

# *Adams County* **Legal Journal**

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Vol. 45

June 6, 2003

No. 2, pp. 5-12

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## **IN THIS ISSUE**

NATIONWIDE VS. DEGROFT

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### **CONTINUING LEGAL EDUCATION PROGRAM**

*Malpractice Avoidance Seminar*

June 17, 2003 – 1:30 p.m. - 3:00 p.m.

Credits: Ethics – 1.5

Location: Hotel Gettysburg

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

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1035 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

FRONTING 57 feet 9 inches on the East side of the Gettysburg-Arendtsville State Highway; thence from its Northwestern corner along lands formerly of Allen B. Hartman, now or formerly of Florence Wilson, in an East-Northeasterly direction, to a 20 foot alley in the rear, thence by the Western side of said alley in a South-Southeasterly direction, 57 feet 9 inches to the corner of another lot now or formerly of Florence Wilson; thence by said last mentioned lot in a West-Southwesterly direction to the Gettysburg-Arendtsville State Highway aforesaid; thence as aforesaid in or along said State Highway in a North-Northwesterly direction 57 feet 9 inches to the Northwest corner of said lot.

BEING known as 2515 Mummaburg Road, Gettysburg, PA 17325

Property ID No.: MAP E10, Parcel 46

TITLE TO SAID PREMISES IS VESTED IN Kevin W. Fuller and Sinead T. Fuller, husband and wife, as tenants of an estate by the entireties, by Deed from Stephen P. Coldsmith and Sheila M. Coldsmith, formerly known as Sheila M. Abell, his wife, dated 3/31/92, recorded 4/1/92, in Deed Book 620, Page 623.

SEIZED and taken into execution as the property of **Kevin W. Fuller & Sinead T. Fuller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/30, 6/6 & 13

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-176 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of June, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground, together with the improvements thereon erected, situate, lying and being in the Borough of McSherrystown, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the Northern side of North Street at the Southwestern corner of lot now or formerly of Thomas B. Redding, designated as 53 North Street; thence along the Northern side of North Street, South sixty-six (66) degrees West, seventy (70) feet to a point on the Northern side of North Street, thence by lands now or formerly of Lewis S. Smith and Alma C. Smith, husband and wife, North twenty-four (24) degrees West, one hundred twenty-five and no one-hundredths (125.00) feet; thence by lands of same, North sixty-six (66) degrees East, seventy-three and forty-six one-hundredths (73.46) feet; thence by said lot now or formerly of Thomas D. Redding, South twenty-two (22) degrees twenty-five (25) minutes East, one hundred twenty-five and five one-hundredths (125.05) feet to the point on the North side of North Street, the place of BEGINNING. CONTAINING 0.206 acres. Known as 49 North Street.

The above description is taken from a draft made by Joe B. O'Brien, Registered Surveyor, on April 18, 1969.

BEING Tax Map 2, Parcel 213.

BEING the same premises which George D. Hartman and Mary H. Hartman, husband and wife, by Deed

dated December 29, 1989 and recorded in the Office of the Recorder of Deeds in and for Adams County in Deed Book 543, Page 484, granted and conveyed unto Robert W. Myers and Eva F. Myers, husband and wife.

SEIZED and taken into execution as the property of **Robert W. Myers & Eva F. Myers** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on July 21, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

## INCORPORATION NOTICE

JER-TER INC. has been incorporated under the provisions of the Business Corporation Law of 1988.

6/6

## NATIONWIDE VS. DEGROFT

1. Where the parties agree that disputes are to be resolved in accordance with the Pennsylvania Arbitration Act of 1927, the contrary to law standard of review contained in 42 Pa. Cons. Stat. Ann. §7302(d)(2) (West 1998) applies. Under this standard, a Court shall modify or correct the award where the award is contrary to law and is such that had it been a jury verdict, the Court would have entered a different judgment or a judgment notwithstanding the verdict.

2. In determining future wage loss, the law requires not merely conjecture, but rather sufficient data from which the damages can be assessed with reasonable certainty.

3. Three factors must be proved before a determination of lost wages, based not on conjecture but on fact, can be made: (1) the plaintiff's wage rate at the time of the injury; (2) the amount of work available to the plaintiff; and (3) the capacity at which the plaintiff's employer was operating. Although absolute certainty as to the establishment of wage loss is not necessary, there must be at least reasonable certainty that the evidence is sufficient in order to allow a jury to assess wage loss damages.

4. Although a stenographic record of the arbitration is not required, it is improper for a reviewing Court to assume the facts in absence of a record.

5. In the event that a reviewing Court lacks a proper record justifying the modification of an arbitration award, the petitioning party will not be heard to complain since they had the opportunity to create a stenographic record of the arbitration hearing which would permit a proper inquiry into the allegations of error. Moreover, a presumption should be made in favor of an arbitration award's validity.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 02-S-175, NATIONWIDE MUTUAL INSURANCE COMPANY VS. RONALD V. DeGROFT.

Gerard E. Rickards, Esq., for Plaintiff  
Archie V. Diveglia, Esq., for Defendant  
George, J., October 8, 2002

### OPINION

In this case, the Court is asked by Nationwide Mutual Insurance Company (hereinafter referred to as "Nationwide") to review the award of a Board of Arbitrators which awarded Ronald V. DeGroft (hereinafter referred to as "DeGroft") judgment in the amount of \$178,790.00. Specifically, Nationwide challenges the portion of that award which consists of \$53,790.00 in loss of future earnings. Nationwide claims that the award is contrary to law because recovery of wage loss is barred by 75 PA. CONS. STAT. ANN. § 1722

(West 1996) (relating to preclusion of benefits in underinsured motorist claim).<sup>1</sup>

The background of this case consists of the following:<sup>2</sup> On December 13, 2000, DeGroft was injured in a motor vehicle accident at the intersection of Herr's Ridge Road and Route 30 in Cumberland Township, Adams County. As a result of the accident, DeGroft suffered serious injuries to his neck and left knee. Due to those injuries, DeGroft was disabled from work at the Littlestown Foundry from January 10, 2001, until October 22, 2001. When he returned to work at the Littlestown Foundry, he was re-assigned from the position of maintenance man to a position as an assembly person. This change in position was necessitated by restrictions placed on DeGroft as a result of his injuries. DeGroft's pre-injury annual earnings were \$40,872.00, consisting of \$31,907.00 in regular wages and \$8,965.00 in overtime wages. Apparently, DeGroft's change of positions has eliminated the possibility of him obtaining overtime pay.

Following the accident, DeGroft successfully pursued a civil claim against the tortfeasor driver. Thereafter, he presented a claim against Nationwide under a policy of motor vehicle insurance providing for underinsured benefits of \$100,000.00. The Nationwide

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<sup>1</sup> Nationwide's Petition also requests the Court to mark satisfied the award entered by the arbitrators. Nationwide urges, and DeGroft agrees, that DeGroft's underinsured motorist limits under the Nationwide Policy are \$100,000.00. This amount was paid to DeGroft on January 25, 2002. As such, Nationwide requests, and at argument DeGroft agreed, that the arbitration award should be marked satisfied. The attached Order will reflect this agreement.

Although at first glance satisfaction of the arbitrator's award makes further discussion moot, the parties have requested the Court to make a specific finding in regard to the modification of the wage loss portion of the award. It appears that a bad faith claim has been initiated by DeGroft against Nationwide in Federal Court. Thus, resolution of the wage loss issue may be material to the resolution of the federal litigation due to the concept of issue preclusion. *See generally Balliett v. City of Allentown, et al*, No. 92-4713, 1994 U.S. Dist. LEXIS 18216 (E.D. Pa. Dec. 22, 1994). Therefore, if this Court fails to specifically address the issue, Nationwide may be bound by the award of the arbitrators in the federal litigation.

<sup>2</sup> A stenographic transcript of the arbitration was not kept by either party. Accordingly, the record in this matter is sparse. This background is obtained from admissions in the pleadings, facts generally agreed upon by both parties in their briefs and a joint stipulated record presented to the Court, which consists of Nationwide's Automobile Insurance Policy, a Hartford Long-term Disability Policy, the deposition of Ronald DeGroft and the deposition of Wayne Anders (DeGroft's supervisor at the Littlestown Foundry).

Policy provided for disputes in coverage to be resolved by arbitration in accordance with the Pennsylvania Arbitration Act of 1927. A Board of Arbitrators was impaneled and, following the hearing, entered an award on January 22, 2002, in favor of DeGroft in the amount of \$178,790.00. The award specifically indicated that \$53,790.00 of the award consisted of loss of future earnings while the remaining \$125,000.00 compensated DeGroft for non-economic damages. At the time of the accident, DeGroft was covered by a Long-term Disability Policy issued by the Hartford Life Insurance Company (hereinafter referred to as "Hartford Policy") and an income loss benefit option under his Nationwide Automobile Insurance Policy (hereinafter referred to as "Nationwide Policy"). Nationwide argues that because of the coverage provided by these policies, DeGroft is precluded as a matter of law from obtaining an award for future wage loss due to the statutory preclusions of 75 PA. CONS. STAT. ANN. § 1722 (West 1996).

The standard of review in considering a Petition to Modify or Vacate an Award of a Board of Arbitrators is set forth in *Nationwide Ins. Co. v. Calhoun*, 635 A.2d 643 (Pa. Super. Ct. 1993). In cases, such as this one, where the parties agree that disputes are to be resolved in accordance with the Pennsylvania Arbitration Act of 1927, the contrary to law standard of review contained in 42 PA. CONS. STAT. ANN. § 7302(d)(2) (West 1998) applies. *Calhoun*, 635 A.2d at 646. Under this standard, a Court shall modify or correct the award where the award is contrary to law and is such that had it been a jury verdict, the Court would have entered a different judgment or a judgment notwithstanding the verdict. *Id.* at 646; *Scott v. Erie Ins. Group*, 706 A.2d 357, 359 (Pa. Super. Ct. 1998); 42 PA. CONS. STAT. ANN. § 7302(d)(2) (West 1998). Bearing this standard in mind, I will examine Nationwide's arguments.

There is little dispute among the parties that DeGroft may not collect benefits on an Underinsured Motorist Claim at a time when he is eligible to receive those benefits from other sources.

In any action for damages against a tortfeasor, or in any uninsured or underinsured motorist proceeding, arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits...[from other

sources] shall be precluded from recovering the amount of benefits paid or payable under...[the Pennsylvania Motor Vehicle Financial Responsibility Law].

75 PA. CONS. STAT. ANN. § 1722 (West 1996). Accordingly, if the record clearly reflected a duplication of benefits, Nationwide's Claim would be meritorious. However, DeGroft argues that the award of future wage loss is not a duplication of benefits but rather an award for a "gap" between his actual damages and the disability coverage to which DeGroft was entitled as a result of his disability policies with Hartford and Nationwide.

Specifically, DeGroft argues three (3) scenarios where there is a gap in coverage under the disability policies:

1. DeGroft does not have disability coverage for the loss of future income which will result from his inability to obtain overtime wages;
2. DeGroft may become totally disabled in the future after his ability to file a claim on the Nationwide Policy has expired; or
3. DeGroft is laid off from employment at the Foundry due to circumstances unrelated to his injuries.

As a matter of law, had DeGroft's argument been limited to scenarios two and three above, Nationwide would be entitled to the relief which it has requested. Both scenarios raised by the Plaintiff are purely hypothetical and speculative and cannot possibly justify an award of future wage loss. In determining future wage loss, "[t]he law requires not merely conjecture, but rather sufficient data from which the damages can be assessed with reasonable certainty." *Gordon v. Trovato*, 338 A.2d 653, 657 (Pa. Super. Ct. 1975). Three factors must be proved before a determination of lost wages, based not on conjecture but on fact, can be made: (1) the plaintiff's wage rate at the time of the injury; (2) the amount of work available to the plaintiff; and (3) the capacity at which the plaintiff's employer was operating. *O'Malley v. Peerless Petroleum, Inc.*, 423 A.2d 1251, 1257 (Pa. Super. Ct. 1980) (discussing and applying *Gordon*, supra). Although absolute certainty as to the establishment of wage loss is not necessary, there must be at least reasonable certainty that the evidence is sufficient in order to allow a jury to assess wage loss damages. *King v. Pulaski*, 710 A.2d 1200, 1205 (Pa. Super. Ct. 1998).

Plaintiff's scenarios two and three talk about the possibility of DeGroft becoming totally disabled and/or the possibility of DeGroft being laid off from current employment and not being able to find meaningful alternative employment. The stipulated record presented to the Court does not provide any evidence which would support either claim. Moreover, it is doubtful that any such evidence could be presented. The deposition of DeGroft's employer, Wayne Anders, is completely absent of any indication that future layoffs are anticipated. Although Plaintiff argues that layoffs **could** happen, the same record equally supports the proposition that the Defendant **could** receive a substantial promotion mitigating any wage loss. Such a speculation is simply beyond a minimum level of proof which would allow a fact finder to assess damages with reasonable certainty. *Id.* Plaintiff's hypothetical scenarios two and three cannot support an award of wage loss. Scenario number one, however, deserves further discussion.

DeGroft argues a gap in coverage as the disability policies apply to overtime. He calculates, and Nationwide tacitly agrees, that prior to the accident DeGroft earned approximately \$8,965.00 in overtime wages. DeGroft further urges that he has a remaining work-life expectancy of twelve (12) years. Thus, he concludes that over the course of his life he will lose overtime wages in the amount of \$107,580.00. Nationwide argues that the disability policies available to DeGroft provide coverage for this loss. However, Nationwide's argument is contrary to the express language of the Hartford policy.

The Hartford Policy provides wage loss benefits in the amount of 60% of the beneficiary's Pre-Disability Earnings. Joint Stipulated Record, Ex. A, at 3. The Hartford Policy provides in relevant part:

Current Monthly Earnings will not be used to reduce your Monthly Benefit. However, if the sum of your Monthly Benefit and your Current Monthly Earnings exceeds 100% of your Pre-[D]isability Earnings, we will reduce your Monthly Benefit by the amount of excess.

*Id.* Pre-Disability Earnings are defined in the policy as the "Monthly Rate of Basic Earnings in effect on the day before [the beneficiary] became disabled." *Id.* at 17. Importantly, Monthly Rate of Basic Earnings is defined by the policy to mean the regular monthly rate of

a beneficiary's pay, however, "not including bonuses, overtime pay or expense reimbursements..." *Id.* at 15 (emphasis added).

The parties agree that DeGroft is currently earning the same basic pay which he earned prior to the accident. Thus, under the definitions set forth in the Hartford Policy, his current Monthly Earnings equal 100% of his Pre-Disability Earnings. Therefore, the Hartford Policy, by its express language, will not compensate DeGroft for any lost wages due to his loss of overtime employment.

The terms of the Nationwide Policy are not quite as clear. Without further definition, the Nationwide Policy provides that "loss of income" is defined as "80% of actual loss of gross income." Nationwide's Petition, Ex. A, at 10. Gross income is "income received from work performed while normally employed in gainful activity." *Id.* The Policy is void of any language referencing whether overtime wages are encompassed within that definition. However, during argument, Nationwide has indicated that loss of overtime wages due to injury is covered under their policy. This acknowledgment is consistent with authority which requires vague language in an insurance policy to be interpreted in favor of the policy holder. *Madison Constr. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999). This Court, therefore, will hold Nationwide to its representations and find that the Nationwide disability policy provides coverage to Mr. DeGroft for any loss in future wages, including overtime wages, which are the result of the injury caused by the December 13, 2000, accident.

As mentioned above, benefits under the Nationwide Policy are limited to 80% of the actual loss of income. The parties have agreed that the difference between DeGroft's pre-injury annual earnings and his current annual earnings multiplied over a work-life expectancy of twelve (12) years totals \$107,580.00. Under the policy, Nationwide would cover 80% of this wage loss leaving a gap in coverage of approximately \$21,516.00. If consideration of this issue ended here, Plaintiff would be entitled to a judgment of future loss of wages of \$21,516 due to a gap in coverage. Unfortunately for Nationwide, however, further inquiry is necessary.

In their Petition to Vacate, Nationwide has indicated that DeGroft has first-party wage loss coverage under the Nationwide policy with limits of \$3,000.00 per month up to a total of \$75,000.00. Petition



to Vacate, Modify or Mark Satisfied an Underinsured Motorist Arbitration Award, at ¶ 11. In their brief, Nationwide indicates that DeGroft “has available approximately \$45,000.00 in remaining first party wage loss benefits.” Nationwide’s Br. at 5. As previously indicated, DeGroft claims a loss of overtime wages in an amount of \$107,580.00. If we presume that the first-party wage loss benefits of the Nationwide Policy are exhausted, there remains a potential uncovered wage loss in the amount of \$62,580.00.<sup>3</sup> Under these circumstances I cannot find that the Board of Arbitrators granted an award which is contrary to law. Clearly, there is a gap in coverage of the potential policy benefits which DeGroft is eligible to recover.

In reaching this conclusion, I note that the absence of a record makes review of the Arbitrators’ decision extremely difficult. Although a stenographic record of the arbitration proceeding is not required, *City of Scranton v. Shoemaker*, 428 A.2d 1048, 1051 (Pa. Commw. Ct. 1981), it is improper for a reviewing Court to assume the facts in absence of a record. *Carroll v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 660, 666 (Pa. Super. Ct. 1992). In the event that a reviewing Court lacks a proper record justifying the modification of an arbitration award, the petitioning party will not be heard to complain since they had the opportunity to create a stenographic record of the arbitration hearing which would permit a proper inquiry into the allegations of error. *Id.* See also 42 PA. CONS. STAT. ANN. § 7307(b) (West 1998) (any party may request that a record of the arbitration hearing be made). Instantly, the sparse record before the Court makes it impossible to find that the award of the arbitrators was contrary to law. Moreover, a presumption should be made in favor of an arbitration award’s validity. *Parking Unlimited, Inc. v. Monsour Med. Found.*, 445 A.2d 758, 760 (Pa. Super. Ct. 1982). Absent clear and precise evidence in the record that the arbitration award is contrary to law, Nationwide’s Petition to modify or vacate the Arbitrators’ Award is denied.

#### ORDER OF COURT

AND NOW, this 8th day of October, 2002, Nationwide Mutual Insurance Company’s Petition to Vacate, Modify or Mark Satisfied

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<sup>3</sup> Overtime wage loss of \$107,580.00 minus Nationwide Policy coverage of \$45,000.00 equals \$62,580.00.

an Underinsured Motorist Arbitration Award is partially denied and partially granted. The request to vacate or modify the award is denied and judgment is entered in favor of the Plaintiff in the sum of \$178,790.00. However, Nationwide's request to make the judgment satisfied is granted. The Adams County Prothonotary's Office is directed to mark the judgment entered against Nationwide Mutual Insurance Company satisfied.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-140 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Southwestern edge of a 50 foot wide right of way, and the Northernmost corner of Lot No. 16 on the hereinafter referred to draft of survey; thence by said Lot No. 16, South 32 degrees 10 minutes 27 seconds West, 354.89 feet to a point on line of land now or formerly of Francis B. Moore; thence by said land now or formerly of Francis B. Moore, North 41 degrees 57 minutes 03 seconds West, 129.73 feet to a point at corner of Lot No. 18; thence by said Lot No. 18 North 33 degrees 01 minute 49 seconds East, 321.03 feet to a point on the Southwestern edge of a 50 foot wide right of way aforesaid; thence along said Southwestern edge of 50 foot wide right of way, South 56 degrees 58 minutes 11 seconds East, 93.68 feet to a point; thence along same, on a curve to the left, having a radius of 1,761.53 feet, an arc distance of 26.32 feet, and a bearing and chord distance of South 57 degrees 23 minutes 52 seconds East, 26.32 feet to a point, the place of BEGINNING. CONTAINING 41,395 Square Feet.

THE above description was taken from a draft of survey prepared by Donald E. Worley, R.S., dated June 24, 1977, recorded in Adams County Plat Book 16, page 43, designating the above as Lot No. 17.

TITLE TO SAID PREMISES IS VESTED IN Lisa A. Smith by Deed from James P. Smith and Lisa A. Smith, his wife dated 8/24/1995 and recorded 9/12/1995 in Record Book 1085, Page 221.

Premises being: 85 Graft Drive, New Oxford, PA 17350

Tax Parcel No. J12-135

SEIZED and taken into execution as the property of **James P. Smith & Lisa A. Smith** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 11, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-223 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 11th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate in the Borough of Gettysburg, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a mark on the North side of curb on the North side of Breckenridge Street in the Borough of Gettysburg at corner of lot now or formerly of Jacob Weikert; thence along lot now or formerly of Jacob Weikert, North 4 degrees 15 minutes East, 126.0 feet passing through a garage wall to spike on the South side of a 12 foot public alley; thence along the South side of public alley, South 85 degrees East, 30.0 feet to a spike at corner of lot now or formerly of Lester Bower; thence along lot now or formerly of Lester Bower, South 4 degrees 15 minutes West, 126.0 feet to a mark on the north side of curb on the North side of Breckenridge Street; thence along the north side of curb, North 85 degrees West, 30.0 feet to a mark, the place of BEGINNING.

The above description was taken from draft of survey of "Property of Russell D. Shetter" prepared by LeRoy H. Winebrenner, C.S. on May 9, 1963.

HAVING ERRECTED THEREON a dwelling known as 35 Breckenridge Street, Gettysburg, Pennsylvania.

BEING THE SAME PREMISES WHICH Adams County Housing Authority by Deed dated October 2, 1992 and recorded October 5, 1992 in Adams County Deed Book 642, Page 1121, granted and conveyed unto Marcus P. Pringle and Judy L. Pringle.

SEIZED IN EXECUTION AS THE PROPERTY OF JUDY L. PRINGLE AND MARCUS P. PRINGLE UNDER ADAMS COUNTY JUDGMENT NO. 03-S-223.

MAP & PARCEL #16-10-266

SEIZED and taken into execution as the property of **Judy L. Pringle & Marcus P. Pringle** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 4, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

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, June 16, 2003, at 9:00 o'clock a.m.

**SHULL**—Orphans' Court Action Number OC-56-03. The First and Final Account of Betty V. Shull, Executrix of the Estate of Carrie E. Shull a/k/a Carrie Ellen Shull, deceased, late of the Borough of York Springs, Adams County, Pennsylvania.

**SHOWERS**—Orphans' Court Action Number OC-122-02. The First and Final Account of Elizabeth A. Overholtzer, Executrix of the Last Will and Testament of Marie A. Showers, deceased, late of Cumberland Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

6/6 & 13

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CIVIL ACTION  
NO. 03-S-488  
Action to Quiet Title

NEW OXFORD I LIMITED PARTNER-  
SHIP, Plaintiff

vs.

GRIER HERSH, JAMES R. STOCK,  
FLOYD L. FOGLE, JR. and DELORES  
R. FOGLE, CLARK J. SMITH and  
KATHARINE J. SMITH, NEW OXFORD  
BOROUGH, and the heirs, legatees,  
successors, personal administrators,  
executors and assigns of all of the fore-  
going, and all unknown persons claiming  
any estate, right, title, lien or interest in or  
to the within real property situate along  
West Berlin Street in New Oxford  
Borough, Adams County, Pennsylvania,  
containing 0.03 acres, more or less,  
Defendants

**NOTICE**

TO: GRIER HERSH, ALONG WITH HIS  
HEIRS, LEGATEES, SUCCESSORS,  
PERSONAL ADMINISTRATORS,  
EXECUTORS AND ASSIGNS, AND ALL  
OTHER UNKNOWN PERSONS CLAIM-  
ING ANY ESTATE, RIGHT, TITLE, LIEN  
OR INTEREST IN OR TO THE WITHIN  
REAL PROPERTY SITUATE ALONG  
WEST BERLIN STREET IN NEW  
OXFORD BOROUGH, ADAMS COUN-  
TY, PENNSYLVANIA, CONTAINING  
0.03 ACRES, MORE OR LESS.

TAKE NOTICE that on the 15th day of  
May, 2003, New Oxford I Limited  
Partnership filed a Civil Action to Quiet  
Title, endorsed with a notice to defend,  
against you in the Court of Common  
Pleas of Adams County, Pennsylvania,  
docketed to No. 03-S-488, wherein the  
Plaintiff seeks judgment in its favor and  
against you with respect to establishing  
legal title in fee simple to certain real  
property situate along West Berlin Street  
in New Oxford Borough, Adams County,  
Pennsylvania, containing 0.03 acres,  
more or less, and more fully described as  
follows:

BEGINNING at a point, said point of  
Beginning being North thirteen (13)  
degrees thirty-nine (39) minutes fifty-four  
(54) seconds West a distance of two  
hundred forty-eight and fifty hundredths  
(248.50) feet from a drill hole found on  
the right-of-way of Golden Lane at lands  
now or formerly of Floyd L. Fogle, Jr.;  
thence along said lands of Floyd L.  
Fogle, Jr., North thirteen (13) degrees  
thirty-nine (39) minutes fifty-four (54)  
seconds West a distance of twenty-three  
and fifty-eight hundredths (23.58) feet to  
a point at lands now or formerly of  
Oxford Manor Limited Partnership;

thence along said lands of Oxford Manor  
Limited Partnership, North seventy-four  
(74) degrees thirty-seven (37) minutes  
twenty-nine (29) seconds East a dis-  
tance of fifty and two hundredths (50.02)  
feet to a point; thence through said West  
Berlin Street, South thirteen (13)  
degrees thirty-nine (39) minutes fifty-four  
(54) seconds East a distance of twenty-  
four and sixty-four hundredths (24.64)  
feet to a point at lands now or formerly of  
Oxford Manor Limited Partnership;  
thence along said lands of Oxford Manor  
Limited Partnership, South seventy-five  
(75) degrees fifty (50) minutes six (06)  
seconds West a distance of fifty and zero  
hundredths (50.00) feet to a point, said  
point being the point and place of  
BEGINNING.

CONTAINING in area 1,205 square  
feet or 0.03 acres.

The Complaint requests that the Court  
declare and adjudge that the Plaintiff  
owns absolutely in fee simple and are  
entitled to the quiet and peaceful pos-  
session of the foregoing tract as against  
the Defendants and all persons claiming  
under them, and that the Defendants and  
all persons claiming under them have no  
estate, right, title, lien, or interest in the  
tract or any part thereof, and that fee  
simple legal title in the tract be quieted in  
the Plaintiff as against all claims of the  
Defendants and all persons claiming  
under them; and for a Decree perman-  
ently enjoying the Defendants and all  
persons claiming under them from  
asserting any estate, right, title, lien or  
interest in or to the tract, or any part  
thereof, adverse to the Plaintiff.

YOU ARE HEREBY NOTIFIED to  
plead to the above-referenced Complaint  
on or before twenty (20) days from the  
date of this publication or a judgment will  
be entered against you.

**NOTICE**

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

YOU SHOULD TAKE THIS PAPER TO  
YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE OR KNOW A LAWYER, THEN  
YOU SHOULD GO TO OR TELEPHONE

THE OFFICE SET FORTH BELOW TO  
FIND OUT WHERE YOU CAN GET  
LEGAL HELP.

Court Administrator's Office  
Adams County Courthouse  
111-117 Baltimore Street  
Gettysburg, Pennsylvania 17325  
Telephone (717) 337-9846 or  
1-888-337-9846

**AVISO**

USTED HA SIDO DEMANDADO EN  
LA CORTE. Si usted desea defenderse  
de las quejas expuestas en las páginas  
siguientes, debe tomar acción dentro de  
veinte (20) días a partir de la fecha en  
que recibió la demanda y el aviso. Usted  
debe presentar una comparecencia  
escrita en persona o por abogado y pre-  
sentar en la Corte por escrito sus defen-  
sas o sus objeciones a las demandas en  
su contra.

Se le avisa que si no se defiende, el  
caso puede proceder sin usted y la Corte  
puede decidir en su contra sin más aviso  
o notificación por cualquier dinero recla-  
mada en la demanda o por cualquier otra  
queja o compensación reclamada por el  
demandante. USTED PUEDE PERDER  
DINERO O PROPIEDADES O OTROS  
DERECHOS IMPORTANTES PARA  
USTED.

LLEVE ESTA DEMANDA A UN ABO-  
GADO INMEDIATAMENTE. SI USTED  
NO TIENE O NO CONOCE UN ABOGA-  
DO, VAYA O LLAME A LA OFICINA EN  
LA DIRECCION ESCRITA ABAJO PARA  
AVERIGUAR DONDE PUEDE OBTEN-  
ER ASISTENCIA LEGAL.

Court Administrator's Office  
Adams County Courthouse  
111-117 Baltimore Street  
Gettysburg, Pennsylvania 17325  
Teléfono No. (717) 337-9846 or  
1-888-337-9846

Morris & Vedder  
Rand A. Feder, Esq.  
Attorney for Plaintiff

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-319 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the westerly right of way line of Abbotts Drive in the Borough of Abbottstown, Adams County, Pennsylvania, known and numbered as Lot No. 50 and for Adams County, PA in Subdivision Plan Book 76, Page 99, more fully bounded and described as follows, to wit:

BEGINNING at a point on the westerly right of way line of Abbotts Drive, at a corner of Lot No. 51 on said plan; thence extending along the said right of way line South 47 degrees 16 minutes 34 seconds East 85 feet to a point at corner of Lot No. 49 on said plan; thence extending along Lot No. 49 South 41 degrees 58 minutes 10 seconds West 278.28 feet to a point; thence extending along Lot No. 55E on a plan of lots for Abbotts Manor Phase II, Plan Book 73, Page 43 North 25 degrees 36 minutes 53 seconds West 95.40 feet to a point; thence North 42 degrees 43 minutes 26 seconds East 243.04 feet to the point and place of BEGINNING.

CONTAINING 22,600 square feet

TITLE TO SAID PREMISES IS VESTED IN Daniel J. Furman by Deed from Gariland Construction, Inc. dated 11/3/2000 and recorded 1/31/2001 in Record Book 2205, Page 134.

Premises being: 51 Abbotts Drive, Abbottstown, PA 17301

Tax Parcel No. 40, Map #5

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 11, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-289 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center line of Lincoln Highway (U.S. Route 30) on line of land 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 land 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 the same South 39 degrees 39 minutes East, 150 feet to an iron pin; thence by land 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.

TITLE TO SAID PREMISES IS VESTED IN Randy L. Kroft by Deed from Paul E. Blough and Barbara A. Fissel, dated 8/31/2001 and recorded 9/18/2001 in Record Book 2406, Page 224.

Premises being: 2865 Chambersburg Road, Biglerville, PA 17307

Tax Parcel No. D11-18

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 11, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-207 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 11th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground, situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a corner of James Avenue and proposed Roberta Jean Street, thence westerly along said proposed Roberta Jean Street one hundred fifty feet to a stake; thence northerly fifty feet to a stake at a corner of Lot No. 107-A, thence easterly along said Lot No. 107-A one hundred fifty feet to James Avenue thence southerly along said James Avenue fifty feet to proposed Roberta Jean Street, the place of BEGINNING.

The above and foregoing parcel of land being Lot Nos. 108 and 108A according to the plan and resurvey made in November, 1935, by Leroy Winebrenner, County Surveyor, for T.C. McSherry and Marie McSherry, First Addiiton to Littlestown Borough, Adams County, Pennsylvania, and known as "McSherry Park".

SEIZED and taken into execution as the property of **Mary E. Tidman** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 4, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-180 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, now being Carroll Valley Borough, Adams County, Pennsylvania, being Lot No. 202 in Section J, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Field Trail as Lot No. 201; thence in the cul-de-sac and by said Lot North 3 degrees 11 minutes 40 seconds West, 200 feet to Lot No. 187; thence by said Lot and by Lot No. 186 South 87 degrees 23 minutes 40 seconds East, 231.11 feet to lands of George C. Steinberger; thence by said lands South 23 degrees 45 minutes West, 213.34 feet to Lot No. 203; thence by said Lot in the cul-de-sac of said Field Trail, North 87 degrees 23 minutes 40 seconds West, 133.94 feet to the place of BEGINNING.

HAVING erected thereon a dwelling known as 15 Field Trail, and being Tax I.D. No. 2-141

BEING the same premises which United Companies Lending Corporation, by its Attorney-in-Fact, Federal National Mortgage Association, by Deed dated September 29, 1998 and recorded in the Office of the Recorder of Deeds of Adams County on October 2, 1998, in Deed Book Volume 1672, Page 246, granted and conveyed unto Neil E. Shriner and Stacey R. Shriner.

GRENN & BIRSIC, P.C.  
Kristine M. Anthou, Esq.  
Attorneys for Plaintiff  
One Gateway Center, Nine West  
Pittsburgh, PA 15222  
(412) 281-7650

SEIZED and taken into execution as the property of **Nell E. Shriner & Stacey R. Shriner** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 11, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the

purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

5/30, 6/6 & 13

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-395 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin along the southern edge of the Lincoln Highway at corner of lands now or formerly of May B. Sterner; thence along the southern edge of the Lincoln Highway, South 59-1/2 degrees East 60 feet to an iron pin along the southern edge of the Lincoln Highway; thence along a 10 ft. alley adjoining lands formerly owned by Dr. Elderdice, South 30-1/2 degrees West 218 feet to an iron pin; thence along a 20 ft. alley, North 53-1/4 degrees West 63 feet to a post; thence along lands now or formerly of May B. Sterner, North 31-1/4 degrees East 211.4 feet to an iron pin along the southern edge of the Lincoln Highway, the place of BEGINNING.

The above description was obtained from a draft of a survey dated December 14, 1939, prepared by LeRoy H. Winebrenner, Surveyor.

IT BEING THAT same tract of land which Daniel J. Rudisill, single, by his Deed dated June 12, 1995 and recorded in the Recorder of Deeds of Adams County in Record Book 1041 at Page 65, sold and conveyed unto Pamela J. Howery, Grantor herein.

SEIZED IN EXECUTION as the property of Pamela J. Howery, h/w, on Judgment No. 02-S-395.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 11, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

NOTICE

In Re: Condemnation by the Township of Oxford, Adams County, PA of Easements Across Lands of Donald F. Kuhn and Eva Mae Kuhn, et al.

No. 03-S-335

TO: DONALD F. KUHN and EVA MAE KUHN

TAKE NOTICE that on the 27th day of March, 2003, Oxford Township, P.O. Box 86, 780 Hanover Street, New Oxford, PA, filed its Declaration of Taking for temporary construction easement and permanent sewer easement over property owned by you in Oxford Township as fully described in deed recorded in Adams County Deed Book 0348, Page 1081, as authorized by Second Class Township Code 53 P.S. 65101, et seq. and the Eminent Domain Code of 1964, 26 P.S. 1-101, et seq., and by Township Resolution adopted March 17, 2003. A Plan depicting the taking can be examined at the above court number or Oxford Township offices. Just compensation is secured by the taxing authority of Oxford Township.

If you wish to challenge the power or the right of Oxford Township to appropriate the condemned property, the sufficiency of the security, the procedure followed by the Condemnor, or the Declaration of Taking, you shall file Preliminary Objections within thirty (30) days after publication of this Notice.

Blakey, Yost, Bupp & Rausch, LLP  
Stacey R. MacNeal, Esq.  
Solicitor for Oxford Township

6/6

## 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 DOROTHY O. BOWERS, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Co-Executors: Gloria A. Burr & Paul F. Tice, III, 104 Bowers Road, Littlestown, PA 17340-9468

Attorney: G. Thomas Miller, Esq., 401 S. 32nd Street, Camp Hill, PA 17011-5105

## ESTATE OF MARY EVA MYERS, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executrices: Patricia Anthony & Jean Anthony, 26 Easy Street, Littlestown, PA 17340

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

## ESTATE OF MARIE A. OSBORN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Diane M. Yupatoff

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

## ESTATE OF NORMAN E. WALLEN, SR., DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Pamela K. Wallen & Norman E. Wallen, Jr.

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

## SECOND PUBLICATION

## ESTATE OF PAUL R. BLACK, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Stephen E. Black, 1010 South 2nd St., Clearfield, PA 16830; Gary L. Black, 11 Ridgeway Drive, Mechanicsburg, PA 17050; Dennis P. Black, 765 Clayton Dr., Aurora, OH 44202

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

## ESTATE OF NANCY S. BUFFINGTON, a/k/a NANCY CATHARINE SLONAKER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Teresa E. Slonaker, 107 Ridge Avenue, Gettysburg, PA 17325

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

## ESTATE OF MARY L. MESSINGER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Co-Executors: Darlene L. Moore Parlette, 4744 Baltimore Pike, Littlestown, PA 17340; Ricky H. Messinger, 730 Pine Grove Road, Hanover, PA 17331; Benjamin F. Messinger, 63 James Avenue, Littlestown, PA 17340

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

## THIRD PUBLICATION

## ESTATE OF NANCY RUTH BEALL, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Wayne D. Beall, 3918 Susanna Road, Randallstown, MD 21133

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

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Madeline M. Deardorff, 529 Prince Street, Littlestown, PA 17340

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF CATHERINE V. MESSINGER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Barry D. Messinger, 35 Locust Drive, Littlestown, PA 17340

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

## ESTATE OF ANNA M. NATALE, DEC'D

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

Executrix: Diane D. Fetters, 1289 Gabler Road, Gardners, PA 17324

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

## ESTATE OF RUTH S. SUMMERS, a/k/a RUTH J. SUMMERS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Jeanne C. Myers, 4998 April Day Garth, Columbia, MD 21044

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-327 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 18th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of ground, situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

SMOKEHOUSE Court at a corner of an access drive; thence along the Southern edge of Smokehouse Court on a curve having a radius of 50.00 feet, an arc length of 36.39 feet and a chord bearing South 30 degrees 27 minutes 57 seconds West, 35.59 feet to a point at a corner of Lot No. 14; thence along Lot No. 14, North 80 degrees 22 minutes 53 seconds East, 127.33 feet to a point at lands now or formerly of Littlestown Little League; thence along the same and across Marvin Street, North 22 degrees 36 minutes 52 seconds East, 53.63 feet to a point at Applr, Phase II-Section A; thence along the same, North 66 degrees 50 minutes 22 seconds West, 128.12 feet to a point at a corner of an access drive thence along said access drive, South 27 degrees 09 minutes 00 seconds West, 101.71 feet to a point

along the Southern edge of Smokehouse Court, the place of BEGINNING.

CONTAINING 12,190 square feet

BEING Lot No. 15 on a final plan of Applr, Phase II-Section C prepared by Group Hanover, Inc., dated 5/6/1998, Project No. 951879, which said plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 75, Page 25-C.

TITLE TO SAID PREMISES IS VESTED IN Matthew G. Schatz by Deed from Garland Construction, Inc. dated 7/11/2000 and recorded 8/11/2000 in Record Book 2104, Page 301.

Premises being: 25 Smokehouse Court, Littlestown, PA 17340

Tax Parcel No. 154 Map #7

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 11, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/23, 30 & 6/6

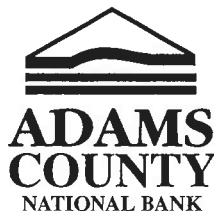
FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act", 54 Pa. C.S.A. §§ 301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is LINCOLN TRAIN MUSEUM. The address of the principal office or place of business to be carried on under or through the fictitious name is 302 York Street, Gettysburg, Adams County, Pennsylvania 17325. The name and address of the entity who is a party to the registration is SMG Investments, Inc. of 302 York Street, Gettysburg, Adams County, Pennsylvania 17325. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on April 28, 2003.

Campbell & White  
112 Baltimore Street  
Gettysburg, PA 17325  
Attorneys for Applicant

6/6

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



Member FDIC



# *Adams County* Legal Journal

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Vol. 45

June 13, 2003

No. 3, pp. 13-20

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## **IN THIS ISSUE**

**AIELLO VS. AIELLO ET AL**

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### **CONTINUING LEGAL EDUCATION PROGRAM**

*Malpractice Avoidance Seminar*

June 17, 2003 – 1:30 p.m. - 3:00 p.m.

Credits: Ethics – 1.5

Location: Hotel Gettysburg

### **REGISTRATION THROUGH PA BAR ASSOCIATION**

**1-800-932-0311**

5% Premium discount given to attending firms on PBA sponsored professional liability insurance.

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

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 334-6781 ext 336

Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1035 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

FRONTING 57 feet 9 inches on the East side of the Gettysburg-Arendtsville State Highway; thence from its Northwestern corner along lands formerly of Allen B. Hartman, now or formerly of Florence Wilson, in an East-Northeasterly direction, to a 20 foot alley in the rear; thence by the Western side of said alley in a South-Southeasterly direction, 57 feet 9 inches to the corner of another lot now or formerly of Florence Wilson; thence by said last mentioned lot in a West-Southwesterly direction to the Gettysburg-Arendtsville State Highway aforesaid; thence as aforesaid in or along said State Highway in a North-Northwesterly direction 57 feet 9 inches to the Northwest corner of said lot.

BEING known as 2515 Mummasburg Road, Gettysburg, PA 17325

Property ID No.: MAP E10, Parcel 46

TITLE TO SAID PREMISES IS VESTED IN Kevin W. Fuller and Sinead T. Fuller, husband and wife, as tenants of an estate by the entireties, by Deed from Stephen P. Coldsmith and Sheila M. Coldsmith, formerly known as Sheila M. Abell, his wife, dated 3/31/92, recorded 4/1/92, in Deed Book 620, Page 623.

SEIZED and taken into execution as the property of **Kevin W. Fuller & Sinead T. Fuller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

5/30, 6/6 & 13

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-477 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the easterly right of way line of Kinneman Road in the Borough of Abbottstown, County of Adams, and State of Pennsylvania known and numbered as Lot No. 33, on a plan for Abbotts Manor recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69, page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the easterly right of way line of the said Kinneman Road, at a corner of Lot No. 32 on said plan; thence extending along the said Lot No. 32 South 88 degrees 36 minutes 40 seconds East 110 feet to a point; thence South 1 degree 23 minutes 20 seconds West 85 feet to a point, at a corner of Lot No. 34; thence extending along the said Lot No. 34 South 88 degrees 36 minutes 40 seconds West 120 feet to a point on the easterly right of way line of Kinneman Road; thence extending along the said right of way line of Kinneman Road North 1 degree 23 minutes 20 seconds East 85 feet to the point and place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Christopher A. Bless and Kimberlyn M. Bless by Deed of Correction from Garland Construction, Inc., a Pennsylvania Corporation, dated 6/15/98, recorded 6/16/98 in Record Book 1601 Page 330.

Tax Parcel: 5-33

Premises Being: 68 Kinneman Road,  
Abbottstown, PA 17301

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

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, June 16, 2003, at 9:00 o'clock a.m.

**SHULL**—Orphans' Court Action Number OC-56-03. The First and Final Account of Betty V. Shull, Executrix of the Estate of Carrie E. Shull a/k/a Carrie Ellen Shull, deceased, late of the Borough of York Springs, Adams County, Pennsylvania.

**SHOWERS**—Orphans' Court Action Number OC-122-02. The First and Final Account of Elizabeth A. Overholtzer, Executrix of the Last Will and Testament of Marie A. Showers, deceased, late of Cumberland Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

6/6 & 13

## AIELLO VS. AIELLO ET AL

1. In considering a demurrer, a Court may disregard averments in the Complaint which are in conflict with exhibits attached to the Complaint.

2. The theory of quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another party. Under this theory of recovery, the focus is not on the intention of the parties but rather is on whether the Defendant has been unjustly enriched.

3. Where unjust enrichment is found, the law implies a contract between the parties pursuant to which the plaintiff must be compensated for the benefits unjustly received by the defendant. This contract, referred to as either a quasi-contract or a contract implied in law, requires that the defendant pay the plaintiff the value of the benefits conferred.

4. Although Pennsylvania courts have recognized the propriety of civil actions to recover funds obtained as a result of extortionate threats, there is no case law or statutory authority in Pennsylvania recognizing a cause of action for extortion.

5. To sustain a cause of action for intentional interference with business relations, it must be alleged that: (1) there is an existing contractual relationship between the plaintiff and a third party; (2) the defendant interfered with the performance of that contract by inducing a breach or otherwise causing a third party not to perform; (3) the defendant was not privileged to act in this manner; and (4) the plaintiff suffered pecuniary loss as a result of the breach of contract.

6. In order to state a civil cause of action for conspiracy, a plaintiff must allege: 1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; 2) an overt act done in pursuance of the common purpose; and 3) actual legal damage.

7. Proof of malice or an intent to injure is essential to the proof of a conspiracy. Before a party may succeed on a civil cause of action for conspiracy, there must be a civil cause of action for the underlying act.

8. Conversion is defined under Pennsylvania law as the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification. Although the exercise of control over the chattel must be intentional, the tort of conversion does not rest on proof of specific intent to commit a wrong.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil, No. 02-S-607, DAVID AIELLO VS. SAMUEL M. AIELLO  
AND JUDY MICELI.

David Aiello, Plaintiff, *pro se*

Gary E. Hartman, Esq., for Defendant Aiello

Carol L. Cingranelli, Esq., for Defendant Miceli

George, J., October 23, 2002

## OPINION

This matter comes before the Court on Samuel M. Aiello's (hereinafter referred to as "Defendant") Preliminary Objections to the Complaint filed by David Aiello (hereinafter referred to as "Plaintiff"). Specifically, the Defendant raises three Preliminary Objections as follows:

1. A Motion to Strike the Complaint for lack of specificity;
2. A Motion to Strike the Complaint for failing to state a cause of action for which relief may be granted; and
3. A Motion to Strike Plaintiff's Complaint based upon the inclusion of scandalous and impertinent matter.

On June 7, 2002, the Plaintiff filed a Complaint in Adams County containing four (4) separate counts consisting of claims of breach of an implied or quasi-contract; extortion; tortious interference to business relationship and conspiracy.<sup>1</sup> Although the complaint is quite lengthy, it generally alleges an assortment of financial arrangements between a son (the Plaintiff), his father (the Defendant), and father's sister (co-Defendant Judy A. Miceli). While I will not rehash all of the details leading to this family dispute, some background is necessary for resolution of the issues.

During February, 1999, through February, 2001, Plaintiff stored property at Judy Miceli's garage in Cumberland County. In January, 2000, the Plaintiff, experiencing financial difficulties, sought and received a personal loan from the Defendant in the amount of \$10,000.00. Plaintiff claims that the term of the loan was indefinite. He further claims that the loan was secured by a judgment note, although the parties agreed that the judgment note would not be recorded unless either of the parties died. However, in October, 2000, the Defendant demanded repayment of the loan and on January 28, 2000, recorded the judgment note in the Prothonotary's Office at the Cumberland County Courthouse. During approximately this same time period, Judy Miceli requested that the past due rental fee on her garage be brought current. After a flurry of correspondence between all of the parties, Miceli filed a Landlord Tenant Complaint in Cumberland County on January 26, 2001. Ultimately, the District Justice entered judgment in favor of Miceli in the amount of \$981.50.

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<sup>1</sup> Plaintiff's Complaint has been filed *pro se*.

The Cumberland County litigation continued, however, on February 13, 2001, when the Plaintiff filed a Complaint in Equity against Miceli. The Complaint sought recovery of certain items of property alleged to have been held in the Miceli garage which Plaintiff claimed Miceli had converted. The litigation took numerous twists and turns resulting in the Plaintiff obtaining judgment against Miceli in the amount of \$96,162.84. Plaintiff now files the current action in Adams County seeking judgment against Miceli and the Defendant generally charging that the Defendant conspired with Miceli to withhold the Plaintiff's personal property in an effort to force repayment of the \$10,000 note. The Court will initially address Defendant's Preliminary Objections in the nature of a demurrer.

Preliminary Objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *League of Women Voters of Pennsylvania v. Commonwealth*, 692 A.2d 263, 267 (Pa. Commw. Ct. 1997). Because of the nature of the demurrer, all well-pled material facts as well as all reasonable inferences deductible therefrom are admitted. *Peerless Publications, Inc. v. County of Montgomery*, 656 A.2d 547, 550 (Pa. Commw. Ct. 1995). In considering a demurrer, a Court may disregard averments in the Complaint which are in conflict with exhibits attached to the Complaint. *Philmar Mid-Atl. Inc. v. York St. Assocs. II*, 566 A.2d 1253, 1254 (Pa. Super. Ct. 1989).

The Plaintiff's first cause of action alleges breach of an implied or quasi-contract. Plaintiff alleges that the Defendant promised not to record the judgment note, however, in violation of that agreement, recorded the judgment note thereby causing him damage.

The theory of quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another party. *Ameripro Search, Inc. v. Fleming Steel Co.*, 787 A.2d 988, 991 (Pa. Super. Ct. 2001). Under this theory of recovery, the focus is not on the intention of the parties but rather is on whether the Defendant has been unjustly enriched. *Styer v. Hugo*, 619 A.2d 347, 350 (Pa. Super. Ct. 1993). The elements of unjust enrichment are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be

inequitable for defendant to retain a benefit without payment of value.’” *Ameripro Search, Inc.*, 787 A.2d at 991, quoting *Styer*, 819 A.2d at 350. Where unjust enrichment is found, the law implies a contract between the parties pursuant to which the plaintiff must be compensated for the benefits unjustly received by the defendant. *Styer*, 619 A.2d at 350. This contract, referred to as either a quasi-contract or a contract implied in law, requires that the defendant pay the plaintiff the value of the benefits conferred. *Id.*

Plaintiff’s Complaint is clearly lacking in alleging a factual basis sufficient to support a theory of recovery based upon quasi-contract. Even presuming Plaintiff’s allegations to be true, I am unable to find any benefit conferred upon the Defendant under circumstances which would make it inequitable for the Defendant to retain the benefit without payment of value.<sup>2</sup> Defendant’s demurrer to this Count will, therefore, be sustained.

Plaintiff’s second count alleges a cause of action based upon extortion. In this Count, the Plaintiff makes a number of references to provisions of the Pennsylvania Crimes Code including the crimes of Theft by extortion, 18 PA. CONS. STAT. ANN. § 3923 (West 1983), and Theft by unlawful taking or disposition, 18 PA. CONS. STAT. ANN. § 3921 (West 1983). The Defendant objects on the ground that Pennsylvania does not recognize a civil action for extortion.

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<sup>2</sup>Exhibit D to Plaintiff’s Complaint is a copy of correspondence from the Plaintiff to the Defendant dated January 20, 2001. The last paragraph on Page 3 of that letter reads as follows:

You have every right to take the Judgment Note I gave you as security for your \$10,000 personal loan to me to the Prothonotary in Cumberland County, have it entered in the record as a Judgment against me with interest and expenses as stated on the note and instigate collection proceedings. My debt to you is not part of my bankruptcy proceedings because I incurred the debt after I filed Bankruptcy and I cannot discharge that debt even if I wanted to, which I don’t. I do want to repay your loan and I will repay your loan as soon as I have the money.

Pl.’s Compl., Ex. D at 3.

Plaintiff’s allegations of an agreement not to record the note are clearly contradicted by Exhibit D and will be disregarded by the Court. Thus, any claim by the Defendant that there is a contract implied in fact is not supported by the record. (For a discussion concerning the distinction between a quasi-contract or implied contract and a contract implied in fact, see *Ameripro Search, Inc.*, supra.)

Although Pennsylvania courts have recognized the propriety of civil actions to recover funds obtained as a result of extortionate threats, see *Hurt v. Stirone*, 206 A.2d 624 (Pa. 1965),<sup>3</sup> there is no case law or statutory authority in Pennsylvania recognizing a cause of action for extortion. Instantly, Plaintiff's allegations rest upon an attempt "to extort money...with threats of litigation and accusations of criminal offense". Pl.'s Compl., ¶s 82-83. Thus, not only has the Plaintiff failed to allege a viable cause of action, he fails to set forth a sufficient basis for any viable damages. The alleged improper actions of the Defendant were, at best, an **attempt** and did not result in the Defendant improperly obtaining any funds from the Plaintiff. Although, in conclusory fashion, he requests judgment in the amount of \$100,000.00 based upon the claim of extortion, the pleading is absolutely void of any legally recognizable basis for such a request pursuant to this count. Therefore, Defendant's demurrer to this count will be granted.<sup>4</sup>

Plaintiff's third cause of action is a claim of tortious interference with a business relationship. To sustain a cause of action for intentional interference with business relations, it must be alleged that: (1) there is an existing contractual relationship between the plaintiff and a third party; (2) the defendant interfered with the performance of that contract by inducing a breach or otherwise causing a third party not to perform; (3) the defendant was not privileged to act in this manner; and (4) the plaintiff suffered pecuniary loss as a result of the breach of contract. *Al Hamilton Contracting Co. v. Cowder*, 644 A.2d 188, 191 (Pa. Super. Ct. 1994). Thus, a contractual relationship between the plaintiff and another person is essential before a cause of action will lie. *Id.* Moreover, a cause of action will not stand unless there has been some act by the defendant which served to deprive the plaintiff of a benefit to which he was entitled by the contract. *Id.* The gravamen of intentional interference with business relations is the loss of pecuniary benefits following from the lost contract. *Id.*

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<sup>3</sup>*Hurt* involved the issue of whether or not a previous conviction for extortion is admissible as conclusive evidence in a civil action to recover monies which had allegedly been extorted from the plaintiff.

<sup>4</sup>This Court offers no opinion as to whether or not the Defendant has committed an offense under the Pennsylvania Crimes Code. It appears from the pleadings that the criminal allegations of the Plaintiff involve actions occurring in a jurisdiction other than Adams County.

The Plaintiff claims that the Defendant interfered with his use of co-Defendant Micelli's garage. He makes this claim despite admitting that Micelli obtained judgment against him on a Landlord Tenant Complaint filed in Cumberland County on January 26, 2001. The Court finds it incredulous that the Plaintiff is asking for an award of damages based upon an alleged deprivation of a benefit under a contract which a court has found he breached. Under the circumstances, Plaintiff does not, and cannot, argue that there was a third party breach of any contract with him. Although the Plaintiff argues that the Defendant "convinced Miceli not to consider or accept settlement offers...to resolve the issue of back rent", Pl.'s Compl., ¶ 88, the allegations imply a lack of an existing contractual relationship on that particular issue. Additionally, the Plaintiff has no clear right to settlement and, thus, cannot establish the denial of any benefit.

The Plaintiff's final cause of action is for conspiracy. He alleges that the Defendant and Miceli "wrongfully and illegally agreed to convert the property [of the plaintiff] for their own use and benefit." Pl.'s Compl., ¶ 95.

In order to state a civil cause of action for conspiracy, a plaintiff must allege: 1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; 2) an overt act done in pursuance of the common purpose; and 3) actual legal damage. *McGuire v. Shubert*, 722 A.2d 1087, 1092 (Pa. Super. Ct. 1998). Proof of malice or an intent to injure is essential to the proof of a conspiracy. *Skipworth by Williams v. Lead Industries Ass'n*, 690 A.2d 169, 174 (Pa. 1997). Before a party may succeed on a civil cause of action for conspiracy, there must be a civil cause of action for the underlying act. *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 660 (Pa. Super. Ct. 2000).

Plaintiff's pleading alleges an agreement to convert Plaintiff's property. Although the Complaint is somewhat wordy and convoluted, it essentially sets forth a factual basis wherein the Defendant obtained possession of the Plaintiff's property without his permission and for the purpose of forcing Plaintiff to repay a debt. Had the debt been secured by the property seized by the Defendant, a different result might lie. However, as alleged in Plaintiff's Complaint, the seizure of the Plaintiff's property by the Defendant was without



lawful authority. Since, for purposes of this Opinion, I must accept all properly-pled allegations in the Complaint as true, *Peerless Productions, Inc.*, supra, Plaintiff's underlying claim of conversion has merit.

Conversion is defined under Pennsylvania law as the deprivation of another's right of property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification. *Stevenson v. Economy Bank of Ambridge*, 197 A.2d 721, 726 (Pa. 1964). Although the exercise of control over the chattel must be intentional, the tort of conversion does not rest on proof of specific intent to commit a wrong. *Norriton E. Realty Corp. v. Central-Penn Nat'l Bank*, 254 A.2d 637, 638 (Pa. 1969).

It appears, therefore, that the Plaintiff has pled a cause of action for the unlawful conversion of his property and, thus, has satisfied two of the elements necessary to establish a cause of action for conspiracy. Whether Plaintiff will be able to prove "malice" necessary to establish a conspiracy remains to be seen. For purposes of a demurrer, however, the allegations create enough doubt in the merit of the demurrer that the demurrer should be resolved in favor of it being overruled. *See Emerich v. Philadelphia Ctr. for Human Dev. Inc.*, 720 A.2d 1032, 1034 n.1 (Pa. 1998).

Plaintiff's Complaint, however, is lacking the third requirement of a conspiracy: allegations of actual legal damage. *See McGuire*, supra. Plaintiff's Complaint requests judgment in his favor and against the Defendant in the amount of \$150,000.00 plus interest and costs. Although Plaintiff references an exhibit alleging the value of the converted property to be \$96,162.84, the Complaint is lacking any indication of a factual basis for judgment in the amount of \$150,000.00 against the Defendant.

Pennsylvania is a fact-pleading state. *Smith v. Brown*, 423 A.2d 743 (Pa. Super. Ct. 1980); *see also Miketic v. Baron*, 675 A.2d 324, 330 (Pa. Super. Ct. 1996); PA. R. CIV. P. 1019(a). Under the Pennsylvania system of fact pleading, the pleader must define each of the issues; every actor's performance is essential to that and must be set forth in the complaint. *Santiago v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1238 (Pa. Super. Ct. 1992); *see also Miketic*, 675 A.2d at 330; PA. R. CIV. P. 1019. Instantly, the Complaint fails to set forth facts sufficient to support Plaintiff's

request for judgment in the amount of \$150,000.00. The Plaintiff, however, will be given the opportunity to amend the Complaint in this regard.

Since the Plaintiff's Complaint will be stricken for the reasons set forth hereinabove, Defendant's other Preliminary Objection is moot. However, in order to avoid future preliminary objections, the Court reminds Plaintiff that while a pleading should inform the opposing party, with reasonable accuracy, of the nature and extent of the claim, the facts should be set forth in a concise fashion. *See Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677, 681 (Pa. Super. Ct. 1978); PA. R. CIV. P. 1019(a). Unnecessary scandalous allegations or impertinent matters which are irrelevant to the material issues of the case are improper and subject to be stricken. PA. R. CIV. P. 1028(a)(2).

For the foregoing reasons, the Plaintiff's Complaint will be stricken in its entirety. Based upon my review of the entire pleading in this matter, amendment of the Complaint in regard to Counts I, II and III will not possibly support a cause of action based upon those theories. Accordingly, the Plaintiff will not be given an opportunity to amend those counts. However, the Plaintiff is given leave to amend Count IV of his Complaint so as to comply with this Opinion or to allege any other legally cognizable cause of action.

#### ORDER OF COURT

AND NOW, this 23rd day of October, 2002, for the reasons set forth in the attached Opinion, the Defendant's Preliminary Objections to Plaintiff's Complaint are granted and the Plaintiff's Complaint is stricken. Plaintiff is not given an opportunity to amend Counts I through III, however, he will be granted an opportunity to amend Count IV or to allege any other legally cognizable cause of action. He shall file an Amended Complaint within twenty (20) days of the date of this Order. His failure to comply with the time limits set forth herein may result in the dismissal of his Complaint.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-374 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following three tracts of real estate lying and being situate along the southerly side of U.S. Highway Route 30, in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

Parcel A

BEGINNING at a point on the southern side of the Lincoln Highway leading from Chambersburg to Gettysburg on the easterly line of Tract No. 2; thence by said Highway, South 74-1/2 degrees East, 135 feet to a point; thence by Tract No. 4, South 25 degrees West, 225 feet to a point; thence North 61-1/4 degrees West, 150.5 feet to stones in the easterly line of Tract No. 2; thence by Tract No. 2, North 29-1/2 degrees East, 179.2 feet to the place of BEGINNING, described in part from the survey of P.S. Ormer, made August 12, 1921 for H.W. Newman.

Parcel B

BEGINNING at a point in U.S. Highway Route 30 at the northeast corner of Tract No. 3; thence through U.S. Highway Route 30, South 77 degrees 20 minutes East, 158.25 feet to a point marked with an "X" cut in said concrete road at lands now or formerly of Helen Mae Barnes and Robert I. Barnes; thence by the same, South 21 degrees 03 minutes West 306.4 feet to an iron pin at lands quitclaimed to South Mountain Development Company by Hollis and Margaretta P. Dick by Quitclaim Deed dated August 2, 1979, and recorded in Deed Book 346, page 1090; thence by the same, North 67 degrees 08 minutes 48 seconds West, 135.62 feet to an iron pin; thence by Tract No. 5, North 67 degrees 08 minutes 48 seconds West, 30.34 feet to an iron pin; thence North 12 degrees 04 minutes 34 seconds East, 40.05 feet to an iron pin; thence North 59 degrees 30 seconds West, 9.8 feet to a set iron pin at existing stake, being the southeasterly corner of Tract No. 3; thence by the same, North 24 degrees 48 minutes East, 222.42 feet to a point in U.S. Highway Route 30, the place of BEGINNING, CONTAINING 1.06 acres and described according to the surveys of John Howard McClellan, C.S., dated December 6, 1968, revised January 3, 1969, and of William A. Brindle Associates, dated December 1, 1976.

Parcel C

BEGINNING at an existing iron pin at the northeast corner of Lot No. 12, as

shown in the plan of "Caledonia Acres", as laid out for South Mountain Development Co., Inc., a copy of which is recorded in Adams County Plat Book No. 1, Page 17, said place of beginning being the southeastern most corner of the tract hereby conveyed; thence by Lot No. 12, North 75 degrees 50 minutes 29 seconds West, 200 feet to an existing iron pin at the northwest corner of Lot No. 12; thence by lands now or formerly of the heirs of H.A. Marshall, North 14 degrees 9 minutes 31 seconds East, 22.02 feet to an existing iron pipe marker; thence by Tract No. 2, North 14 degrees 9 minutes 31 seconds East, 92.07 feet to an existing iron pin at the southwesterly corner of Tract No. 3; thence by the same, South 67 degrees 10 minutes 26 seconds East, 170.50 feet to a set iron pin at a corner of Tract No. 4; thence by the same, South 12 degrees 04 minutes 34 seconds West, 40.05 feet to a set iron pin on the southerly line of Tract No. 4; thence along the northern line of Lot No. 13 and by Tract No. 4, South 67 degrees 08 minutes 48 seconds East, 30.34 feet to an iron pipe marker; thence running along the easterly line of Lot No. 13 of Caledonia Acres and by lands quitclaimed to South Mountain Development Co., Inc., by Quitclaim Deed dated August 2, 1979, and recorded in the Adams County Deed Book 346, page 1090, South 14 degrees 09 minutes 31 seconds West, 11.15 feet to an existing iron pin; thence continuing with the easterly line of Lot No. 13 of Caledonia Acres, South 14 degrees 09 minutes 31 seconds West, 32.64 feet to the place of BEGINNING, CONTAINING 0.4258 acres and described according to the survey of William A. Brindle Associates dated December 1, 1976.

SEIZED and taken into execution as the property of **David J. Howell & Diane M. Howell** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-333 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stone for a corner along a twelve foot alley North 70-1/2 degrees East 18 perches to a stone at an eleven foot alley; thence along said alley North 21 degrees West 52.5 feet to a stone; thence along land now or formerly of H. C. Eppleman South 72-1/2 degrees West 17.5 rods to iron pin at verge of Opossum Creek; thence along said creek South 12-1/2 degrees East 60 feet to the place of BEGINNING. CONTAINING 64 perches.

HAVING ERECTED THEREON a dwelling known as 1519 Center Mills Road, Aspers, Pennsylvania.

BEING THE SAME PREMISES WHICH William A. Maust and Audrey L. Maust by Deed dated September 18, 1998 and recorded September 29, 1998 in Adams County Deed Book 1669, Page 197, granted and conveyed unto Anthony M. Carbaugh and Joann Newberry.

SEIZED IN EXECUTION AS THE PROPERTY OF ANTHONY M. CARBAUGH AND JOANN NEWBERRY ALTER UNDER ADAMS COUNTY JUDGMENT NO. 03-S-333.

MAP & PARCEL #29-1-28

SEIZED and taken into execution as the property of **Anthony M. Carbaugh & Joann Newberry** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at an iron pin at the edge of the sidewalk on the East side of Patrick Street at corner of land now or formerly of Richard M. Phreaner; thence along land now or formerly of said Richard M. Phreaner North 59 degrees East, 194.9 feet to an iron pin at a proposed alley; thence along said proposed alley South 34 degrees 45 minutes East, 65.1 feet to an iron pin; thence along land now or formerly of Earl F. Wenschhof South 59 degrees West, 199.3 feet to an iron pin at the edge of sidewalk on the East side of Patrick Street; thence along the sidewalk of said Patrick Street North 31 degrees West, 65 feet to an iron pin at edge of said sidewalk, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Brett M. Jacques and Tamarah S. Jacques, his wife by Deed from Frank E. Basehoar and Esther Basehoar, his wife dated 11/17/2000 and recorded 11/20/2000 in Record Book 2165, Page 333.

Premises being: 59 Patrick Avenue, Littlestown, PA 17340

Tax Parcel No. 8-65

SEIZED and taken into execution as the property of **Brett M. Jacques & Tamarah S. Jacques** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-363 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four (4) tracts of land lying and being situate in Franklin Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a mark in the center of State Highway leading from Gettysburg to Chambersburg (Old Lincoln Highway); thence in the center of said State Highway, North 88 degrees 40 minutes East, 100 feet to a mark in the Highway at corner of lands now or formerly of Raymond P. Warner; thence by lands now or formerly of Raymond P. Warner and through an iron pin, South 1 degree 20 minutes East, 250 feet to an iron pin on the Northern boundary line of Tract No. 4 hereinafter described; thence by same, South 88 degrees 40 minutes West, 100 feet to a point at corner of Tract No. 2 hereinafter described; thence by same and through an iron pin, North 1 degree 20 minutes West, 250 feet to a mark in the center of the aforesaid State Highway, the place of BEGINNING.

THE above description of Tract No. 1 was taken from a draft of survey prepared by Leroy H. Winebrenner, C.S., dated July 11, 1962.

TRACT NO. 2: BEGINNING at a mark in the center line of the Old Lincoln Highway leading from Cashtown to Chambersburg at corner of Tract No. 1 above described; thence by same, South 1 degree 20 minutes East, 250 feet to a point on the Northern boundary line of Tract No. 4 hereinafter described; thence by same, South 88 degrees 40 minutes West, 50 feet to a point; thence by Tract No. 3 hereinafter described, North 1 degree 20 minutes West, 250 feet to a point in the center of the Old Lincoln Highway; thence North 88 degrees 40 minutes East, 50 feet to a mark in said center line, the place of BEGINNING.

CONTAINING 45.9 perches, more or less.

TRACT NO. 3: BEGINNING at a point in the center line of the Old Lincoln Highway leading from Cashtown to Chambersburg at corner of Tract No. 2 above described; thence by same, South 1 degree 20 minutes East, 250 feet to a point; thence South 88 degrees 40 minutes West, 25 feet to a point; thence by land now or formerly of Charles J. Verdier, North 1 degree 20 minutes West, 250 feet

to a point in the center line of the aforesaid Highway; thence by same, North 88 degrees 40 minutes East, 25 feet to the place of BEGINNING.

CONTAINING 22.95 perches, more or less.

TRACT NO. 4: An unimproved tract of land approximately 50 feet on the Easterly and Westerly boundaries, and 200 feet on the Northerly and Southerly boundaries bounded on the North by Tract No. 1 and Tract No. 2 above described and by lands now or formerly of Raymond P. Warner; on the East by lands now or formerly of Warner; on the South and West by lands now or formerly of Eugene Ojanen; otherwise described as Tract 38-F, on Map B-9 of the Tax Map of Adams County, Pennsylvania.

TITLE TO SAID PREMISES IS VESTED IN Galen C. Walters, Jr. and Kristy M. Bowers, single persons as joint tenants with right of survivorship by Deed from Robert R. Fournier, etux dated 3/10/2000 and recorded 3/15/2000 in Record Book 2014 Page 194.

Premises being: 3280 Old Route 30, Orrtanna, PA 17353

Tax Parcel No. 133 Map #B9

SEIZED and taken into execution as the property of **Galen C. Walters, Jr. & Kristy M. Bowers** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

**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 JOHN R. ELINE, DEC'D**  
 Late of the Borough of McSherrystown, Adams County, Pennsylvania  
 Executrix: Anita L. McPherson, 1320 Round Oak Court, McLean, VA 22101  
 Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

**ESTATE OF JAMES L. GURRY, JR., DEC'D**  
 Late of Mt. Pleasant Township, Adams County, Pennsylvania  
 Administrator c.t.a.: James M. Thomas, 2345 Fairchild Lane, West Chicago, IL 60185  
 Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ANNE N. HAGIE, DEC'D**  
 Late of Franklin Township, Adams County, Pennsylvania  
 Executrix: Susan H. Crouse, 520 University Drive, Biglerville, PA 17307  
 Attorney: Ross H. Pifer, Esq., Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF RAE LOUISE SCHOES-TRAND, DEC'D**  
 Late of Oxford Township, Adams County, Pennsylvania  
 Executrix: Mary Ann Redding Cardinale, 323 South York Street, Manchester, MD 21102  
 Attorney: Judith Koper Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF GLADYS VIOLA SNEERINGER, DEC'D**  
 Late of Hamilton Township, Adams County, Pennsylvania  
 Executors: Joann A. Hoff, 70 Green Ridge Road, New Oxford, PA 17350; Judy Ann Rohrer, 1322 Round House Lane, Alexandria, VA 22314  
 Attorney: Larry W. Wolf, Esq., 215 Broadway, Hanover, PA 17331

**SECOND PUBLICATION**

**ESTATE OF DOROTHY O. BOWERS, DEC'D**  
 Late of Mt. Joy Township, Adams County, Pennsylvania  
 Co-Executors: Gloria A. Burr & Paul F. Tice, III, 104 Bowers Road, Littlestown, PA 17340-9468  
 Attorney: G. Thomas Miller, Esq., 401 S. 32nd Street, Camp Hill, PA 17011-5105

**ESTATE OF MARY EVA MYERS, DEC'D**  
 Late of Mount Pleasant Township, Adams County, Pennsylvania  
 Executrices: Patricia Anthony & Jean Anthony, 26 Easy Street, Littlestown, PA 17340  
 Attorney: Daniel M. Frey, Esq., Barley, Snyder, Senft & Cohen, LLC., 14 Center Square, Hanover, PA 17331

**ESTATE OF MARIE A. OSBORN, DEC'D**  
 Late of Oxford Township, Adams County, Pennsylvania  
 Executrix: Diane M. Yupatoff  
 Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

**ESTATE OF NORMAN E. WALLEN, SR., DEC'D**  
 Late of Hamilton Township, Adams County, Pennsylvania  
 Executors: Pamela K. Wallen & Norman E. Wallen, Jr.  
 Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

**THIRD PUBLICATION**

**ESTATE OF PAUL R. BLACK, DEC'D**  
 Late of Huntington Township, Adams County, Pennsylvania  
 Co-Executors: Stephen E. Black, 1010 South 2nd St., Clearfield, PA 16830; Gary L. Black, 11 Ridgeway Drive, Mechanicsburg, PA 17050; Dennis P. Black, 765 Clayton Dr., Aurora, OH 44202  
 Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF NANCY S. BUFFINGTON, a/k/a NANCY CATHARINE SLONAKER, DEC'D**  
 Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: Teresa E. Slonaker, 107 Ridge Avenue, Gettysburg, PA 17325  
 Attorney: Walton V. Davis, 63 West High Street, Gettysburg, PA 17325

**ESTATE OF MARY L. MESSINGER, DEC'D**  
 Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Co-Executors: Darlene L. Moore Parlette, 4744 Baltimore Pike, Littlestown, PA 17340; Ricky H. Messinger, 730 Pine Grove Road, Hanover, PA 17331; Benjamin F. Messinger, 63 James Avenue, Littlestown, PA 17340  
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
  
CIVIL ACTION—LAW  
NO. 03-S-332

G. ROBERT DEATRICK, individually,  
and ADAMS COUNTY NATIONAL  
BANK, personal representative of the  
Estate of Dorothy R. Deatrck a/k/a  
Dorothy M. Deatrck, deceased, Plaintiffs  
vs.

WILLIE J. WILLIAMS and MARY E.  
WILLIAMS, Defendants

TO: Willie J. Williams and Mary E.  
Williams

You have been named as Defendants  
in an Action to Quiet Title instituted by  
the Plaintiffs G. Robert Deatrck and  
Adams County National Bank, personal  
representative of the Estate of Dorothy  
R. Deatrck a/k/a Dorothy M. Deatrck,  
deceased.

The Plaintiffs allege in the Complaint  
in this action that you entered into an  
Installment Sales Agreement for the pur-  
chase of a tract of land in Franklin  
Township, Adams County, Pennsylvania  
known as Lot No. 49 on a plan of lots of  
Recreational Real Estate Company as  
shown on a plan recorded in Adams  
County Plat Book 4 at Page 50. An  
Installment Sales Agreement was duly  
recorded in the Office of the Recorder of  
Deeds of Adams County, Pennsylvania,  
in Adams County Record Book 435 at  
Page 955. Plaintiffs claim that you have  
defaulted under the terms of the  
Installment Sales Contract and have  
failed to pay the purchase price for the  
real estate. Plaintiffs are asking that any  
right, title, and interest that you may have  
to the aforementioned real estate be ter-  
minated and that you be and your heirs  
be forever barred from asserting any  
claims against said real estate.

You are hereby notified to plead to the  
Complaint in this case, of which the  
above is a brief summary within twenty  
(20) days from June 13, 2003, the date  
of publication.

If you wish to defend, you must enter  
a written appearance personally or by  
attorney and file your defenses or objec-  
tions in writing with the court. You are  
warned that if you fail to do so the case  
may proceed without you and judgment  
may be entered against you without fur-  
ther notice for the relief requested by the  
Plaintiffs. You may lose money or prop-  
erty 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 Street  
Gettysburg, PA 17325  
Telephone (717) 334-6781

Robert E. Campbell  
Attorney for Plaintiffs  
112 Baltimore Street  
Gettysburg, PA 17325

6/13

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA  
  
CIVIL ACTION—LAW  
NO. 03-S-331

G. ROBERT DEATRICK, individually,  
and ADAMS COUNTY NATIONAL  
BANK, personal representative of the  
Estate of Dorothy R. Deatrck a/k/a  
Dorothy M. Deatrck, deceased, Plaintiffs  
vs.

JAMES S. KING and DOLWYN KING,  
Defendants

TO: James S. King and Dolwyn King

You have been named as Defendants  
in an Action to Quiet Title instituted by  
the Plaintiffs G. Robert Deatrck and  
Adams County National Bank, personal  
representative of the Estate of Dorothy  
R. Deatrck a/k/a Dorothy M. Deatrck,  
deceased.

The Plaintiffs allege in the Complaint  
in this action that you entered into an  
Installment Sales Agreement for the pur-  
chase of a tract of land in Franklin  
Township, Adams County, Pennsylvania  
known as Lot No. 25 on a plan of lots of  
Recreational Real Estate Company as  
shown on a plan recorded in Adams  
County Plat Book 4 at Page 50. An  
Installment Sales Agreement was duly  
recorded in the Office of the Recorder of  
Deeds of Adams County, Pennsylvania,  
in Adams County Record Book 705 at  
Page 56. Plaintiffs claim that you have  
defaulted under the terms of the  
Installment Sales Contract and have  
failed to pay the purchase price for the  
real estate. Plaintiffs are asking that any  
right, title, and interest that you may have  
to the aforementioned real estate be ter-  
minated and that you be and your heirs  
be forever barred from asserting any  
claims against said real estate.

You are hereby notified to plead to the  
Complaint in this case, of which the  
above is a brief summary within twenty  
(20) days from June 13, 2003, the date  
of publication.

If you wish to defend, you must enter  
a written appearance personally or by  
attorney and file your defenses or objec-  
tions in writing with the court. You are  
warned that if you fail to do so the case  
may proceed without you and judgment

may be entered against you without fur-  
ther notice for the relief requested by the  
Plaintiffs. You may lose money or prop-  
erty or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO  
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NOT HAVE A LAWYER OR CANNOT  
AFFORD ONE, GO TO OR TELEPHONE  
THE OFFICE SET FORTH BELOW TO  
FIND OUT WHERE YOU CAN GET  
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Court Administrator  
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Gettysburg, PA 17325  
Telephone (717) 334-6781

Robert E. Campbell  
Attorney for Plaintiffs  
112 Baltimore Street  
Gettysburg, PA 17325

6/13

# Adams County Legal Journal

Vol. 45

June 20, 2003

No. 4, pp. 21-31

## IN THIS ISSUE

### COMMONWEALTH VS. ATTERBERRY

#### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-821 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground being the western half of a town lot situate in the Borough of Gettysburg, Adams County, Pennsylvania, more particularly bounded and described as follows, to-wit:

BEGINNING at a point on West Middle Street at corner of lot sometimes designated as Lot #15 being the eastern part of said town lot now or formerly owned by Jacob McDonnell; thence by said Lot #15, South one hundred eighty (180) feet to a twelve (12) foot alley; thence along said alley, West thirty (30) feet to a part of town originally laid out by James Gettys; thence by the same, North one hundred eighty (180) feet to West Middle Street; thence along West Middle Street thirty (30) feet to the point, the place of BEGINNING.

BEING known as 144 West Middle Street, Gettysburg, PA 17325

Property ID No.: 10-91

TITLE TO SAID PREMISES IS VESTED IN James G. Edge, a single man, by Deed from Dorothy J. O'Dell, Executrix of the Last Will and Testament of Mary E.

Little, deceased, dated 05/26/95, recorded 05/30/95, in Deed Book 1035, Page 184.

SEIZED and taken into execution as the property of James G. Edge and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

#### FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately May 2, 2003, a certificate for the conduct of a

business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of FLEABAGS & FURBALLS PET CARE SERVICES, with its principal place of business at P.O. Box 4913, Gettysburg, PA. The names and addresses of the persons owning or interested in said business are Linda Mohr, P.O. Box 4913, Gettysburg, PA 17325, residing at 2134 Mummasburg Road, Gettysburg, PA 17325. The character or nature of the business is animal care at the client's home.

6/20

#### INCORPORATION NOTICE

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

The name of the corporation is MOUNT PLEASANT MASONRY & CARPENTRY, INC.

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

Mount Pleasant Masonry &  
Carpentry, Inc.  
2928 Hanover Pike  
Hanover, PA 17333

6/20

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

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812  
Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-477 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the easterly right of way line of Kinneman Road in the Borough of Abbottstown, County of Adams, and State of Pennsylvania known and numbered as Lot No. 33, on a plan for Abbotts Manor recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69, page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the easterly right of way line of the said Kinneman Road, at a corner of Lot No. 32 on said plan; thence extending along the said Lot No. 32 South 88 degrees 36 minutes 40 seconds East 110 feet to a point; thence South 1 degree 23 minutes 20 seconds West 85 feet to a point, at a corner of Lot No. 34; thence extending along the said Lot No. 34 South 88 degrees 36 minutes 40 seconds West 120 feet to a point on the easterly right of way line of Kinneman Road; thence extending along the said right of way line of Kinneman Road North 1 degree 23 minutes 20 seconds East 85 feet to the point and place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Christopher A. Bless and Kimberlyn M. Bless by Deed of Correction from Garland Construction, Inc., a Pennsylvania Corporation, dated 6/15/98, recorded 6/16/98 in Record Book 1601 Page 330.

Tax Parcel: 5-33

Premises Being: 68 Kinneman Road, Abbottstown, PA 17301

SEIZED and taken into execution as the property of Christopher A. Bless & Kimberlyn M. Bless and to be sold by me.

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

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

Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land and premises situate, lying and being in the Township of Conewago, County of Adams and Commonwealth of Pennsylvania, more particularly described as follows:

BEGINNING at a point in the Legislative Route 01005 at lands now or formerly of Peter Sheppard; thence along said last mentioned lands, South seventy-eight (78) degrees twenty-one (21) minutes West, two hundred seven (207) feet to a stone; thence along said last mentioned lands, South forty-four (44) degrees fifty-eight (58) minutes East, sixty-two (62) feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South forty-four (44) degrees fifty-eight (58) minutes East, sixty-two (62) feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South seventy-three (73) degrees thirty (30) minutes East, one hundred twenty-six and seventy-five one-hundredths (126.75) feet to a point in the centerline of Legislative Route 01005; thence along and with the centerline of Legislative Route 01005, North twelve (12) degrees East, one hundred twenty-six and sixty-seven one-hundredths (126.67) feet to the point and

place of BEGINNING. Known as 251 Narrow Drive, Hanover, PA 17331.

BEING the same premises which Donald W. Teal and Debra Ann Teal by Deed dated the 24th day of May, 1997, and recorded at Adams County in the Office of the Recorder of Deeds, in and for the County of Adams, on the 4th day of June, 1997, in Record Book 1383, Page 253, granted and conveyed unto Jo Zartman.

Tax Map: K16. Parcel: 11

Being known as: 251 Narrow Drive, Hanover, PA 17331

SEIZED and taken into execution as the property of Jo Zartman and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of incorporation were filed with the Commonwealth of Pennsylvania.

The name of the corporation is RUSSELL J. WOLF ENTERPRISES, INC.

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

Russell J. Wolf Enterprises, Inc.  
65 Race Horse Road  
Hanover, PA 17331

6/20



## COMMONWEALTH VS. ATTERBERRY

1. The question of whether a lease or a security interest is created by a particular transaction is no longer within the exclusive control of the parties and subject to possible manipulation through artful document drafting. Rather, the issue is to be determined by reference to the uniform criteria set forth in the revised statute.

2. Pennsylvania courts have held that if the purchase option price is comparable to the property's fair market value, it is more likely that the agreement is a true lease rather than a security agreement. It is Defendant's burden to offer evidence suggesting that the purchase option price is not equivalent to the fair market value of the property.

3. The analysis under 13 Pa.C.S.A. §1201(6) requires the Court to consider the entire "transaction" in search of the answer to this question (lease vs. Security interest). In so doing the Court is not constrained to look solely to the documents signed by the parties which bear the designation "lease" or which make use of terms commonly found in leases. Rather the analysis may include an examination of both parol and extrinsic evidence if shown to be relevant to the determination of same.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CC-773-02, COMMONWEALTH VS. DORETHEA ATTERBERRY.

Paul Dean, Esq., District Attorney, for Commonwealth

Anthony Miley, Esq., for Defendant

Kuhn, P.J., October 23, 2002

### MEMORANDUM OPINION

Before this Court is Defendant's Petition for Habeas Corpus. Defendant is charged with Theft of Leased Property (18 Pa.C.S.A. § 3932(a)). That offense, however, does not apply to secured transactions. Defendant contends that the facts of this case fall within the exception. Therefore, the issue is whether a "rental-purchase agreement" entered into by Defendant and Gettysburg Rental Center falls within the definition of "security interest" set forth in 13 Pa.C.S.A. § 1201, relating to the Uniform Commercial Code (hereinafter "U.C.C."). For the reasons stated herein, Defendant's Petition is dismissed.

The background is derived from the Affidavit of Probable Cause and the rental agreement itself. Defendant entered into a "rental-purchase agreement" (hereinafter "the Agreement") on May 12, 2001. The terms of the Agreement were as follows. Defendant was to pay \$26.58 per week for the rental of two diamond rings, Model Numbers T1105 and T1116. The initial term of the Agreement was one week. Defendant had the option to renew the Agreement for

additional weeks by making rental payments on or before the Monday of each successive term. The Agreement could be renewed for a total of 78 weekly terms.

The Agreement further provided that Defendant could acquire ownership of the rings either by renewing the Agreement for a total of 78 weeks or by exercising an early purchase option. The early purchase option gave Defendant the opportunity to purchase the rings at any time after paying the initial rental payment. The purchase price under the early purchase option would be the cash price less 50% of all rental payments made up to that time.<sup>1</sup>

Defendant was not obligated to renew the Agreement. Paragraph 10 of the Agreement states:

You have no obligation to renew this Agreement and may terminate it without penalty at any time by returning the property to us. Should you return the property early, you will not receive a refund for any unexpired portion of a term. This Agreement will automatically terminate if you fail to make a timely rental payment. If this Agreement terminates and you fail to return the property to us, you will be liable for rent from the date this Agreement terminates to the date the property is returned to us.

Paragraph 15 of the Agreement further states:

If the property is lost, stolen or damaged in excess of ordinary wear and tear, this Agreement will terminate and you will be liable to us for either the fair market value of the property, your early purchase option price, or the cost of repairs, whichever amount is lowest.

Defendant allegedly made timely payments for the rings until August 27, 2001 when she failed to make her weekly payment or any subsequent payments. On November 29, 2001, The Gettysburg Rental Center forwarded a registered letter to Defendant demanding return of the rings. Defendant responded by stating that the rings were missing and that she would set up a payment plan. When the police became involved, Defendant allegedly stated that the rings had been stolen from her apartment. She further advised that she would

---

<sup>1</sup>The cash price of Model T1105 was listed as \$1,125.00. The cash price of Model T1116 was listed as \$562.50.

pay no more money to the Gettysburg Rental Center because the rings were gone and because an appraisal revealed that they were not worth the amount she paid for them.

18 Pa.C.S.A. § 3932 states:

(a) Offense defined.-- A person who obtains personal property under an agreement for the lease or rental of the property is guilty of theft if he intentionally deals with the property as his own.

(b) Definition.-- As used in this section, a person "deals with the property as his own" if he sells, secretes, destroys, converts to his own use or otherwise disposes of the property.

(c) Presumption.-- A person shall be prima facie presumed to have intent if he:

...

(2) fails to return the property to its owner within seven days after a written demand to return the property is delivered by registered or certified mail to the person's last known address.

(d) Exception.—This section shall not apply to secured transactions as defined in Title 13 (relating to commercial code).

Defendant argues that the Agreement between herself and the Gettysburg Rental Center comes within the secured transaction exception set forth in Section 3932(d), and the charge of Theft of Leased Property should therefore be dismissed.

Division 9 of the U.C.C. relating to Secured Transactions applies to security agreements. 13 Pa.C.S.A. § 9102 defines a security agreement as "an agreement which creates or provides for a security interest." A security interest is then defined as "an interest in personal property or fixtures which secures payment or performance of an obligation." 13 Pa.C.S.A. § 1201. Within the definition of the term "security interest," is a provision entitled "Determination of lease or security interest" 13 Pa.C.S.A. § 1201(5). This provision is intended to "draw a sharper line between leases and security interests disguised as leases to create greater certainty in commercial transactions." See 13 Pa.C.S.A. § 1201 (Supp. 2002)(U.C.C. Comments).

To that end, 13 Pa.C.S.A. §1201 was amended in 1992 to incorporate revised Section 1-201(37) of Article 2A of the Uniform Commercial Code (hereinafter "UCC"). *In re Murray*, 191 B.R. 309 (Bkrcty.E.D.Pa. 1996) aff'd, 201 B.R. 381 (E.D.Pa. 1996).

The former version of the statute was much less detailed than its current iteration and led to the development of inconsistent views among courts regarding the criteria to be applied in determining whether an agreement creates a true lease or a security interest...In contrast, the revised statute provides standardized provisions intended to focus a court's inquiry on the most salient criteria for distinguishing between true leases and those intended for security. *Id.* at 313.

*Murray* was the first Pennsylvania case to interpret 13 Pa.C.S.A. § 1201(5), formerly 13 Pa.C.S.A. § 1201(6), entitled "determination of lease or security interest." The Court therefore relied on decisions from other jurisdictions which interpret U.C.C. § 1-201(37) and on a decision interpreting an Illinois statute that is substantially similar to 13 Pa.C.S.A. § 1201. The Court stated:

The judicial opinions construing U.C.C. § 1-201(37) and the Official Uniform Commercial Code Comments ("Comments") clearly place the focus of the inquiry under the revised statute on the economics of the transaction rather than on the intent of the parties as had been the emphasis previously... The Comments explain:

Reference to the intent of the parties to create a security interest has led to unfortunate results. In discovering intent, courts have relied upon factors that were thought to be more consistent with sales or loans than leases. Most of these criteria however, are as applicable to true leases as to security interests.... Accordingly, amended Section 1-201(37) deletes all reference to the parties' intent. *Id.* at 314, citing U.C.C. § 1-201 historical notes (other citations omitted).

The United States Bankruptcy Court for the Eastern District of Pennsylvania further stated in a later case,

Thus, the question of whether a lease or a security interest is created by a particular transaction is no longer within

the exclusive control of the parties and subject to possible manipulation through artful document drafting. Rather, the issue is to be determined by reference to the uniform criteria set forth in the revised statute. *In re Kim*, 232 B.R. 324, 329 (1999).

The following is the criteria set forth in 13 Pa.C.S.A. § 1201(5) to be used in determining whether a transaction creates a true lease or a security interest disguised as a lease.

**(5) Determination of lease or security interest.** – Whether a transaction creates a lease or security interest is determined by the facts of each case; however:

(i) A transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and not subject to termination by the lessee and:

(A) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(B) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(C) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(D) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(ii) A transaction does not create a security interest merely because it provides that:

(A) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods

is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(B) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees, or service or maintenance costs with respect to the goods;

(C) the lessee has an option to renew the lease or to become the owner of the goods;

(D) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(E) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(iii) For purposes of determining whether the transaction is a lease or a security interest:

(A) Additional consideration is not nominal if:

(I) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(II) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of

performing under the lease agreement if the option is not exercised.

(B) “Reasonably predictable” and “remaining economic life of the goods” are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(C) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

With regard to Section 1201(5)(i), the *Murray* Court held, “without looking at all the facts, a lease will be construed as a security interest if a debtor cannot terminate the lease, and if one of the four enumerated terms is present in the lease.” *In re Murray*, 191 B.R. at 315. For leases which satisfy this bright line test, “the case-by-case analysis exception and the inquiry comes to an end — such leases constitute security agreements as a matter of law.” *In re Kim*, 232 B.R. 324, 330 (Bkrcty.E.D.Pa. 1999).<sup>2</sup> As noted above, Section 10 of the Agreement entered into by Defendant and Gettysburg Rental Center allowed Defendant to terminate the Agreement at any time without penalty by returning the property. Section 10 of the Agreement further stated that Defendant would not receive a refund for any unexpired portion of the term if she were to return the

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<sup>2</sup> In *In re Kim*, the Court concluded that the lease was a security agreement as a matter of law because it was non-cancelable by the lessee prior to the end of the lease term and because the lessee had the option to become the owner of the property at the end of the term by paying the sum of \$1.00. See also *In re Eagle Enterprises, Inc.*, 223 B.R. 290 (Bkrcty.E.D.Pa. 1998), where the Court held that the leases in question constituted security agreements because they were not terminable before the end of their terms, and they provided the lessee with the right to purchase the property for a nominal sum.

property early. Nevertheless, it appears that Defendant could have terminated the Agreement even within the first week. Therefore, the Agreement cannot be deemed a security interest as a matter of law under Section 1201(5)(i), and we must examine the non-exclusive list of factors set forth in 13 Pa.C.S.A. § 1201(5)(ii).

The Agreement entered into by Defendant and Gettysburg Rental Center is somewhat unusual in the sense that Defendant could have become the owner of the rings in two ways. Defendant could have renewed the Agreement for a total of 78 weeks by paying \$26.58 every Monday and by otherwise complying with the terms of the Agreement. By the 78th week, Defendant would have paid the “total cost” of the rings (\$2,073.24), and would have become the owner of the rings.<sup>3</sup> Defendant also could have exercised an early purchase option by paying the “cash price” (\$1,687.50) less 50% of all rental payments she had made up to that time. For example, if Defendant had exercised her early purchase option at the time she stopped making weekly payments, her cost would have been \$1,488.15. Defendant made 15 weekly payments of \$26.58 for a total of \$398.70 between May 12 and August 27, 2001. Therefore, her early purchase option price on August 27, 2001 would have been the “cash price” of the rings (\$1,687.50) less 50% of \$398.70 for a total of \$1,488.15.

With those calculations in mind, we now turn to the list of factors set forth in 13 Pa.C.S.A. §1201(5)(ii). As noted above, Paragraph 15 of the Agreement provides that if the rings are lost, stolen, or damaged in excess of ordinary wear and tear, the lessee must pay the fair market value, the early purchase option price, or the cost of repairs, whichever amount is lowest. Defendant therefore assumed the risk of loss as described in 13 Pa.C.S.A. § 1201(5)(ii)(B). Furthermore, the Agreement afforded Defendant the opportunity to renew for a total of 78 weekly terms or to exercise an early purchase option as described in 13 Pa.C.S.A. § 1201(5)(ii)(C). Finally, Paragraph 10 of the Agreement states, “[i]n the absence of evidence to the contrary, your early purchase option price will be presumed to be the property’s fair market value.” Defendant therefore had an option to become

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<sup>3</sup>The Agreement explains that the “total cost” of the rings reflects the “cash price” of the rings, which totals \$1,687.50, plus \$385.74, which is the amount Defendant would have paid for lease services if she had renewed the Agreement for a total of 78 weekly terms.



the owner of the rings for a fixed price equal to the reasonably predictable fair market value of the goods at the time the option was to be performed, as described in 13 Pa.C.S.A. § 1201(5)(ii)(E). Nevertheless, 13 Pa.C.S.A. § 1201(5)(ii) specifically states that a transaction does not create a security interest merely because the above factors are present.

Pennsylvania courts have held, however, that if the purchase option price is comparable to the property's fair market value, it is more likely that the agreement is a true lease rather than a security agreement. See *Murray*, 191 B.R. 309. As the Court noted in *Murray*, it is the debtor's burden to prove that the agreement is other than what it purports to be. *Murray*, 191 B.R. at 316. It is therefore Defendant's burden to offer evidence suggesting that the purchase option price is not equivalent to the fair market value of the rings. Defendant alleges that the rings are worth less than the amount referenced in the Agreement; however, she has offered no evidence in support of that allegation.

The Court also stated in *Murray* that factors such as the debtor's assumption of the risk of loss are typical of "net" leases rather than security agreements, and "reflect less the character of the transaction than the strength of the parties' respective bargaining positions." *Id.* The Court further held that in order for a transaction to have created a security interest, it must have provided the debtor with some ownership interest. *Id.* The Court pointed out that *Murray's* lease provided him only with use and possession, not ownership, of the property. *Murray's* use of the property was defined by a set term, at the completion of which, he was obligated to either return it or pay the purchase option price which was equal to the reasonably predictable fair market value of the property. *Id.* at 316-317.

Here, Paragraph 6 of the Agreement specifically states that Defendant would not acquire ownership of the property unless she renewed the Agreement for a total of 78 weekly terms or exercised her early purchase option. Paragraph 8 of the Agreement further states,

You will be renting the property. We own the property and retain title until you pay the total number of payments or exercise your early purchase option.

Defendant's use and possession of the rings was also limited to one week increments. Defendant was obligated to return the goods if she did not renew the Agreement or exercise her early purchase option. Paragraph 10 of the Agreement provides,

This Agreement will automatically terminate if you fail to make a timely rental payment. If this Agreement terminates and you fail to return the property to us, you will be liable for rent from the date this Agreement terminates to the date the property is returned to us.

Based on the circumstances outlined above, the Court concluded in *Murray* that the debtor had not satisfied his burden of demonstrating that the lease in question was a security agreement rather than a true lease. Furthermore, the United States District Court for the Eastern District of Pennsylvania has held that features such as those present in the Agreement between Defendant and Gettysburg Rental Center are indicative of a true lease. In *In re Phoenix Pipe & Tube, L.P.*, 1993 U.S. Dist. LEXIS 7653, 8-9 (E.D.Pa. 1993), the Court noted that an agreement is likely a true lease if the lessor can not compel the debtor to make payment of the full purchase price and the debtor has no obligation to purchase, pay for or assume title to the property at any time.

The terms of the early purchase option along with several other provisions of the Agreement between Defendant and Gettysburg Rental Center indicate that the transaction created a true lease rather than a security agreement; however, this Court concedes that when the option to acquire ownership through renewal of the Agreement is considered in light of the factors set forth in 13 Pa.C.S.A. § 1201(6), different results are possible. As the District Court noted in *In re Kim*, 232 B.R. at 330,

the analysis under 13 Pa.C.S.A. § 1201(6) requires the Court to consider the entire "transaction" in search of the answer to this question. In so doing the Court is not constrained to look solely to the documents signed by the parties which bear the designation "lease" or which make use of terms commonly found in leases. Rather, the analysis may include an examination of both parol and extrinsic evidence if shown to be relevant to the determination of the issue.

Nevertheless, because we are dealing with a pre-trial motion, the totality of the circumstances appears sufficient to warrant dismissal of Defendant's Petition. This Court will, however, allow the parties to present further evidence with regard to whether the Agreement is in fact a lease or a security agreement.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 23rd day of October, 2002, Defendant's Petition for Habeas Corpus, filed July 25, 2002, is dismissed.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-374 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following three tracts of real estate lying and being situate along the southerly side of U.S. Highway Route 30, in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

Parcel A

BEGINNING at a point on the southern side of the Lincoln Highway leading from Chambersburg to Gettysburg on the easterly line of Tract No. 2; thence by said Highway, South 74-1/2 degrees East, 135 feet to a point; thence by Tract No. 4, South 25 degrees West, 225 feet to a point; thence North 61-1/4 degrees West, 150.5 feet to stones in the easterly line of Tract No. 2; thence by Tract No. 2, North 29-1/2 degrees East, 179.2 feet to the place of BEGINNING, described in part from the survey of P.S. Orner, made August 12, 1921 for H.W. Newman.

Parcel B

BEGINNING at a point in U.S. Highway Route 30 at the northeast corner of Tract No. 3; thence through U.S. Highway Route 30, South 77 degrees 20 minutes East, 158.25 feet to a point marked with an "X" cut in said concrete road at lands now or formerly of Helen Mae Barnes and Robert I. Barnes; thence by the same, South 21 degrees 03 minutes West 306.4 feet to an iron pin at lands quitclaimed to South Mountain Development Company by Holles and Margaretta P. Dick by Quitclaim Deed dated August 2, 1979, and recorded in Deed Book 346, page 1090; thence by the same, North 67 degrees 08 minutes 48 seconds West, 135.62 feet to an iron pin; thence by Tract No. 5, North 67 degrees 08 minutes 48 seconds West, 30.34 feet to an iron pin; thence North 12 degrees 04 minutes 34 seconds East, 40.05 feet to an iron pin; thence North 59 degrees 30 seconds West, 9.8 feet to a set iron pin at existing stake, being the southeasterly corner of Tract No. 3; thence by the same, North 24 degrees 48 minutes East, 222.42 feet to a point in U.S. Highway Route 30, the place of BEGINNING, CONTAINING 1.06 acres and described according to the surveys of John Howard McClellan, C.S., dated December 6, 1968, revised January 3, 1969, and of William A. Brindle Associates, dated December 1, 1976.

Parcel C

BEGINNING at an existing iron pin at the northeast corner of Lot No. 12, as

shown in the plan of "Caledonia Acres", as laid out for South Mountain Development Co., Inc., a copy of which is recorded in Adams County Plat Book No. 1, Page 17, said place of beginning being the southeastern most corner of the tract hereby conveyed; thence by Lot No. 12, North 75 degrees 50 minutes 29 seconds West, 200 feet to an existing iron pin at the northwest corner of Lot No. 12; thence by lands now or formerly of the heirs of H.A. Marshall, North 14 degrees 9 minutes 31 seconds East, 22.02 feet to an existing iron pipe marker; thence by Tract No. 2, North 14 degrees 9 minutes 31 seconds East, 92.07 feet to an existing iron pin at the southwesterly corner of Tract No. 3; thence by the same, South 67 degrees 10 minutes 26 seconds East, 170.50 feet to a set iron pin at a corner of Tract No. 4; thence by the same, South 12 degrees 04 minutes 34 seconds West, 40.05 feet to a set iron pin on the southerly line of Tract No. 4; thence along the northern line of Lot No. 13 and by Tract No. 4, South 67 degrees 08 minutes 48 seconds East, 30.34 feet to an iron pipe marker; thence running along the easterly line of Lot No. 13 of Caledonia Acres and by lands quitclaimed to South Mountain Development Co., Inc., by Quitclaim Deed dated August 2, 1979, and recorded in the Adams County Deed Book 346, page 1090, South 14 degrees 09 minutes 31 seconds West, 11.15 feet to an existing iron pin; thence continuing with the easterly line of Lot No. 13 of Caledonia Acres, South 14 degrees 09 minutes 31 seconds West, 32.64 feet to the place of BEGINNING, CONTAINING 0.4258 acres and described according to the survey of William A. Brindle Associates dated December 1, 1976.

SEIZED and taken into execution as the property of **David J. Howell & Diane M. Howell** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-333 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stone for a corner along a twelve foot alley North 70-1/2 degrees East 18 perches to a stone at an eleven foot alley; thence along said alley North 21 degrees West 52.5 feet to a stone; thence along land now or formerly of H. C. Eppleman South 72-1/2 degrees West 17.5 rods to iron pin at verge of Opossum Creek; thence along said creek South 12-1/2 degrees East 60 feet to the place of BEGINNING. CONTAINING 64 perches.

HAVING ERECTED THEREON a dwelling known as 1519 Center Mills Road, Aspers, Pennsylvania.

BEING THE SAME PREMISES WHICH William A. Maust and Audrey L. Maust by Deed dated September 18, 1998 and recorded September 29, 1998 in Adams County Deed Book 1669, Page 197, granted and conveyed unto Anthony M. Carbaugh and Joann Newberry.

SEIZED IN EXECUTION AS THE PROPERTY OF ANTHONY M. CARBAUGH AND JOANN NEWBERRY ALTER UNDER ADAMS COUNTY JUDGMENT NO. 03-S-333.

MAP & PARCEL #29-1-28

SEIZED and taken into execution as the property of **Anthony M. Carbaugh & Joann Newberry** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at an iron pin at the edge of the sidewalk on the East side of Patrick Street at corner of land now or formerly of Richard M. Phreaner; thence along land now or formerly of said Richard M. Phreaner North 59 degrees East, 194.9 feet to an iron pin at a proposed alley; thence along said proposed alley South 34 degrees 45 minutes East, 65.1 feet to an iron pin; thence along land now or formerly of Earl F. Wenschhof South 59 degrees West, 199.3 feet to an iron pin at the edge of sidewalk on the East side of Patrick Street; thence along the sidewalk of said Patrick Street North 31 degrees West, 65 feet to an iron pin at edge of said sidewalk, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Brett M. Jacques and Tamarah S. Jacques, his wife by Deed from Frank E. Basehoar and Esther Basehoar, his wife dated 11/17/2000 and recorded 11/20/2000 in Record Book 2165, Page 333.

Premises being: 59 Patrick Avenue, Littlestown, PA 17340

Tax Parcel No. 8-65

SEIZED and taken into execution as the property of **Brett M. Jacques & Tamarah S. Jacques** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-363 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four (4) tracts of land lying and being situate in Franklin Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a mark in the center of State Highway leading from Gettysburg to Chambersburg (Old Lincoln Highway); thence in the center of said State Highway, North 88 degrees 40 minutes East, 100 feet to a mark in the Highway at corner of lands now or formerly of Raymond P. Warner; thence by lands now or formerly of Raymond P. Warner and through an iron pin, South 1 degree 20 minutes East, 250 feet to an iron pin on the Northern boundary line of Tract No. 4 hereinafter described; thence by same, South 88 degrees 40 minutes West, 100 feet to a point at corner of Tract No. 2 hereinafter described; thence by same and through an iron pin, North 1 degree 20 minutes West, 250 feet to a mark in the center of the aforesaid State Highway, the place of BEGINNING.

The above description of Tract No. 1 was taken from a draft of survey prepared by Leroy H. Winebrenner, C.S., dated July 11, 1962.

TRACT NO. 2: BEGINNING at a mark in the center line of the Old Lincoln Highway leading from Cashtown to Chambersburg at corner of Tract No. 1 above described; thence by same, South 1 degree 20 minutes East, 250 feet to a point on the Northern boundary line of Tract No. 4 hereinafter described; thence by same, South 88 degrees 40 minutes West, 50 feet to a point; thence by Tract No. 3 hereinafter described, North 1 degree 20 minutes West, 250 feet to a point in the center of the Old Lincoln Highway; thence North 88 degrees 40 minutes East, 50 feet to a mark in said center line, the place of BEGINNING.

CONTAINING 45.9 perches, more or less.

TRACT NO. 3: BEGINNING at a point in the center line of the Old Lincoln Highway leading from Cashtown to Chambersburg at corner of Tract No. 2 above described; thence by same, South 1 degree 20 minutes East, 250 feet to a point; thence South 88 degrees 40 minutes West, 25 feet to a point; thence by land now or formerly of Charles J. Verdier, North 1 degree 20 minutes West, 250 feet

to a point in the center line of the aforesaid Highway; thence by same, North 88 degrees 40 minutes East, 25 feet to the place of BEGINNING.

CONTAINING 22.95 perches, more or less.

TRACT NO. 4: An unimproved tract of land approximately 50 feet on the Easterly and Westerly boundaries, and 200 feet on the Northerly and Southerly boundaries bounded on the North by Tract No. 1 and Tract No. 2 above described and by lands now or formerly of Raymond P. Warner; on the East by lands now or formerly of Warner; on the South and West by lands now or formerly of Eugene Ojanen; otherwise described as Tract 38-F, on Map B-9 of the Tax Map of Adams County, Pennsylvania.

TITLE TO SAID PREMISES IS VESTED IN Galen C. Walters, Jr. and Kristy M. Bowers, single persons as joint tenants with right of survivorship by Deed from Robert R. Fournier, etux dated 3/10/2000 and recorded 3/15/2000 in Record Book 2014 Page 194.

Premises being: 3280 Old Route 30, Orntanna, PA 17353

Tax Parcel No. 133 Map #B9

SEIZED and taken into execution as the property of **Galen C. Walters, Jr. & Kristy M. Bowers** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## 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 CAROLYN M. GURRY, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: James M. Thomas, 2345 Fairchild Lane, West Chicago, IL 60185

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

## ESTATE OF DORIS G. KRETSCHMER a/k/a DORIS GAYNELL KRETSCHMER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator c.t.a.: Adam R. Schellhase

Attorney: Adam R. Schellhase, Esq., Law Offices of Adam R. Schellhase, LLC, 785 Fifth Avenue, Suite 8, Chambersburg, PA 17201

## ESTATE OF LOVIE P. MARKLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Connie E. Keiter, 30 Carlisle Road, Newville, PA 17241

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

## ESTATE OF AMY LORRAINE WILLEY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Beverly A. Stanley Bradsher (Beverly A. Bradsher), 625-C Augusta Ave., Westminster, MD 21158

## SECOND PUBLICATION

## ESTATE OF JOHN R. ELINE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Anita L. McPherson, 1320 Round Oak Court, McLean, VA 22101

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

## ESTATE OF JAMES L. GURRY, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: James M. Thomas, 2345 Fairchild Lane, West Chicago, IL 60185

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

## ESTATE OF ANNE N. HAGIE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Susan H. Crouse, 520 University Drive, Biglerville, PA 17307

Attorney: Ross H. Pifer, Esq., Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF RAE LOUISE SCHOES-TRAND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Mary Ann Redding Cardinale, 323 South York Street, Manchester, MD 21102

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

## ESTATE OF GLADYS VIOLA SNEERINGER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Joann A. Hoff, 70 Green Ridge Road, New Oxford, PA 17350; Judy Ann Rohrer, 1322 Round House Lane, Alexandria, VA 22314

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

## THIRD PUBLICATION

## ESTATE OF DOROTHY O. BOWERS, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Co-Executors: Gloria A. Burr & Paul F. Tice, III, 104 Bowers Road, Littlestown, PA 17340-9468

Attorney: G. Thomas Miller, Esq., 401 S. 32nd Street, Camp Hill, PA 17011-5105

## ESTATE OF MARY EVA MYERS, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executrices: Patricia Anthony & Jean Anthony, 26 Easy Street, Littlestown, PA 17340

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

## ESTATE OF MARIE A. OSBORN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Diane M. Yupatoff

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

## ESTATE OF NORMAN E. WALLEN, SR., DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Pamela K. Wallen & Norman E. Wallen, Jr.

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-759 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground situate on the West side of the Bonneauville-Two Taverns State Highway in the village of Bonneauville (formerly Mt. Pleasant Township), Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the State Highway aforesaid at land now or formerly of Harry Smith; thence through a stake on the West side of said State Highway by land now or formerly of Harry Smith, North 75-3/4 degrees West, 214.7 feet through a maple to a stake at land now or formerly of Carroll E. Storm; thence by the same, North 8 degrees West, 82 feet to an iron pin at land now or formerly of James Grot; thence by the same South 87-1/4 degrees East, 200 feet through a post on the West side of the State Highway aforesaid to an iron pin in the center of said State Highway; thence by the center of said State Highway, South 9 degrees East, 126.3 feet to an iron pin, the place of BEGINNING. CONTAINING 74.9 perches.

IT BEING the same which was surveyed July 27, 1946 by Leroy H. Winebrenner, registered surveyor, as the property of Carroll E. Storm.

BEING the same premises which Mary E. Staub, by Deed dated 12/11/97 and recorded 12/15/97 in the Recorder's Office in and for Adams, Pennsylvania in Deed Book Volume 1489, Page 303, granted and conveyed unto Tanya Gillis a/k/a Tanya Shipley, the Mortgagor herein.

Tax Parcel ID 5-62  
Being known as: 20 Maple Street, Gettysburg, PA 17325

SEIZED and taken into execution as the property of Tanya Gillis a/k/a Tanya Shipley and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-317 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situated, lying and being in the Borough of Carroll Valley, formerly Liberty Township, Adams County, Pennsylvania, being Lot #128 in Section A, bounded and described as follows:

BEGINNING at a point in the center of High Trail, formerly known as High Ridge Trail, at Lot #127; thence by said lot, North 62 degrees, 13 minutes West, 200 feet to a point; thence North 27 degrees, 47 minutes East, 90 feet to other lands, now or formerly of Charnita, Inc.; thence by said lands, South 62 degrees, 13 minutes East, 200 feet to a point in the center of said High Trail, formerly known as High Ridge Trail; thence in said High Trail, formerly known as High Ridge Trail, South 27 degrees, 47 minutes West, 90 feet to the place of BEGINNING. The above description was taken from a plan of lots labeled "Section A, Charnita" and dated March 10, 1965, prepared by Gordon L. Brown, R.S., recorded in Adams County Miscellaneous docket 3, page 733.

Map #13, Parcel #16

SEIZED and taken into execution as the property of Michael K. Burke & The United States of America and to be sold by me.

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

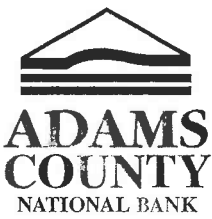
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

Helping families achieve  
their long-range financial goals  
is our business.



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# *Adams County* Legal Journal

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Vol. 45

June 27, 2003

No. 5, pp. 32-36

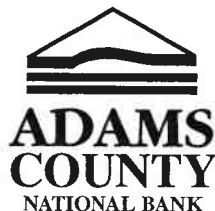
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## **IN THIS ISSUE**

HENNING VS. BOROWIEC ETAL

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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)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 111 Baltimore Street, Room 305, Gettysburg, PA 17325.

Business Office - 111 Baltimore Street, Room 305, Gettysburg, PA 17325. Telephone: (717) 337-9812  
Periodicals postage paid at Gettysburg, PA 17325.

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-477 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot or tract of land situate on the easterly right of way line of Kinneman Road in the Borough of Abbotstown, County of Adams, and State of Pennsylvania known and numbered as Lot No. 33, on a plan for Abbotts Manor recorded in the Office of the Recorder of Deeds in and for Adams County, PA in Subdivision Plan Book 69, page 95, more fully bounded and described as follows, to wit:

BEGINNING at a point on the easterly right of way line of the said Kinneman Road, at a corner of Lot No. 32 on said plan; thence extending along the said Lot No. 32 South 88 degrees 36 minutes 40 seconds East 110 feet to a point; thence South 1 degree 23 minutes 20 seconds West 85 feet to a point, at a corner of Lot No. 34; thence extending along the said Lot No. 34 South 88 degrees 36 minutes 40 seconds West 120 feet to a point on the easterly right of way line of Kinneman Road; thence extending along the said right of way line of Kinneman Road North 1 degree 23 minutes 20 seconds East 85 feet to the point and place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Christopher A. Bless and Kimberlyn M. Bless by Deed of Correction from Garland Construction, Inc., a Pennsylvania Corporation, dated 6/15/98, recorded 6/16/98 in Record Book 1601 Page 330.

Tax Parcel: 5-33

Premises Being: 68 Kinneman Road, Abbotstown, PA 17301

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

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

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

Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1326 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land and premises situate, lying and being in the Township of Conewago, County of Adams and Commonwealth of Pennsylvania, more particularly described as follows:

BEGINNING at a point in the Legislative Route 01005 at lands now or formerly of Peter Sheppard; thence along said last mentioned lands, South seventy-eight (78) degrees twenty-one (21) minutes West, two hundred seven (207) feet to a stone; thence along said last mentioned lands, South forty-four (44) degrees fifty-eight (58) minutes East, sixty-two (62) feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South forty-four (44) degrees fifty-eight (58) minutes East, sixty-two (62) feet to a point at lands now or formerly of Phyllis Snyder; thence along said last mentioned lands, South seventy-three (73) degrees thirty (30) minutes East, one hundred twenty-six and seventy-five one-hundredths (126.75) feet to a point in the centerline of Legislative Route 01005; thence along and with the centerline of Legislative Route 01005, North twelve (12) degrees East, one hundred twenty-six and sixty-seven one-hundredths (126.67) feet to the point and

place of BEGINNING. Known as 251 Narrow Drive, Hanover, PA 17331.

BEING the same premises which Donald W. Teal and Debra Ann Teal by Deed dated the 24th day of May, 1997, and recorded at Adams County in the Office of the Recorder of Deeds, in and for the County of Adams, on the 4th day of June, 1997, in Record Book 1383, Page 253, granted and conveyed unto Jo Zartman.

Tax Map: K16, Parcel: 11

Being known as: 251 Narrow Drive, Hanover, PA 17331

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

## HENNING VS. BOROWIEC ETAL

1. Allegations in a complaint are insufficient where they are vague and do not fairly allow the responding party a legitimate opportunity to provide a purposeful answer. A preliminary objection on the grounds that a pleading lacks sufficient specificity requires that the pleading be tested as to whether it fully summarizes material facts or whether it informs the Defendant, with accuracy and completeness, of the specific basis on which recovery is sought, so that the Defendant may know without question upon what grounds to make a defense.

2. In determining whether or not a pleading is sufficient, it is necessary to consider the nature of the case. For instance, while fraud-related allegations must be averred with particularity, allegations of malice, intent, knowledge and other conditions of mind may be averred generally.

3. Pennsylvania is a fact-pleading state and, under the system of fact pleading, a pleader must define issues and set forth in the Complaint every act or performance essential to that end.

4. In order to pierce the protection of governmental immunity, (the moving party) must demonstrate that the municipality had actual or constructive notice of the dangerous condition that caused the Plaintiff's injury.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 01-S-646, JAMES P. HENNING AND GLORIA J. HENNING VS. PATRICIA F. BOROWIEC, DEFENDANT, AND COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION AND CUMBERLAND TOWNSHIP, ADDITIONAL DEFENDANTS.

Leah B. Graff, Esq., for Plaintiff

John N. Keller, Esq., for Defendant Borowiec

Jay W. Stark, Esq., for Defendant PennDOT

Frank J. Lavery, Jr., Esq., for Defendant Cumberland Township

George, J., October 29, 2002

### MEMORANDUM OPINION

The factual background in this matter was substantially addressed in the previous Opinion of this Court dated July 23, 2002. At that time, the Court sustained the Preliminary Objections of Additional Defendant, Cumberland Township, however, granted the Original Defendant, Patricia F. Borowiec, the opportunity to amend. She has subsequently filed an Amended Joinder Complaint to which the Township has filed Preliminary Objections. The Preliminary Objections of the Township consist of an objection pursuant to PA. R. CIV. P. 1028(a)(3) (insufficient specificity in a pleading) and a Demurrer pursuant to PA. R. CIV. P. 1028(a)(4).

The Township's initial Preliminary Objection questions the specificity of Borowiec's allegation that the Township had "actual notice" and could be "charged with notice" of the alleged dangerous condition existing at the intersection of Table Rock Road and Boyd's School Road.

The function of a complaint is to apprise the Defendant of the issues he faces and to enable him to prepare an intelligent response. Because there is no precise standard to determine the actual amount of detail that must be included, the Court is vested with a great deal of discretion. *Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677, 681 (Pa. Super. Ct. 1978). Allegations in a complaint are insufficient where they are vague and do not fairly allow the responding party a legitimate opportunity to provide a purposeful answer. *See Framlau Corp. v. County of Delaware*, 299 A.2d 335, 337 (Pa. Super. Ct. 1972). A preliminary objection on the grounds that a pleading lacks sufficient specificity requires that the pleading be tested as to whether it fully summarizes material facts or whether it informs the Defendant, with accuracy and completeness, of the specific basis on which recovery is sought, so that the Defendant may know without question upon what grounds to make a defense. Standard Pennsylvania Practice 2d, § 25:68, *citing Credit Alliance Corp. v. Metrick*, 38 Pa. D & C.3d 9 (C.C.P. of Luzerne County 1983); *Paz v. Commonwealth, Dep't of Corrections*, 580 A.2d 452 (Pa. Commw. Ct. 1990); *Mansueti v. King*, 57 Pa. D & C.2d 407 (C.C.P. of Beaver County 1972). In determining whether or not a pleading is sufficient, it is necessary to consider the nature of the case. *Hock v. L.B. Smith, Inc.*, 69 Pa. D & C.2d 420, 423 (C.C.P. of Columbia County 1974). For instance, while fraud-related allegations must be averred with particularity, allegations of malice, intent, knowledge and other conditions of mind may be averred generally. *See PA. R. CIV. P. 1019(b)*.

Under the circumstances of this case, I find that Borowiec's allegations of prior knowledge by the Township are sufficient for purposes of allowing the Township the opportunity to provide a meaningful answer. Accordingly, the Township's Preliminary Objection based upon lack of insufficiency of the pleading is denied.

The Township's second Preliminary Objection is titled as a Demurrer, however, it raises a number of challenges. Initially, the

objection questions the propriety of Borowiec's use of the phrase "particularly including" when identifying allegations of the Township's negligence. In this regard, the Township is correct. Pennsylvania is a fact-pleading state and, under the system of fact pleading, a pleader must define issues and set forth in the Complaint every act or performance essential to that end. *Estate of Swift v. Northeastern Hosp. of Philadelphia*, 690 A.2d 719, 723 (Pa. Super. Ct. 1997). Allowing Borowiec to proceed on theories other than those specifically set forth in the Amended Joinder Complaint is contrary to the nature of Pennsylvania practice. The use of the phrase "particularly including" implies that Borowiec may be proceeding on other theories of negligence not specifically pled. Such a pleading is improper and this phrase in paragraph 21(A) of Borowiec's Amended Joinder Complaint will be stricken.

The Township also raises whether paragraph 21(B) of Borowiec's Amended Joinder Complaint is incomplete. Borowiec, in her Amended Joinder Complaint, acknowledges that due to a word processing error, the last line of paragraph 21(B) was inadvertently omitted. She indicates in her brief that paragraph 21(B) of her Amended Joinder Complaint should read as follows:

The Additional Defendant failed to erect, install or create properly placed signage and/or markings along or on the roadway warning motorists of the said dangerous condition which would have constituted a proper and effective measure to mitigate the said dangerous condition.

Def.'s Br. in Opp'n to Additional Def. Cumberland Township's Prelim. Objections to Am. Joinder Compl., p. 5. Although granting the Township's Motion and requiring Borowiec to file an Amended Answer may be the technically correct manner in which to proceed, it will also cause an unnecessary delay in allowing this matter to proceed through litigation. Instead, I opt to liberally construe the rules to secure the just, speedy and inexpensive determination of this action. *See* PA. R. CIV. P. 126. Therefore, paragraph 21(B) of Borowiec's Amended Complaint Joining Additional Defendants is amended to read as set forth hereinabove without the necessity of Borowiec filing additional pleadings.

The Township's Demurrer further argues that the Amended Joinder Complaint fails to specify which "roadway" is being referenced

when Borowiec identifies allegations of negligence on behalf of the Township. This argument addresses the dichotomy raised by the assignment of duty at the intersection in question. Specifically, Table Rock Road is a state-maintained road while, on the other hand, Boyd's School Road is a Township-maintained road. Clearly, the Township cannot be held liable for the dangerous conditions of streets unless the municipality owns the road or has contracted with PennDOT to maintain the road. *See* 42 PA. CON. STAT. ANN. § 8542(b)(6) (West 1998). It would appear, therefore, that any liability attaching to the Township as a result of the subject accident must be traced to the Township's relationship with Boyd's School Road. The Township currently argues that the Amended Joinder Complaint is insufficient in this regard since it fails to specify the roadway upon which the Township's duty applies.

My reading of the Amended Joinder Complaint, however, does not support this conclusion. To the contrary, when reading the Amended Joinder Complaint as a whole, it is clear that Borowiec is seeking to impose liability based upon the Township's relationship with Boyd's School Road. This objection, therefore, is without merit.

Finally, the Township's Demurrer raises the argument that Borowiec's allegation of the Township's prior knowledge of the dangerous condition of Boyd's School Road is raised in conclusive form and, therefore, the pleading fails to properly state a viable cause of action. It is true that in order to pierce the protection of governmental immunity, Borowiec must demonstrate that the municipality had actual or constructive notice of the dangerous condition that caused the Plaintiff's injury. *Starr v. Veneziano*, 747 A.2d 867, 873 (Pa. 2000). However, for the reasons set forth above, Borowiec's pleading of knowledge on the part of the Township is proper. Thus, Borowiec has properly pled a viable cause of action.

For the foregoing reasons, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 29th day of October, 2002, the Preliminary Objection of Cumberland Township is granted to the extent that the phrase "particularly including" is stricken from paragraph 21(A).

Additionally, paragraph 21(B) of the Amended Complaint Joining Additional Defendants is amended to read:

The Additional Defendant failed to erect, install or create properly placed signage and/or markings along or on the roadway warning motorists of the said dangerous condition which would have constituted a proper and effective measure to mitigate the said dangerous condition.

Defendant Borowiec will not be required to file additional pleadings in this regard. In all other respects, the Township's Preliminary Objections are dismissed. The Township is granted twenty (20) days to file an Answer.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-374 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 25th day of July, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following three tracts of real estate lying and being situate along the southerly side of U.S. Highway Route 30, in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

Parcel A

BEGINNING at a point on the southern side of the Lincoln Highway leading from Chambersburg to Gettysburg on the easterly line of Tract No. 2; thence by said Highway, South 74-1/2 degrees East, 135 feet to a point; thence by Tract No. 4, South 25 degrees West, 225 feet to a point; thence North 61-1/4 degrees West, 150.5 feet to stones in the easterly line of Tract No. 2; thence by Tract No. 2, North 29-1/2 degrees East, 179.2 feet to the place of BEGINNING, described in part from the survey of P.S. Orner, made August 12, 1921 for H.W. Newman.

Parcel B

BEGINNING at a point in U.S. Highway Route 30 at the northeast corner of Tract No. 3; thence through U.S. Highway Route 30, South 77 degrees 20 minutes East, 158.25 feet to a point marked with an "X" cut in said concrete road at lands now or formerly of Helen Mae Barnes and Robert I. Barnes; thence by the same, South 21 degrees 03 minutes West 306.4 feet to an iron pin at lands quitclaimed to South Mountain Development Company by Holles and Margaretta P. Dick by Quitclaim Deed dated August 2, 1979, and recorded in Deed Book 346, page 1090; thence by the same, North 67 degrees 08 minutes 48 seconds West, 135.62 feet to an iron pin; thence by Tract No. 5, North 67 degrees 08 minutes 48 seconds West, 30.34 feet to an iron pin; thence North 12 degrees 04 minutes 34 seconds East, 40.05 feet to an iron pin; thence North 59 degrees 30 seconds West, 9.8 feet to a set iron pin at existing stake, being the southeasterly corner of Tract No. 3; thence by the same, North 24 degrees 48 minutes East, 222.42 feet to a point in U.S. Highway Route 30, the place of BEGINNING, CONTAINING 1.06 acres and described according to the surveys of John Howard McClellan, C.S., dated December 6, 1968, revised January 3, 1969, and of William A. Brindle Associates, dated December 1, 1976.

Parcel C

BEGINNING at an existing iron pin at the northeast corner of Lot No. 12, as

shown in the plan of "Caledonia Acres", as laid out for South Mountain Development Co., Inc., a copy of which is recorded in Adams County Plat Book No. 1, Page 17, said place of beginning being the southeastern most corner of the tract hereby conveyed; thence by Lot No. 12, North 75 degrees 50 minutes 29 seconds West, 200 feet to an existing iron pin at the northwest corner of Lot No. 12; thence by lands now or formerly of the heirs of H.A. Marshall, North 14 degrees 9 minutes 31 seconds East, 22.02 feet to an existing iron pipe marker; thence by Tract No. 2, North 14 degrees 9 minutes 31 seconds East, 92.07 feet to an existing iron pin at the southwesterly corner of Tract No. 3; thence by the same, South 67 degrees 10 minutes 26 seconds East, 170.50 feet to a set iron pin at a corner of Tract No. 4; thence by the same, South 12 degrees 04 minutes 34 seconds West, 40.05 feet to a set iron pin on the southerly line of Tract No. 4; thence along the northern line of Lot No. 13 and by Tract No. 4, South 67 degrees 08 minutes 48 seconds East, 30.34 feet to an iron pipe marker; thence running along the easterly line of Lot No. 13 of Caledonia Acres and by lands quitclaimed to South Mountain Development Co., Inc., by Quitclaim Deed dated August 2, 1979, and recorded in the Adams County Deed Book 346, page 1090, South 14 degrees 09 minutes 31 seconds West, 11.15 feet to an existing iron pin; thence continuing with the easterly line of Lot No. 13 of Caledonia Acres, South 14 degrees 09 minutes 31 seconds West, 32.64 feet to the place of BEGINNING, CONTAINING 0.4258 acres and described according to the survey of William A. Brindle Associates dated December 1, 1976.

SEIZED and taken into execution as the property of **David J. Howell & Diane M. Howell** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 18, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-333 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stone for a corner along a twelve foot alley North 70-1/2 degrees East 18 perches to a stone at an eleven foot alley; thence along said alley North 21 degrees West 52.5 feet to a stone; thence along land now or formerly of H. C. Eppleman South 72-1/2 degrees West 17.5 rods to iron pin at verge of Opossum Creek; thence along said creek South 12-1/2 degrees East 60 feet to the place of BEGINNING. CONTAINING 64 perches.

HAVING ERRECTED THEREON a dwelling known as 1519 Center Mills Road, Aspers, Pennsylvania.

BEING THE SAME PREMISES WHICH William A. Maust and Audrey L. Maust by Deed dated September 18, 1998 and recorded September 29, 1998 in Adams County Deed Book 1669, Page 197, granted and conveyed unto Anthony M. Carbaugh and Joann Newberry.

SEIZED IN EXECUTION AS THE PROPERTY OF ANTHONY M. CARBAUGH AND JOANN NEWBERRY ALTER UNDER ADAMS COUNTY JUDGMENT NO. 03-S-333.

MAP & PARCEL #29-1-28

SEIZED and taken into execution as the property of **Anthony M. Carbaugh & Joann Newberry** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-370 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT tract of land situate, lying and being in the Borough of Littlestown, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at an iron pin at the edge of the sidewalk on the East side of Patrick Street at corner of land now or formerly of Richard M. Phreaner; thence along land now or formerly of said Richard M. Phreaner North 59 degrees East, 194.9 feet to an iron pin at a proposed alley; thence along said proposed alley South 34 degrees 45 minutes East, 65.1 feet to an iron pin; thence along land now or formerly of Earl F. Wenschhoff South 59 degrees West, 199.3 feet to an iron pin at the edge of sidewalk on the East side of Patrick Street; thence along the sidewalk of said Patrick Street North 31 degrees West, 65 feet to an iron pin at edge of said sidewalk, the place of BEGINNING.

TITLE TO SAID PREMISES IS VESTED IN Brett M. Jacques and Tamarah S. Jacques, his wife by Deed from Frank E. Basehoar and Esther Basehoar, his wife dated 11/17/2000 and recorded 11/20/2000 in Record Book 2165, Page 333.

Premises being: 59 Patrick Avenue, Littlestown, PA 17340

Tax Parcel No. 8-65

SEIZED and taken into execution as the property of **Brett M. Jacques & Tamarah S. Jacques** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-363 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four (4) tracts of land lying and being situate in Franklin Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a mark in the center of State Highway leading from Gettysburg to Chambersburg (Old Lincoln Highway); thence in the center of said State Highway, North 88 degrees 40 minutes East, 100 feet to a mark in the Highway at corner of lands now or formerly of Raymond P. Warner; thence by lands now or formerly of Raymond P. Warner and through an iron pin, South 1 degree 20 minutes East, 250 feet to an iron pin on the Northern boundary line of Tract No. 4 hereinafter described; thence by same, South 88 degrees 40 minutes West, 100 feet to a point at corner of Tract No. 2 hereinafter described; thence by same and through an iron pin, North 1 degree 20 minutes West, 250 feet to a mark in the center of the aforesaid State Highway, the place of BEGINNING.

THE above description of Tract No. 1 was taken from a draft of survey prepared by Leroy H. Winebrenner, C.S., dated July 11, 1962.

TRACT NO. 2: BEGINNING at a mark in the center line of the Old Lincoln Highway leading from Cashtown to Chambersburg at corner of Tract No. 1 above described; thence by same, South 1 degree 20 minutes East, 250 feet to a point on the Northern boundary line of Tract No. 4 hereinafter described; thence by same, South 88 degrees 40 minutes West, 50 feet to a point; thence by Tract No. 3 hereinafter described, North 1 degree 20 minutes West, 250 feet to a point in the center of the Old Lincoln Highway; thence North 88 degrees 40 minutes East, 50 feet to a mark in said center line, the place of BEGINNING.

CONTAINING 45.9 perches, more or less.

TRACT NO. 3: BEGINNING at a point in the center line of the Old Lincoln Highway leading from Cashtown to Chambersburg at corner of Tract No. 2 above described; thence by same, South 1 degree 20 minutes East, 250 feet to a point; thence South 88 degrees 40 minutes West, 25 feet to a point; thence by land now or formerly of Charles J. Verdier, North 1 degree 20 minutes West, 250 feet

to a point in the center line of the aforesaid Highway; thence by same, North 88 degrees 40 minutes East, 25 feet to the place of BEGINNING.

CONTAINING 22.95 perches, more or less.

TRACT NO. 4: An unimproved tract of land approximately 50 feet on the Easterly and Westerly boundaries, and 200 feet on the Northerly and Southerly boundaries bounded on the North by Tract No. 1 and Tract No. 2 above described and by lands now or formerly of Raymond P. Warner; on the East by lands now or formerly of Warner; on the South and West by lands now or formerly of Eugene Ojanen; otherwise described as Tract 38-F, on Map B-9 of the Tax Map of Adams County, Pennsylvania.

TITLE TO SAID PREMISES IS VESTED IN Galen C. Walters, Jr. and Kristy M. Bowers, single persons as joint tenants with right of survivorship by Deed from Robert R. Fournier, etux dated 3/10/2000 and recorded 3/15/2000 in Record Book 2014 Page 194.

Premises being: 3280 Old Route 30, Ortanna, PA 17353

Tax Parcel No. 133 Map #B9

SEIZED and taken into execution as the property of **Galen C. Walters, Jr. & Kristy M. Bowers** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on August 29, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/13, 20 & 27



## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-759 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground situate on the West side of the Bonneauville-Two Taverns State Highway in the village of Bonneaurville (formerly Mt. Pleasant Township), Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the State Highway aforesaid at land now or formerly of Harry Smith; thence through a stake on the West side of said State Highway by land now or formerly of Harry Smith, North 75-3/4 degrees West, 214.7 feet through a maple to a stake at land now or formerly of Carroll E. Storm; thence by the same, North 8 degrees West, 82 feet to an iron pin at land now or formerly of James Grott; thence by the same South 87-1/4 degrees East, 200 feet through a post on the West side of the State Highway aforesaid to an iron pin in the center of said State Highway; thence by the center of said State Highway, South 9 degrees East, 126.3 feet to an iron pin, the place of BEGINNING. CONTAINING 74.9 perches.

IT BEING the same which was surveyed July 27, 1946 by Leroy H. Winebrenner, registered surveyor, as the property of Carroll E. Storm.

BEING the same premises which Mary E. Staub, by Deed dated 12/11/97 and recorded 12/15/97 in the Recorder's Office in and for Adams, Pennsylvania in Deed Book Volume 1489, Page 303, granted and conveyed unto Tanya Gillis a/k/a Tanya Shipley, the Mortgagor herein.

Tax Parcel ID 5-62

Being known as: 20 Maple Street, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Tanya Gillis a/k/a Tanya Shipley** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-411 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania, being Lot No. 5 of Springfield Estates, bounded and described as follows:

BEGINNING at an iron pin on the southerly edge of Summer Drive at Lot No. 4; thence by said lot South 33 degrees 36 minutes 10 seconds West, 179.63 feet to an iron pin at lands now or formerly of Guy Francis Gebhart; thence by said lands North 56 degrees 20 minutes 46 seconds West, 115 feet to an iron pin at Lot No. 6; thence by said lot North 33 degrees 36 minutes 10 seconds East, 179.53 feet to iron pin on the southerly edge of Summer Drive; thence along the southerly edge of said Summer Drive South 56 degrees 23 minutes 50 seconds East, 115 feet to the place of BEGINNING. CONTAINING 20,652 square feet.

Parcel No. 6-8-76

BEING PREMISES: 16 Summer Drive, Gettysburg, PA 17325

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-317 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being in the Borough of Carroll Valley, formerly Liberty Township, Adams County, Pennsylvania, being Lot #128 in Section A, bounded and described as follows:

BEGINNING at a point in the center of High Trail, formerly known as High Ridge Trail, at Lot #127; thence by said lot, North 62 degrees, 13 minutes West, 200 feet to a point; thence North 27 degrees, 47 minutes East, 90 feet to other lands, now or formerly of Charnita, Inc.; thence by said lands, South 62 degrees, 13 minutes East, 200 feet to a point in the center of said High Trail, formerly known as High Ridge Trail; thence in said High Trail; formerly known as High Ridge Trail, South 27 degrees, 47 minutes West, 90 feet to the place of BEGINNING. The above description was taken from a plan of lots labeled "Section A., Charnita" and dated March 10, 1965, prepared by Gordon L. Brown, R.S., recorded in Adams County Miscellaneous docket 3, page 733.

Map #13, Parcel #16

SEIZED and taken into execution as the property of **Michael K. Burke & The United States of America** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-442 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THE FOLLOWING described real estate lying and being situate in the Borough of Littlestown, Adams County, Pennsylvania, bounded and limited as follows:

BEGINNING at a point along a private street known as Apple Grove Lane at the corner of Lot No. 434 on the plan of lots hereinafter referred to; thence along Lot No. 434, South 61 degrees 18 minutes 33 seconds West, 95.00 feet to a point along Appler-Phase II-Section A; thence along Appler-Phase II-Section A, North 28 degrees 41 minutes 27 seconds West, 40.00 feet to a point; thence along the same, North 61 degrees 18 minutes 33 seconds East, 95.00 feet to a point at the edge of the private street at a corner of Lot No. 436; thence along said private street, South 28 degrees 41 minutes 27 seconds East, 40.00 feet to a point at a corner of Lot No. 434, the place of BEGINNING.

CONTAINING 3,800 square feet.

BEING Lot No. 435 on a plan of lots for Appler prepared by Group Hanover, Inc., dated January 21, 1999, which together with all necessary municipal approvals, is recorded in Adams County Plan Book 77, Page 94, through 94-C.

TITLE TO SAID PREMISES IS VESTED IN Anthony W. Myers and Linda Thompson by Deed from Appler Properties, LLC, a Maryland Limited Liability Company dated 5/31/2001 and recorded 7/16/2001 in Record Book 2343, Page 319.

Premises being: 141 Apple Grove Lane, Littlestown, PA 17340

Tax Parcel No. 004-0148-000

SEIZED and taken into execution as the property of **Anthony W. Myers & Linda Thompson** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 2002-TL-568 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land with the improvements thereon erected situate in Reading Township, Adams County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING for a point at Antler Lane and Lot No. 48; thence along Lot No. 48, South 48 degrees 29 minutes 22 seconds West, 156.42 feet to a point at the dedicated right of way line of Pennsylvania Route 94; thence along the said right of way line, North 21 degrees 50 minutes 25 seconds West, 91.39 feet to a point at Lot No. 50; thence along Lot No. 50, North 68 degrees 09 minutes 35 seconds East, 140.04 feet to a point at Antler Lane; thence along Antler Lane, by a curve to the left, whose radius is 125.00 feet and whose chord bearing is South 32 degrees 26 minutes 24 seconds East, 39.41 feet for an arc distance of 39.58 feet to a point and place of BEGINNING. CONTAINING 9,402 square feet.

The above description was taken from a plan of lots entitled Phase III, Deer Park Estates, recorded in Plat Book 52 at page 55, designating the above as Lot No. 49.

SUBJECT TO restrictions contained in Miscellaneous Book 42 at page 708, UNDER AND SUBJECT TO such other conditions and restrictions as now appear on record.

IT BEING the same premises which Larry E. Bankert, Jr., an adult single man, by his Deed dated November 20, 2001, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 2469, Page 204, granted and conveyed unto Ginger M. Moore, an adult single woman.

SEIZED and taken into execution as the property of **Ginger M. Moore** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 22, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/27, 7/3 & 11

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

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

**BECKER**—Orphans' Court Action Number OC-62-03. The First and Final Account of Shirley W. Staub and Linda Wallach Miller, Personal Representatives of the Estate of Nioma M. Becker, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

**RIGGEEAL**—Orphans' Court Action Number OC-65-03. The First and Final Account of Dorothy M. (Shindledecker) Barger a/k/a Dorothy M. Harris, Executrix of the Estate of Betty J. Riggieal, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

6/27 & 7/3

## 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 MARGARET A. CHAPMAN, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Executrix: Betty A. Leatherman, 61 Chapman Road, Fairfield, PA 17320; Dorothy Mae Wagerman, 260 Middle Creek Road, Fairfield, PA 17320

Attorney: Alan K. Patrono, Esq., 30 West Middle Street, Gettysburg, PA 17325

## ESTATE OF HELEN MARGARET NICHOLSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

## ESTATE OF MARY S. REBERT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Charlotte A. Shultz, c/o Shultz Law Firm, LLC, 215 Baltimore Street, Hanover, PA 17331

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

## ESTATE OF VIRGINIA WHIPPLE RUPP, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard James Whipple, 1719 Middle Road, Glenshaw, PA 15116

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

## ESTATE OF CARL C. SIMPSON, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Wilda Simpson Keefer, 2000 Cherokee Road, Waynesboro, VA 22980; Edward C. Simpson, 14 East Hanover Street, Biglerville, PA 17307

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

## ESTATE OF FRANCIS WORLEY, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Francis Worley, Jr. & Daniel T. Worley, c/o Worley & Worley LLP, 225 Latimore Valley Road, York Springs, PA 17372

Attorney: Daniel D. Worley, Esq., 225 Latimore Valley Road, York Springs, PA 17372

## SECOND PUBLICATION

## ESTATE OF CAROLYN M. GURRY, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: James M. Thomas, 2345 Fairchild Lane, West Chicago, IL 60185

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

## ESTATE OF DORIS G. KRETSCHMER a/k/a DORIS GAYNELL KRETSCHMER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator c.t.a.: Adam R. Schellhase  
Attorney: Adam R. Schellhase, Esq., Law Offices of Adam R. Schellhase, LLC, 785 Fifth Avenue, Suite 8, Chambersburg, PA 17201

## ESTATE OF LOVIE P. MARKLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Connie E. Keiter, 30 Carlisle Road, Newville, PA 17241

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

## ESTATE OF AMY LORRAINE WILLEY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Beverly A. Stanley Bradsher (Beverly A. Bradsher), 625-C Augusta Ave., Westminster, MD 21158

## THIRD PUBLICATION

## ESTATE OF JOHN R. ELINE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Anita L. McPherson, 1320 Round Oak Court, McLean, VA 22101

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

## ESTATE OF JAMES L. GURRY, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: James M. Thomas, 2345 Fairchild Lane, West Chicago, IL 60185

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

## ESTATE OF ANNE N. HAGIE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Susan H. Crouse, 520 University Drive, Biglerville, PA 17307

Attorney: Ross H. Pifer, Esq., Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF RAE LOUISE SCHOES-TRAND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Mary Ann Redding Cardinale, 323 South York Street, Manchester, MD 21102

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

## ESTATE OF GLADYS VIOLA SNEERINGER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Joann A. Hoff, 70 Green Ridge Road, New Oxford, PA 17350; Judy Ann Rohrer, 1322 Round House Lane, Alexandria, VA 22314

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

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-821 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of August, 2003, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground being the western half of a town lot situate in the Borough of Gettysburg, Adams County, Pennsylvania, more particularly bounded and described as follows, to-wit:

BEGINNING at a point in West Middle Street at corner of lot sometimes designated as Lot #15 being the eastern part of said town lot now or formerly owned by Jacob McDonnell; thence by said Lot #15, South one hundred eighty (180) feet to a twelve (12) foot alley; thence along said alley, West thirty (30) feet to a part of town originally laid out by James Gettys; thence by the same, North one hundred eighty (180) feet to West Middle Street; thence along West Middle Street thirty (30) feet to the point, the place of BEGINNING.

BEING known as 144 West Middle Street, Gettysburg, PA 17325

Property ID No.: 10-91

TITLE TO SAID PREMISES IS VESTED IN James G. Edge, a single man, by Deed from Dorothy J. O'Dell, Executrix of the Last Will and Testament of Mary E. Little, deceased, dated 05/26/95, recorded 05/30/95, in Deed Book 1035, Page 184.

SEIZED and taken into execution as the property of **James G. Edge** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on September 15, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

6/20, 27 & 7/3

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately April 2003, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of NEW ROAD LOGISTICS, INC., with its principal place of business at 816 New Road, Orrtanna, PA 17353. The names and addresses of the persons owning or interested in said business are Robert R. Finch & Ellen M. Finch, residing at 816 New Road, Orrtanna, PA 17353. The character or nature of the business is Trucking.

6/27

## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on June 12, 2003, an Order was issued on the Petition of Anna Ilene Staub in the Court of Common Pleas of Adams County, PA, praying for a decree to change her name to Anna Ilene Heller.

The Court has fixed August 12, 2003 at 9:00 a.m. at the Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA 17325, as the time and place for the hearing of said Petition when and where all persons interested may appear and show cause, if any of them have, why the prayer of the said Petition should not be granted.

Amy E. W. Ehrhart, Esq.  
Solicitor

6/27