specific debt. As in the case of fraud, evidence must be clear, precise and indubitable as to the intention of the parties. Proof that one party loaned money to the other will not suffice. Although the right to a lien is usually asserted when one party has furnished the purchase price for realty, the elements necessary are: a) an obligation from one party to another; b) a res to which that obligation attaches and; c) an intent by the parties that the property serve as security for the payment of the obligation. *Mermon v. Mermon*, 257 Pa. Super 228, 390 A.2d 796 (1978).

We must remember that we are in the pleading, not proof, stage, and cannot be concerned about plaintiff's ability to carry her burden. Allegations are sufficient to require defendant to answer.

Defendant also seeks a more specific complaint. While it is true that some allegations are couched in general terms, with the assertion that defendant has records which plaintiff lacks, the amended complaint adequately explains the nature of the claim with sufficient detail to allow defendant to prepare his defense and to demonstrate that averments are not merely a subterfuge. This is enough. In *Re Estate of Schofield*, 505 Pa. 95, 477 A.2d 473 (1984). Defendant's arguments, which rely on the necessity for pleading special damages with particularity, do not apply to the situation sub judice.

Finally, defendant seeks dismissal on the grounds of laches. Prejudice, and not mere passage of time, is required. *Caledonia Acres Property Owners Association v. South Mountain Development Co.*, 34 ACLJ 55 (1991). In rare cases, this may appear on the face of the complaint. However, it does not in the case before us. In fact, defendant attempts to establish the defense by reciting facts in his brief.

The attached order is entered.

#### ORDER OF COURT

AND NOW, this 5th day of September, 1995, defendant's preliminary objections are dismissed. He shall have twenty (20) days from the date of this order to file and answer.

## 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 BEULAH A. COULSON, DEC'D

Late of Lutheran Social Services-South Region, 1075 Old Harrisburg Road, Gettysburg, Adams County, Pennsylvania

Administratrixes: Ruth S. Willard, 709 N. Railroad St., Palmyra, PA 17078; Lucille Leer, 9 S. Chestnut St., Dillsburg, PA 17019

Attorney: Jan M. Wiley, Esquire, One South Baltimore St., Dillsburg, PA 17019

## ESTATE OF LAURENCE K. RETH, JR. a/k/a LAURENCE K. RETH, II, DEC'D

Late of 690 Cedar Road, City of New Oxford, Adams County, Pennsylvania

Administratrix: Yvonne G. Staub, 690 Cedar Road, New Oxford, PA 17350

Attorney: Dusan Bratic, Bratic & Portko, 101 South US Route 15, Suite A, Dillsburg, PA 17019

## SECOND PUBLICATION

## ESTATE OF DOROTHY E. KEIM, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executrix: Sandra L. Wood, 325 Bon Ox Road, Gettysburg, PA 17325

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

## ESTATE OF ROBERT B. STAUFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Barbara J. Zimmerman, 361 Caraway Drive, Mountville, PA 17554

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

## THIRD PUBLICATION

## ESTATE OF JAMES L. BYNAKER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

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

Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

## ESTATE OF HAZELL KAYSER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator: Richard J. Mills, 2451 Hanover Road, Gettysburg, PA 17325

Attorney: Micheal A. George, Campbell, White & George, 122 Baltimore St., Gettysburg, PA 17325

## ESTATE OF DOROTHY MARIA REIGLE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Robert A. Musselman, 24 Main Street, McSherrystown, PA 17344

## ESTATE OF MAURICE EDGAR SANDERS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: Larry F. Sanders and Patricia A. Nickey (Wildasin)

Attorney: John J. Mooney, III, Gates and Mooney, 250 York Street, Hanover, PA 17331

## ESTATE OF THELMA M. SPANGLER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Norma Eckard, 735 McCallister Street, Hanover, PA 17331

Attorney: Muriel Anne Crabbs, Esq., 202 Broadway, Hanover, PA 17331

## ESTATE OF MARTIN C. WINTERS, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Attorney: John B. Mancke, Esq., Mancke, Wagner, Hershey & Tully, 2233 North Front Street, Harrisburg, PA 17110

## FICTITIOUS NAME NOTICE

**NOTICE IS HEREBY GIVEN** that on January 5, 1996, an Application for Fictitious Name Registration was filed with the Department of State of the Commonwealth of Pennsylvania under the Fictitious Name Act setting forth that Timeless Towns of the Americas, Inc., 2634 Emmitsburg Road, Gettysburg, Pennsylvania 17325 is the only entity owning or otherwise having an interest in a business to be known as ALL STAR FAMILY FUN & SPORTS COMPLEX and the location where said business is and will be located is 2634 Emmitsburg Road, Gettysburg, Pennsylvania 17325.

Edward C. Roberts  
Solicitor

3/1

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Edward C. Roberts  
Solicitor

3/1

## FICTITIOUS NAME NOTICE

**NOTICE IS GIVEN** that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 7, 1996, pursuant to the Fictitious Name Act, setting forth that Joseph A. Murphy, of 210 North Fifth Street, McSherrystown, PA 17344, is the only person owning or interested in a business, the character of which is to own and operate a funeral home and that the name, style and designation under which said business is and will be conducted is LEONARD B. HICKS FUNERAL HOME and the location where said business is and will be conducted is 501 Ridge Avenue, McSherrystown, PA 17344.

Rudisill, Guthrie, Nonemaker,  
Guthrie & Yingst  
Solicitor

3/1





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ol. 37

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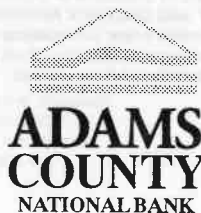
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Rooted Upon Traditional Values.  
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Dependable.  
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Member FDIC

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through said right-of-way South eighty-seven (87) degrees thirty-nine (39) minutes zero (0) seconds West two hundred twelve and ninety-seven hundredths (212.97) feet to a steel rod at the point and place of beginning.

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PARCEL NO. B-14-40

SEIZED and taken into execution as the property of **Michael Sites and Shirley Sites** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
January 25, 1996.

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2/23 & 3/1, 8

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, that on February 15, 1996, an application was filed under the Fictitious Name Act, No. 1982-295 (54 Pa. C.S. Section 311) in the Office of the Secretary of the Commonwealth of Pennsylvania setting forth that: Tammy L. Althoff is the only person or entity owning or interested in a business, the character of which is buying and selling of infants and children's clothing/apparel, and that the name, style and designation under which said business is and will be conducted is OLIVIA'S INFANT AND CHILDREN APPAREL and the location where said business is and will be located is 6955 York Road, Route 30, Abbottstown, Pennsylvania.

Stonesifer and Kelley  
209 Broadway  
Hanover, PA 17331  
717-632-0163

3/8

## FICTITIOUS NAME

NOTICE IS HEREBY GIVEN, that on February 15, 1996, an application was filed under the Fictitious Name Act, No. 1982-295 (54 Pa. C.S. Section 311) in the Office of the Secretary of the Commonwealth of Pennsylvania setting forth that: John M. Seifert is the only person or entity owning or interested in a business, the character of which is plant and machine maintenance, and that the name, style and designation under which said business is and will be conducted is NEW OXFORD MECHANICAL SERVICES and the location where said business is and will be located is 302 Commerce Street, New Oxford, Pennsylvania.

Stonesifer and Kelley  
209 Broadway  
Hanover, PA 17331  
717-632-0163

3/8

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, that on February 12, 1996, an application was filed under the Fictitious Name Act, No. 1982-295 (54 Pa. C.S. §311) in the Office of the Secretary of the Commonwealth of Pennsylvania setting forth that: Rodney J. Harris is the only person or entity owning or interested in a business, the character of which is custom woodworking, and that the name, style and designation under which said business is and will be conducted is RED BARN WOODWORKS and the location where said business is and will be located is 545 Hilltown Road, Gettysburg, Pennsylvania.

Swope, Heiser & McQuaile  
104 Baltimore Street  
Gettysburg, PA 17325

3/8

## COMMONWEALTH. VS. GILBERT

When a person receives notice that their operating privilege is or will be suspended or revoked for a D.U.I. related offense, that person is subject to the penalties of Section 1543 (b) of the Vehicle Code and will be subject to the penalties thereof throughout any current suspension or revocation and any subsequent suspensions or revocations until the end of their D.U.I. related suspension or revocation.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-34-95, COMMONWEALTH VS. DOUGLAS KEITH GILBERT, SR.

Bernard Yannetti, Jr., Esq., for Commonwealth  
Jean Arena, Esq., for Defendant

### MEMORANDUM OPINION

Kuhn, J., September 29, 1995.

On August 30, 1994, Defendant was issued a citation for driving under suspension. The only question is whether he is guilty of 75 Pa. C.S.A. §154(a) or (b). Defendant's driving record reveals the following relevant history:

1. Convicted on December 5, 1983, for violating §1543(a) on July 31, 1983, and received a six month revocation effective March 11, 1984;

2. Convicted on March 7, 1985, for violating §1543(a) on December 22, 1984, and received a six month revocation effective May 9, 1985;

3. Convicted on August 26, 1985, for violating §1543(a) on July 24, 1985, and received a one year revocation effective December 16, 1985;

4. Convicted on February 19, 1986, for violating §1543(a) on January 2, 1986, and received a five year revocation effective December 16, 1986;

5. Convicted on November 3, 1986, for violating §1543(a) on September 25, 1986, and received a 2 year revocation effective December 16, 1991;

6. Convicted on January 26, 1987, for violating §1543(a) on December 13, 1986, and received a two year revocation effective December 16, 1993;

7. Convicted on January 23, 1987, for violating §3714 on September 25, 1986, and received a 15 day suspension effective December 16, 1995;

8. Convicted on July 20, 1987, for violating §1543(a) on June 24, 1987, and received a two year revocation effective December 31, 1995;

9. Convicted on October 29, 1991, for violating §3731 on January 22, 1989, and received a two year revocation effective December 31, 1997;

10. Convicted on October 29, 1991, for violating §1543(a) on January 22, 1989, and received a two year revocation effective December 31, 1999.

It is, therefore, clear that at the time Defendant was illegally driving on August 30, 1994, he was subject to a two year revocation as an habitual offender. However, the driving took place after Defendant had been convicted of the D.U.I. charge and after notice has been mailed to him (December 27, 1991) of the revocation that would be imposed effective December 31, 1997. The Court finds that this case is controlled by *Commonwealth v. Nuno*, 385 Pa. Super. 6, 559 A.2d 949 (1989). There, Nuno's operating privileges were revoked for a period of five years effective December 12, 1984. He received an additional one year suspension effective January 12, 1990, for refusing to submit to a chemical test of his breath. On April 18, 1986, Nuno received notice of a two year revocation effective January 12, 1991, for a D.U.I. conviction. On August 8, 1987, he was stopped and cited for several offenses including 75 Pa. C.S.A. §1543(b). Defendant argued that in 1987, his operating privileges were revoked for non-D.U.I. related matters, therefore, he could not be guilty of violating §1543(b). Superior Court held that,

“... when a person receives notice that their operating privilege is or will be suspended or revoked for a D.U.I. related offense, that person is subject to the penalties of §1543(b). That person will be subject to the penalties of §1543(b) throughout any current suspension or revocation and any subsequent suspensions or revocations until the end of their D.U.I. related suspension or revocation.” 385 Pa. Super. at. 9, 559 A.2d at 951.

We conclude that Defendant's reliance upon *Commonwealth v. Rosenberger*, 426 Pa. Super.37, 626 A.2d 181 (1993) is not applicable.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 29th day of September, 1995, the Court finds Defendant guilty of a violation of 75 Pa. C.S.A. §1543(b) as charged in Citation No. 0196066. Sentencing is hereby set for 9:00 A.M., October 11, 1995, Courtroom No. 2, at which time Defendant is directed to appear.

## SHUBERT VS. BOROUGH OF CARROLL VALLEY, ET AL

1. On a Motion for Summary Judgment, the trial court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party.

2. The Political Subdivision Tort Claims Act is not applicable to a federal cause of action under 42 USC §1983

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 91-S-911, JEFFREY M. SHUBERT VS. BOROUGH OF CARROLL VALLEY, A POLITICAL SUBDIVISION AND MUNICIPAL CORPORATION, AND DENNIS M. DIDIO, BETTY J. BOWER, DOROTHY A. CORBIN, JANE E. MIKESELL, DANIEL T. HALLINAN, EDWARD F. MCMANNESS, AND CLIFFORD A. STRAUSBAUGH, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES.

Lawrence F. Clark, Jr., Esq., for Plaintiff

Charles B. Calkins, Esq., for Defendant

### OPINION ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Kuhn, J., September 14, 1995.

Plaintiff, a former police officer for the Defendant, Borough of Carroll Valley, filed suit against the Borough and seven borough council members, seeking monetary damages and injunctive relief for his dismissal as a police officer. The Complaint contains a count for violation of the Sunshine Act (Count I), for violation of due process under 42 U.S.C. §1983 (Count II), and in equity (Count III). After the pleadings were filed, Defendants filed a motion for partial summary judgment contending that the Defendants are entitled to immunity pursuant to the Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541 et seq. and requests dismissal of the claims for monetary damages only.

It is well known that,

...summary judgment is properly granted 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.C.P. 1035(b)...The trial court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party...The moving party's evidence must clearly exclude any genuine issue of material fact. Aetna Casualty and Surety Com-

pany v. Roe, 437 Pa. Super. 414, 419-20, 650 A.2d 94, 97 (1994) (citations omitted).

Plaintiff claims he was a police officer for the borough beginning October 8, 1990. Borough claims he was a probationary employee. Borough held a council meeting on September 9, 1991, which was attended by Plaintiff. At some point after Plaintiff's departure, Council adjourned into executive session. It appears that Plaintiff's job performance was discussed to some degree in the executive session. Council again met on September 26, 1991, at which time Council decided not to retain Plaintiff's services further. The parties dispute whether that decision was made in open or closed session. By letter dated September 27, 1991, Plaintiff was advised of Council's decision.

The Political Subdivision Tort Claims Act (PSTCA), provides a grant of governmental (§8541) and individual (§8545 and §8546) immunity for damages on account of any injury to a person or property caused by act of the governmental unit or its employee. However, the title of the Act and the legislative intent was to insulate political subdivisions and their employees from tort liability unless the conduct fit within the defined exceptions.

As we carefully examine this Complaint, it appears that Count II is the only one which seeks monetary damages. Count I asserts a violation of the Sunshine Act, 65 P.S. §271, et seq., but not a tort claim. Immunity would not apply to violation of this statutory provision otherwise, the Sunshine Act would have no effect. Legal challenges to action taken in violation of the Sunshine Act allows the court, in its discretion, to find that the action taken was invalid. There does not appear to be any specific authorization for damages under the Act. We assume, however, that if Plaintiff can prove that his termination was invalid, then, in fact, he was ready to perform his duties and entitled to compensation although our research has revealed no authority to that effect. Resolution of that issue is not presently before the Court. Count III seeks injunctive relief which is not barred by the PSTCA.

Caselaw has held that the PSTCA is not applicable to a federal cause of action under 42 U.S.C. §1983. *Wiehagen v. Borough of North Braddock*, 126 Pa. Comlth. Ct. 353, 559 A.2d 991, 993 (1989), *Alloc. gr.* 575 A.2d 120 (1990); *Wade v. City of Pittsburgh*, 765 F.2d 405, 407 (3rd Cir. 1985). Therefore, Count II remains a viable count.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 14th day of September, 1995, Defendants' Motion For Partial Summary Judgment is denied.

## ESTATE NOTICES

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

## FIRST PUBLICATION

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

Late of Straban Township, Adams County, Pennsylvania  
 Executor: Andrew J. Bauerline, 3565 Hanover Road, Gettysburg, PA 17325  
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF LUCILLE W. GILLAND, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania  
 Executor: Raymond Charles Gilland, 2535 Iron Springs Road, Fairfield, PA 17320  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF KENNETH P. HULL, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executrix: Elizabeth W. Hull, 96 Twin Lakes Drive, Gettysburg, PA 17325  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF GEORGE F. O'CONNOR, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: PNC BANK, N.A., 10 York Street, Gettysburg, PA 17325  
 Attorney: Robert E. Campbell, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF HENRY N. REDDING, SR., DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executrix: Alice L. Redding, P.O. Box 221, Scotland, PA 17254  
 Attorney: Donald G. Oyler, Esq., 112 Baltimore St., Gettysburg, PA 17325

## ESTATE OF AMOS L. SPANGLER, DEC'D

Late of Union Township, Adams County, Pennsylvania  
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## ESTATE OF RICHARD C. STRAUSBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: Joseph Strausbaugh, 419 Boyer Drive, East Berlin, PA 17316; Esther Walsh, Box 223, Wurtsboro, New York 12790  
 Attorney: Louis T. Guthrie, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

## ESTATE OF FRANCIS WILLIAM ULRICH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Adams County National Bank, Trust Office, P.O. Box 4566, Gettysburg, PA 17325  
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF BEULAH A. COULSON, DEC'D

Late of Lutheran Social Services-South Region, 1075 Old Harrisburg Road, Gettysburg, Adams County, Pennsylvania  
 Administratrixes: Ruth S. Willard, 709 N. Railroad St., Palmyra, PA 17078; Lucille Leer, 9 S. Chestnut St., Dillsburg, PA 17019  
 Attorney: Jan M. Wiley, Esquire, One South Baltimore St., Dillsburg, PA 17019

## ESTATE OF LAURENCE K. RETH, JR. a/k/a LAURENCE K. RETH, II, DEC'D

Late of 690 Cedar Road, City of New Oxford, Adams County, Pennsylvania  
 Administratrix: Yvonne G. Staub, 690 Cedar Road, New Oxford, PA 17350  
 Attorney: Dusan Bratic, Bratic & Portko, 101 South US Route 15, Suite A, Dillsburg, PA 17019

## THIRD PUBLICATION

## ESTATE OF DOROTHY E. KEIM, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania  
 Executrix: Sandra L. Wood, 325 Bon Ox Road, Gettysburg, PA 17325  
 Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ROBERT B. STAUFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executrix: Barbara J. Zimmerman, 361 Caraway Drive, Mountville, PA 17554  
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

## NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, March 18, 1996, at 9:00 o'clock a.m.

**KORTE**—Orphans' Court Action Number OC-12-96. The First and Final Account of Terry Richard and Elizabeth Korte Gardner, Executors of the Will of Anne H. Korte, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**SMITH**—Orphans' Court Action Number OC-14-96. The First and Final Account of Stella M. Hippensteel, Janet Hahn and Elizabeth Adams, Executrices of the Last Will and Testament of Margaret H. Smith, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

**WILLIAMS**—Orphans' Court Action Number OC-17-96. The First and Final Account of Mabert S. Williams, Executrix under the Last Will and Testament of Charles R. Williams, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**OSBORN**—Orphans' Court Action Number OC-18-96. The First and Final Account of Thomas G. Lush, Executor of the Last Will and Testament of Mildred M. Osborn, deceased, late of Biglerville, Adams County, Pennsylvania.

Peggy J. Breighner  
 Clerk of Courts

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-846 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the South Side of Ridge Road T-635 in Latimore Township Adams County, Pennsylvania more particularly bounded and described as follows:

**BEGINNING** at a point in the center of Ridge Road, which point is established on the subdivision plan hereinafter referred to and being at the northwestern corner of Lot No. 4 on said subdivision plan; thence crossing said road and through an iron pin set back 25.36 feet from the beginning hereof and by lands of Glenn F. Guise and Marie B. Guise, Lot No. 4, South 0 degrees 33 minutes 18 seconds West, 668.99 feet to a concrete monument at lands of John D. Sensenig; thence by lands of John D. Sensenig, South 78 degrees 14 minutes 23 seconds West, 724.61 feet to lands of Charles Lory; thence by lands of Charles Lory through a steel pin 37.78 feet along the line and traversing the northbound lane of U.S. Route 15, North 15 degrees 0 minutes 30 seconds West, 129.07 feet to an iron pin in the 20 feet grass strip between the northbound and southbound lanes of U.S. Route 15 at lands of Ricky B. Nell; thence by lands of Ricky B. Nell by an arc of a curve to the left having a radius of 3,819.83 feet, a chord bearing and distance of North 29 degrees 12 minutes 57 seconds East 719.97 feet, for an arc distance of 721.04 feet to an iron pipe found in or near the center line of the 20 feet grass strip aforementioned; thence crossing the northbound lane of U.S. Route 15 and in and along the center of Ridge Road, T-635, North 80 degrees 55 minutes 6 seconds East, 402.94 feet to a point in the center of Ridge Road, T-635, the place of **BEGINNING. CONTAINING 9.2 Acres.**

The foregoing description was taken from a draft of survey prepared for Glenn F. Guise and Marie D. Guise by John R. Williams, P.L.S., dated August 18, 1987, as approved by the various municipal subdivisions and commissions of Adams County and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, on September 14, 1987, in Plat Book 47, page 99, and identified thereon as Lot No. 5.

**BEING** a portion of Tract No. 1 and the remaining part of Tract No. 3, which Glenn F. Guise and Marie B. Guise, his wife, by their deed dated June 10, 1972, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 300, page 840, sold and conveyed unto Glenn F. Guise and Marie B. Guise, husband and wife, Grantors herein.

**SUBJECT, NEVERTHELESS,** to the right of way requirements of the Pennsylvania Department of Highway as to U.S. Route 15 as more particularly set forth on the subdivision plan and the setback restrictions duly noted on the subdivision plan.

**SUBJECT NEVERTHELESS,** to the following restriction which is in the nature of a covenant running with the land and shall be binding upon the Grantees, and their heirs and assigns:

That no commercial swine, cattle, goat, sheep, horse, mule, or fowl operations shall be established, kept and maintained upon this said lot.

Together with any improvements situate thereon.

**SEIZED** and taken into execution as the property of **GOLDEN RIDGE FARMS** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 23, 1996.

**TO ALL PARTIES IN INTEREST AND CLAIMANTS:** You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/8, 15 & 22

## INCORPORATION NOTICE

**NOTICE IS HEREBY GIVEN** that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 16th day of February, 1996, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania of 1988, as amended.

The name of the Corporation is **GETTYSBURG CONCRETE COMPANY, INC.** The purpose for which said Corporation is organized is to engage in and do any lawful act concerning any or all business for which corporations may be incorporated under the Business Corporation Law of 1988, December 21, P.L. 1444, No. 177 Section 103, effective October 1, 1989 including but not limited to the ownership and operation of a concrete plant.

Stonesifer and Kelley  
209 Broadway  
Hanover, PA 17331  
717-632-0163



# Adams County Legal Journal

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IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW  
NO. 96-S-36  
Jury Trial Demanded

LARRY HALL, Plaintiff  
vs.  
RON SWINGLE, Defendant

## ORDER

Upon due consideration of the attached Petition to Obtain Special Order of Court for Service of Process by Publication Pursuant to Pa.R.C.P. No. 430, it is hereby Ordered and Directed that the Defendant in the above-captioned matter, Ron Swingle, by the herewith Special Order of Court, shall be considered to have been **legally and properly served with the Writ of Summons in the above-captioned matter** when service is perfected by publication with a one-time notice in the Adams County Legal Journal and a one-day publication in The Gettysburg Times with said publication to be in the following form:

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW  
NO. 96-S-36  
Jury Trial Demanded

LARRY HALL, Plaintiff  
vs.  
RON SWINGLE, Defendant  
To: Ron Swingle

This action arises out of injuries and damages sustained by Larry Hall when his vehicle was struck broadside by a motor vehicle operated by Ron Swingle, whose last known address was 112 West High Street, New Oxford, Pennsylvania 7350, with said accident occurring on Route 30, one-half block east of the Square in New Oxford Borough, Adams County, Pennsylvania heading in an east-bound direction.

## NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth against you in the following pages, you must take action within twenty (20) days after this Writ of Summons 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 default judgment may be entered against you by the Court without further notice for any money claimed in the Writ of Summons 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 THIS OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Adams County Court Administrator  
111-117 Baltimore St.  
Gettysburg, Pennsylvania 17325  
(717) 334-6781

3/15

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-307 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that tract of land situate, lying and being in the Borough of Carroll Valley, formerly Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 286 in Section K, Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Snow Trail at Lot No. 287; thence in the cul-de-sac and by said Lot, South

43 degrees 11 minutes 50 seconds East, 177.51 feet to Lot No. 270; thence by said lot and by Lot No. 271, South 27 degrees 27 minutes 2 seconds West, 142.15 feet to Lot No. 274; thence by said lot and by Lot No. 275, North 64 degrees 44 minutes 25 seconds West, 143.56 feet to Lot No. 285; thence by said lot and in the cul-de-sac of Snow Trail, North 20 degrees 48 minutes 50 seconds East 207.85 feet to the place of BEGINNING.

Being the same premises which Billie J. Lloyd, et al., by their deed dated June 13, 1991 and recorded on June 14, 1991 in Deed Book Volume 590, page 1113, et seq., in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Charles W. Lloyd and Billie J. Lloyd as tenants by the entireties, in fee.

BEING SOLD AS PROPERTY OF CHARLES W. LLOYD AND BILLIE J. LLOYD, TENANTS BY THE ENTIRETIES.

SEIZED and taken into execution as the property of CHARLES W. LLOYD AND BILLIE J. LLOYD and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
June 8, 1995.

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 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29

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COUNTY**  
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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. 95-S-991 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

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

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

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

SEIZED and taken into execution as the property of **PAUL E. BLOUGH AND BARBARA A. FISSEL** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 22, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29

FOREIGN CORPORATION  
REGISTRATION

NOTICE IS HEREBY GIVEN that the Department of State of the Commonwealth of Pennsylvania at Harrisburg, PA did, on November 27, 1995, issue a Certificate of Authority to do business in the Commonwealth of Pennsylvania under the provisions of the Pennsylvania Business Law of 1988 to FREDERICKSBURG HISTORICAL PRINTS, INC., a foreign corporation formed under the laws of the Commonwealth of Virginia with its principal office located at 829 Caroline Street, Fredericksburg, VA 22401-5805. The registered office of the corporation in the Commonwealth of Pennsylvania is 11 E. Bridge Street, New Hope, PA 18938.

3/15

THE PENNSYLVANIA  
DEFENSE INSTITUTE

The Pennsylvania Defense Institute will present a one-day, two-part seminar approved for five continuing legal education credits on Friday, March 29 at the Harrisburg Marriott Hotel. The morning session will be on "Bad Faith Insurance Practice" and the afternoon on "Employment Law." Registration will be from 8:00 to 9:00 a.m. with coffee and Danish, and the program concludes at 4:30 p.m. The program has been approved by the Pennsylvania Continuing Legal Education Board for four hours of substantive law, practice and procedure CLE credit and one hour of ethics, professionalism or substance abuse credit. Included in the morning portion will be a history and update of the Bad Faith Insurance Practice Law in Pennsylvania, bad faith from a claims prospective, the CAT Fund prospective on bad faith and excess issues, avoiding neglect, and ethics case analysis. In the afternoon employment law portion, there will be an update on the Americans With Disabilities Act, update on the Sexual Harassment Law, insurance coverage for employment law liability, and ethical issues in employment law practice.

Richard Z. Bagley  
Executive Director

3/15

NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, March 18, 1996, at 9:00 o'clock a.m.

**KORTE**—Orphans' Court Action Number OC-12-96. The First and Final Account of Terry Richard and Elizabeth Korte Gardner, Executors of the Will of Anne H. Korte, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**SMITH**—Orphans' Court Action Number OC-14-96. The First and Final Account of Stella M. Hippensteel, Janet Hahn and Elizabeth Adams, Executrices of the Last Will and Testament of Margaret H. Smith, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

**WILLIAMS**—Orphans' Court Action Number OC-17-96. The First and Final Account of Mabert S. Williams, Executrix under the Last Will and Testament of Charles R. Williams, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**OSBORN**—Orphans' Court Action Number OC-18-96. The First and Final Account of Thomas G. Lush, Executor of the Last Will and Testament of Mildred M. Osborn, deceased, late of Biglerville, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

3/8, 15

## CAMARA VS. KING, ET AL.

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

2. An owner would not be liable for negligent entrustment of his motor vehicle unless he knew at the time he permitted the other person to drive it that such person was intoxicated or unfit to drive.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-949, GAIL M. CAMARA AND DONALD CAMARA VS. MICHAEL D. KING AND YVONNE M. STONER.

David L. Lutz, Esq., for Plaintiff

Richard H. Wix, Esq., for Defendant King

Robert E. Kelly, Jr., Esq., for Defendant Stoner

### OPINION ON DEFENDANT-STONER'S MOTION FOR SUMMARY JUDGMENT

Kuhn, J., September 25, 1995.

Plaintiffs, Gail and Donald Camara, sued for injuries sustained in an automobile accident occurring on July 1, 1993, at approximately 8:12 P.M. on State Route 34, involving a vehicle owned by Defendant, Yvonne M. Stoner, and being driven by Defendant, Michael D. King. Plaintiffs are pursuing a cause of action for negligent entrustment against Stoner. That theory focuses on permission given King by Stoner to drive her automobile at a time when King was intoxicated. Stoner moves for summary judgment on the premise that there is no evidence that she was aware that King was intoxicated when she entrusted her vehicle to him.

It has often been stated that,

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

In addition, the record must be examined in a light most favorable to the non-moving party, accepting as true all well-pleaded facts in the pleadings and giving that party the benefit of all reasonable inferences

drawn therefrom. *Godlewski v. Pars Manufacturing Company*, 408 Pa. Super. 425, 430, 597 A.2d 106, 109 (1991). Finally, pursuant to the Nanty-Glo rule, summary judgment is not available where the moving party relies exclusively upon oral affidavits or depositions to establish the absence of a genuine issue of material fact, except where that oral testimony consists of admissions of the opposing party or his witnesses. *Johnson v. Johnson*, 410 Pa. Super. 631, 637, 600 A.2d 965, 968 (1991).

The theory of negligent entrustment in cases involving allegedly intoxicated drivers of motor vehicles was discussed in *Gibson v. Bruner*, 406 Pa. 315, 178 A.2d 145 (1961). There a father had seen his son consume two to four alcoholic beverages prior to allowing him to drive a truck. Approximately two hours later and after patronizing a bar the son was involved in an accident. The court noted that the father would not be liable for negligent entrustment unless he knew at the time he permitted his son to drive the truck that he was intoxicated or unfit to drive. The court found no evidence to support liability. This theory was followed in *Robare v. Pekarick*, 109 Pa. Comlth. Ct. 87, 530 A.2d 534 (1987) with the added proviso that evidence that the driver was proven to be intoxicated at a later time is not controlling. See also *Wertz v. Kephart*, 374 Pa. Super. 274, 542 A.2d 1019 (1988), Alloc. den. 554 A.2d 511 (1988). It is interesting to note that these cases do not expressly state that the driver must be visibly intoxicated when the owner gave him the car keys which suggests that a plaintiff meets his burden if the driver was intoxicated when the owner entrusted the vehicle to him.

The following facts appear in the record. On July 1, 1993, King and Stoner went to the Walwood Bar in Menallen Township and drank alcoholic beverages and played pool for approximately one and one-half hours. While at the bar, Stoner and King were generally in different rooms. Stoner did not observe King consume the three to four 16 ounce beers he admitted drinking. Defendants left the bar at approximately 4:30 P.M. and drove to Dillsburg. King drove the vehicle. The accident occurred at the time and place noted above when King collided into the rear end of Gail Camara's vehicle when she was stopped to make a left hand turn. Whether Defendants had returned to the bar is unclear but right before the accident, Donald Camara witnessed the car being driven by King pull out of the Walwood parking lot at a high speed and shortly thereafter strike Mrs. Camara's car.

At approximately 9:22 P.M. King was interviewed at the scene by Trooper Malesky who noticed that King had a strong odor of alcoholic beverages coming from his breath. The trooper also noticed that

King's eyes were red and glassy. Blood drawn at 9:50 P.M. revealed that King had a B.A.C. of 0.144%. A volunteer fireman who appeared at the scene also noticed a strong odor of alcoholic beverages on King.

We believe there are issues of fact which must be resolved, i.e. did Defendants leave Walwood at 3:00 P.M. or right before the accident. If the entrustment occurred at 8:00 P.M., the parties drank for five hours, Stoner got in the car with King, the accident occurred shortly thereafter, and within one and one-half hours King was legally intoxicated, the jury may conclude from the circumstances that Stoner knew King was unfit to drive due to intoxication.

We note that the opinions in Gibson, Robare, and Wertz were written after trial and a full development of the record. While there are elements of the existing record which would support a dismissal as to Stoner, we believe that conclusion should not be reached on summary judgment.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 25th day of September, 1995, the Motion For Summary Judgment filed by Defendant, Yvonne M. Stoner, is denied.

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#### COMMONWEALTH VS. WROBLSKI

Eligibility for the Intermediate Punishment Program does not mean one is automatically entered into the Program.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-28-85, COMMONWEALTH VS. RICHARD THOMAS WROBLSKI.

Roy A. Keefer, District Attorney  
Anthony Miley, Esq., for Defendant

#### MEMORANDUM OPINION

Kuhn, J., October 2, 1995.

The issue before the Court is whether Defendant is eligible for participation in the Intermediate Punishment Program (IPP).

The relevant history is set forth. On February 25, 1985, Defendant entered a plea of guilty to burglary (Section 3502 (a) of the Crimes Code) as a felony of the first degree. The building entered was a church. He was placed on 23 months probation. On May 27, 1986, a bench warrant was issued for Defendant's arrest for his failure to appear at a Gagnon I hearing. Defendant was arrested pursuant to that warrant on September 16, 1994. On August 2, 1995, Defendant's probation was

revoked and he was resentenced to imprisonment of 6-23 months effective July 12, 1995.

Pursuant to Act 201 of 1990, the Legislature adopted provisions establishing intermediate punishment to take effect on July 1, 1991. Under the eligibility standards set forth in the Act, 42 Pa. C.S.A. §9729(c)(2), one is not eligible for IPP if convicted of burglary under Section 3502, if graded as a felony of the first degree. (§3502(c)(1).

At first glance it would appear that Defendant is not eligible for IPP. However, Act 201 also amended the gradation of burglary to be a felony of the second degree if the building is not adapted for overnight accomodation and if no one was present at the time of entry. Therefore, if Defendant had committed the same crime after July 1, 1991, he would have been convicted of a second degree felony burglary and would be clearly eligible for IPP. The query is whether IPP eligibility in this case should be determined by the gradation of the offense on Defendant's record or by considering what the gradation would have been at the time he was resentenced. The precedental value of this Opinion is minimal because the undersigned can't imagine this scenario arising very often. However, significant liberty issues are at stake. Under Adams County's IPP criteria, Defendant would be eligible for alternatives to incarceration after having served one half of his minimum sentence. Eligibility does not mean one is automatically entered into the program.

The purpose of IPP is to reduce prison overcrowding by placing certain nonviolent offenders in programs designed to facilitate rehabilitation. Eligibility seems to be concerned more with the type of criminal act perpetrated by the offender rather than the gradation of the crime. The Legislature determined that the type of conduct committed by Defendant is not, despite its distasteful character, the type which would make him ineligible for IPP. We, therefore, find him to be eligible.

Lest one concludes that Defendant has benefited by absconding for over eight years, be mindful that 1) Defendant retains a first degree felony on his record, 2) Defendant's probation was revoked and a sentence which included incarceration was imposed, and 3) we have only ruled on the issue of eligibility. Whether this victory for Defendant is pyrrhic awaits recommendation and approval for Defendant's actual participation in IPP.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 2nd day of October, 1995, in consideration of Defendant's Petition filed August 22, 1995, the Court holds that he is generally eligible for the Intermediate Punishment Program.

## 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 JULIAN N. CLUCK, DEC'D**  
Late of Menallen Township, Adams County, Pennsylvania  
Administrator: Clifford W. Rice, P.O. Box 315, Bendersville, PA 17306  
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF WALTER L. HAY, DEC'D**  
Late of Highland Township, Adams County, Pennsylvania  
Executor: Robert L. Hay, 625 Meadowbrook Lane, Gettysburg, PA 17325  
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF GLADYS M. MECKLEY, DEC'D**  
Late of the Borough of McSherrystown, Adams County, Pennsylvania  
Co-Executors: James R. Meckley; Phyllis A. Meckley  
Attorney: Michael E. Dows, Esquire, 515 Carlisle Street, Hanover, Pennsylvania 17331

**ESTATE OF MARTHA B. SIMPSON, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Executrix: Mary E. Reist, 4620 Reist Ct., Harrisburg, PA 17110

**ESTATE OF DARLENE C. SPONSELLER, DEC'D**  
Late of the Borough of Bonneauville, Adams County, Pennsylvania  
Administrators: Daniel P. Musser, 257 Stone Bridge Road, Gettysburg, PA 17325; Steven C. Moles, 515 Old Carlisle Road, Biglerville, PA 17307  
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF RUTH W. WELLS a/k/a RUTH E. WELLS, DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Executrix: Jean W. Sixeas, 20 Longview Boulevard, Gettysburg, PA 17325  
Attorney: Edward E. Guido, Esquire, Saidis, Guido, Shuff & Masland, 26 West High Street, Carlisle PA 17013

## SECOND PUBLICATION

**ESTATE OF ANDREWS S. BAUERLINE, DEC'D**  
Late of Straban Township, Adams County, Pennsylvania  
Executor: Andrew J. Bauerline, 3565 Hanover Road, Gettysburg, PA 17325  
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF LUCILLE W. GILLAND, DEC'D**  
Late of Hamiltonban Township, Adams County, Pennsylvania  
Executor: Raymond Charles Gilland, 2535 Iron Springs Road, Fairfield, PA 17320  
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

**ESTATE OF KENNETH P. HULL, SR., DEC'D**  
Late of Cumberland Township, Adams County, Pennsylvania  
Executrix: Elizabeth W. Hull, 96 Twin Lakes Drive, Gettysburg, PA 17325  
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

**ESTATE OF GEORGE F. O'CONNOR, DEC'D**  
Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Executor: PNC BANK, N.A., 10 York Street, Gettysburg, PA 17325  
Attorney: Robert E. Campbell, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 173256

**ESTATE OF HENRY N. REDDING, SR., DEC'D**  
Late of the Borough of Littlestown, Adams County, Pennsylvania  
Executrix: Alice L. Redding, P.O. Box 221, Scotland, PA 17254  
Attorney: Donald G. Oyler, Esq., 112 Baltimore St., Gettysburg, PA 17325

**ESTATE OF AMOS L. SPANGLER, DEC'D**  
Late of Union Township, Adams County, Pennsylvania  
Executor: Adams County National Bank; P.O. Box 4566, Gettysburg, PA 17325  
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

**ESTATE OF RICHARD C. STRAUSBAUGH, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executors: Joseph Strausbaugh, 419 Boyer Drive, East Berlin, PA 17316; Esther Walsh, Box 223, Wurtsboro, New York 12790  
Attorney: Louis T. Guthrie, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

**ESTATE OF FRANCIS WILLIAM ULRICH, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executor: Adams County National Bank, Trust Office, P.O. Box 4566, Gettysburg, PA 17325  
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

**ESTATE OF BEULAH A. COULSON, DEC'D**  
Late of Lutheran Social Services-South Region, 1075 Old Harrisburg Road, Gettysburg, Adams County, Pennsylvania  
Administratrixes: Ruth S. Willard, 709 N. Railroad St., Palmyra, PA 17078; Lucille Leer, 9 S. Chestnut St., Dillsburg, PA 17019  
Attorney: Jan M. Wiley, Esquire, One South Baltimore St., Dillsburg, PA 17019

**ESTATE OF LAURENCE K. RETH, JR. a/k/a LAURENCE K. RETH, II, DEC'D**  
Late of 690 Cedar Road, City of New Oxford, Adams County, Pennsylvania  
Administratrix: Yvonne G. Staub, 690 Cedar Road, New Oxford, PA 17350  
Attorney: Dusan Bratic, Bratic & Portko, 101 South US Route 15, Suite A, Dillsburg, PA 17019

## FICTITIOUS NAME NOTICE

**NOTICE IS HEREBY GIVEN**, pursuant to the provisions of Act of Assembly No. 295, approved December 16, 1982, effective March 16, 1983, of intention to file in the office of the Secretary of the Commonwealth of Pennsylvania, Department of State, Bureau of Corporations at Harrisburg, Pennsylvania, a Certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation: **GETTYSBURG HISTORICAL PRINTS, INC.** with its principal place of business at 219 Steinwehr Avenue, Gettysburg, PA 17325. The name and address of the entity owning or interested in said business is **Fredericksburg Historical Prints, Inc.**, 829 Caroline Street, Fredericksburg, VA 22401-5805 and 11 E. Bridge Street, New Hope, PA 18938. The certificate was filed on November 27, 1995.

Carl L. Lindsay, Jr., Esq.  
11 E. Bridge Street  
P.O. Box 60  
New Hope, PA 18938

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-846 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the South Side of Ridge Road T-635 in Latimore Township Adams County, Pennsylvania more particularly bounded and described as follows:

BEGINNING at a point in the center of Ridge Road, which point is established on the subdivision plan hereinafter referred to and being at the northwestern corner of Lot No. 4 on said subdivision plan; thence crossing said road and through an iron pin set back 25.36 feet from the beginning hereof and by lands of Glenn F. Guise and Marie B. Guise, Lot No. 4, South 0 degrees 33 minutes 18 seconds West, 668.99 feet to a concrete monument at lands of John D. Sensenig; thence by lands of John D. Sensenig, South 78 degrees 14 minutes 23 seconds West, 724.61 feet to lands of Charles Lory; thence by lands of Charles Lory through a steel pin 37.78 feet along the line and traversing the northbound lane of U.S. Route 15, North 15 degrees 0 minutes 30 seconds West, 129.07 feet to an iron pin in the 20 feet grass strip between the northbound and southbound lanes of U.S. Route 15 at lands of Ricky B. Nell; thence by lands of Ricky B. Nell by an arc of a curve to the left having a radius of 3,819.83 feet, a chord bearing and distance of North 29 degrees 12 minutes 57 seconds East 719.97 feet, for an arc distance of 721.04 feet to an iron pipe found in or near the center line of the 20 feet grass strip aforementioned; thence crossing the northbound lane of U.S. Route 15 and in and along the center of Ridge Road, T-635, North 80 degrees 55 minutes 6 seconds East, 402.94 feet to a point in the center of Ridge Road, T-635, the place of BEGINNING. CONTAINING 9.2 Acres.

The foregoing description was taken from a draft of survey prepared for Glenn F. Guise and Marie D. Guise by John R. Williams, P.L.S., dated August 18, 1987, as approved by the various municipal subdivisions and commissions of Adams County and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, on September 14, 1987, in Plat Book 47, page 99, and identified thereon as Lot No. 5.

BEING a portion of Tract No. 1 and the remaining part of Tract No. 3. which Glenn F. Guise and Marie B. Guise, his wife, by their deed dated June 10, 1972, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 300, page 840, sold and conveyed unto Glenn F. Guise and Marie B. Guise, husband and wife, Grantors herein.

SUBJECT, NEVERTHELESS, to the right of way requirements of the Pennsylvania Department of Highway as to U.S. Route 15 as more particularly set forth on the subdivision plan and the setback restrictions duly noted on the subdivision plan.

SUBJECT NEVERTHELESS, to the following restriction which is in the nature of a covenant running with the land and shall be binding upon the Grantees, and their heirs and assigns:

That no commercial swine, cattle, goat, sheep, horse, mule, or fowl operations shall be established, kept and maintained upon this said lot.

Together with any improvements situate thereon.

SEIZED and taken into execution as the property of **GOLDEN RIDGE FARMS** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 23, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/8, 15 & 22

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1098 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a P.K. in the center of Pennsylvania Route 16 at corner of land now or formerly of James A. Hammonds; thence in said Pennsylvania Route 16, North 68 degrees west 265.87 feet to a P.K. in the center of said road; thence by land of Robert L. Flohr and wife, and running through an iron pin located 27 feet from the beginning of this line, North 22 degrees east, 379.23 feet to an iron pin; thence by land of James M. Farkas South 69 degrees 50 minutes 46 seconds east 277.82 feet to an existing iron pin; thence by land of Charles R. Thalheim and by land of James A. Hammonds and running through an iron pin located 29.70

feet from the end of this line South 23 degrees 44 minutes 30 seconds west 388.76 feet to a P.K. in the center line of Pennsylvania Route 16, the place of BEGINNING. CONTAINING 2.393 Acres.

The foregoing description was obtained from a draft of a survey made by Gettysburg Engineering Co., Inc., on March 6, 1976, which draft is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 10 at page 16.

BEING the same real estate conveyed to Samuel R. Harbaugh and Virginia A. Harbaugh, husband and wife, by deed of Mae V. Soloman and Phyllis A. Wassenberg, partners, trading and doing business as Hindsite Antiques and Trivia, dated August 23, 1988 and recorded in Adams County Record Book 499 Page 322.

Included within the above described real estate but specifically excluded therefrom is that real estate conveyed to David R. Varner and Carlene A. Varner, husband and wife, containing 4,599 square feet and recorded in Adams County Record Book 1128, Page 171.

Improved with a brick/block/frame building and having a street address of 1665-A Waynesboro Pike, Fairfield, Pennsylvania 17320.

SEIZED and taken into execution as the property of **SAMUEL R. HARBAUGH AND VIRGINIA A. HARBAUGH** and to be sold by me

Bernard V. Miller  
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29



# Adams County Legal Journal

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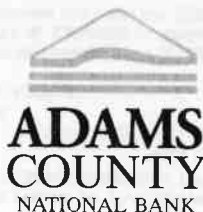
**FEDERAL JUDICIAL NOMINATING COMMISSION  
TWO VACANCIES  
U.S. DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

Two (2) vacancies exist in the U.S. District Court for the **Middle District** of Pennsylvania which must be filled immediately. The Commission is affirmatively charged by Senators Specter and Santorum to seek out qualified men, women and minority candidates for vacancies on the District Courts.

The Commission encourages all persons interested in being considered for these vacancies to obtain, complete and submit the Commission Questionnaire, which may be obtained from the Chairman of the Commission, Mr. Herbert Barnes, or his Assistant, Terri Brodheim at 975 Easton Road, Warrington, PA 18976, (215) 343-2780. To be considered for these vacancies the completed questionnaire must be returned by Monday, April 15th. Interviews for these vacancies will be held in Harrisburg.

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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. 95-S-991 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

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

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

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

SEIZED and taken into execution as the property of PAUL E. BLOUGH AND BARBARA A. FISSEL and to be sold by me

Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA February 22, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-307 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that tract of land situate, lying and being in the Borough of Carroll Valley, formerly Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 286 in Section K, Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Snow Trail at Lot No. 287; thence in the cul-de-sac and by said Lot, South 43 degrees 11 minutes 50 seconds East, 177.51 feet to Lot No. 270; thence by said lot and by Lot No. 271, South 27 degrees 27 minutes 2 seconds West, 142.15 feet to Lot No. 274; thence by said lot and by Lot No. 275, North 64 degrees 44 minutes 25 seconds West, 143.56 feet to Lot No. 285; thence by said lot and in the cul-de-sac of Snow Trail, North 20 degrees 48 minutes 50 seconds East 207.85 feet to the place of BEGINNING.

Being the same premises which Billie J. Lloyd, et al., by their deed dated June 13, 1991 and recorded on June 14, 1991 in Deed Book Volume 590, page 1113, et. seq., in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Charles W. Lloyd and Billie J. Lloyd as tenants by the entireties, in fee.

BEING SOLD AS PROPERTY OF CHARLES W. LLOYD AND BILLIE J. LLOYD, TENANTS BY THE ENTIRETIES.

SEIZED and taken into execution as the property of CHARLES W. LLOYD AND BILLIE J. LLOYD and to be sold by me

Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA June 8, 1995.

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 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on February 29, 1996. The name of the corporation is ELY ORCHARDS, INC. The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

John R. White Campbell, White & George 122 Baltimore Street Gettysburg, PA 17325

3/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN of the filing of Articles of Incorporation stating the following:

- 1. The name of the corporation is MOON TREES, INC.
2. The corporation has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177 Sec. 103, 15 Pa. C.S.A. Sec. 1101, et seq., as amended.

Katherman & Heim, P.C. Solicitor

3/22

NOTICE IS HEREBY GIVEN that Mary Ester Boyd intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania on the day of \_\_, 1996, and that she has established a legal practice at the office of Mary Esther Boyd, Attorney At Law, 69 East Middle Street, Gettysburg, Pennsylvania 17325.

Mary Esther Boyd 69 East Middle Street Gettysburg, PA 17325

3/22

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW  
NO. 96-S-203  
Action in Quiet Title

ESTATE OF MAE E. OLINGER, by and through her executrix, Paula D. Olinger, Plaintiff

vs.

ANNA LOUISE WILLIAMS, deceased, her heirs, executors, administrators and assigns, and ANNIE W. MARSH, deceased, her heirs, executors, administrators and assigns, and WILSON W. MARSH, deceased, his heirs, executors, administrators and assigns, Defendants TO: Heirs, Executors, Administrators and Assigns of Anna Louise Williams, Anna W. Marsh and Wilson W. Marsh, and all parties in interest

TAKE NOTICE that the Estate of Mae E. Olinger has filed a Complaint against the above-named Defendants to 96-S-203 in an action to quiet title to that tract of land lying and situate in the Borough of Gettysburg, Adams County, Pennsylvania, known as 231 West High Street, further being described as follows:

BEGINNING at a point on the North side of West High Street at corner of lot adjoined on the West, formerly of Doctor Vandersloot, now or formerly of George W. Olinger et ux; thence by said lot now or formerly of George W. Olinger et ux, to a point on the South side of a public alley thirty (30) feet to corner of lot adjoined on the East, formerly of Reuben Robinson and now or formerly of George W. Olinger et ux; thence by said lot now or formerly of George W. Olinger et ux, to a point on the North side of West High Street; thence along the North side of West High Street, thirty (30) feet to a point on the North side of West High Street at corner of said lot formerly of Doctor Vandersloot and now or formerly of George W. Olinger et ux, the place of BEGINNING.

The Complaint requests the Court to determine that Plaintiff owns the above-mentioned property in fee simple absolute by deed dated January 28, 1993 and recorded in the office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 685 at Page 130.

WHEREUPON, the Court has ordered that notice of Plaintiff's Complaint be served on Defendants, their heirs, executors, administrators, successor and assigns, and whoever may have claim upon the property as a result of the Plaintiff's claim to the property.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in this notice, you must take action within twenty (20) days after this notice is published, 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 property 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 NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Adams County Court Administrator  
(717) 334-6781  
Adams County Courthouse  
111 Baltimore St.  
Gettysburg, Pennsylvania 17325  
3/22

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW  
NO. 95-S-847  
Action to Quiet Title

HARRY L. RAMAGE and DAVID A. KRULAC, Plaintiffs

vs.

ESTATE OF CHARLES W. RANKIN, his heirs and assigns, BRUCE W. RANKIN, Administrator, and TAX CLAIM BUREAU OF ADAMS COUNTY, Defendants TO: ESTATE OF CHARLES W. RANKIN, his heirs and assigns, BRUCE W. RANKIN, Administrator

TAKE NOTICE that on the 14th day of September, 1995, Harry L. Ramage and David A. Krulac, filed a Complaint against the above-named Defendant in an Action to Quiet Title docketed to No. 95-S-847 with reference to a tract of land situate in Adams County, Pennsylvania, bounded and described as follows:

Charnita Area Section RA Lot 27, as shown on a plan of lots labeled "Section RA, Charnita," dated September 3, 1968, and recorded in Plat Book 1 at Page 33.

Sold as the property of Charles W. Rankin, Estate, as described in the deed of Charnita, Inc., a Pennsylvania corporation, by their deed dated June 18, 1969, and recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania in Deed Book 278 at Page 125 on October 7, 1969. This property being subject to existing restrictions.

Sale No. 128

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the Court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator  
Adams County Courthouse  
111-117 Baltimore St.  
Gettysburg, Pennsylvania 17325  
(717) 334-6781, ext. 213

3/22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-41 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in the Borough of Arendtsville, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a post for a corner at the North side of East Main Street; thence along the North side of said street, South 74 degrees West, 35 feet to a post; thence by land formerly of W. E. Wolff, North 16 degrees West, 165 feet to an alley; thence by said alley, North 74 degrees East, 35 feet to a post; thence along another alley, South 16 degrees East, 165 feet to a post; the place of BEGINNING. CONTAINING 21 perches and 57-3/4 square feet, more or less.

BEING the same which Adrian L. Slaybaugh and Joyce E. Slaybaugh, husband and wife, by deed dated August 12, 1987, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 465 at page 258 granted and conveyed unto Edna V. Misner, single, the Defendant herein.

IMPROVED WITH 4-unit, 2 1/2-story apartment building.

SEIZED and taken into execution as the property of EDNA V. MISNER and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 6, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the County of Adams, a duly incorporated municipality and political subdivision of the Commonwealth of Pennsylvania, by its duly elected and incumbent Board of County Commissioners, Harry Stokes, Thomas J. Weaver and Thomas L. Collins, intends to adopt the following Resolution at 9:30 o'clock, A.M., prevailing time, on Wednesday, April 24, 1996, during the Adams County Commissioners' regularly-scheduled public meeting, in the Commissioners' Meeting Room (second floor), Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Adams County, Pennsylvania 17325; a Public Hearing will be held at such time and place, and on such date, relative to the adoption of the following Resolution and the County's organization of the Adams County Transit Authority:

A RESOLUTION SIGNIFYING THE INTENTION OF THE COUNTY OF ADAMS, PENNSYLVANIA, BY ITS BOARD OF COUNTY COMMISSIONERS, TO ORGANIZE THE ADAMS COUNTY TRANSIT AUTHORITY, PURSUANT TO THE "MUNICIPALITY AUTHORITIES ACT OF 1945," AS AMENDED.

WHEREAS, the economic well-being of the County of Adams as a whole and its citizens individually can be adversely affected by the lack of a public transit system; and

WHEREAS, the County is desirous of maintaining surface motor vehicle public transportation for its residents; and

WHEREAS, proper management of operations and finances must be undertaken to ensure the viability of a public transportation program; and

WHEREAS, the County of Adams, Pennsylvania (the "County"), by its duly elected and incumbent Board of County Commissioners (the "Commissioners"), has determined that it is desirable for the health, safety and welfare of the citizens of the County to establish and incorporate a body corporate and politic, pursuant to the "Municipality Authorities Act of 1945," Act of May 2, 1945, P.L. 382, as amended [53 P.S. §301 et seq.] (the "Act"), to be known as the Adams County Transit Authority (the "Authority"), for the purpose of providing surface motor vehicle public transportation services through the Authority; and

WHEREAS, the County, by its Commissioners, desires to adopt the present Resolution signifying the County's and Commissioners' intention to organize the Authority pursuant to the Act, and otherwise initiate and take all necessary or appropriate action to incorporate and establish the Authority.

NOW, THEREFORE, BE IT RESOLVED AND IT IS HEREBY RESOLVED, by the County, by its Commissioners, as follows:

1. The County, by its Commissioners, shall undertake and do all necessary or appropriate things to effect the incorporation and establishment of the Authority, as a Municipal Authority, a body corporate and politic, pursuant to the provisions of the Act; therefore, the Commissioners shall be, and they are hereby, authorized and directed to execute and deliver on behalf of the County, all necessary or appropriate instruments, documents and papers, and to otherwise undertake any and all other necessary or appropriate action to effect the incorporation and establishment of the Authority.

2. Pursuant to the Act, the project or projects which shall be undertaken by the Authority shall be for the purpose of providing municipal surface motor vehicle transportation services in the County of Adams, including the leasing and/or purchasing of real and/or personal property necessary for the rendering of said services, the employment of such persons as are necessary for the rendering of such services, and to do and to perform all acts necessary for the rendering of said services; provided, however, that the Authority shall not engage in any other activities or services, other than municipal surface motor vehicle transportation services without the prior, express consent and authorization of the County by its Commissioners.

3. The Authority shall have no power to pledge the full faith and credit or taxing power of the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, nor shall the bonds issued by the Authority be deemed to be obligations of the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, nor shall the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, be liable for the payment of premium, if any, or interest on any of said Authority bonds; nor shall the members, officers, or employees of the Authority be personally liable on any such Authority obligations.

4. This Resolution shall be effective immediately.

IN WITNESS WHEREOF, the County, by its Commissioners, has duly adopted the present Resolution this 24th day of April, 1996.

ATTEST: Brenda J. Constable, Chief Clerk

COUNTY OF ADAMS ADAMS COUNTY COMMISSIONERS

By: Harry Stokes, Chairman Thomas J. Weaver, Commissioner Thomas L. Collins, Commissioner

A true and correct copy of the above-proposed Resolution may be examined without charge or obtained for a charge not greater than the cost thereof at the Adams County Commissioners' Office, Second Floor, Adams County Courthouse, 111-117 Baltimore Street,

Gettysburg, Adams County, Pennsylvania 17325, during regular business hours. (Monday-Friday, 8:00 a.m.-4:30 p.m.).

John R. White Adams County Solicitor

3/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on 02/21/1996, for the purpose of obtaining a Certificate of Incorporation of a business corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is DAVE MARTIN ENTERPRISES, INC.

The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

Dave Martin Enterprises, Inc. 1607 Hanover Road Gettysburg, PA 17325

3/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania, Dec. 21, 1988, P.L. 1444, No. 177, effective Oct. 1, 1989. Said certificate of incorporation was granted September 18, 1995.

The name of the corporation is NEW OXFORD BODYWORKS, INC.

Robert A. Lippy

3/22

**KOTTCAMP SHEET METAL, INC. VS.  
THE AMERICAN INSURANCE COMPANY**

1. The Court will grant a stay of a cause of action by a subcontractor against the surety on the labor and materials payment bond pending arbitration of the dispute between the subcontractor and the general contractor.
2. When parties agree to arbitration, the Court will make every effort to favor such agreement.
3. Liability under a bond is limited in accordance with its language and the statute with which it was executed to conform.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-567, KOTTCAMP SHEET METAL, INC. VS. THE AMERICAN INSURANCE COMPANY.

Thomas A. Beckley, Esq., for Plaintiff  
John H. Frymyer, Jr., Esq., for Defendant

**OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS**

Kuhn, J., September 26, 1995.

Plaintiff, Kottcamp Sheet Metal, Inc., filed a Complaint seeking a judgment for sums it claims is owed under a contract with McClure Company, Inc., for work performed in connection with the construction of the Biglerville Elementary School. Plaintiff claims it is owed \$6,250.00 for work performed under the contract and \$191,146.80 for additional work not included in the contract. Defendant, The American Insurance Company, provided the labor and materials payment bond to McClure in connection with the project.

Defendant filed preliminary objections in the form of motions to strike and a demurrer. Plaintiff, in turn, filed preliminary objections to one of Defendant's motions to strike. Defendant then filed amended preliminary objections. These matters are now before the Court for disposition.

Defendant set forth a Motion to Strike in Count I of its preliminary objections. Defendant relies on Pa. R.C.P. 1028(a)(6) which allows preliminary objections where there is an "agreement for alternate dispute resolution." Defendant claims that the contract between Plaintiff and McClure requires that disputes be submitted to arbitration and that Plaintiff's failure to do so subjects the Complaint to be stricken. Plaintiff then moves to strike Defendant's motion to strike because it claims to have a statutory right to commence the action pursuant to Section 4 of the Public Works Contractor's Bond Law of 1957, 8 P.S. §194. Such an action must be commenced within one year. 42 Pa. C.S.A. §5523. Defendant subsequently amended its motion to

strike with a motion to stay. We agree that Plaintiff has the right to file this action and that it should not be stricken. Whether the action should be stayed, however, requires more extensive discussion.

Before proceeding we must digress to determine what averments can be considered by the Court. When Defendant filed its Amended Preliminary Objections, it verified the averments and attached a notice to plead. Defendant contends that because Plaintiff listed this matter for Argument Court on the amended preliminary objections and the answer thereto that pursuant to Pa. R.C.P. 209 the Court must consider all well-pleaded facts in the amended preliminary objections as true. Plaintiff argues that Rule 209 is only applicable to petitions. Ordinarily, a preliminary objection is a pleading, not a petition, and therefore, not subject to Rule 209. *Slota v. Moorings, Ltd.*, 343 Pa. Super. 96, 99-100, 494 A.2d 1, 2 (1985). We believe that general rule is applicable here and decline to accept as true the averments in Defendant's amended preliminary objections.

Defendant argues that McClure intends to institute an arbitration in accordance with its contract with Upper Adams School District and that there is an arbitration clause in the contract between Plaintiff and McClure. Defendant suggests that it would be more economical and would avoid inconsistent results if all disputes were resolved in a single forum. As attractive as that suggestion may seem, we cannot be swayed by its practicability absent some authority for such a stay.

First, we note that there is no express requirement in the bond for claims made thereunder to be submitted to arbitration. Thus, it appears that the only claim Plaintiff is authorized to make under the bond is pursuant to 8 P.S. §194.

We have found no case on point under the Public Works Contractors' Bond Law which discusses the right to the stay of a cause of action under §194 pending arbitration of the dispute between the general contractor and the subcontractor. Pennsylvania courts have found it useful to look to decisions under the Miller Act. 40 U.S.C.A. §270, et seq., when deciding cases under the Pennsylvania law. *Eastern Insulating Glass Co. v. Raymon R. Heddon & Co.*, 21 D & C 3d 611 (Lackawanna Co. 1980). There is scant authority under the Miller Act on the issue of a stay. Those decisions appear to go both ways.<sup>1</sup>

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<sup>1</sup> *Agostini Bros. Bldg. Corp. v. United States on behalf of and for the use of Virginia-Carolina Electrical Works, Inc.*, 142 F.2d 854 (4th Cir. 1944) at first glance seems to hold that denial of a request to stay a Miller Act action on the bond until arbitration could be had pursuant to the contract between the parties is improper. We cannot determine, however, whether the surety is a party to the contractual agreement to arbitrate. Therefore, we merely cite this case for reference purposes only.

In *United States for the use and benefit of Frank A. Trucco and Sons Comp. v. Bregman Construction Corp.*, 256 F.2d 851 (7th Cir. 1958), the subcontractor was suing the general contractor and the surety under the Miller Act. The case focused primarily on a waiver issue. In language that appears to be dicta the court noted that the right of a contractor to arbitration does not exist in the surety on the contractor's performance bond since the surety is not a party to the contract. Of significance, however, is the suggestion that "The surety would be entitled at most to a stay of the action on its principal's bond until the owner's rights to compel arbitration of disputes arising under the contract were determined." p. 854.

*United States for the use and benefit of Capolino Sons, Inc. v. Electronic & Missile Facilities, Inc.*, 364 F.2d 705 (2nd Cir. 1966) was also a cause of action on the bond under the Miller Act. There the surety moved to stay the suit on the bond because the contract between the general contractor and subcontractor provided for arbitration of disputes. The Court granted the stay pending resolution of the arbitration and held that such a stay was not inconsistent with the Miller Act.

In *United States for the use and benefit of N.U., Inc. v. Gulf Insurance Co.*, 640 F.Supp. 557 (S.D. Fla. 1986) the surety's request for a stay of the Miller Act cause of action on the bond pending an arbitration was denied. The court felt that because an arbitration clause in a subcontract between the subcontractor and the general contractor was ineffective as to the contractor's surety a stay of the arbitration would be inappropriate. Perhaps the distinguishing factor in this case may have been the court's concern that the subcontractor would not be bound by an arbitration clause which was incorporated by reference rather than being an express term of a subcontract.

With the above authorities in mind we are inclined to grant a stay so long as McClure actively pursues its right to arbitrate the dispute with Plaintiff. The real purpose of a bond is to guarantee that a principal will meet its obligation. What the principal's obligation may be is subject to inconsistent results if determined under both the action on the bond and in the arbitration. When parties agree to arbitration the court will make every effort to favor such agreements. *DiLucente Corp. v. Pennsylvania Roofing Co., Inc.*, \_\_\_ Pa. Super. \_\_\_, \_\_\_, 655 A.2d 1035, 1038 (1995). Plaintiff certainly contemplated resolving its dispute with McClure with arbitration. Justice suggests that resolution should be the true measure of McClure's obligation. To the extent McClure fails to fulfill that obligation Plaintiff can still seek recourse under the bond. By filing the above captioned matter Plaintiff has protected itself against a statute of limitations defense.

In Count II and III of its preliminary objection Defendant sets forth a demurrer and motion to strike respectively and contends that Plaintiff is seeking recovery of delay damages and lost profits, neither of which are recoverable under 8 P.S. §194. There is little question that liability under a bond is limited in accordance with its language and the statute with which it was executed to conform. *Salvino Steel & Iron Works, Inc. v. Fletcher & Sons, Inc.*, 398 Pa. Super. 86, 91, 580 A.2d 853, 856 (1990), *Alloc gr.* 592 A.2d 45 (1991), appeal dismissed 601 A.2d 806 (1992). The bond in question in this case was for payment of material furnished and labor supplied or performed. We agree that costs resulting from delay, *Salvino Steel*, supra., and lost profits on work not performed, *Lite-Air Products, Inc. v. Fidelity Deposit Co. of Maryland*, 437 F. Supp. 801 (E.D. Pa. 1977), are not recoverable.

A close review of Plaintiff's claim shows that it is not seeking delay damages or lost profits. Rather it is seeking extra labor costs incurred to accelerate its performance timetable caused by delays in receiving drawings and erection of the structural steel for the building. Therefore, these preliminary objections are denied.

Finally, in Court IV Defendant seeks to strike the Complaint for Plaintiff's failure to set forth its claim for damages under the original contract and its claim for extras in separate paragraphs. Defendant contends this result is required by Pa. R.C.P. 1020(a). The Rule states, in pertinent part, "Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief."

While Defendant may be technically correct we invoke Pa. R.C.P. 126 and decline to require separate counts in this case. Both items of damage arise out of work allegedly performed on a single project. Any verdict can be fashioned to allow separate consideration of each item.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 26th day of September, 1995, Defendant's preliminary objection seeking a stay of this matter pending resolution of arbitration between Plaintiff and McClure Company, Inc. is granted so long as McClure actively pursues arbitration. All other preliminary objections are denied.



## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-42 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing nail in the center of Legislative Route No. 01025, known as the Bullfrog Road, and at the Northeast corner of the tract of land conveyed by Samuel S. McNair and wife to Robert J. Kreitz and wife by deed recorded in Deed Book 285 at page 354; thence by said last mentioned tract of land, South 60 degrees 52 minutes West, 296.50 feet, more or less, to a pipe at post; thence by land of Samuel S. McNair and wife, North 29 degrees 56 minutes West, 1599.24 feet, more or less, to a pipe; thence by land of Insbuck and Haggart, Inc., North 81 degrees 19 minutes 20 seconds East, 225.68 feet, more or less, to a pipe at post; thence by same and by land now or formerly of Richard Varish, South 39 degrees 26 minutes 25 seconds East, 621.24 feet, more or less, to a pin at post; thence by land now or formerly of Thomas Bittle, South 42 degrees 22 minutes 5 seconds West, 155.42 feet, more or less, to a post; thence by same, South 18 degrees 45 minutes 55 seconds East, 167.18 feet, more or less, to a steel fence post; thence by same and through an existing pipe, North 71 degrees 10 minutes 40 seconds East, 277.78 feet, more or less, to an existing nail in the center of the aforesaid Bullfrog Road; thence in said Bullfrog Road, South 17 degrees 16 minutes East, 490 feet, more or less, to an existing railroad spike at the west edge of the paving of the Bullfrog Road; thence in the Bullfrog Road, South 29 degrees 32 minutes 40 seconds East, 166 feet, more or less, to an existing nail, the place of BEGINNING. CONTAINING 10 acres, more or less.

The description of this tract was obtained from a draft of survey made by J. Riley Redding, dated December 11, 1978.

BEING the same tract of land which andolph N. Smith and Cynthia J. Smith, husband and wife, by deed dated April 27, 1981, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 356 at page 1076 conveyed to Keller E. Misner and Anna Mae Misner, husband and wife, and Edna V. Misner, single; and the said Keller E. Misner having died, entire title became vested in Anna Mae Misner and Edna V. Misner, the Defendants herein.

IMPROVED WITH a single-family, one-story vinyl and brick dwelling with attached garage.

SEIZED and taken into execution as the property of EDNA V. MISNER and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 6, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-53 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two lots of ground situate on the East side of Gettysburg-Harrisburg State Highway in Latimore Township Adams County, Pennsylvania, more particularly bounded and described as follows:

LOT A: BEGINNING at an iron pin on or along the State Highway aforesaid at lands now or formerly of Estella Stallsmith, also known as Lot #3; thence along said Highway in a Northerly direction for a distance of 50 feet to an iron pin at lands now or formerly of Sherrill Smith, also known as Lot #5; thence by said lands in an Easterly direction for a distance of 199 feet to an iron pin on the West side of a 22 foot alley; thence along the western side of said alley in a Southerly direction for a distance of 50 feet to an iron pin at Lot #3 aforesaid; thence by Lot #3 in a Westerly direction for a distance of 199 feet to an iron pin, the place of BEGINNING. CONTAINING 9,950 square feet more or less.

It being known as Lot #4 on plan of lots as laid out by C. E. Pearson.

LOT B: BEGINNING at an iron pin on the East side of the 22 feet alley aforesaid at Lot #3 1/2; thence along the East side of said alley in a Northerly direction for a distance of 50 feet to an iron pin at Lot #5 1/2; thence by said lot in an Easterly direction for a distance of 98 feet more or less to a stake at lands now or formerly of John Mumper; thence by said lands in a Southerly direction for a distance of 50 feet to a stake at lot #3 1/2 aforesaid; thence by said lot in a Westerly direction

for a distance of 98 feet, more or less, to an iron pin, the place of BEGINNING.

It being known as part of Lot #4 1/2 on plan of lots as laid out by C. E. Pearson.

BEING the same two lots of ground that James A. Pennington and Joyce R. Pennington, husband and wife, by deed dated October 27, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 957 at page 162, sold and conveyed unto Randy E. Noble, Sr., and Barbara A. Smith, the Defendants herein.

IMPROVED WITH a 1 1/2-story single family dwelling with a detached 2-car garage.

SEIZED and taken into execution as the property of RANDY E. NOBLE, SR. AND BARBARA A. SMITH and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 5, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

## 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 EVELYN M. BECKER a/k/a EVELYN MARY BECKER, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania

Executors: Joseph C. Becker; John B. Becker

Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

**ESTATE OF RALPH CURTIS DEATRICK, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Claude M. Lewenz, 369 North Street, Greenwich, CT 06830

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

**ESTATE OF KATHRYN V. HAY, DEC'D**

Late of Highland Township, Adams County, Pennsylvania

Administrator: Robert L. Hay, 625 Meadowbrook Lane, Gettysburg, PA 17325

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

**ESTATE OF EFFIE M. KLEINGINNA, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esquire, 209 Broadway, Hanover, Pennsylvania 17331

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

**ESTATE OF VERNON F. LAMBERSON a/k/a GEORGE VERNON FRANKLIN LAMBERSON, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Carson C. Lamberson, 1270 Oxford Road, New Oxford, PA 17350  
Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

**ESTATE OF VERNA B. LILlich a/k/a VERNA EVELYN LILlich, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Jack E. Housman, 303 Forge Court, Spring Grove, PA 17362  
Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

**ESTATE OF HILDA C. SANDERST, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania  
Administrator: Gregory Sanders, 43 N. Queen Street, Littlestown, PA 17340  
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF HARVEY W. STIMER a/k/a HARVEY WILHELM STIMER a/k/a HARVEY W. STIMER, SR., DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Executrices: Harriet E. Hartzell; Joanaleene E. Small

Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

## SECOND PUBLICATION

**ESTATE OF JULIAN N. CLUCK, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Administrator: Clifford W. Rice, P.O. Box 315, Bendersville, PA 17306

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

**ESTATE OF WALTER L. HAY, DEC'D**

Late of Highland Township, Adams County, Pennsylvania

Executor: Robert L. Hay, 625 Meadowbrook Lane, Gettysburg, PA 17325

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

**ESTATE OF GLADYS M. MECKLEY, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: James R. Meckley; Phyllis A. Meckley

Attorney: Michael E. Dows, Esquire, 105 Carlisle Street, Hanover, Pennsylvania 17331

**ESTATE OF MARTHA B. SIMPSON, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Mary E. Reist, 4620 Reist Ct., Harrisburg, PA 17110

**ESTATE OF DARLENE C. SPONSSELLER, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administrators: Daniel P. Musser, 257 Stone Bridge Road, Gettysburg, PA 17325; Steven C. Moles, 515 Old Carlisle Road, Biglerville, PA 17307

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

**ESTATE OF RUTH W. WELLS a/k/a RUTH E. WELLS, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Jean W. Sixeas, 20 Longview Boulevard, Gettysburg, PA 17325

Attorney: Edward E. Guido, Esquire, Saidis, Guido, Shuff & Masland, 26 West High Street, Carlisle PA 17013

## THIRD PUBLICATION

**ESTATE OF ANDREWS S. BAUERLINE, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Andrew J. Bauerline, 3565 Hanover Road, Gettysburg, PA 17325

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

**ESTATE OF LUCILLE W. GILLAND, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Raymond Charles Gilland, 2535 Iron Springs Road, Fairfield, PA 17320

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

**ESTATE OF KENNETH P. HULL, SR., DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Elizabeth W. Hull, 96 Twin Lakes Drive, Gettysburg, PA 17325

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

**ESTATE OF GEORGE F. O'CONNOR, DEC'D**

Late of the Borough of Gettysburg Adams County, Pennsylvania

Executor: PNC BANK, N.A., 10 York Street, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Campbell, White & George, 122 Baltimore Street, Gettysburg, PA 173256

**ESTATE OF HENRY N. REDDING, SR., DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Alice L. Redding, P.O. Box 221, Scotland, PA 17254

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

**ESTATE OF AMOS L. SPANGLER, DEC'D**

Late of Union Township, Adams County, Pennsylvania

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

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

**ESTATE OF RICHARD C. STRAUSBAUGH, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executors: Joseph Strausbaugh, 419 Boyer Drive, East Berlin, PA 17316; Esther Walsh, Box 223, Wurtsboro, New York 12790

Attorney: Louis T. Guthrie, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

## Estate Notices cont'd

## THIRD PUBLICATION

ESTATE OF FRANCIS WILLIAM  
ULRICH, DEC'D

Late of Oxford Township, Adams  
County, Pennsylvania

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

Attorney: Ronald J. Hagarman, Es-  
quire, 110 Baltimore Street,  
Gettysburg, PA 17325

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-  
tion, Judgment No. 93-S-846 issuing out  
of the Court of Common Pleas of Adams  
County, and to me directed, will be ex-  
posed to Public Sale on Friday, the 26th  
day of April, 1996, at 10:00 o'clock in the  
forenoon at the Courthouse in the Bor-  
ough of Gettysburg, Adams County, PA,  
the following Real Estate, viz.:

ALL that lot of ground situate on the  
South Side of Ridge Road T-635 in  
Lattimore Township Adams County,  
Pennsylvania more particularly bounded  
and described as follows:

BEGINNING at a point in the center of  
Ridge Road, which point is established  
on the subdivision plan hereinafter re-  
ferred to and being at the northwestern  
corner of Lot No. 4 on said subdivision  
plan; thence crossing said road and  
through an iron pin set back 25.36 feet  
from the beginning hereof and by lands  
of Glenn F. Guise and Marie B. Guise,  
Lot No. 4, South 0 degrees 33 minutes 18  
seconds West, 668.99 feet to a concrete  
monument at lands of John D. Sensenig;  
thence by lands of John D. Sensenig,  
South 78 degrees 14 minutes 23 sec-  
onds West, 724.61 feet to lands of Charles  
Lory; thence by lands of Charles Lory  
through a steel pin 37.78 feet along the  
line and traversing the northbound lane  
of U.S. Route 15, North 15 degrees 0  
minutes 30 seconds West, 129.07 feet to  
an iron pin in the 20 feet grass strip  
between the northbound and southbound  
lanes of U.S. Route 15 at lands of Ricky  
B. Nell; thence by lands of Ricky B. Nell  
by an arc of a curve to the left having a  
radius of 3,819.83 feet, a chord bearing  
and distance of North 29 degrees 12  
minutes 57 seconds East 719.97 feet, for  
an arc distance of 721.04 feet to an iron  
pipe found in or near the center line of the  
0 feet grass strip aforementioned;  
thence crossing the northbound lane of  
U.S. Route 15 and in and along the  
center of Ridge Road, T-635, North 80  
degrees 55 minutes 6 seconds East,  
402.94 feet to a point in the center of  
Ridge Road, T-635, the place of BEGIN-  
NING. CONTAINING 9.2 Acres.

The foregoing description was taken  
from a draft of survey prepared for Glenn  
F. Guise and Marie D. Guise by John R.  
Williams, P.L.S., dated August 18, 1987,  
as approved by the various municipal  
subdivisions and commissions of Adams  
County and duly recorded in the Office of

the Recorder of Deeds of Adams County,  
Pennsylvania, on September 14, 1987,  
in Plat Book 47, page 99, and identified  
thereon as Lot No. 5.

BEING a portion of Tract No. 1 and the  
remaining part of Tract No. 3, which  
Glenn F. Guise and Marie B. Guise, his  
wife, by their deed dated June 10, 1972,  
and recorded in the Office of the Re-  
corder of Deeds of Adams County, Penn-  
sylvania, in Deed Book 300, page 840,  
sold and conveyed unto Glenn F. Guise  
and Marie B. Guise, husband and wife,  
Grantors herein.

SUBJECT, NEVERTHELESS, to the  
right of way requirements of the Pennsylv-  
ania Department of Highway as to U.S.  
Route 15 as more particularly set forth on  
the subdivision plan and the setback  
restrictions duly noted on the subdivision  
plan.

SUBJECT NEVERTHELESS, to the  
following restriction which is in the nature  
of a covenant running with the land and  
shall be binding upon the Grantees, and  
their heirs and assigns:

That no commercial swine, cattle, goat,  
sheep, horse, mule, or fowl operations  
shall be established, kept and maintained  
upon this said lot.

Together with any improvements situ-  
ate thereon.

SEIZED and taken into execution as  
the property of **GOLDEN RIDGE FARMS**  
and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 23, 1996.

TO ALL PARTIES IN INTEREST AND  
CLAIMANTS: You are notified that a  
schedule of distribution will be filed by  
the Sheriff in his office on May 20, 1996,  
and distribution will be made in accor-  
dance with said schedule, unless excep-  
tions 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, which-  
ever may be the higher, shall be paid  
forthwith to the Sheriff.

3/8, 15 & 22

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-  
tion, Judgment No. 95-S-1098 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 April, 1996, at 10:00 o'clock  
in the forenoon at the Courthouse in the  
Borough of Gettysburg, Adams County,  
PA, the following Real Estate, viz.:

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

BEGINNING at a P.K. in the center of  
Pennsylvania Route 16 at corner of land

now or formerly of James A. Hammonds;  
thence in said Pennsylvania Route 16,  
North 68 degrees west 265.87 feet to a  
P.K. in the center of said road; thence by  
land of Robert L. Flohr and wife, and  
running through an iron pin located 27  
feet from the beginning of this line, North  
22 degrees east, 379.23 feet to an iron  
pin; thence by land of James M. Farkas  
South 69 degrees 50 minutes 46 sec-  
onds east 277.82 feet to an existing iron  
pin; thence by land of Charles R. Thalheim  
and by land of James A. Hammonds and  
running through an iron pin located 29.70  
feet from the end of this line South 23  
degrees 44 minutes 30 seconds west  
388.76 feet to a P.K. in the center line of  
Pennsylvania Route 16, the place of  
BEGINNING. CONTAINING 2.393 Acres.

The foregoing description was obtained  
from a draft of a survey made by  
Gettysburg Engineering Co., Inc., on May  
6, 1976, which draft is recorded in the  
Office of the Recorder of Deeds of Adams  
County, Pennsylvania, in Plat Book 10 at  
page 16.

BEING the same real estate conveyed  
to Samuel R. Harbaugh and Virginia A.  
Harbaugh, husband and wife, by deed of  
Mae V. Solomon and Phyllis A.  
Wassenberg, partners, trading and do-  
ing business as Hindsite Antiques and  
Trivia, dated August 23, 1988 and re-  
corded in Adams County Record Book  
499 Page 322.

Included within the above described  
real estate but specifically excluded there-  
from is that real estate conveyed to David  
R. Varner and Carlene A. Varner, hus-  
band and wife, containing 4,599 square  
feet and recorded in Adams County  
Record Book 1128, Page 171.

Improved with a brick/block/frame build-  
ing and having a street address of 1665-  
A Waynesboro Pike, Fairfield, Pennsylv-  
ania 17320.

SEIZED and taken into execution as  
the property of **SAMUEL R. HARBAUGH**  
AND **VIRGINIA A. HARBAUGH** and to  
be sold by me

Bernard V. Miller  
Sheriff

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

TO ALL PARTIES IN INTEREST AND  
CLAIMANTS: You are notified that a  
schedule of distribution will be filed by the  
Sheriff in his office on May 6, 1996, and  
distribution will be made in accordance  
with said schedule, unless exceptions  
are filed thereto within 10 days after the  
filing thereof. Purchaser must settle for  
property on or before filing date.

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

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

3/15, 22 & 29



# Adams County Legal Journal

pl. 37

March 29, 1996

No. 44, pp. 231-236

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-53 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two lots of ground situate on the East side of Gettysburg-Harrisburg State Highway in Latimore Township Adams County, Pennsylvania, more particularly bounded and described as follows:

LOT A: BEGINNING at an iron pin on or along the State Highway aforesaid at lands now or formerly of Estella Stallsmith, also known as Lot #3; thence along said Highway in a Northerly direction for a distance of 50 feet to an iron pin (lands now or formerly of Sherrill Smith, so known as Lot #5; thence by said lands in an Easterly direction for a distance of 199 feet to an iron pin on the West side of a 22 foot alley; thence along the western side of said alley in a Southerly direction for a distance of 50 feet to an iron pin at Lot #3 aforesaid; thence by

Lot #3 in a Westerly direction for a distance of 199 feet to an iron pin, the place of BEGINNING. CONTAINING 9,950 square feet more or less.

It being known as Lot #4 on plan of lots as laid out by C. E. Pearson.

LOT B: BEGINNING at an iron pin on the East side of the 22 feet alley aforesaid at Lot #3 1/2; thence along the East side of said alley in a Northerly direction for a distance of 50 feet to an iron pin at Lot #5 1/2; thence by said lot in an Easterly direction for a distance of 98 feet more or less to a stake at lands now or formerly of John Mumper; thence by said lands in a Southerly direction for a distance of 50 feet to a stake at lot #3 1/2 aforesaid; thence by said lot in a Westerly direction for a distance of 98 feet, more or less, to an iron pin, the place of BEGINNING.

It being known as part of Lot #4 1/2 on plan of lots as laid out by C. E. Pearson.

BEING the same two lots of ground that James A. Pennington and Joyce R. Pennington, husband and wife, by deed dated October 27, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 957 at page 162, sold and conveyed unto Randy E. Noble, Sr., and

Barbara A. Smith, the Defendants herein.

IMPROVED WITH a 1 1/2-story single family dwelling with a detached 2-car garage.

SEIZED and taken into execution as the property of **RANDY E. NOBLE, SR. AND BARBARA A. SMITH** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 5, 1996.

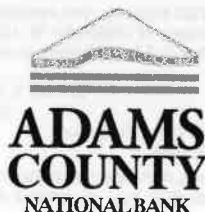
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-991 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

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

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

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

SEIZED and taken into execution as the property of **PAUL E. BLOUGH AND BARBARA A. FISSEL** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 22, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-307 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that tract of land situate, lying and being in the Borough of Carroll Valley, formerly Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 286 in Section K, Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Snow Trail at Lot No. 287; thence in the cul-de-sac and by said Lot, South 43 degrees 11 minutes 50 seconds East, 177.51 feet to Lot No. 270; thence by said lot and by Lot No. 271, South 27 degrees 27 minutes 2 seconds West, 142.15 feet to Lot No. 274; thence by said lot and by Lot No. 275, North 64 degrees 44 minutes 25 seconds West, 143.56 feet to Lot No. 285; thence by said lot and in the cul-de-sac of Snow Trail, North 20 degrees 48 minutes 50 seconds East 207.85 feet to the place of BEGINNING.

Being the same premises which Billie J. Lloyd, et al., by their deed dated June 13, 1991 and recorded on June 14, 1991 in Deed Book Volume 590, page 1113, et. seq., in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Charles W. Lloyd and Billie J. Lloyd as tenants by the entireties, in fee.

BEING SOLD AS PROPERTY OF **CHARLES W. LLOYD AND BILLIE J. LLOYD, TENANTS BY THE ENTIRETIES.**

SEIZED and taken into execution as the property of **CHARLES W. LLOYD AND BILLIE J. LLOYD** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
June 8, 1995.

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 6, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/15, 22 & 29

## NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution file therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Friday, April 12, 1996, at 9:00 o'clock a.m.

**RICHARDSON**—Orphans' Court Action Number OC-24-96. The First and Final Account of Nadine Warren and Donald Richardson, Administrators of the Estate of Donald F. Richardson, deceased, late of Menallen Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

3/29 & 4/5

## NOTICE

THE AUSTAD COMPANY, a South Dakota corporation with its principal office located at 4500 East 10th Street, Sioux Falls, South Dakota, 57117, was granted a Certificate of Authority under Section 4124 (b) of the Pennsylvania Consolidated Statutes Annotated on February 23, 1996. The registered office is located at 340 Poplar Street, Hanover, Adams County, Pennsylvania.

3/29

## DOSCH VS. HUBBELL, INC., ET AL.

1. A defect under Restatement, Torts 2nd, §402 A. means that the product lacks every element essential to make it safe and may be proven either by direct evidence or by proof of a malfunction.

2. To prove a defective product, Plaintiff must not only prove a malfunction but also eliminate abnormal use and/or reasonable secondary causes.

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

Williams P. Douglas, Esq., and Ralph D. Oyler, Esq., for Plaintiff  
Dean F. Murtagh, Esq., for Defendant  
C. Kent Price, Esq., for Defendant

### OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., September 29, 1995.

Plaintiff filed his complaint on June 14, 1995, alleging that each of three defendants designed, manufactured, or had the same done according to their specifications, a dusk to dawn lighting fixture. After the light was installed on the property of Thelma Spangler, who has no part in this lawsuit, it failed to work and plaintiff went to fix it. He said that about a minute after he replaced a photocell, a malfunction occurred. It was caused, according to plaintiff's belief, by a bare wire coming into contact with a metal casing. Plaintiff said he was thrown from the pole and suffered injuries.

He has alleged that the light left defendant's place of business in a defective condition, was unreasonably dangerous and was not substantially changed thereafter. He sues both on a negligence theory and under Restatement, Torts 2nd, §402 A.

Two defendants filed answers with New Matter. The third, Hubbell, Inc. has filed preliminary objections in the nature of a demurrer and a motion for more specific pleading. Because we find the objections lacking in merit, we overrule them and direct Hubbell to answer.<sup>1</sup>

The standard for ruling on a demurrer has been described as follows:

In reviewing a demurrer, the receiving (sic) court must accept the facts and all reasonable inferences drawn there from of the party against whom the motion is granted. (citation omitted):

---

<sup>1</sup>Plaintiff's brief recites that no notice to plead was attached to his complaint and, therefore, there was no requirement that Hubbell answer. The court's inspection of the complaint indicates that a notice was attached and that an answer is necessary.

All material facts set forth in the complaint as well as all inferences reasonable deducible therefrom are admitted as true for (the purpose of this review) (citation omitted). The question presented is whether, on the facts averred, the law says with certainty that no recovery is possible. (citation omitted), Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. (citation omitted).

Gabel v. Cambuzzi, 532 Pa. 584, \_\_\_, 616 A.2d 1364, 1367 (1992).

One authority states:

The question to be decided when a preliminary objection in the form of a motion for a more specific pleading is interposed pursuant to Rule 1017(b)(3) is whether a pleading is sufficiently clear to enable the opposing party to prepare a response, or whether a pleading informs an opponent with accuracy and completeness of the specific basis on which recovery is sought so that he or she may know without question upon what grounds to make his or her defense. (Footnotes omitted)

2 Goodrich Amram 2d. § 1017(b):21

Elements of an action under the Restatement, supra, include:

1. The product was defective.
2. The defect was the proximate cause of plaintiff's injury.
3. The defect existed at the time the product left the manufacturer's control.

A defect means that the product lacks every element essential to make it safe. Majdic v. Cincinnati Machine Co., 370 Pa.Super. 611, 537 A.2d 334 (1988). Defects may be proven by either direct evidence, or by proof of a malfunction. In the latter instance, plaintiff must:

1. Eliminate abnormal use and/or reasonable secondary causes.
2. Prove a malfunction.

Woodin v. J.C. Penny Co., Inc. 427 Pa.Super 488, 629 A.2d 974 (1993); Harkins v. Calumet Realty Co., 418 Pa.Super 405, 614 A.2d. 699 (1993).



Plaintiff must also identify defendant as the manufacturer. *Burman v. Golay and Co.*, 420 Pa.Super 209, 616 A.2d 657 (1992).

The complaint clearly alleges all that is required. While it is true that several defendants have been identified as the manufacturer of the light fixture, this does not diminish the allegations concerning Hubbell.

Hubbell argues that it is not sufficient to allege that the entire fixture was defective. It would require plaintiff to be more specific. As authority for this assertion, it cites *Micciche v. Eastern Elevator Co.*, 435 Pa. Super. 219, 645 A. 2d 278 (1994). Aside from the different procedural posture of that case compared to ours (the appeal was from a denial of post trial motions), the factual situation is too dissimilar to be relevant. The defendant in that case, was responsible for the repair and modernization of an elevator. It had not designed, manufactured or installed the original elevator and used components it neither designed nor manufactured. Superior court cited the general rule that plaintiff must "assert a product or component was in a defective condition as sold." 645 A.2d at 280. Because of the particular facts, the court said plaintiff could not carry his burden by merely alleging that the entire system was defective. In fact, all plaintiff proved was that defendant removed certain components of an existing elevator and replaced them with others, as part of a modernization contract.

By contrast, our plaintiff has alleged that Hubbell manufactured and designed the fixture and that no substantial changes occurred after it left Hubbell's control.

The attached order is entered.

#### ORDER OF COURT

AND NOW, this 29th day of September, 1995, preliminary objections are denied. Defendant, Hubbell, Inc., has twenty (20) days in which to file an answer.

**DAVIS VS. ZONING HEARING BOARD OF  
READING TOWNSHIP, ET AL.**

1. In zoning cases where the trial court did not receive any additional evidence, its scope of review is limited to determining whether the Zoning Hearing Board committed an error of law or a manifest abuse of discretion.

2. A Special Exception in a Zoning Ordinance is not an exception to the ordinance but rather is a use to which the Applicant is expressly entitled unless the Board determines, in accordance with the standards set forth in the Ordinance, that the proposed use would adversely affect the community.

3. Initially, the Applicant bears the burden of presenting evidence which will persuade the Board that the Applicant has complied with all the objective requirements in the Zoning Ordinance and once the Applicant has met this burden, a presumption arises that his proposed use is consistent with the health, safety and welfare of the community.

4. Once the Applicant for a Special Exception under a Zoning Ordinance has met his burden of presenting evidence, it then shifts to the Objectors to present evidence and persuade the Zoning Board that the proposed use would have a generally detrimental effect on public health, safety and welfare or will conflict with the expressions of general policy contained in the Ordinance, which burden they cannot meet without showing a high degree of probability that the proposed use will substantially effect the health and safety of the community.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 93-S-44, **J. KENNETH DAVIS AND ANN DAVIS VS. ZONING HEARING BOARD OF READING TOWNSHIP VS. TOWNSHIP OF READING AND WILLIAM BOWEN AND RUTH ANN BOWEN AND CITIZENS IN OPPOSITION TO MOBILE HOME PARK.**

Daniel Carn, Esq., for Appellants

David C. Keiter, Esq., for Appellees

Catherine J. Gault, Esq., for Intervenor

Victor A. Neubaum, Esq., for Intervenors

**OPINION PURSUANT TO APPEAL BY LANDOWNER**

Kuhn, J., October 3, 1995.

J. Kenneth and Ann Davis appeal from a decision of the Reading Township Zoning Hearing Board denying their application for a special exception to construct a 275 unit mobile home park on a 54 acre parcel along Rife Road in Reading Township.

Section 302.3.C of the Reading Township Zoning Ordinance permits by special exception in A-2 Districts (Secondary Agriculture) "mobile home parks in compliance with the Reading Township Subdivision Ordinance and other ordinances." It is clear that Appellants have not submitted their proposal for subdivision approval with the township Board of Supervisors.

In zoning cases where, as here, the trial court did not receive any additional evidence, its scope of review is limited to determining whether the zoning hearing board committed an error of law or a manifest abuse of discretion. *Hogan, Lepore & Hogan v. Pequea Township Zoning Board*, 162 Pa. Comlth. Ct. 282, 288, 638 A.2d 464, 467 (1994), Alloc. den. 647 A.2d 905 (19 ); *Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board*, 139 Pa. Comlth. Ct. 206, 217, 590 A.2d 65, 70 (1991).

The law recognizes that a special exception in a zoning ordinance is not an exception to that ordinance but rather is a use to which the applicant is expressly entitled unless the board determines, in accordance with the standards set forth in the ordinance, that the proposed use would adversely affect the community. *East Manchester Township Zoning Hearing Board v. Dallmeyer*, 147 Pa. Comlth. Ct. 671, 682, 609 A.2d 604, 610 (1992); *Manor Healthcare Corp.*, supra. In order to properly analyze an appeal from the grant or denial of a special exception, the Court must be cognizant of the burdens placed on the various parties.

Initially, the applicant bears the burden of presenting evidence which will persuade the board that the applicant has complied with all the objective requirements contained in the zoning ordinance. *Hogan, Lepore & Hogan*, 162 Pa. Comlth. Ct. at 292, 638 A.2d at 469. Once the applicant has met this burden a presumption arises that his proposed use is consistent with the health, safety and welfare of the community. *Manor Health Care Corp.*, 139 Pa. Comlth. Ct. at 216, 590 A.2d 70.

The burden then shifts to the objectors of the application to present evidence and persuade the zoning board that the proposed use would have a generally detrimental effect on public health, safety and welfare or will conflict with the expressions of general policy contained in the ordinance... This shift occurs because it is presumed that in considering a particular use for a particular zoning district, such general matters as health, safety and general welfare and the general intent of the zoning ordinance have been considered by the Township when it provided for a special exception for the proposed use . . .

The burden placed on the objectors is a heavy one. They cannot meet their burden by merely speculating as to possible harm, but instead must show a high degree of probability that the proposed use will substantially affect the health and safety of the community. *East Manchester*

Township, 147 Pa. Comlth. Ct. at 683, 609 A.2d at 610 (citations omitted).

As noted above, Appellants have not submitted their plans for subdivision approval. Furthermore, at the zoning hearing their evidence failed to demonstrate compliance with provisions of the subdivision ordinance in numerous respects. Instead, Appellants argue that the Zoning Board should have granted their application subject to subdivision approval. They contend that to follow the Township's procedure is backwards and is not cost effective. We have found no authority which suggests that the Township's requirements are unreasonable. There is authority, however, that detailed evidence of how an applicant will comply with the requirements necessary to obtain a special exception must be shown rather than a "promise" that it intends to meet a condition if approval is granted. *Edgmont Township v. Springton Lake Montessori School, Inc.*, 154 Pa. Comlth. Ct. 76, 622 A.2d 418 (1993).

For this reason alone, Appellants appeal must be denied.

We, therefore, need not address whether the objectors in this case have met their burden. The Court is not commenting upon the issues raised, by the objectors. Instead, issues concerning the objectors should be evaluated in the context of an approved subdivision plan and the circumstances in the community as they exist at that time.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 3rd day of October, 1995, the zoning appeal filed in this matter from a denial of Appellants application for a special exception is denied.

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
NO. 96-S-115  
Action to Quiet Title

COUNTY OF ADAMS, Plaintiff,  
vs.

THOMAS PENN, RICHARD PENN,  
MARTIN WINTER, JAMES P.  
MCCONOUGHY, MOSES MCCLEAN  
AND GEORGE WEISMANTLE, their  
heirs, executors, administrators and as-  
signs, successors in title, and all persons  
and entities unknown claiming any right,  
title or interest in certain real estate situ-  
ate in Cumberland Township, Adams  
County, Pennsylvania, containing 90.094  
Acres, Defendants.

TO: THOMAS PENN, RICHARD PENN,  
MARTIN WINTER, JAMES P.  
MCCONOUGHY, MOSES MCCLEAN  
AND GEORGE WEISMANTLE, their  
heirs, executors, administrators and as-  
signs, successors in title, and all persons  
and entities unknown claiming any right,  
title or interest in certain real estate situ-  
ate in Cumberland Township, Adams  
County, Pennsylvania, containing 90.094  
Acres.

DATE OF NOTICE: March 19, 1996

#### IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE  
YOU HAVE FAILED TO TAKE ACTION  
REQUIRED OF YOU IN THIS CASE.  
UNLESS YOU ACT WITHIN TEN (10)  
DAYS FROM THE DATE OF THIS NOTI-  
CE, A JUDGMENT MAY BE ENTERED  
AGAINST YOU WITHOUT A HEARING  
AND YOU MAY LOSE YOUR PROP-  
ERTY OR OTHER IMPORTANT  
RIGHTS. YOU SHOULD TAKE THIS  
NOTICE TO A LAWYER AT ONCE. IF  
YOU DO NOT HAVE A LAWYER OR  
CANNOT AFFORD ONE, GO TO OR  
TELEPHONE THE FOLLOWING OFFICE  
TO FIND OUT WHERE YOU CAN GET  
LEGAL HELP.

Court Administrator  
Adams County Courthouse  
111-117 Baltimore Street  
Gettysburg, PA 17325  
(717) 334-6751

John R. White  
Solicitor  
County of Adams  
Adams County Commissioners

3/29

#### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execu-  
tion, Judgment No. 96-S-41 issuing out  
of the Court of Common Pleas of Adams  
County, and to me directed, will be ex-  
posed to Public Sale on Friday, the 26th  
day of April, 1996, at 10:00 o'clock in the  
forenoon at the Courthouse in the Bor-  
ough of Gettysburg, Adams County, PA,  
the following Real Estate, viz.:

ALL that lot of ground situate, lying  
and being in the Borough of Arendtsville,  
Adams County, Pennsylvania, more par-  
ticularly bounded and described as fol-  
lows:

BEGINNING at a post for a corner at  
the North side of East Main Street; thence  
along the North side of said street, South  
74 degrees West, 35 feet to a post;  
thence by land formerly of W. E. Wolff,  
North 16 degrees West, 165 feet to an  
alley; thence by said alley, North 74 de-  
grees East, 35 feet to a post; thence  
along another alley, South 16 degrees  
East, 165 feet to a post; the place of  
BEGINNING. CONTAINING 21 perches  
and 57-3/4 square feet, more or less.

BEING the same which Adrian L.  
Slaybaugh and Joyce E. Slaybaugh, hus-  
band and wife, by deed dated August 12,  
1987, and recorded in the office of the  
Recorder of Deeds of Adams County,  
Pennsylvania, in Record Book 465 at  
page 258 granted and conveyed unto  
Edna V. Misner, single, the Defendant  
herein.

IMPROVED WITH 4-unit, 2 1/2-story  
apartment building.

SEIZED and taken into execution as  
the property of **EDNA V. MISNER** and to  
be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 6, 1996.

TO ALL PARTIES IN INTEREST AND  
CLAIMANTS: You are notified that a  
schedule of distribution will be filed by  
the Sheriff in his office on May 20, 1996,  
and distribution will be made in accor-  
dance with said schedule, unless excep-  
tions 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, which-  
ever may be the higher, shall be paid  
forthwith to the Sheriff.

3/22, 29 & 4/5

#### INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Ar-  
ticles of Incorporation were filed with the  
Department of State of the Common-  
wealth of Pennsylvania, at Harrisburg,  
Pennsylvania, on March 12, 1996, for the  
purpose of obtaining a Certificate of In-  
corporation of a business corporation or-  
ganized under the Business Corporation  
Law of the Commonwealth of Pennsylva-  
nia, Act of December 21, 1988, P.L. 1444,  
No. 177. The name of the Corporation is  
GETTYSBURG BREWING COMPANY,  
INC. The purpose for which the corpora-  
tion has been organized is: The corpora-  
tion shall have unlimited power to engage  
in and do any law act concerning any or  
all lawful business for which corporations  
may be organized under the Pennsylva-  
nia Business Corporation Law.

David L. Baker  
Gettysburg Brewing Company, Inc.  
2111 Wensville Road  
Biglerville, PA 17307

3/29



## ESTATE NOTICES

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

## FIRST PUBLICATION

## ESTATE OF NAOMI H. CHRONISTER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania  
 Executrix: Jannie-Lee Mentzer, P. O. Box 217, Arendtsville, PA 17303  
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

## ESTATE OF J. HAMBLETON RAY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
 Executor: Clifford W. Ray, R. D. #2, Box 50, Kingsley, PA 18826  
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

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

Late of Oxford Township, Adams County, Pennsylvania  
 Administratrix C.T.A.: Sylvia K. Noel, 300 Fairview Avenue, McSherrystown, PA 17344  
 Attorney: Crabbs & Frey, Daniel M. Frey, Attorney, 14 Center Square, Hanover, PA 17331

## ESTATE OF DANIEL D. SANDERS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania  
 Executor: Mary Sanders Lawrence, 29 Main Street, McSherrystown, PA 17344  
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

ESTATE OF EVELYN M. BECKER a/k/a EVELYN MARY BECKER, DEC'D  
 Late of Oxford Township, Adams County, Pennsylvania  
 Executors: Joseph C. Becker; John B. Becker  
 Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

## ESTATE OF RALPH CURTIS DEATRICK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executor: Claude M. Lewenz, 369 North Street, Greenwich, CT 06830  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

## ESTATE OF KATHRYN V. HAY, DEC'D

Late of Highland Township, Adams County, Pennsylvania  
 Administrator: Robert L. Hay, 625 Meadowbrook Lane, Gettysburg, PA 17325  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF EFFIE M. KLEINGINNA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Scott L. Kelley, Esquire, 209 Broadway, Hanover, Pennsylvania 17331  
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

## ESTATE OF VERNON F. LAMBERSON a/k/a GEORGE VERNON FRANKLIN LAMBERSON, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania  
 Executor: Carson C. Lamberson, 1270 Oxford Road, New Oxford, PA 17350  
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

## ESTATE OF VERNA B. LILLICH a/k/a VERNA EVELYN LILLICH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Jack E. Housman, 303 Forge Court, Spring Grove, PA 17362  
 Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

## ESTATE OF HILDA C. SANDERST, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Administrator: Gregory Sanders, 43 N. Queen Street, Littlestown, PA 17340  
 Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HARVEY W. STIMER a/k/a HARVEY WILHELM STIMER a/k/a HARVEY W. STIMER, SR., DEC'D  
 Late of Reading Township, Adams County, Pennsylvania  
 Executrices: Harriet E. Hartzell; Joanaeleene E. Small  
 Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

## THIRD PUBLICATION

## ESTATE OF JULIAN N. CLUCK, DEC'D

Late of Menallen Township, Adams County, Pennsylvania  
 Administrator: Clifford W. Rice, P.O. Box 315, Bendersville, PA 17306  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF WALTER L. HAY, DEC'D

Late of Highland Township, Adams County, Pennsylvania  
 Executor: Robert L. Hay, 625 Meadowbrook Lane, Gettysburg, PA 17325  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF GLADYS M. MECKLEY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania  
 Co-Executors: James R. Meckley; Phyllis A. Meckley  
 Attorney: Michael E. Dows, Esquire, 515 Carlisle Street, Hanover, Pennsylvania 17331

## ESTATE OF MARTHA B. SIMPSON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executrix: Mary E. Reist, 4620 Reist Ct., Harrisburg, PA 17110

## ESTATE OF DARLENE C. SPONSELLER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania  
 Administrators: Daniel P. Musser, 257 Stone Bridge Road, Gettysburg, PA 17325; Steven C. Moles, 515 Old Carlisle Road, Biglerville, PA 17307  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF RUTH W. WELLS a/k/a RUTH E. WELLS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executrix: Jean W. Sixeas, 20 Longview Boulevard, Gettysburg, PA 17325  
 Attorney: Edward E. Guido, Esquire, Saidis, Guido, Shuff & Masland, 26 West High Street, Carlisle PA 17013

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1098 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a P.K. in the center of Pennsylvania Route 16 at corner of land now or formerly of James A. Hammonds; thence in said Pennsylvania Route 16, North 68 degrees west 265.87 feet to a P.K. in the center of said road; thence by land of Robert L. Flohr and wife, and running through an iron pin located 27 feet from the beginning of this line, North 22 degrees east, 379.23 feet to an iron pin; thence by land of James M. Farkas South 69 degrees 50 minutes 46 seconds east 277.82 feet to an existing iron pin; thence by land of Charles R. Thalheim and by land of James A. Hammonds and running through an iron pin located 29.70 feet from the end of this line South 23 degrees 44 minutes 30 seconds west 388.76 feet to a P.K. in the center line of Pennsylvania Route 16, the place of BEGINNING. CONTAINING 2.393 Acres.

The foregoing description was obtained from a draft of a survey made by Gettysburg Engineering Co., Inc., on May 6, 1976, which draft is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 10 at page 16.

BEING the same real estate conveyed to Samuel R. Harbaugh and Virginia A. Harbaugh, husband and wife, by deed of Mae V. Solomon and Phyllis A. Wassenberg, partners, trading and doing business as Hindsite Antiques and Trivia, dated August 23, 1988 and recorded in Adams County Record Book 499 Page 322.

Included within the above described real estate but specifically excluded therefrom is that real estate conveyed to David R. Varner and Carlene A. Varner, husband and wife, containing 4,599 square feet and recorded in Adams County Record Book 1128, Page 171.

Improved with a brick/block/frame building and having a street address of 1665-A Waynesboro Pike, Fairfield, Pennsylvania 17320.

SEIZED and taken into execution as the property of **SAMUEL R. HARBAUGH AND VIRGINIA A. HARBAUGH** and to be sold by me

Bernard V. Miller  
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 6, 1996,

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

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

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

3/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-42 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing nail in the center of Legislative Route No. 01025, known as the Bullfrog Road, and at the Northeast corner of the tract of land conveyed by Samuel S. McNair and wife to Robert J. Kreitz and wife by deed recorded in Deed Book 285 at page 354; thence by said last mentioned tract of land, South 60 degrees 52 minutes West, 296.50 feet, more or less, to a pipe at post; thence by land of Samuel S. McNair and wife, North 29 degrees 56 minutes West, 1599.24 feet, more or less, to a pipe; thence by land of Insbuck and Haggart, Inc., North 81 degrees 19 minutes 20 seconds East, 225.68 feet, more or less, to a pipe at post; thence by same and by land now or formerly of Richard Varish, South 39 degrees 26 minutes 25 seconds East, 621.24 feet, more or less, to a pin at post; thence by land now or formerly of Thomas Bittle, South 42 degrees 22 minutes 5 seconds West, 155.42 feet, more or less, to a post; thence by same, South 18 degrees 45 minutes 55 seconds East, 167.18 feet, more or less, to a steel fence post; thence by same and through an existing pipe, North 71 degrees 10 minutes 40 seconds East, 277.78 feet, more or less, to an existing nail in the center of the aforesaid Bullfrog Road; thence in said Bullfrog Road, South 17 degrees 16 minutes East, 490 feet, more or less, to an existing railroad spike at the west edge of the paving of the Bullfrog Road; thence in the Bullfrog Road, South 29 degrees 32 minutes 40 seconds East, 166 feet, more or less, to an existing nail, the place of BEGINNING. CONTAINING 10 acres, more or less.

The description of this tract was obtained from a draft of survey made by J. Riley Redding, dated December 11, 1978.

BEING the same tract of land which Randolph N. Smith and Cynthia J. Smith, husband and wife, by deed dated April 27, 1981, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 356 at page 1076 conveyed to Keller E. Misner and Anna Mae Misner, husband and wife, and Edna V. Misner, single; and the s. Keller E. Misner having died, entire title became vested in Anna Mae Misner and Edna V. Misner, the Defendants herein.

IMPROVED WITH a single-family, one-story vinyl and brick dwelling with attached garage.

SEIZED and taken into execution as the property of **EDNA V. MISNER** and to be sold by me

Bernard V. Miller  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 6, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name will be filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about the 25th of March, 1996, pursuant to the Fictitious Name Act of 1982, as amended, setting forth that Thomas Crist, of 214 Ewell Avenue, Gettysburg, Pennsylvania, is an individual engaged in a business, the character of which is the sale of cards, crafts and collectibles, and that such business will be conducted under the name of P.B. FLOYD AND COMPANY and have a principal office or location at 240 Steinwehr Avenue (Rear) Gettysburg, Pennsylvania, 17325

Wilcox, James and Cook  
234 Baltimore St.  
Gettysburg, PA 17325

3/29