

Adams County Legal Journal

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NOTICE

The Business Office of the Adams County Legal Journal has moved and is now at the following address:

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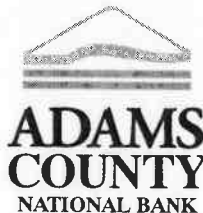
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Donald G. Oyler
Editor

6/26, 7/3 & 10

Helping families achieve
their long-range financial goals
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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about June 19, 1998, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is LITTLESTOWN SHELL, INC., and the purpose for which it is being organized is to sell gas and related products, food products and repair of vehicles, and the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 400 North Queen Street, Littlestown, Pennsylvania, 17340.

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

7/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania on or about May 11, 1998, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation organized under the provisions of the Pennsylvania Business Corporation Law, Act of May 5, 1933, P.L. 364, as amended.

The name of the Corporation is RONALD P. GLASS, JR., INC.

The location and post office address of the initial registered office of said corporation is: 15 South Franklin Street, Gettysburg, PA 17325.

The purpose for which the corporation is organized is to have unlimited power to engage in and to do any lawful act concerning any and all lawful business for which corporations may be incorporated under the aforesaid Pennsylvania Business Corporation Law, as amended.

Katherman & Heim, P.C.
Solicitor
345 East Market Street
York, PA 17403

7/3

NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of an Act of the General Assembly, approved December 16, 1982, P.L. 1309, there has been filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on the 9th day of April, 1998, a certificate for the conduct of a business in Adams County, Pennsylvania, under the fictitious name, style or designation of "BONFIRE INVESTMENTS" with its principal place of business at 1210 Hoffman Home Road, Littlestown, Pennsylvania, 17340. The names and addresses of the persons owning or interested in said business are Forrest M. Bonner and Janet E. Bonner, of 1210 Hoffman Home Road, Littlestown, Pennsylvania 17340; and John W. Fitch and Deborah J. Fitch, of 363 Basehoar School Road, Littlestown, Pennsylvania, 17340.

Hartman & Yannetti
Solicitors
Attorneys at Law
126 Baltimore Street
Gettysburg, PA 17325

7/3

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



SANDERS, ET AL. VS. NATIONWIDE INSURANCE COMPANY

1. A motion for judgment on the pleadings is similar to a demurrer and may be entered when there are not disputed issues of fact and the moving party is entitled to judgment as a matter of law.

2. The Court may rely only upon the pleadings and may grant the motion where the moving party's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise.

3. In cases brought under 42 Pa. C.S.A. §8371 which allows the court to award punitive damages against the insurer in actions arising under an insurance policy if it finds the insurer has acted in bad faith toward the insured, the normal requirement of a showing of outrageous conduct has not been required by our courts.

4. "Bad faith" on the part of an insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent.

5. To recover under a claim of bad faith, the Plaintiff must show that the insurer did not have a reasonable basis for denying benefits under the policy and that Defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-57 LORI SANDERS AND STEVEN J. TRIANTAFYLLOU, M.D. VS. NATIONWIDE INSURANCE COMPANY.

Ralph D. Oyler, Esq., for Plaintiffs

Douglas R. Johnson, Esq., for Defendant

**OPINION ON DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS**

Kuhn, J., September 24, 1997

On January 24, 1996, Plaintiffs, Lori Sanders and Steven J. Triantafyllou, M.D., brought an action against Defendant, Nationwide Insurance Company, for breach of contract and bad faith. Defendant then filed a Motion for Judgment on the Pleadings as to the bad faith claim. For the following reasons, the Motion is denied.

STATEMENT OF FACTS

Plaintiff, Lori Sanders, was involved in an automobile accident on February 9, 1995, in which she allegedly suffered personal injuries. The driver of the vehicle, Mr. William R. Auten, was insured under a policy issued by Defendant. Ms. Sanders and Steven J. Triantafyllou, M.D., her treating physician, have apparently made several requests for payment for medical bills but have consistently been refused by Defendant.

Plaintiffs raise two counts in their Complaint. Count I raises a claim for breach of contract. Count II alleges that Defendant acted in bad faith and is, therefore, liable for punitive damages, interest on the claim,

court costs and attorney's fees pursuant to 42 Pa. C.S.A. §8371. Defendant argues that a Motion for Judgment on the Pleadings is warranted as to Count II due to insufficiency of the pleadings.

LEGAL DISCUSSION

A motion for judgment on the pleadings is permitted under Pa. R.C.P. §1034 "after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial." The Superior Court has held that "[a] motion for judgment on the pleadings is similar to a demurrer . . . [i]t may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law." *Koser v. Harlesville Mutual Insurance Co.*, 407 Pa. Super. 68, 71, 595 A.2d 128, 129 (1991) (citations omitted). Additionally, the court may rely only upon the pleadings and may grant the motion "where the moving party's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise." *Shirley v. Javan*, 454 Pa. Super. 131, 134, 684 A.2d 1088, 1089 (1996) (citations omitted).

Defendant argues that Plaintiffs have failed to specify facts that would allow a punitive damages award under 42 Pa. C.S.A. §8371. Section 8371 reads as follows:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

- (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.
- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 Pa. C.S.A. §8371.

The term bad faith has not been defined by statute but Pennsylvania Courts have addressed the issue. It is Defendant's argument that in order to award punitive damages there must be a showing of outrageous conduct. Although normally this is the case in an action for punitive damages, in interpreting 42 Pa. C.S.A. §8371, our Courts have not required outrageousness. As the Superior Court noted:

In the insurance context, the term bad faith has acquired a particular meaning:

Insurance. “Bad Faith” on part of insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e. good faith and fair dealing), through some motive of self-interest or ill will; mere negligence in bad judgment is not bad faith

. . . Further, bad faith must be proven by clear and convincing evidence and not merely insinuated. . . Finally, to recover under a claim of bad faith, the plaintiff must show that the defendant did not have a reasonable basis for denying benefits under the policy and that defendant knew or recklessly disregarding its lack of reasonable basis in denying the claim . . .

Terletsky v. Prudential Prop. & Casualty Insurance Co., 437 Pa. Super. 108, 124-24, 649 A.2d 680, 688 (1994) (citations omitted); see also, *Romano v. Nationwide Mutual Fire Insurance Co.*, 435 Pa. Super. 545, 553-54, 646 A.2d 1228, 1232 (1994).

It is this Court’s determination that Plaintiffs’ pleadings are sufficient to withstand a demurrer. Plaintiffs allege in their Complaint that the Defendant “refused to pay the requested medical benefits due under the terms and conditions of the policy of insurance.” (Plts.’ Complaint ¶10). It is also alleged that Defendant “refused to pay the requested medical benefits due under the terms and conditions of the policy of insurance.” (Plts.’ Complaint ¶12). It would be premature to dismiss Plaintiffs’ claim for bad faith at this stage in the proceedings because the specific facts underlying the insurer’s knowledge and reasonableness in failing to pay medical expenses may be gathered during the discovery process.

ORDER OF COURT

AND NOW, this 24th day of September, 1997, Defendant’s Motion for Judgment on the Pleadings is hereby denied.

COMMONWEALTH VS. MONROE

1. The bottom line on plea colloquy is whether the Defendant knew what he was doing.
2. Even if there was a defect in the plea colloquy, the plea should not be invalidated if Defendant fully understood the consequences of the plea and knowingly voluntarily decided to plead.
3. Acceptance of a plea agreement is a strong indicator of the voluntariness of the plea.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-137-96; CC-138-96; CC-397-95; CC-834-94; and CC-898-95 COMMONWEALTH OF PENNSYLVANIA VS. WILLIAM HARRISON MONROE.

District Attorney
Thomas Campbell, Esq., for Defendant

STATEMENT PURSUANT TO PA. R.APP.P. 1925

Spicer, P.J., September 26, 1997.

Defendant appeals from an order entered August 26, 1997, following a hearing on defendant's first PCRA petition. The undersigned found that defendant was afforded effective assistance of counsel prior to and during his guilty pleas, and that those pleas were knowingly, intelligently and voluntarily entered. Therefore, the PCRA petition was dismissed.

Defendant faced charges of receiving stolen property (a rototiller) on CC-834-94, two charges of possession of cocaine with intent to deliver in CC-137-96 and CC-138-96, and recklessly endangering another person in CC-397-95. One drug charge involved a mandatory minimum sentence of one year, and the other, three years. On April 18, 1996, defendant presented himself with counsel and pleaded guilty to these charges. Originally, defendant faced sentencing on aggravated assault in CC-397-95, but was allowed to withdraw a plea of nolo contendere entered in that case.

The assault charge involved defendant's spraying a parking lot behind an apartment building with a 9 mm weapon. Although several cars were damaged, an occupant escaped injury. Defendant contended that he did not know the person was present, and when he asserted his innocence, the essential element of intent was missing for aggravated assault. The incident followed an earlier confrontation between defendant, his companions and several other persons, including the occupant of the car.

Defendant also pleaded guilty to two Vehicle Code cases which were, at that time, summary offenses. Neither is involved in defendant's PCRA.

A transcript appears of record of the plea colloquy and sentencing proceedings. Despite one exchange, we think that it effectively disposes of defendant's contentions. The charges and plea arrangement were carefully explained. Defendant indicated that he understood, said that he had enough time to discuss his decision with plea counsel and was satisfied with counsel's advice and services.

Defendant points to the following exchange:

THE COURT: Are you entering these pleas voluntarily without any coercion or promises other than this plea arrangement?

THE DEFENDANT: No.

Transcript pp 15 and 16.

We have no explanation for this answer. Obviously, the undersigned and counsel acted as if the proper answer had been given. It is hard to believe that "no" was given, but even if it were, it could only mean that defendant misunderstood the question. Reading the transcript as a whole, it is obvious that defendant acknowledged that there were no other agreements other than the one presented to the court, page 14, clearly understood what the sentence would be (e.g., "I don't feel four years is right but I have already lost everything." Page 15), and was pleading guilty because he was in fact guilty, page 15.

The bottom line on plea colloquies is whether the defendant knew what he was doing. Even if there was a defect, the plea should not be invalidated if defendant fully understood the consequences of the plea and knowingly and voluntarily decided to plead. *Commonwealth v. Young*, ___ Pa Super. ___, 695 A.2d 414 (1997). Acceptance of a plea agreement is a strong indicator of the voluntariness of the plea. *Commonwealth v. Myers*, 434 Pa. Super. 221, 642 A.2d 1103 (1994).

Commonwealth essentially rolled over on the recklessly endangering and theft charges. Both were subsumed in the drug sentences, which reflected two consecutive mandatory minimums of one and three years.

During the PCRA hearing on August 26, 1997, defendant contradicted what he said during the plea colloquy. He testified that he had

previously turned down a three to six offer by the Commonwealth, which was conditioned on his testifying against a codefendant in the aggravated assault case. Instead, he testified for that person. He said he was shocked and confused about the plea arrangement and that counsel said he would explain it after sentencing.

Defendant's testimony was contradicted by the plea colloquy and by the testimony of plea counsel. Jeffrey Cook, Esq. pointed out that trials were continued numerous times for plea negotiations and that the deal was the best that could be arranged. He said that the sheer volume of cases might account for any confusion on defendant's part, but that defendant understood what was at stake and what the sentences would be.

We resolved any discrepancies in testimony in favor of the Commonwealth and dismissed the PCRA petition. Even without Mr. Cook's testimony, any discrepancy between what defendant said during the plea colloquy and his PCRA testimony should be resolved in favor of the colloquy. *Commonwealth v. Myers*, supra.

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 MARY A. MURREN, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executors: Alice M. Sosna, 3055 Centennial Road, Hanover, PA 17331; Mary Ann M. Smith, 219 North Street, McSherrystown, PA 17334; Teresa C. Glass 544 Brickcrafters Road, New Oxford, PA 17350; Bernard J. Murren, 2876 Centennial Road, Hanover, PA 17331; Gerald A. Murren, 600 Bender Road, Hanover, PA 17331

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

ESTATE OF FRANCISA. NOEL, DEC'D
Late of Oxford Township, Adams County, Pennsylvania

Administrator: Mary L. Noel, 406 Lingg Road, New Oxford, PA 17350
Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF NORA G. SMICK, DEC'D
Late of the Borough of Biglerville, Adams County, Pennsylvania

Executrix: Lois S. Payne, a/k/a Lois J. Payne, 157 North Main Street, Biglerville, PA 17307

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

SECOND PUBLICATION

ESTATE OF JOHANNA ELSNER, DEC'D

Late of Cross Keys, Oxford Township, Adams County, Pennsylvania
Executors: Frank Elsner, Jr., 29 Lee Street, Hanover, PA 17331; Bertram F. Elsner, c/o Elsner Engineering Works, Inc., 675 Fame Avenue, Hanover, PA 17331

Administrator: Jack F. Ream, Esquire, Rhoads and Sinon LLP, 119 East Market Street, York, PA 17401

ESTATE OF EMMA H. KEMPER, DEC'D
Late of Huntington Township, Adams County, Pennsylvania

Executrix: Darlene F. Hoffman, R.D. #1, Box 910, East Berlin, PA 17316
Attorney: Sharon E. Myers, Esquire, 29 North Duke Street, York, PA 17401

ESTATE OF CYRIL N. MCMASTER, SR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
Administrator: Cyril N. McMaster, Jr., c/o 230 York Street, Hanover, PA 17331

Attorney: Judith Koper Morris, Esquire, 230 York Street, Hanover, PA 17331

ESTATE OF MARY JANE MUMPER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
Executors: Katherine J. Lee now Katherine J. Williams, 11688 Cochran Road, Woodstock, AL 35188; John H. Mumper, 62 Allen Crest Drive, Hampden, MA 01036
Attorney: Robert E. Campbell, Esquire, Campbell and White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF NAOMI F. SANDERS, DEC'D

Late of Littlestown, Adams County, Pennsylvania
Executrix: Nancy E. Six, 4810 Baltimore Pike, Littlestown, PA 17340
Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF OSCAR S. STAMBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executor: Homer S. Stambaugh, R.D. #1, Box 1464, Brodbeck's, PA 17329
Attorney: James T. Yingst, Esquire, 515 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF THELMA K. BROWN, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executor: Lee Krout, 425 Glenwyn Drive, Littlestown, PA 17340
Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF TAKAKO FAIR, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
Administrator: James M. Fair, 355 Table Rock Road, Gettysburg, PA 17325

Attorney: Roy A. Keefer, Esquire, Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HELEN V. KRICHTEN, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrices: Geraldine M. Staub, 5544 Hanover Road, Hanover, PA 17331; Rose A. Bevenour, 1 Walnut Lane, New Oxford, PA 17350

Attorney: Donald W. Dorr, Esquire Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF RUSSELL A. PEIFER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executrix: Mary E. Houck, 314 Fourth Street, Hanover, PA 17331

Attorney: James T. Yingst, Esquire, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF ELEANOR J. SCHOLL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executrices: Eleanor Jane Elsner, 29 Lee Street, Hanover, PA 17331; Rose Ann Ziegler, 93 Ege Drive, Carlisle, PA 17013

Attorney: Donald W. Dorr, Esquire, Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

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Adams County Legal Journal

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No.7, pp. 33-36

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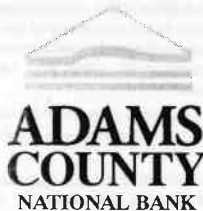
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Donald G. Oyler
Editor

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 22nd day of June, 1998, a certificate has been filed under Section 311 of the Act 1982-295 (54 Pa.C.S. Section 311), the Fictitious Name Act, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Joanne and Kristin Myers and Karen Staub of Spring Grove, PA 17362 are the only persons owning or interested in a business, the character of which is retail sales and antique sales and that the name, style and designation under which said business is and will be conducted is THYMES REMEMBERED and the location where said business is and will be located is 6385 York Road, New Oxford, PA 17350.

Joanne Myers

7/10

INCORPORATION NOTICE FOR PROFIT

NOTICE IS HEREBY GIVEN that on June 15, 1998, an application for Articles of Incorporation for Profit was filed under the Articles of Incorporation Act in the Office of the Secretary of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, setting forth that Carl J. Scozzaro, Jr. and Laura J. Scozzaro, 315 Hunterstown Hampton Road, Gettysburg, Pennsylvania, are the only persons owning or interested in a business, the character of which is a corporation under which said business, is and will be conducted as SCOZZARO ENTERPRISES, INC. and the location of said business is and will be located at 315 Hunterstown Hampton Road, Gettysburg, PA 17325.

John James Mooney, III, Esquire
Mooney & Associates
230 York Street
Hanover, PA 17331

7/10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for WOODY'S RESTAURANT & NIGHT CLUB, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on April 10, 1998, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

7/10

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, July 20, 1998, at 9:00 o'clock a.m.

MILLER—Orphans' Court Action Number OC-60-98, The First and Final Account of James A. Miller, Executor of the Last Will and Testament of Rebecca E. Miller, a/k/a Rebecca Elizabeth Miller, deceased, late of Oxford Township, Adams County, Pennsylvania

DARCEY—Orphans' Court Action Number OC-63-98, The First and Final Account of Claude R. Vess, Executor of the Last Will and Testament of Frank B. Darcey, Jr. a/k/a Frank B. Darcey, deceased, late of Freedom Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

7/10, 17

INCORPORATION NOTICE

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

1. The name of the corporation is TRIPLE-A TRANSPORT, INC. and its registered office is located at the following: 94 Dakota Drive, Hanover, PA 17331.

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

3. The business purpose of the corporation is: Hauling garbage to a dump station.

4. The Articles of Incorporation were filed with the Corporation Bureau of the Department of State on 5/20/98.

7/10

INCORPORATION NOTICE

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

1. The name of the corporation is VICTOR A. TRONE PLUMBING & HEATING, INC. and its registered office is located at the following: Rear 913 Hanover Pike, Littlestown, PA 17340.

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

3. The business purpose of the corporation is Plumbing & Heating Service.

4. The Articles of Incorporation were filed with the Corporation Bureau of the Department of State on July 1, 1998.

7/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Fictitious Names Act, 54 Pa. C.S. §5311, et seq., and its amendments and supplements, of filing with the Secretary of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania on September 22, 1995, an application for conducting business under the assumed or fictitious name of LAMB DISTRIBUTION, with its principal place of business at 1074 Irishtown Road, New Oxford, Pennsylvania 17350. The Names and addresses of all persons owning or interested in said business are: Ronald Routson, 1074 Irishtown Road, New Oxford, PA 17350.

7/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on May 27, 1998, a certificate will be filed under the Fictitious Name Act approved December 21, 1988, P.L. 1444, in the Office of the Secretary of the Commonwealth, setting forth that Robert K. Higgins, 94 Dakota Drive, Hanover, PA 17331, is/are the only person(s) owning or interested in a business, the character of which is excavating and hauling and that the name, style and designation under which said business is and will be conducted is BOB'S EXCAVATING AND DUMP TRUCK SERVICE and the location where said business is and will be located is 94 Dakota Drive, Hanover, PA 17331.

7/10

RESSLER ET UX. VS. SPIRK

1. A motion for judgment on the pleading is similar to a demurrer and may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law.
2. A release will be the law of any action between the parties unless it was obtained through fraud, accident or mutual mistake and therefore, Plaintiffs must plead fraud, or the like, in order to have the release considered non-binding upon them.
3. A release is binding on the parties no matter how "improvident their agreement may be or subsequently prove for either party."
4. When the terms of a written contract are clear, the Court will not rewrite it to give it a construction in conflict with the accepted and plain meaning of the language used.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-149, DAVID E. RESSLER AND LINDA E. RESSLER, HUSBAND AND WIFE, VS. ROBERT M. SPIRK, JR.

Mark E. Halbruner, Esq., for Plaintiffs

Gregory R. Reed, Esq., for Defendant

OPINION ON DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Kuhn, J., September 26, 1997

On January 24, 1996, Plaintiffs, David E. Ressler and Linda E. Ressler, filed a Complaint against Defendant, Robert M. Spirk. Defendant answered the Complaint and raised New Matter on March 31, 1996. In April of 1996, Plaintiffs replied to the New Matter. On May 16, 1996, Plaintiffs served interrogatories on Defendant and later filed a Motion to Compel. Defendant then answered the interrogatories and the Motion to Compel was dismissed on July 25, 1996. On July 29, 1996, Plaintiffs filed for appointment of a board of arbitrators and the board was appointed two days later. Defendant proceeded to file a Motion for Judgment on the Pleadings on August 1, 1996. For the following reasons, the Motion is granted.

STATEMENT OF THE FACTS

On December 30, 1994, Plaintiffs purchased from Defendant and his estranged wife the property located at 1082 Ridge Road, Latimore Township, Adams County, Pennsylvania. Before Plaintiffs purchased the real estate, Dillsburg Septic and Excavating Company ("Dillsburg Septic") inspected the septic system on the property. Although not a report on the total functionality of the system, Dillsburg Septic did indicate that there were problems with the system which included water drainage from drain fields. (Exhibit A, Defendant's Motion for Judgment on the Pleadings).

The report on the septic system was provided to Plaintiffs at closing on December 30, 1996. At this time, Plaintiffs executed a release

agreeing not to hold Defendant liable for future repairs to the septic system.

Plaintiffs have allegedly experienced numerous problems with the septic system since moving into the property. The most notable problem is malfunctioning drain fields causing effluent to back up into the residence.

LEGAL DISCUSSION

A motion for judgment on the pleadings is permitted under Pa. R.C.P. 1034 “after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial.” The Superior Court has held that “[a] motion for judgment on the pleadings is similar to a demurrer . . . [i]t may be entered when there are no disputed issues of fact and the moving party is **entitled to judgment as a matter of law.**” *Koser v. Harlesville Mutual Insurance Co.*, 407 Pa. Super. 68, 71, 595 A.2d 128, 129 (1991) (citations omitted). Additionally, the court may rely only upon the pleadings and may grant the motion “where the moving party’s right to succeed is certain the case is so free from doubt that trial would clearly be a fruitless exercise.” *Shirley v. Javan*, 454 Pa. Super. 131, 134, 684 A.2d 1088, 1089 (1996) (citations omitted).

Defendant argues that the release signed by Plaintiffs acts as a complete bar to the instant action. Plaintiffs counter by raising two arguments.

First, Plaintiffs claim the release is not binding because Defendant did not disclose known problems with the septic system. A release will be the law of any action between the parties unless it was obtained through fraud, accident or mutual mistake. *Buttermore v. Aliquippa Hospital*, 522 Pa. 325, 329-30, 561 A.2d 733, 735 (1989). Therefore, Plaintiffs must plead fraud, or the like, in order to have the release considered non-binding upon them. In the case at hand, Plaintiffs’ pleadings are insufficient.

Under the Pennsylvania Rules of Civil Procedure, fraud must be pled with particularity. Pa. R.C.P. 1019(b), 42 Pa. C.S.A. Fraud requires Plaintiffs to establish the following:

- (1) a misrepresentaion;
- (2) a fraudulent utterance thereof;
- (3) an intention by the maker that the recipient will thereby be induced to act;
- (4) justifiable reliance by the recipient upon the misrepresentation;
- (5) damage to the recipient as the proximate cause.

Woodward v. Dietrich, 378 Pa. Super. 111, 123-24, 548 A.2d 301, 307 (1988) (citations omitted).

In Plaintiffs' Complaint, they have merely alleged that "Defendant had knowledge of the septic system defects prior to Plaintiffs' purchase of the premises, and Defendant did not disclose such knowledge to Plaintiffs." (Plaintiffs' Complaint ¶10). As the Complaint stands, fraud has not been sufficiently pled and the release will, therefore, govern the case.

A release is binding on the parties no matter how "improvident their agreement may be or subsequently prove for either party..." *Buttermore v. Aliquippa Hospital*, 561 A.2d at 735. In interpreting releases, the Superior Court has held:

When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. . . The Court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation . . . When the terms of a written contract are clear, this Court will not rewrite it to give it a construction in conflict with the accepted and plain meaning of the language used . . .

Harrity v. Medical College of Pennsylvania Hospital, 439 Pa. Super. 10, 20, 653 A.2d 5, 9 (1994) (citations omitted).

In the case at hand, the release signed by Plaintiffs reads as follows:

We, David E. and Linda E. Ressler, the Buyers, will not hold KEYSTONE LAND TRANSFER, INC., REMAX REALTY ASSOCIATES, INC., ERA ANDERSON, or ROBERT M. SPIRK, JR. AND VIRGINIA R. SPIRK, his wife, financially or any other way for possible repairs in the future to the septic system located at 1082 Ridge Road, York Springs, PA.

(Exhibit B, Defendant's Answer).

Under the language of the release, it is clear that Defendant may not be held liable for the present problems with the septic system. The release is unambiguous in stating that Plaintiffs will not hold Defendant for future repairs of the system. Additionally, in Plaintiffs' Complaint it is alleged that the present problems with the septic system involve the drain fields (Plaintiffs' Complaint ¶7). However, Plaintiffs were made aware of problems with the drain fields before signing the release because they were given a copy of Dillsburg Septic's report (Exhibit A, Defendant's Answer). Defendant cannot be held liable for problems with the septic system under the terms of the release.

Second, Plaintiffs argue that Defendant's Motion is untimely. It is asserted that because Defendant did not file his Motion for Judgment on the Pleadings until four months after the pleadings closed, the Motion should be dismissed.

Pa. R.C.P. 1034(a) states that "[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings." Pa. R.C.P. 1034, 42 Pa. C.S.A. (emphasis added). In *Yerger v. Brandt*, 58 D&C 2d 275, 277-78 (Lebanon 1972), the Court permitted a motion for judgment on the pleadings even after the board of arbitrators had rendered its decision. The Court went on to say that although the motion for judgment on the pleadings should have been filed between the dismissal of the counterclaim and the praecipe for reference to arbitration, the tardiness would be disregarded in order to promote judicial economy. *Id.* At 277; see also *Law v. Frink*, 37 D&C 3d 262, 266 (Luzerne 1982) (where the Court allowed a motion for judgment on the pleadings 11 months after the pleadings had closed and after the matter had been scheduled for arbitration in order to promote justice). The *Yerger* Court relied upon Pa. R.C.P. 126, which states in pertinent part that "the rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable." *Yerger v. Brandt*, 58 D&C 2d at 278.

In the case at hand, Defendant's Motion will not be dismissed for untimeliness. The Motion was filed only four months after the pleadings had ended and three days after Plaintiffs asked to appointment of a board of arbitrators. Furthermore, the Motion has been permitted in order to secure the "just, speedy and inexpensive determination" of the action since it has been determined that the release acts to bar Plaintiffs' claim at this time. Pa. R.C.P. 126, 42 Pa. C.S.A. It is possible, however, the Plaintiffs may be able to remedy the procedural deficiencies. The Court will grant them that opportunity. Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 26th day of September, 1997, Defendant's Motion for Judgment on the Pleadings is hereby Granted and Plaintiffs are given twenty (20) days from the date of mailing of this Order to file an amended Complaint.

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 PHOEBE A. BERWAGER, DEC'D

Late of the Oxford Township, Adams County, Pennsylvania

Executor: Donald L. Berwager, 1066 Pine Grove Road, Hanover, PA 17331

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

ESTATE OF MARTHA R. GORMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Kay H. Tudhope, 231 Barberry Drive, Berea, OH 44017

Attorney: Timothy W. Misner, Attorney, 39 South Broad Street, Waynesboro, PA 17268-1610

ESTATE OF BENJAMIN F. HUFNAGEL a/k/a BENJAMIN F. HUFNAGEL, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Barbara A. Hufnagel, 80 Witmer Road, Hanover, PA 17331

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

ESTATE OF MARIE E. KELLER DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Anna M. Noel, 355 Clouser Road, Hanover, PA 17331; Joanne M. Stull, 366 Schoolhouse Road, Aspers, PA 17304; Michael J. Keller, 418 Granite Station Road, Gettysburg, PA 17325

Attorney: Audrey E. Woloshin, Attorney, Katherman & Heim, 345 East Market Street, York, PA 17403

ESTATE OF CORA E. LUCKENBAUGH a/k/a CORA ELLEN LUCKENBAUGH DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Ruth M. Yohe, 4052 Robin Hood Drive, York, PA 17404; Carroll C. Luckenbaugh, 4041 Eldine Avenue, York, PA 17404

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

ESTATE OF JACQUELINE M. SPONSELLER DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Shawn E. Sponseller, 88 Ruel Avenue, Hanover, PA 17331
Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF MARY A. MURREN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executors: Alice M. Sosna, 3055 Centennial Road, Hanover, PA 17331; Mary Ann M. Smith, 219 North Street, McSherrystown, PA 17334; Teresa C. Glass 544 Brickcrafters Road, New Oxford, PA 17350; Bernard J. Murren, 2876 Centennial Road, Hanover, PA 17331; Gerald A. Murren, 600 Bender Road, Hanover, PA 17331

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

ESTATE OF FRANCIS A. NOEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administrator: Mary L. Noel, 406 Lingg Road, New Oxford, PA 17350

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

ESTATE OF NORA G. SMICK, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executrix: Lois S. Payne, a/k/a Lois J. Payne, 157 North Main Street, Biglerville, PA 17307

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

THIRD PUBLICATION

ESTATE OF JOHANNA ELSNER, DEC'D

Late of Cross Keys, Oxford Township, Adams County, Pennsylvania

Executors: Frank Elsner, Jr., 29 Lee Street, Hanover, PA 17331; Bertram F. Elsner, c/o Elsner Engineering Works, Inc., 675 Fame Avenue, Hanover, PA 17331

Administrator: Jack F. Ream, Esquire, Rhoads and Sinon LLP, 119 East Market Street, York, PA 17401

ESTATE OF EMMA H. KEMPER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Darlene F. Hoffman, R.D. #1, Box 910, East Berlin, PA 17316
Attorney: Sharon E. Myers, Esquire, 29 North Duke Street, York, PA 17401

ESTATE OF CYRIL N. MCMASTER, SR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator: Cyril N. McMaster, Jr., c/o 230 York Street, Hanover, PA 17331

Attorney: Judith Koper Morris, Esquire, 230 York Street, Hanover, PA 17331

ESTATE OF MARY JANE MUMPER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Katherine J. Lee now Katherine J. Williams, 11688 Cochran Road, Woodstock, AL 35188; John H. Mumper, 62 Allen Crest Drive, Hampden, MA 01036

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

ESTATE OF NAOMI F. SANDERS, DEC'D

Late of Littlestown, Adams County, Pennsylvania

Executrix: Nancy E. Six, 4810 Baltimore Pike, Littlestown, PA 17340

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

ESTATE OF OSCAR S. STAMBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Homer S. Stambaugh, R.D. #1, Box 1464, Brodbeck's, PA 17329

Attorney: James T. Yingst, Esquire, 515 Carlisle Street, Hanover, PA 17331

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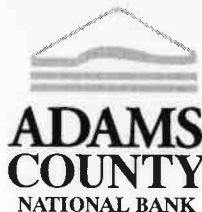
IN THIS ISSUE

STILLWAGGON

VS.

GETTYSBURG HOSPITAL ET AL.

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



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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on June 10, 1998, pursuant to the Fictitious Names Act, setting forth that Lesa D. Faraci, 4527 Carlisle Pike, New Oxford, PA 17350 is the only person owning or interested in a business, the character of which is fishing equipment and antiques, and that the name, style and designation under which said business is and will be conducted is Kimmel's Collectibles, and the address of the principal office or place of business of said business is 4527 Carlisle Pike, New Oxford, PA 17350.

Sharon E. Myers, Esquire
Countess Gilbert Andrews
29 North Duke Street
York, PA 17401
Solicitors

7/17

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, July 20, 1998, at 9:00 o'clock a.m.

MILLER—Orphans' Court Action Number OC-60-98. The First and Final Account of James A. Miller, Executor of the Last Will and Testament of Rebecca E. Miller, a/k/a Rebecca Elizabeth Miller, deceased, late of Oxford Township, Adams County, Pennsylvania

DARCEY—Orphans' Court Action Number OC-63-98. The First and Final Account of Claude R. Vess, Executor of the Last Will and Testament of Frank B. Darcey, Jr. a/k/a Frank B. Darcey, deceased, late of Freedom Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

7/17, 17



STILLWAGGON VS. GETTYSBURG HOSPITAL ET AL.

1. A medical doctor is competent to establish acceptable standards of nursing care.
2. Pennsylvania employs a liberal standard for qualifying expert witnesses and anyone with a reasonable pretension to knowledge beyond that possessed and understood by ordinary lay persons, and which may assist the finder of fact, may testify and give an opinion.
3. A party Defendant who is qualified as an expert may be required to express an opinion concerning his or her own negligence, but not that of a Co-Defendant.
4. When evidence which would properly be part of a case is within the control of or available to the party whose interest it would naturally be to produce it, and that party fails to do so without satisfactory explanation, the jury may draw an inference that if the evidence had been produced, it would be unfavorable to that party.
5. Where Plaintiff presented herself to the hospital emergency room with a condition that Defendant was required to treat, her being a drunk or a liar did not alter the condition or affect Defendant's duty to her.
6. The Court is not required to repeat a requested jury instruction as long as the point has been covered.
7. Ordinarily, assessment of damages is a jury question and judicial supervision is proper only if the verdict is plainly excessive or exorbitant.
8. A remittitur is appropriate only when the verdict suggests that the jury was guided by partiality, prejudice, mistake or corruption and if a remittitur is proper, the amount that is set should be the highest amount any jury could award, giving due weight to all evidence offered.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 91-S-967, **KENNA DEE STILLWAGGON AND ROBERT STILLWAGGON VS. GETTYSBURG HOSPITAL AND LEAH MAITLAND, M.D.**

Neil Rovner, Esq., for Plaintiff
Evan Black, Esq., for Defendant Gettysburg Hospital
Peter Curry, Esq., for Defendant Maitland

OPINION ON POST-TRIAL MOTIONS

Spicer, P.J., September 18, 1997.

On March 21, 1997, a jury returned a verdict absolving defendant Leah Maitland, M.D. of negligence, while awarding plaintiff \$1,253,128.16 because of Gettysburg Hospital's negligence. Of this \$128,162.16 was allocated to medical bills and the remainder, \$1,125,000.0, for loss of earning capacity and non-economic damages. On August 11, 1997, we awarded delay damages and molded the verdict to \$1,423,081.77. The hospital promptly moved to prohibit entry of judgment until the court disposed of its post-trial motions, under Pa.R.C.P. 227.4(1). The court stayed all proceedings until it at least considered post-trial motions and briefs. Argument was scheduled and heard September 12, 1997.

Reviewing facts most favorable to the verdict winner, the record indicates that on December 2, 1989, Kenna Dee Stillwaggon¹ (plaintiff) was a 26 year old woman who had been married for approximately six months. After shopping in York with a friend, she stopped in Gettysburg for a drink or two and parked on York Street. After leaving a local social club, she ran across the street and into the side of a van proceeding west. The side view mirror struck her head and she fell to the pavement.

An ambulance was summoned to the scene. The driver noticed a laceration of plaintiff's eyebrow and reported that she was oriented to person, place and friend but amnesic as to the events of her injury. After being transported to Gettysburg Hospital, plaintiff was assessed by a nurse, who reported her oriented as to time place and person but not as to the incident of injury. Plaintiff entered the emergency room at 6:10 p.m. Despite hospital records indicating that only she and a man complaining of a sore jaw entered the emergency room between 6:10 and 6:45 p.m., plaintiff was not seen by a physician until approximately 6:40 p.m. At that time she was seen and evaluated by Dr. Leah Maitland, who was the emergency room physician on duty. Dr. Maitland noticed that plaintiff did not know the name of the friend with whom she had traveled to York, was not following commands very well and seemed confused. However, the doctor could not determine if the reason for plaintiff's condition was alcohol or some other cause.

Dr. Maitland ordered fifteen-minute neurological (neuro) checks every fifteen minutes. Pursuant to hospital protocol, the results were to be entered in a neuro check sheet. At trial, the hospital was unable to produce these records and could only explain that they must have been lost during the press of business. The nurse responsible, Jennifer Carmichael Grove, testified that it is not unusual for such records to be shipped along with a patient to a receiving hospital. However, she could not say that this happened.

Patients suffering from head injuries are evaluated according to what is known as the Glasgow Coma Scale. A perfect score is fifteen. The lower the score, the greater the possibility of brain impairment. Ms. Grove said that she assigned a perfect score to plaintiff, and noticed no deterioration in her condition. This version conflicted with other

¹This action was commenced by both Ms. Stillwaggon and her former husband. Mr. Stillwaggon did not appear at trial and did not participate in these proceedings. Our opinion dealing with delay damages points out that trial was delayed until plaintiffs were divorced. The record in this case does not really reflect what happened to the consortium claim and we can only assume it has died a quiet death.

evidence, especially expert opinions. A defense expert opined that Ms. Stillwaggon would have scored 13 or 14.

Ms. Grove was aware that plaintiff vomited twice in the x-ray department. No evidence showed that she reported this to Dr. Maitland, who said she would have liked having the information. Dr. Marc Bayer, one of plaintiff's experts, testified specifically that failure to report vomiting was a violation of an emergency department's standard of care. Another, Dr. James Bagnell said that applicable nursing standards of care were breached by failure to perform and document adequate neuro checks, and to document vomiting and report the same to a doctor.

To put this into perspective, plaintiff presented herself at the hospital as either a person who suffered only from the effects of alcohol, or a person traumatized by a head injury, likely to have suffered a epidural hematoma, and only incidentally affected by alcohol. Plaintiff's experts said that it is very important to track and evaluate patients manifesting signs of head injury as well as inebriation. The first hour, said one, is critical. During that time, blood may leak into the cranial cavity, compressing the brain and causing symptoms that can easily be mistaken for alcohol impairment. Drunks can sober up, but brain compression may cause irreversible neurological damage. The emergency room staff, physician and nurses included, saw a patient who may have been intoxicated, and who displayed signs of head injury. Nobody testified that the hospital should have immediately shipped her off to a receiving hospital with more equipment and a bigger staff. There was little dispute as to what should have been done, and that was to carefully monitor the patient and act quickly when indications of hematoma appeared. The dispute concerned what actually was done.

A plaintiff's expert alluded to a rule that if an act is not documented, it hasn't been done. The jury was instructed to consider defendant's explanation for its failure to present neuro checks at trial and, if they rejected the explanation, could find that either the checks were not done, or, if they were, the results would have been unfavorable to the hospital.

It is obvious that the jury resolved credibility issues in favor of plaintiff and against defendant.

Ultimately, a nurse noticed what was called a blown eye, which was a dilated pupil indicative of pressure on the brain. Plaintiff was flown to York Hospital, where it was determined she had a epidural hematoma. As a result, she suffered permanent injuries, including partial paralysis on her right side, as well as speech and memory problems.

Her treating physician said problems will worsen with age. Plaintiff's testimony indicated that she worked very hard in therapy and improved more than people might have anticipated. An almost perpetual smile was described as being involuntary. She underwent 104 days of hospitalization and experienced seizures. During treatment, she had a tracheostomy tube as well as a stomach feeding tube.

Uncontradicted economic expert testimony set plaintiff's loss of earning capacity between \$375,277.00 and \$862,234.00.

The jury returned with a verdict in plaintiff's favor in the amount of \$1,125,000.00. Defendant seeks a new trial as to all issues and all parties. It requests, in the alternative, a remittitur. We will now consider specific challenges raised in defendant's motions.

1. Weight of evidence: Normally, arguments that a new trial should be granted because a verdict is against the weight of evidence, are judged on whether the verdict was so contrary to the evidence as to shock one's sense of justice. In certain situations, new trials are granted to give right another chance to prevail. *O'Sullivan v. Joy Technologies, Inc.*, 446 Pa. Super 140, 666 A.2d 664 (1995). However, in this case the sole basis advanced is that plaintiff failed to meet her burden of proving negligence. All other grounds, including boilerplate assertions, are waived. *TCI Construction Corp. v. Gangitano*, 403 Pa. Super, 621, 589 A.2d 1135 (1991).

Defendant's argument might more properly be characterized as one involving sufficiency, not weight, but we view this distinction as rather meaningless under the circumstances. Neither party has attempted to distinguish malpractice cases involving hospitals from those involving physicians, nor has plaintiff argued that different rules apply. Therefore, we will discuss and apply cases involving doctors.

Defendant recognizes that this case involves respondeat superior, concerning its nursing staff, and not corporate negligence. The central issue involves Ms. Grove's failure to monitor and report, not the hospital's non delegable duties relating to: (1) maintaining its facilities properly; (2) selecting and retaining competent physicians; (3) overseeing doctors; and (4) adopting and promulgating adequate rules and policies. See *McClellan v. Health Maintenance*, 413 Pa. Super. 128, 604 A.2d 1053 (1992). Plaintiff does not contend that the hospital failed to adopt adequate procedures. Rather, she asserted that defendant's nursing staff failed to follow procedures.

Supreme Court has said:

In order to establish a prima facie case of malpractice, the plaintiff must establish (1) a duty owed by the physician to the patient (2) a breach of duty from the physician to the

patient (3) that the breach of duty was the proximate cause of, or a substantial factor in, bringing about the harm suffered by the patient, and (4) damages suffered by the patient that were a direct result of that harm. (citations omitted)

Mitzelfelt v. Kamrin, 526 Pa. 54, 62, 584 A.2d 888, 891 (1990)

As to causation, the same court said:

The second step is to determine whether the acts complained of caused the actual harm suffered by appellant. This is where we apply the relaxed standard.....

Once there is sufficient testimony to establish that (1) the physician failed to exercise reasonable care, that (2) such failure increased the risk of physical harm to the plaintiff, and (3) such harm did in fact occur, then it is a question properly left to the jury whether the acts or omissions were the proximate cause of the injury.

Id., 584 A.2d at 894, 895

Despite arguments to the contrary, both Dr. Bagnell and Dr. Bayer were competent to express expert opinions concerning emergency room nursing care. Superior Court has held that a medical doctor is competent to establish acceptable standards of nursing care. Taylor v. Spencer Hospital, 222 Pa. Super. 17, 292 A.2d 449 (1972). Pennsylvania employs a liberal standard for qualifying expert witnesses. Anyone with a reasonable pretension to knowledge beyond that possessed and understood by ordinary laypersons, and which may assist a finder of fact, may testify and give an opinion. Ruzzi v. Butler Petroleum Co., 527 Pa. 1, 588 A.2d 1 (1991).

Dr. Bayer spent five years as director of the UCLA emergency department and was an associate director of emergency medicine for 11 years at Oregon State University. For the 5 year period preceding the trial, he worked in the emergency room department at a community hospital in Connecticut. He is a professor of surgery and medicine at University of Connecticut and does "hands on" training with his students, residents, nurses and other health care professionals in the emergency room.

Dr. Bagnell was chairman of a regional trauma center and practiced in an emergency room from 1984 to 1995. As chairman, he oversaw the activities of personnel working in an emergency room setting. At the

time of trial, he worked 48 hours per week in an emergency room.

Both Dr. Bayer and Dr. Bagnell testified that prompt care may have resulted in plaintiff suffering no residual injury. Dr. Bagnell said that an epidural hematoma "rarely even leaves you with a seizure problem, let alone any permanent brain damage," when there is early intervention. N.T.324. Both said inaction by hospital staff, especially Nurse Grove's failure to report vomiting, led to delay in treatment, fell below an acceptable standard of care and increased the risk of harm to plaintiff. Both experts testified to a reasonable degree of medical certainty.

Of course, defendant argued that it acted properly and there was no delay. However, Nurse Grove could not remember whether or not she reported vomiting to a doctor, and records of neither of the two doctors having emergency room duty that evening reflected such information.

At any rate, plaintiff produced sufficient evidence which, if believed, would have entitled her to a verdict.

2. Cross examination of Dr. Maitland:

After plaintiff closed her case and during Dr. Maitland's defense, the doctor was asked on cross examination:

Q. ...when someone brought you down the first x-ray that was taken for you to look at the x-ray and read it and then dictate your note would she (plaintiff) still have been in the x-ray department?

A. Yes.

Q. But you don't recall any nurse telling you that she vomited?

A. No.

Q: Is that something you would have wanted to know if you were there?

N.T. 467

An objection was overruled at this point. Later, however, another question was asked:

Q. And if that happened while you were still in the hospital, whether you were looking at the x-ray or dictating, is that something the nurse should have reported to a doctor.

N.T. 470

The court sustained an objection, saying that counsel could only ask

if Dr. Maitland would like to have been informed about the vomiting. Questions were thereafter permitted, with the doctor answering that she would have needed to evaluate the information.

The questions were proper cross examination, as they related to direct testimony of a party witness. They were not, as defendant suggests, an expert opinion relating to the hospital's legal duty. It argues that Dr. Maitland should not have been permitted to express an opinion because it was not provided with an expert report.

It is an interesting question whether notice requirements applied in this case and, if so, whether they were sufficiently met. Dr. Maitland was, after all, employed by defendant. In a somewhat analogous situation, Superior Court, in *Jistarri v. Nappi*, 378 Pa. Super 583, 549 A.2d 210 (1988), held that notice requirements were met. That court held that a party defendant who is qualified as an expert may be required to express an opinion concerning his or her own negligence, but not that of a codefendant. Although that is the situation before us, it is clear that Dr. Maitland's testimony concerned her own expectations about the operation of the emergency room and were never couched in terms of an applicable standard of care.

3. Jury instructions concerning a negative inference:

During its charge to the jury, the court said:

There's a general rule of law, members of the panel, that when evidence which would properly be part of a case is within the control of or available to the party whose interest it would naturally be to produce it, and that party fails to do so without satisfactory explanation, you may draw an inference that if the evidence had been produced it would be unfavorable to that party. In applying that general rule to this case, as to the hospital's failure to produce those neuro check forms, you may draw an inference that those reports or form would have been unfavorable to the Defendants if you find all of the following to exist: Number one, that those documents were under the control of the hospital. Number two, that they would naturally have been to the hospital and doctor's interest to produce, and lastly, that there has been no satisfactory explanation for the failure to produce those forms.

With respect to this, members of the panel, my recollection of the testimony is that it never was established that anyone brought to Dr. Maitland's attention the results of any of these neuro checks and this instruction may, depend-

ing upon how you find the facts, be applicable only to the hospital. In other words, if you find that the neuro checks were under the control of the hospital, it would be in the hospital's interest to produce them, that they failed to do so and they haven't given a satisfactory reasonable explanation for the failure, you may find that the results of those checks would be unfavorable or that the checks were not done and it is on that basis that I understand the Plaintiff's case that they are proceeding against the hospital independently of Doctor Maitland's negligence or lack thereof.

N.T. 821-822

Defendant does not dispute the general rule that a jury may draw an inference that the evidence would be unfavorable to it. See *Clark v. Philadelphia College*, ___ Pa. Super. ___, 693 A.2d 202 (1997), which also involved missing notes. However, it claims that the court went too far by telling the jury it could find that the checks were not done. Defendant also has argued that it provided a satisfactory explanation.

It is true that certain reports which undeniably were completed were also missing. While this might make defendant's explanations more credible, facts were hardly clear enough for the court to make the decision. It was a jury question, the issue was ably argued and the resolution went against defendant.

There was a real issue in this case whether or not neuro checks were done. The instruction was tailored to the factual scenario involved. We cannot understand how the defendant was prejudiced. Whether the jury determined that the contents of the checks were unfavorable, or that the checks were not done is a distinction without a difference.

The jury was adequately instructed as to plaintiff's burden and their right to determine facts. The instruction permitted but did not require an inference. Judged in its entirety, the instruction fully and correctly informed the jury of the issues that were to be resolved by them, and the proper standard to be applied. See *O'Sullivan v. Joy Technologies, Inc.*, supra.

4. Instructions concerning plaintiff's intoxication:

The court instructed the jury that they should not consider plaintiff's intoxication except in the context of her medical condition when she arrived at the hospital. Defendant argues that, since it did not assert that Ms. Stillwaggon was contributorily negligent, the instruction was erroneous.

It was precisely because contributory negligence was not an issue that the instruction was given. The court wanted to remove any

influence of fault on the part of plaintiff from the jury's consideration. It was not her testimony which proved her case. She may have, and probably did, under-report the amount she drank in the time before the accident. Whether she drank four, six or more beers within an hour's time was irrelevant. She presented herself to the emergency room with a condition that defendant was required to treat. Her being a drunk or a liar did not alter the condition or affect defendant's duty to her.

Defendant has not shown how it was prejudiced by the instruction, and we can see none.

5. Refusal to give requested instruction that an unfortunate result is not proof of wrongdoing:

While the court did not read defendant's request 4, it feels it adequately covered the request during instructions. On page 818 of the trial transcript, the following appears:

I want to tell you that the mere fact that there were unfortunate results in this case does not mean that the Defendants are liable.

The court is not required to repeat requested wording as long as the point is covered. *Pascale v. Hechinger Co. of Pa.*, 426 Pa. Super. 426, 627 A.2d 750 (1993).

6. Other instructions concerning burden of proof:

Defendant contends: (a) that the court erred in refusing to instruct that the mere fact that plaintiff filed a lawsuit did not entitle her to recover; (b) inadequately explained damages; and (c) inadequately instructed the jury concerning plaintiff's burden of proof to establish damages.

The instructions adequately covered all three of these subjects. Plaintiff's burden was described no less than six times, language used by the court accorded with the law and there were no confusing instructions. Defendant produced no evidence that Ms. Stillwaggon would have suffered residual effects even if proper treatment had promptly been given.

7. Failure to direct a verdict:

The hospital argues that the court should have directed a verdict in its favor. This subject has been addressed in the discussion concerning establishing a prima facie case. Viewing evidence and reasonable inferences deducible therefrom in a light most favorable to plaintiff, it is clear that she produced enough to sustain the verdict. *O'Sullivan v. Joy Technologies, Inc.*, supra.

8. Excessiveness of verdict:

Ordinarily, assessment of damages is a jury question and judicial supervision is proper only if verdict is plainly excessive or exorbitant.

Both remittitur and a motion for new trial based on an excessive award are judged by "shocks the sense of justice" standard. A remittitur is appropriate only when the verdict suggests that the jury was guided by partiality, prejudice, mistake or corruption. If a remittitur is proper, the amount that is set should be the highest amount any jury could award, giving due weight to all evidence offered. Factors to be considered are: (1) severity of the injury; (2) whether injury has been established by objective evidence or subjective testimony of plaintiff; (3) the permanency of injuries; (4) amount or size of out of pocket expenses; (5) whether plaintiff can continue in employment; and (6) the amount demanded in the complaint. Where credibility is the issue, a verdict is conclusive. *Doe v. Raezer*, 444 Pa. Super. 334, 664 A.2d102 (1995); alloc. dn 544 Pa. 630, 675 A.2d 1248 (1996); *Smith v. Brooks*, 394 Pa. Super. 327, 575 A.2d 926 (1990); alloc dn 527 Pa. 625, 592 A.2d 42 (1991).

This is not a case where the jury gave plaintiff more than she demanded, so we will limit our considerations to the first five factors:

(1) The loss of her temporal lobe caused plaintiff permanent hemiparesis on her right side, loss of memory and speech impediments.

(2) Her injuries were established by objective evidence.

(3) The injuries are permanent.

(4) Plaintiff cannot return to work.

(5) Medical expenses, after eliminating one month which plaintiff forewent, were in excess of \$125,000.00. She suffered loss of earnings of \$70,000.00 up to the time of trial. The jury could have determined future impairment of earnings to have been as much as \$850,000.00. Defendant basically conceded that such loss was at least \$575,000.00

Plaintiff had a life expectancy of fifty years.

The record in this case does not support either remittitur or a new trial. While it is true that the verdict was substantial, plaintiff suffered permanent, debilitating injuries.

The attached order shall be entered.

ORDER

AND NOW, this 18th day of September, 1997, defendant's motions for a new trial and for a remittitur are denied.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF HILDA M. WESCH GARRABRANT, a/k/a HILDA M. GARRABRANT, DEC'D

Late of the Mt. Joy Township, Adams County, Pennsylvania
Co-Executors: Marie Chantelau, 765 Barlow Drive, Lake Heritage, Gettysburg, PA 17325; Helen Schwarz, 1405 Pine Crest Drive, South Williamsport, PA 17702
Attorney: John A. Wolfe, Esquire, Wolfe and Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF GENEVIEVE M. LEONARD, a/k/a GENEVIEVE MARY LEONARD, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LOUELLA M. MINNICH, a/k/a LOUELLA L. MINNICH, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executor: Lois Morningred, 19 Green Hill Drive, Newport, PA 17074
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF VERGIE E. SLAYBAUGH, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
Attorney: John W. Phillips, Esquire, 101 W. Middle St., Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF PHOEBE A. BERWAGER, DEC'D

Late of the Oxford Township, Adams County, Pennsylvania
Executor: Donald L. Berwager, 1066 Pine Grove Road, Hanover, PA 17331
Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF MARTHA R. GORMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
Executrix: Kay H. Tudhope, 231 Barberry Drive, Berea, OH 44017
Attorney: Timothy W. Misner, Attorney, 39 South Broad Street, Waynesboro, PA 17268-1610

ESTATE OF BENJAMIN F. HUFNAGEL a/k/a BENJAMIN F. HUFNAGEL, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executrix: Barbara A. Hufnagel, 80 Witmer Road, Hanover, PA 17331
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIE E. KELLER DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
Co-Executors: Anna M. Noel, 355 Clouser Road, Hanover, PA 17331; Joanne M. Stull, 366 Schoolhouse Road, Aspers, PA 17304; Michael J. Keller, 418 Granite Station Road, Gettysburg, PA 17325
Attorney: Audrey E. Woloshin, Attorney, Katherman & Heim, 345 East Market Street, York, PA 17403

ESTATE OF CORA E. LUCKENBAUGH a/k/a CORA ELLEN LUCKENBAUGH DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executors: Ruth M. Yohe, 4052 Robin Hood Drive, York, PA 17404; Carroll C. Luckenbaugh, 4041 Eldine Avenue, York, PA 17404
Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF JACQUELINE M. SPONSELLER DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Shawn E. Sponseller, 88 Ruel Avenue, Hanover, PA 17331
Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF MARY A. MURREN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
Executors: Alice M. Sosna, 3055 Centennial Road, Hanover, PA 17331; Mary Ann M. Smith, 219 North Street, McSherrystown, PA 17334; Teresa C. Glass 544 Brickcrafters Road, New Oxford, PA 17350; Bernard J. Murren, 2876 Centennial Road, Hanover, PA 17331; Gerald A. Murren, 600 Bender Road, Hanover, PA 17331
Attorney: Puhl & Eastman, Esquires, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF FRANCIS A. NOEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Administrator: Mary L. Noel, 406 Lingg Road, New Oxford, PA 17350
Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF NORA G. SMICK, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania
Executrix: Lois S. Payne, a/k/a Lois J. Payne, 157 North Main Street, Biglerville, PA 17307
Attorney: Puhl & Eastman, Esquires, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

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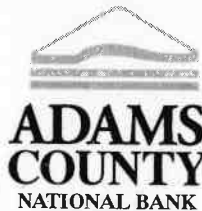
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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on April 9, 1998.

The name of the corporation is JAY BEE MINI MART INC.

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

Jay Bee Mini Mart Inc.
45 E. Hanover Road
Bonneauville, PA 17325

7/24

NOTICE

NOTICE IS HEREBY GIVEN that PNC Bank, National Association, formerly Gettysburg National Bank, Guardian of Troy L. Hadlock, minor child of Barry L. Hadlock, deceased, has filed a First and Final Account to Orphans' Court Action No. OC-40-84. The Account has 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, Pennsylvania, Orphans' Court Division, Gettysburg, Pennsylvania, for confirmation on Monday, August 3, 1998, at 9:00 A.M.

Puhl & Eastman
16 Lincoln Square
Gettysburg, PA 17325

7/24, 31

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for MEADOWBROOK COMMONS PLANNED COMMUNITY, INC., were filed under the provisions of the Nonprofit Corporation Law of 1988.

Daniel M. Frey & Associates
Solicitors
14 Center Square
Hanover, PA 17331

7/24

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, August 3, 1998, at 9:00 o'clock a.m.

FOHL—Orphans' Court Action Number OC-44-94. The Second and Final Account of PNC Bank, N.A. and Kathy L. (King) Landrigan, Executors of the Last Will and Testament of Shirley K. Fohl, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

7/24, 31



CARBAUGH VS. ELICKER, ET AL.

1. Lay persons are qualified to express opinions as to speed in certain situations but such opinions must be expressed in numerical numbers since "fast," "slow," or "excessive" are found to be conclusory in nature and lacking in evidentiary value.

2. In cases where lay witnesses are offered to establish speed, a proper foundation must be established showing that the witness had a sufficient opportunity to estimate the speed and some basis for determining speed.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-863, BRETT A. CARBAUGH VS. LISA A. ELICKER AND DONALD WALTER ALLEN.

Mark David Frankel, Esq., for Plaintiff

Edward E. Knauss, IV, Esq., for Defendants

MEMORANDUM OPINION

Spicer, P.J., September 24, 1997.

Plaintiff has filed a motion in limine seeking to exclude lay opinion testimony. Defendants apparently intend to call two pedestrians, Reverend Dirk Small and Nicole L. Miller, to testify that plaintiff's speed shortly before the accident was between 65 and 75 m.p.h. in a 45 zone. Reverend Small testified in a deposition that he is a licensed driver and saw the plaintiff's pickup truck for a couple of seconds about a quarter mile away from the accident scene. Ms. Miller also gave a deposition and said she was 12 years old, watched the truck go by as she stood in front of her house, and shortly afterwards heard a loud crash. Although she lost sight of the vehicle as it passed, she saw it approaching. Thereafter, she bicycled to the scene.

Obviously, Ms. Miller is not licensed to operate a vehicle. She said she judged speed by traffic that passes in front of her home and that plaintiff was driving faster than her parents.

Laypersons are qualified to express opinions as to speed in certain situations. PLE Evidence §361 summarizes the law in this area. However, some explanation is required. The section points out that a witness familiar with a railroad intersection was allowed to testify that a particular train ran at usual speed. It is clear that opinions must be expressed in numerical numbers, since "fast," "slow," or "excessive" are found to be conclusory in nature and lacking in evidentiary value. *Kearns by Kearns v. DeHaas*, 377 Pa. Super. 200, 546 A.2d 1226 (1988), citing *Starner v. Wirth*, 440 Pa. 177, 269 A.2d 674 (1970).

In cases where lay witnesses are offered to establish speed, a proper foundation must be established showing that the witness had a sufficient opportunity to estimate the speed. *Solomon v. Baum*, 126 Pa. Cmwlth 646, 560 A.2d 878 (1989). The witness must be shown to have some basis for determining speed. *Kearns by Kearns v. DeHaas*, supra. Although it has been held that a driver's license is not a prerequisite,

some experience is necessary, such as being a passenger in an automobile. PLE Evidence, supra.

Supreme Court has said:

Remoteness of the evidence is not determinable by distance and time alone, but as we have said, depends upon the facts in each case. No exact limitation of distance or time can be fixed. Where the accident occurs in a city, for instance, with intersecting streets and traffic, evidence of a speed at a comparatively short distance before the accident may be too remote, whereas in rural areas evidence of a speed at a greater distance may be relevant. *Finnerty v. Darby*, 391 Pa. 300, 316, 138 A.2d 117, 125 (1958)

The court held that one half mile in a rural setting was not too remote.

Although the issue is not before us at the present, we feel it appropriate to point out that Supreme Court also said that such evidence, while relevant, does not in and of itself establish negligence at the scene of an accident. See also, *Kuhler v. Harrison Construction Co.*, 361 Pa. 100, 624 A.2d 853 (1949).

Neither witness was limited to seeing the pickup truck for a fraction of a second. The testimony of Reverend Small is clearly admissible. Ms. Miller's may also be, but her deposition did not establish her familiarity with speed. She said only that plaintiff was going faster than her parents drove.

We decline to exclude either witness's testimony at this time. Unless Ms. Miller is further qualified, however, she will not be permitted to testify.

ORDER

AND NOW, this 24th day of September, 1997, plaintiff's in limine motion to preclude testimony is denied without prejudice to motions made at trial.

LEONARD VS. KATCHUK

1. Any party may move for summary judgment in whole or in part.
2. If a person "is without this Commonwealth" when a cause of action accrues against him, the statute of limitations does not begin to run until "he comes into or returns to this Commonwealth."
3. If the Plaintiff knows of Defendant's out-of-state address and is able to serve him there, the Statute of Limitations will not be tolled.
4. On a Motion for Summary Judgment, the Defendant may not rest upon the mere allegations or denials of the Pleadings but must file a response identifying one or more issues of fact arising from evidence in the record or evidence in the record establishing the facts essential to the cause of action or defense.
5. A clear, distinct and unequivocal acknowledgement of a debt as an existing obligation, such as is consistent with a promise to pay, is sufficient to toll the statute of limitations.

6. Once the Defendant has sufficiently pled the statute of limitations, the burden shifts to the Plaintiff to "raise the issue of its applicability."

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-470, BELMONT L. LEONARD VS. RONALDA. KATCHUK.

Jerry A. Philpott, Esq., for Plaintiff

Debra Fourlas, Esq., for Defendant

OPINION ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Kuhn, J., September 16, 1997.

On May 28, 1996, Plaintiff, Belmont Leonard, filed a Complaint against Defendant, Ronald Katchuk. Plaintiff then filed an amended complaint and on June 28, 1996, a second amended complaint. On July 12, 1996, Defendant answered and raised the affirmative defense of the statute of limitations. On December 23, 1996, Plaintiff filed a Motion for Partial Summary Judgment. For the reasons set forth below, the Motion is stayed until the parties sufficiently supplement the record.

STATEMENT OF FACTS

In July of 1988, Defendant executed an installment note to Plaintiff for the sum of \$15,350 with interest. The note was executed in New York where Defendant had lived since 1984. Defendant moved to Pennsylvania in June of 1994, and currently resides in the Gettysburg area.

According to the note, Defendant was to pay in installments with the last installment to be made on June 1, 1989. Sometime after executing the note, Defendant paid a total of \$3,700. Defendant has claimed that additional payments were made, in the form of furniture, although he is uncertain of when the tender occurred. Plaintiff contends that he is still owed an amount of \$11,650 plus interest.

LEGAL DISCUSSION

Summary judgment shall be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Allstate Insurance Co. v. McFadden*, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991); *Alloc. den.* 602 A.2d 855 (1991) (citations omitted). Any party may move for judgment in whole or in part. Pa. R.C.P. 1035.2, 42 Pa. C.S.A. An entry of summary judgment may be granted only in cases where the right is clear and free from doubt. In ruling on such a motion, the record must be viewed in the light most favorable to the non-moving party. *Demmler v. Smithkline Beecham Corp.*, 448 Pa. Super. 425, 671 A.2d 1151, 1153 (1996).

Plaintiff's motion raises two arguments that the applicable four year statute of limitations, 42 Pa. C.S.A. §5525(7), has not expired. First, Plaintiff claims that Defendant's absence from Pennsylvania from 1984 to 1994 tolled the statute pursuant to Section 5532. 42 Pa. C.S.A. §5532(a). Second, Plaintiff argues that the acknowledgment doctrine has tolled that statute of limitations because Defendant has made partial payments.

Plaintiff's first argument relies on 42 Pa. C.S.A. §5532(a). This Section reads in pertinent part as follows:

If, when a cause of action accrues against a person, he is without this Commonwealth, the time within which the action or proceeding must be commenced shall be computed from the time he comes into or returns to this Commonwealth.

Plaintiff claims that because Defendant has admitted to residing outside the Commonwealth from approximately 1984 to June of 1994, the statute was tolled until June of 1994.

Defendant raises two points in opposition to Plaintiff's argument. First, Defendant claims that because he was not a Pennsylvania resident when the cause of action arose, Section 5532(a) does not apply. We do not find this argument persuasive.

Pennsylvania courts have consistently held that when statutory language is explicit, "the Court must follow its plain language and not resort to other methods of statutory construction." *Thorpe v. Jim Thorpe Borough Police Dept.*, 682 A.2d 73, 76, (Pa. Commw. Ct. 1996). As the language of the statute reads currently, there is no requirement of residency. If a person "is without this Commonwealth" when a cause of action accrues against him, the statute of limitations does not begin to run until "he comes into or returns to this Commonwealth." 42 Pa. C.S.A. §5532(a).

Many of the cases relied upon by Defendant pre-date this amended portion of the statute. E.g., *Hartman v. Time, Inc.*, 64 F. Supp. 671 (E.D. Pa. 1946); *Hunter v. Bremer*, 256 Pa. 257, 100 A. 809 (1917). Section 5532 was amended in June of 1978 and previously read as follows:

In all civil suits and actions in which the cause of action shall have arisen within this state, the defendant or defendants in such suit or action, who shall have become *non-resident* of the state after said cause of action shall have arisen, shall not have the benefit of any statute of this state for the limitations of actions during the period of such residence without the state.

Act of 1895, P.L. 112 §1, 12 P.S. §40 (repealed) (emphasis added). These references to residence are not present in the current statute and therefore will not be read into the statutory language adopted by the legislature.

Defendant's second argument is that the statute was not tolled because the Plaintiff made no reasonable effort to locate or serve Defendant. Section 5532(b)(3) creates an exception to the general tolling provision in subsection (a). This Section precludes tolling where "jurisdiction over the person of the defendant can be obtained without personal delivery of process to him within this Commonwealth." 42 Pa. C.S.A. §5532(b)(3). Little case law in Pennsylvania has addressed this issue; however, federal case law reasoning is persuasive. In *Bywaters v. Bywaters*, 721 F. Supp. 84 (E.D. Pa. 1989), the Court held that if the plaintiff knows of defendant's out of state address and is able to serve him there, the statute will not be tolled.

Defendant has claimed that Plaintiff knew of or could have easily discovered Defendant's whereabouts; however, Plaintiff and Defendant are not in agreement on this point. Therefore, there remains a genuine issue of material fact as to Plaintiff's knowledge, which is not properly determined on a motion for summary judgment.

Plaintiff's knowledge of Defendant's address is only one requirement to the exception in Section 5532(b)(3). The Defendant also bears the burden of showing that Plaintiff could have served Defendant while he was absent from the Commonwealth. *Bywaters v. Bywaters*, 721 F. Supp. 85, 89. Although we are dealing with a motion for summary judgment, where it is the moving party's burden to prove that no material issue of fact exists or that an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense, the Rules state that the defendant may not rest "upon the mere allegations or denials of the pleadings but must file a response . . . identifying one or more issues of fact arising from evidence in the record . . . or . . . evidence in the record establishing the facts essential to the cause of action or defense." Pa. R.C.P. 1035.3, 42 Pa. C.S.A.; *Allstate Insurance Co. v. McFadden*, 407 Pa. Super. 537, 540, 595 A.2d 1277, 1278 (1991).

Defendant has not met his burden in the case at hand. The service requirement to the exception was never addressed. The pleadings provide no facts to show that Plaintiff could have served Defendant or that the Pennsylvania Courts would have had jurisdiction. Therefore, pursuant to Pa. R.C.P. 1035.3(c), the Defendant will be granted leave to supplement the record in support of his claim that Section 5532(b)(3) is applicable. At that point, the Court will be "in a position to determine, upon a more complete factual record and in light of the applicable law" whether Defendant's assertion that the exception applies is warranted. *McFadden v. American Oil Co.*, 215 Pa. Super. 44, 257 A.2d 283, 290 (1969).

Plaintiff's second argument in his Motion for Partial Summary Judgment raises the acknowledgment doctrine. The Superior Court has stated the acknowledgment doctrine as follows,

A clear, distinct and unequivocal acknowledgment of a debt as an existing obligation, such as is consistent with a promise to pay, is sufficient to toll the statute. There must,

however, be no uncertainty either on or in the identification of the debt; and the acknowledgment must be plainly referable to the very debt upon which the action is based; and also must be consistent with a promise to pay on demand and not accompanied by other expressions indicating a mere willingness to pay at a future time." *Huntingdon Finance Corp. v. Newton Artesian Water Co.*, 442 Pa. Super. 406, 659 A.2d 1052, 1055 (1995).

Defendant argues that the acknowledgment doctrine has not tolled the statute of limitations. He claims that any partial payments made by Defendant were made prior to the due date and therefore did not act to toll the statute and, alternatively, that even if the statute was tolled by the partial payments, it was only temporary and began to run again after the acknowledgment occurred.

As noted above, on a motion for summary judgment, it is the moving party's burden to prove that no material issue of fact exists or that an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense. *Allstate Insurance Co. v. McFadden*, supra., 407 Pa. Super. at 540, 595 A.2d at 1278. Additionally, once the Defendant has sufficiently pled the statute of limitations, the burden shifts to the plaintiff to "raise the issue of its applicability." *Johnson v. Shive*, 72 D&C 37, 39 (1949).

It is this Court's opinion that Plaintiff has not met its burden. The only showing made by Plaintiff that would point to a possible acknowledgment by Defendant is an interrogatory answered by Defendant claiming to have tendered goods to Plaintiff. However, there is nothing in the record to show when this occurred or that it was actually tendered as part payment. See, Plaintiff's Interrogatories Directed to Defendant, #5. Had the tender been made after June 1, 1989, it may have acted to toll the statute, but with no evidence as to when it occurred, this Court cannot make the determination as to whether the statute was tolled. Again, pursuant to Pa. R.C.P. 1035.3(c), Plaintiff will be granted leave to supplement the record in support of his claim that the acknowledgment doctrine applies.

Thus, Plaintiff's Motion for Partial Summary Judgment will be stayed to allow both parties to supplement the record so that a determination can be made by the Court based upon a complete record.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 16th day of September, 1997, Plaintiff's Motion for Partial Summary Judgment is hereby stayed to permit the parties to supplement the record.

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 ELIZABETH M. BURKEE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executors: Lena G. Lutter and Frederick T. Lutter
 Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF RALPH M. SANGREY, DEC'D

Late of Orange County, Florida, and formerly of Franklin Township, Adams County, Pennsylvania
 Executor: Joseph J. Sangrey
 Attorney: Lacy Hayes, Jr., Esquire, 2216 Walnut Street, Harrisburg, PA 17103-2426

SECOND PUBLICATION

ESTATE OF HILDA M. WESCH GARRABRANT, a/k/a HILDA M. GARRABRANT, DEC'D

Late of the Mt. Joy Township, Adams County, Pennsylvania
 Co-Executors: Marie Chantelau, 765 Barlow Drive, Lake Heritage, Gettysburg, PA 17325; Helen Schwarz, 1405 Pine Crest Drive, South Williamsport, PA 17702
 Attorney: John A. Wolfe, Esquire, Wolfe and Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF GENEVIEVE M. LEONARD, a/k/a GENEVIEVE MARY LEONARD, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LOUELLA M. MINNICH, a/k/a LOUELLA L. MINNICH, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Lois Morningred, 19 Green Hill Drive, Newport, PA 17074
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF VERGIE E. SLAYBAUGH, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
 Attorney: John W. Phillips, Esquire, 101 W. Middle St., Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF PHOEBE A. BERWAGER, DEC'D

Late of the Oxford Township, Adams County, Pennsylvania
 Executor: Donald L. Berwager, 1066 Pine Grove Road, Hanover, PA 17331
 Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF MARTHA R. GORMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executrix: Kay H. Tudhope, 231 Barberry Drive, Berea, OH 44017
 Attorney: Timothy W. Misner, Attorney, 39 South Broad Street, Waynesboro, PA 17268-1610

ESTATE OF BENJAMIN F. HUFNAGEL a/k/a BENJAMIN F. HUFNAGEL, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executrix: Barbara A. Hufnagel, 80 Witmer Road, Hanover, PA 17331
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIE E. KELLER DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Co-Executors: Anna M. Noel, 355 Clouser Road, Hanover, PA 17331; Joanne M. Stull, 366 Schoolhouse Road, Aspers, PA 17304; Michael J. Keller, 418 Granite Station Road, Gettysburg, PA 17325
 Attorney: Audrey E. Woloshin, Attorney, Katherman & Heim, 345 East Market Street, York, PA 17403

ESTATE OF CORA E. LUCKENBAUGH a/k/a CORA ELLEN LUCKENBAUGH DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Ruth M. Yohe, 4052 Robin Hood Drive, York, PA 17404; Carroll C. Luckenbaugh, 4041 Eldine Avenue, York, PA 17404
 Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF JACQUELINE M. SPONSELLER DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executor: Shawn E. Sponseller, 88 Ruel Avenue, Hanover, PA 17331
 Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

Legal Malpractice...

IT DOES HAPPEN



For some attorneys, legal malpractice is not an area of practice.

I have been doing legal malpractice on a referral basis for Pennsylvania and Delaware attorneys for a number of years.

If a case comes up and you wish to avoid involvement, I will be glad to assist. Referrals paid as allowed by law.

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Media, Pennsylvania 19063
(800) 648-8597
(610) 565-3800

Adams County Legal Journal

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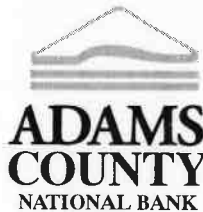
IN THIS ISSUE

FREDERICK, ET UX.

VS.

ZONING HEARING BOARD OF CONEWAGO TOWNSHIP

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, August 3, 1998, at 9:00 o'clock a.m.

FOHL—Orphans' Court Action Number OC-44-94. The Second and Final Account of PNC Bank, N.A. and Kathy L. (King) Landrigan, Executors of the Last Will and Testament of Shirley K. Fohl, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

7/24, 31

NOTICE

NOTICE IS HEREBY GIVEN that PNC Bank, National Association, formerly Gettysburg National Bank, Guardian of Troy L. Hadlock, minor child of Barry L. Hadlock, deceased, has filed a First and Final Account to Orphans' Court Action No. OC-40-84. The Account has 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, Pennsylvania, Orphans' Court Division, Gettysburg, Pennsylvania, for confirmation on Monday, August 3, 1998, at 9:00 A.M.

Puhl & Eastman
16 Lincoln Square
Gettysburg, PA 17325

7/24, 31

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



**LEGAL NOTICE
ADAMS COUNTY TAX CLAIM BUREAU**

Pursuant to Court Orders 98-S-452 through 98-S-468, the following real property will be offered for sale September 18, 1998 at 1:00 p.m. E.D.S.T., at the Adams County Courthouse, 111-117 Baltimore Street, 4th floor, Gettysburg, Pennsylvania. The purpose of this sale is to dispose at public sale the following parcels of real estate:

SALE NO.	OWNER(S) OR REPUTED OWNER(S)	TOWNSHIP/BOROUGH	MAP NO. or PROPERTY DESCRIPTION	PARCEL NO.	LOT NO.
41	Investment Management	Butler	F10 1989 Forest Park Mobile Home	38	81
61	Mays, Donald	Butler	G7	46	
205	Mort, John M. & Catherine	Hamiltonban			BB 17
216	Mort, John M. & Catherine	Hamiltonban			BB 136
226	Crowl, Albert J. Sr.	Huntington	I 4	66	
422	Ash-Mel, Inc.	Reading	J8	122 (previously a portion of J8-120)	
422A	Ash-Mel, Inc.	Reading	J8	123 (previously a portion of J8-120)	
422B	Ash-Mel, Inc.	Reading	J8	124 (previously a portion of J8-120)	
422C	Ash-Mel, Inc.	Reading	J8	125 (previously a portion of J8-120)	
424	Ash-Mel, Inc.	Reading	J8	120-G (previously known as J8-120-1)	
425	Ash-Mel, Inc.	Reading	J8	120-H (previously known as J8-120-2)	
426	Ash-Mel, Inc.	Reading	J8	120-I (previously known as J8-120-3)	
427	Ash-Mel, Inc.	Reading	J8	120-J (previously known as J8-120-4)	
472	Boyers, Howard & Prout, Candy	Straban	G12 1973 Anthony Mobile Home	124	78
487	Keeney, William	Straban	H12 1970 Burlington Mobile Home	21	3
519	Green Tree Financial Services	Straban Township	G12 1994 Commodore Mobile Home	124	69A
592	Wallen, Phillip M.	Carroll Valley	38	29	P 61
593	Widdowson, Fred G.	Carroll Valley	22	214	W320

TERMS OF SALE: Cash in the form of currency of the United States if the purchase price is \$50.00 or less. For properties selling for more than \$50.00, \$50.00 in the form of currency of the United States and a check or other satisfactory payment of the balance. All properties shall be paid for at the time the property is struck down. The purchaser(s) shall be required to pay, in addition to the bid price, the fees for preparing and recording a deed, and any applicable transfer taxes due (the assessed value x 2.43%).

The above properties were previously advertised for sale in the Adams County Legal Journal and The Gettysburg Times and in The Hanover Evening Sun on July 25, 1997.
7/31

**ADAMS COUNTY TAX CLAIM SALES
TAX CLAIM BUREAU—TAX SALES NOTICE**

TO OWNERS OF PROPERTIES DESCRIBED IN THIS NOTICE AND TO ALL PERSONS HAVING LIENS, JUDGMENTS OR MUNICIPAL OR OTHER CLAIMS AGAINST SUCH PROPERTIES.

Notice is hereby given by the Tax Claim Bureau in and for the County of Adams under the Act of 1947, P.L. 1368, as amended, that the Bureau will expose at public sale in the Adams County Courthouse, fourth floor, Jury Assembly Room, 111-117 Baltimore Street, in the Borough of Gettysburg, Pennsylvania at 9:00 a.m. E.D.S.T. on September 18, 1998, or any date to which the sale may be adjourned, re-adjourned or continued, for the purpose of collecting unpaid 1996 and any prior real estate taxes, prior liens, municipal claims, and all costs thereto, the following described set forth.

The sale of the property may, at the option of the Bureau, be stayed if the owner thereof or any lien creditor of the owner, on or before the date of the sale enters into an agreement with the Bureau to pay the taxes, claims, and all costs in installments in the manner provided by said Act, and the agreement be entered into.

There will be no Redemption Period after the date of the sale, but these taxes and costs can be paid up to the date of sale, September 18, 1998.

It is strongly urged that the prospective purchasers have an examination made of the title of any property in which they may be interested. Every reasonable effort has been made to keep the proceedings free from error. However, in every case the Tax Claim Bureau is selling the taxable interest and the property is offered for sale by the Tax Claim Bureau without guarantee or warranty whatsoever.

The property so struck down will be settled for before the next property is offered for sale. Deeds for the premises will be prepared by the Tax Claim Bureau and recorded. Buyer(s) will be required to pay, in addition to their bid, at the time the property is struck down to them, the basic sum for preparing and recording the deed, and the costs of such realty transfer stamps as required (assessed value x 2.43%). The Recorder of Deeds will mail the deeds to the address given by the purchaser.

A property will not be sold if the delinquent taxes and all costs are paid prior to the sale and it is suggested that this be done as soon as possible before the sale, as the earlier this is done, the more saving there will be in the amount of costs, etc.

It is repeated that there is no redemption after the property is sold and all sales will be final. No adjustments will be made after the property is struck down.

TERMS OF SALE: In the case of all properties selling for one hundred dollars (\$100.00) or less, cash in the form of currency of the United States must be paid in full at the time the property is struck down. In the case of properties for which more than one hundred dollars (\$100.00) has been bid, the sum of one hundred dollars (\$100.00) cash in the form of currency of the United States must be paid in full when the property is struck down and a check on a bank or other satisfactory payment for the balance must be paid at the same time. If the balance of the purchase price is not paid for any reason (for example, if a check is not paid), the one hundred dollars (\$100.00) cash paid shall be forfeited as liquidated damages.

David K. James, III
Solicitor, Tax Claim Bureau
Danielle Asper
Director, Tax Claim Bureau

Faint table with multiple columns, likely containing property listings or financial data. The text is mostly illegible due to low contrast and blurriness.

ADAMS COUNTY LEGAL JOURNAL
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ADAMS COUNTY, ILLINOIS
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SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
ABBOTTSTOWN BOROUGH			
4	Gross, Laverne E. & Nancy J.	Map # 005-0004---000	\$5,248.50
5	Speelman, Joseph & Myra	Map # L10-0040---136 1990 Skyline	\$1,267.93
6	Sterner, George O. & Shirley A.	Map # 004-0007---000	\$106.32
7	Gebhart, Wayne A. & Tammy L.	Map # 005-0020---000	\$5,870.77
8	Cary, Richard O. Sr.	Map # 004-0037---000	\$2,355.97
BENDERSVILLE BOROUGH			
14	Black, Dorothy A.	Map # 001-0035---	\$2,143.15
16	Keithley, David C.	Map # 004-0006---	\$553.00
BERWICK TOWNSHIP			
20	Luckenbaugh, Albert Lee & Vondalee	Map # L12-0094---000	\$3,457.83
23	Smith, Gary L.	Map # L11-0091---000	\$1,765.93
26	Wentz, Dennis E. & Null, Rosella L.	Map # K11-0155---000	\$3,103.21
28	Bankert, Alvin F. & Theresa I.	Map # K11-0048---	\$468.95
29	Smith, Timothy L. & Lori A.	Map # L10-0040---206 1986 Commodore	\$799.48
31	Turner, Gale G.	Map # K10-0086---000	\$4,479.52
32	Weaver, Frank E. & Violet N.	Map # L12-0035E---000	\$2,641.16
36	Staub, Patrick J. & Susan A.	Map # L10-0040---422 1985 Hauser	\$594.62
BIGLERVILLE BOROUGH			
45	Warlick, John K. & Dorinda R.	Map # 004-0053---000	\$3,767.44
46	Copenhaver, David M. & Debra K.	Map # 003-0116---000	\$1,702.33
BONNEAUVILLE BOROUGH			
55	Segraves, Helen L.	Map # 005-0088---000	\$4,386.73
56	Colkitt, Roger J. & Joanne M.	Map # 007-0008---000	\$3,881.37
BUTLER TOWNSHIP			
58	Anders, Barbara	Map # F10-0038---008 Skyline 1985	\$938.34
60	Bailey, Parker & Velma	Map # F10-0038---078 1982 Liberty	\$472.00
61	Carroll, Michael & Lisa	Map # F10-0038---084 1992 Imperial	\$1,287.27
63	Gorse, George E. & Carol	Map # E08-0026B---	\$6,268.11
65	Heldibridge, Steve & Connie	Map # F10-0038---029 1977 Mark IV Mobile Home	\$423.49
66	Kauffman, David & Debbie	Map # F09-0039---001 1968 Swiss Chalet Mobile	\$128.17
67	Martin, John C.	Map # F10-0038---037 1967 Redman Mobile	\$1,275.98
72	Rinehart, Catherine A.	Map # F09-0013---000	\$1,185.51
73	Shultz, Kenneth W. & Lisa D.	Map # F08-0056---000	\$1,271.88
77	Weible, Leslie O. & Margaret N.	Map # F08-0081A---000	\$3,293.62
79	Collins, Ricky & Belinda	Map # F10-0038---039 1991 Colonial	\$2,057.91
80	Heckendorn, James Jr.	Map # F10-0038---044 1985 Heritage	\$1,384.28
93	O'Neal, Peggy Sue	Map # G07-0052---001 1970 Hillcrest	\$174.06
CONEWAGO TOWNSHIP			
95	Brendle, Terry Lee & Rosalind	Map # K13-0023---	\$2,740.30
96	Heintzelman, Charles H. Jr. & Joanna M.	Map # 005-0169---000	\$1,624.31
99	Rang, Burnell H. & Hall, Gloria	Map # 008-0214---	\$6,181.94
100	Rohrbaugh, Bradley D.	Map # K14-0116A---	\$1,957.33

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
102	Stotsky, Timothy A. & Laurie A.	Map # 009-0166---	\$3,416.37
108	Wildasin, Lee A. & Margaret A.	Map # L14-0009-000	\$4,053.59
109	Marsar Development Corporation	Map # 012-0073---	\$1,129.98
110	Marsar Development Corporation	Map # 012-0080---	\$1,198.95
CUMBERLAND TOWNSHIP			
111	Andrew, Richard L.	Map # G14-0042A---000	\$2,116.90
117	Carson, Constance Louise	Map # F16-0022B---000	\$4,698.96
119	Eckert, Duane D.	Map # F14-0023---000	\$3,878.01
120	Koscinski, John & Antoinette F.	Map # F12-0051A---000	\$4,358.96
121	Kirkham, Barbara & Doris Lee	Map # F17-0022C---000	\$2,115.88
124	Oak Lawn Memorial Gardens Inc.	Map # E12-0079---000	\$8,066.55
126	Redding, Christopher & Troxell, Pat	Map # F15-0065---016 1986 Oakwood	\$778.98
138	Martin, Colleen	Map # E13-0025A---000	\$3,210.62
140	Sanders, Deborah	Map # F15-0065---039 1994 Fleetwood	\$970.91
141	Engineer, Rajendra B.	Map # E12-0082---096 1972 Vindale	\$205.38
EAST BERLIN BOROUGH			
147	Roberson, Carole S.	Map # 004-0114---000	\$1,302.48
149	Roberson, Carole S.	Map # 004-0116---000	\$4,366.93
150	Roberson, Carole S. & Sarah M.	Map # 004-0225---000	\$5,536.78
FAIRFIELD BOROUGH			
154	Sanders, Ellen Jean	Map # 006-0063---000	\$2,306.65
FRANKLIN TOWNSHIP			
157	Bolton, Rose B.	Map # D12-0019---000	\$2,537.04
161	Coene, Charles & Hoff, Karen	Map # 002-0099---000	\$546.73
163	Cooper, Brenda L. & Eagle, Jerry L. & Margaret L.	Map # D12-0018---000	\$1,948.35
164	Dorsey, Howard R. & Janie L.	Map # D12-0040---000	\$1,603.41
166	Gilland, Jeffrey	Map # C11-0052---000	\$689.08
168	Gorse, George E. & Carol	Map # C09-0045---000	\$5,873.87
169	Graham, Oscar L.	Map # B07-0001---070 1940	\$715.07
172	Herring, Thomas James	Map # B08-0047---001 1980 Liberty	\$296.76
174	Houck, Michael D. & Brunick, Tamela M.	Map # B09-0106---000	\$1,924.54
175	King, Jr., Robert & Marnel	Map # D12-0014A---000	\$418.10
179	Murdoch, Jon P. & Judith A.	Map # C10-0048F---000	\$3,361.12
181	Painter, William	Map # B08-0013---060 1950	\$323.57
186	Rodriquez, Monica S.	Map # C10-0027A---000	\$754.41
188	Schindel, Philip B.	Map # C12-0007D---000	\$4,544.60
190	Stusser, Thomas E. & Doris J.	Map # E10-0039A---000	\$3,662.16
191	South Mountain Dev. Co. Inc.	Map # A10-0001---000	\$675.96
193	Strausbaugh, Charles W. & Alverda	Map # B09-0038G---000	\$613.93
194	Swayzer, Fred L. & Estella M.	Map # C11-0047---000	\$495.42
195	Verdier, Linwood R. & Karan S.	Map # B09-0038E---000	\$1,126.09
201	Schindel, Philip B.	Map # B12-0001B---000	\$1,007.75
207	Goodyear, Christina	Map # B09-0210---000	\$465.84
208	Brown, Elizabeth M.	Map # B08-0013---022 1971	\$196.35
209	Hartzell, Ellwood V. & Margaret	Map # B09-0072---000	\$677.81
210	Ojanen, Eugene	Map # B09-0038D---000	\$2,219.33
211	Williams, Edgar A. & Yvonne H.	Map # B09-0122---000	\$243.55

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
FREEDOM TOWNSHIP			
218	Keckler, Bonnie J.	Map # E17-0033---	\$1,977.20
219	Koontz, James O.	Map # E18-0038---	\$3,803.67
221	Musselman, John E. & Holsinger, Dannie W.	Map # D16-0017---000	\$223.57
GERMANY TOWNSHIP			
223	Gerber, Martha J.	Map # I17-0083---000	\$5,325.40
228	Stambaugh, Charles E. Jr. & Judith Anne	Map # H18-0062---000	\$3,710.77
229	Wilson, Nancy W. a/k/a Nancy W. Rendo	Map # I18-0085---000	\$1,884.36
GETTYSBURG BOROUGH			
242	Harris, Richard A. & Ronda L.	Map # 011-0002---000	\$5,460.29
243	Harris, Richard A. & Rhonda L.	Map # 011-0001---000	\$1,658.00
246	Johnson, Sharon	Map # 010-0227---000	\$1,161.10
247	Jones, William H. & Cindy R.	Map # 010-0346---000	\$1,643.56
248	King, Olia S.	Map # 010-0332---000	\$2,315.62
250	Koscinski, John & Antoinette F.	Map # 006-0011---000	\$2,890.10
251	Koscinski, John & Antoinette F.	Map # 006-0012---000	\$2,829.20
252	Koscinski, Renee J.	Map # 006-0020---000	\$4,281.40
258	Kline, Ray	Map # 009-0113---000	\$1,500.10
268	Bittinger, Ronald J. & Elaine L.	Map # 008-0092---000	\$1,838.32
270	Mauston, James W. & Catherine	Map # 010-0257---000	\$1,024.04
277	Oussoren, Albert H. & Stacey L.	Map # 009-0134---000	\$2,434.93
HAMILTON TOWNSHIP			
278	Bullock, Frank R. & Connie	Map # L09-0015D---002 1987 Mobile Home	\$957.48
279	Forbes, Jack & Carol Elizabeth	Map # L09-0040---000	\$4,416.87
280	Forbes, Jack & Carol E.	Map # L10-0001---000	\$6,320.64
283	Ness, John B. & Eleanor H.	Map # K11-0012---000	\$10,602.90
HAMILTONBAN TOWNSHIP			
297	Dixon, Douglas L. & Cynthia J.	Map # BB0-0120---000	\$3,958.50
299	Higginbotham, Jerry & Linda K.	Map # BB0-0117---000	\$3,359.83
300	Kline, Raymond Walter	Map # C12-0130---000	\$1,452.51
301	Mort, John M. & Catherine C.	Map # A17-0052---000	\$21,014.25
303	Sanders, Robert E.	Map # C15-0084A---000	\$779.03
305	Sprankle, Lawrence K. & Sharon	Map # A15-0010---000	\$1,073.20
306	Stouter, Esther A.	Map # B13-0024---000	\$4,253.43
307	Wahoo Mountain Enterprises Inc.	Map # A17-0084---000	\$1,902.79
312	Gladhill, Kristy L.	Map # B17-0002---000	\$751.25
313	Johnson, John H. & Barbara L.	Map # C15-0038---000	\$1,581.99
314	Monn, Archie E. & Kay Fritz	Map # B14-0036A---000	\$896.15
323	Hazzard, Mary Elizabeth	Map # BB0-0098---000	\$157.94
HUNTINGTON TOWNSHIP			
338	Hermansen, Kai A.	Map # J06-0001A---000	\$3,449.72
339	Hermansen & Sons, Knud A.	Map # I05-0009---000	\$936.56
340	Hermansen & Sons, Knud A.	Map # I06-0015---000	\$480.68
341	Hermansen & Sons, Knud A.	Map # J06-0015---000	\$6,331.11
343	Kuhn, Donald C.	Map # H06-0015---000	\$1,893.35
344	Shaffer, Sharon A.	Map # I05-0045---000	\$1,361.47
348	Wolf, Larry M. & Linda M.	Map # G03-0067---000	\$2,081.44
351	Stephens, Robert S.	Map # I06-0007---000	\$1,693.28
LATIMORE TOWNSHIP			
356	Brown, Janet L.	Map # I03-0024B---000	\$1,229.90
364	Kropp, Lawrence C.	Map # K04-0006A---000	\$1,417.74
369	Tracey, Raymond F.	Map # I02-0070---003 1986 Commodore Mobile Home	\$704.65
370	Wenger, Steven L. & Cynthia A.	Map # I03-0047---000	\$9,359.46

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
378	King, Timothy M. & Donna F.	Map # J03-0020B---000	\$2,813.59
379	Reem, Arlene I.	Map # I01-0031C---000	\$1,093.60
381	Sweigart, Alan	Map # I01-0031C---001 1964 Fleetwood	\$181.65
387	Clopper, Brian K.	Map # J03-0009---000	\$2,263.73
LIBERTY TOWNSHIP			
392	Burgess, Phillip G. & Leslie D.	Map # 000-0123---000	\$582.83
395	Felts, Walter K. & Margaret S.	Map # AA0-0168---000	\$163.00
398	Hurley, Gary A. & Susan S.	Map # D17-0027---001 1973 Atlantic	\$305.31
399	Marsh, Clyde J. & Margaret V.	Map # B18-0001A---000	\$4,849.50
400	Moore, Kendall E. & Janet L.	Map # QQ0-0053---000	\$617.26
402	Ott, Raymond J. & Dorothy M.	Map # A18-0032---000	\$5,115.76
403	Sheldon, William Robert & Cheryl Ann	Map # OO0-0064---000	\$295.34
404	Sheldon, William Robert & Cheryl Ann	Map # OO0-0061---000	\$344.24
442	Justice, Phillip E.	Map # D16-0014A---000	\$3,502.26
446	Parham, Lovell & Gloria M.	Map # AA0-0179---000	\$255.28
447	Ritter, Ralph R. & Veronica G.	Map # AB0-0093---000	\$184.89
462	Charnita, Inc.	Map # 000-0145---	\$120.15
463	Charnita, Inc.	Map # 000-0146---	\$83.34
464	Dunaway, Paul & Kenneth	Map # AA0-0181---000	\$271.20
466	Lease, Thomas S.	Map # B17-0072---000	\$1,160.44
467	Ramsey, Marion Lee & Florence	Map # AB0-0047---000	\$171.62
476	Charnita, Inc.	Map # 00-0145---	\$264.54
477	Charnita, Inc.	Map # 00-000B---	\$110.72
479	Russell, Randy & Yavhonne A.	Map # AA0-0166---000	\$232.61
480	Russell, Randy & Yavhonne A.	Map # AB0-0057---000	\$247.13
481	Sheffield, Michael	Map # AA0-0230-000	\$231.44
482	Wolf, Roy E. & Florence M.	Map # AA0-0228---000	\$235.94
483	Wolfe, John W. & Joyce A.	Map # AA0-0158---000	\$222.81
LITTLESTOWN BOROUGH			
495	Rhinehart, Bryan K.	Map # 011-0135---000	\$1,095.46
496	Sheets, Martha C., Trustee	Map # 008-0196---000	\$11,697.29
497	Sheets, Martha C.	Map # 006-0024---000	\$7,458.76
502	Wagaman, Eddie R. & Sheri B.	Map # 008-0255---000	\$4,990.27
505	Foltz Architectual Millwork	Map # 008-0364---000	\$15,404.56
506	Dennis, Edward F. & June E.	Map # 006-0011---000	\$6,490.31
508	Rode, Roland W. Jr. & Barbara E.	Map # 005-0051A---000	\$3,085.82
511	Howard, Wendy S.	Map # 012-0024---000	\$2,533.71
514	Maurer, Lewis L. & Carol C.	Map # 007-0181---	\$2,605.25
514A	Secretary of Housing and Urban Development	Map # 012-0073---	\$2,500.00
MCSHERRYSTOWN BOROUGH			
515	Curry, Kenneth V. & Victoria A.	Map # 002-0004--000	\$107,697.02
517	Furlong, Mary C.	Map # 005-0018---000	\$1,877.87
MENALLEN TOWNSHIP			
524	Beamer, Donald E. & Nellie M.	Map # D05-0030---000	\$939.08
525	Bremerman, John Shafer Jr.	Map # E06-0001P--000	\$1,428.38
527	Fair, Kenneth E.	Map # F05-0004---000	\$1,437.54
528	Harris, Tom & Kathy	Map # E07-0033---003 1979 Sylvan Mobile Home	\$382.24
529	Haymaker, James R. & Donna M.	Map # F04-0047A---000	\$5,010.07
531	Musgrave, Robert S. & Susan G.	Map # B05-0003---000	\$659.22
533	Koser, Richard & Diane	Map # B05-0055---000	\$906.88
536	McCauslin, Tim	Map # D05-0039---001 1971 Derosé Mobile Home	\$189.20

FREDERICK, ET UX. VS. ZONING HEARING BOARD OF
CONEWAGO TOWNSHIP

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

2. The parking and storage of vehicles used in a business enterprise by the occupant of a residential dwelling is commercial in nature and neither incidental nor customary in a residential area.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-316, MATTHEW A. FREDERICK AND CYNTHIA D. FREDERICK VS. ZONING HEARING BOARD OF CONEWAGO TOWNSHIP.

Thomas M. Shultz, Esq., for Appellants

Harold Eastman, Esq., for Appellee

Clayton R. Wilcox, Esq., for Intervenor

OPINION PURSUANT TO APPEAL FROM LANDOWNER

Kuhn, J., October 1, 1997.

On December 26, 1995, Appellants were sent a Notice of Violation and a Cease and Desist Order from Conewago Township notifying them that they were in violation of the Conewago Township Zoning Ordinance. Appellants appealed the decision and the Zoning Board upheld the Cease and Desist Order. On April 12, 1996, Appellants filed a Notice of Appeal with the Court.

STATEMENT OF THE FACTS

Findings of fact entered by the Zoning Hearing Board and the record reveal the following background. Appellants live at 110 Linden Avenue which is located within Conewago Township in an R-2 Zoning District. Since before December, 1995, Mr. Frederick has been parking four tri-axle trucks in front of his home on Linden Avenue, or on a nearby street, on a daily basis. The trucks have a gross vehicle weight of 73,280 pounds per truck.

Appellants do not have any advertisement displayed at the premises and do not service the trucks there; although on occasion the trucks have been repaired on the street. Mr. Frederick employs three independent contractors who regularly park their personal vehicles on the street in front of or near the premises and then take Mr. Frederick's trucks for the day until returning to their vehicles at night.

On occasion, paperwork relating to the business is kept in Mr. Frederick's home. Mr. Frederick uses a two-way radio and mobile phone for business communications. The telephone bill for the mobile

phone is mailed to the Linden Avenue address. The tax certification application, employment contracts, and insurance policies also list the Linden Avenue address. The business checking account and personal bank accounts are co-mingled and the statement is sent to the Linden Avenue address as well.

The testimony indicates that the trucks are started as early as four o'clock in the morning causing considerable noise. Testimony also indicates that the trucks leak oil, emit odors and fumes, and have at least once had small portions of material dumped out onto neighboring properties.

LEGAL DISCUSSION

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

Appellants argue that the Zoning Board decision is in error because the Township has not met its burden of proving that an unpermitted non-residential use exists upon the property. It is this Court's determination that the record established at the hearing is sufficient to show an unpermitted non-residential use.

In interpreting the regulations set forth in the Ordinance, it is helpful to first consider its purpose. Some of the objectives behind the regulations for an R-2 District are stated as follows:

4.2.1.1 Maintain existing residential environments as an asset to the total community.

4.2.1.5 Promote the use of properties for trade and service activities which are compatible with surrounding residential use. Such activities to be operated by the resident property owner with minimum changes to the exterior of the property.

Conewago Township Zoning Ordinance §4.2.1(#1991-G). In addition, the Ordinance states that the objectives established in Article I are also applicable to R-2 Districts. *Id.* Some of the most relevant objectives in Article I read as follows:

1.1.2 To protect the established character and the social and economic well-being of both private and public property;

1.1.3 To promote, in the public interest, the utilization of land for the purposes for which it is most appropriate, giving consideration to the desired density of population, the need for housing, commerce and industry;

1.1.8 To conserve the value of buildings and to enhance the value of land throughout the Township.

Conewago Township Zoning Ordinance §1.1.

Keeping these general objectives in mind, we will discuss the merits of the case. The activities engaged in by Appellants must exceed the permitted uses set forth in the Ordinance in order to uphold the Board's decision. The Ordinance lists many permitted uses for an R-2 District, including some of the following:

4.2.2.1 Single family detached dwellings

4.2.2.2 Single family semi-detached dwelling

4.2.2.3 Two-family dwelling

4.2.2.8 Professional and administrative offices

Conewago Township Zoning Ordinance §4.2.2.

The case of *Taddeo v. Commonwealth*, 49 Pa. Commw. 485, 412 A.2d 212 (1980), dealt with facts similar to the ones in the case at hand. The appellants in *Taddeo* had an asphalt business and regularly parked various business vehicles at their residential premises. *Id.* at 213. No other business was conducted at the premises except for an occasional business call at the house.

The Court held that the appellants were conducting commercial activities at the premises in violation of the local ordinance. The Court reasoned that "the use of equipment parked at Appellant's business, which is certainly commercial in nature, as to be inseparable from the business."¹ *Id.* at 213; see also, *Hill v. Hamilton Township Zoning Hearing Board*, 45 D&C 3d 390, 394-95 (Monroe 1986).

Although the appellants in *Taddeo* listed their home address in some advertising, the case is not that factually distinct from the case at hand. Mr. Frederick had his four business trucks parked on the street in front of, or near, his premises. His workers, or independent contractors, drove to his premises in order to leave their personal cars parked on the street and take the business trucks. Additionally, Mr. Frederick listed

¹ It should be noted that Appellants have argued that because the trucks are parked on the street and not on their premises, the ordinance does not apply. We do not find this argument persuasive. Appellant may not avoid the purpose and intent behind the ordinance on the mere technicality that he has parked his business vehicles in the street as opposed to on his land.

his home address as the business address in the employment contracts as well as in various other materials. Clearly, the 73,280 pound trucks used by Mr. Frederick are inseparable from his hauling business and make the act of parking and storing them in front of the home commercial in nature.

Appellees have brought to this Court's attention a case which may be controlling. *D.E. Street, Inc. v. West York Zoning Hearing Board*, 103 Pa. Commw. 127, 519 A.2d 1093 (1987). The *D.E. Street* case deals with property located in a Commercial District in which the owner was using the first floor of his property as an office for his roofing and siding business. *Id.* at 1094. The owner had been using the public street to park his business vehicles and the neighbors complained to the zoning officer claiming it was not permitted under the local ordinance. The Court held that "the use of the property itself must exceed that of an office . . . [a] zoning ordinance cannot be used to cure a parking problem on a public street." *Id.* at 1093.

Although the *D.E. Street* case holds that the act of parking business vehicles on a public street is not enough by itself to be a violation of an ordinance, the majority of the case law is contrary. See, *Cook v. Bensalem Township Zoning Bd. Of Adjustment*, 413 Pa. 175, 196 A.2d 327 (1963) (holding that the storage of business equipment on residential property is commercial and does not fit into what is considered residential); *Hill v. Hamilton Township Zoning Hearing Board*, 45 D&C 3d at 395; *Taddeo v. Commonwealth*, 412 A.2d at 213 (holding that equipment that was parked at the residential premises was inseparable from commercial purpose). Therefore, in viewing the purposes behind the ordinance, as well as the fact that "[i]t has often been asserted that a careful researcher can find appellate court authority to support either side of most zoning questions," we will follow the majority of the courts in holding that "the parking or storage of vehicles used in a business enterprise by the occupant of a residential dwelling is commercial in nature and neither incidental nor customary in a residential area." *Hill v. Hamilton Township Zoning Hearing Board*, 45 D&C 3d at 395 (citations omitted).

In the alternative, Appellants argue that even if commercial activity exists on the premises, it is permitted under the Ordinance as administrative office use. The Ordinance allows as a permitted use in an R-2 District that of a professional or administrative office. Conewago Township Ordinance §4.2.2.8.

Administrative Office is not defined in the Ordinance but the definition of Professional Office has been provided. The definition sets forth various professions and goes on to state that "[t]he practice

of such occupation shall in no way adversely affect the safe and comfortable enjoyment of property rights in any District to a greater extent than for the professional activities listed herein.” Conewago Township Zoning Ordinance §15.1.

Webster’s Collegiate Dictionary defines administrative as that relating to administration. Merriam Webster’s Collegiate Dictionary, 15 (10th ed. 1993). Administration is defined as the performance of executive duties or management. *Id.* Office is defined as the directing headquarters of an enterprise or organization; the place where a professional person conducts business. *Id.* at 807.

In reviewing these definitions, it seems clear that what was contemplated in permitting professional or administrative offices in an R-2 District was to permit a resident to conduct executive or professional duties from their home so long as it would not be too offensive to the quality and character of the residential community.

We do not feel that parking four 73,280 pound tri-axle trucks on the street in front of the premises, is what was contemplated in permitting professional and administrative offices. Mr. Frederick may be permitted to run the administrative duties of his business out of his home but what he is doing by parking, and in essence storing, his business trucks in front of his premises constitutes more than that and reaches beyond the scope of what is permitted as an administrative office.

Additionally, it should be noted that in Article 9 of the Common Regulations for all agricultural and residential districts, the Ordinance prohibits the following activities:

Any use which is noxious, offensive or objectionable by reason of the emission of smoke, dust, gas, odor or other form of air pollution or by reason of the deposit, discharge or dispersal of liquid or solid wastes in any form in a manner or amount as to cause permanent damage to the soil and stream or to adversely affect the surrounding area, or by reason of the creation of noise, vibration, electromagnetic or other disturbance, or by reason of illumination by artificial light or light reflection beyond the limits of the lot on or from which such light or light reflection emanates, or which involves any dangerous fire, explosive, radioactive or other hazard, or which causes injury, annoyance or disturbance to any of the surrounding properties or to their own owners and occupants, or any other process or use which is unwholesome and noisy . . . and may be dangerous or prejudicial to health, safety or general welfare.

Conewago Township Zoning Ordinance §9.4.1.

The transcript indicates that many of these problems were present on Linden Avenue. Appellant and his independent contractors start their trucks as early as four o'clock in the morning creating noisy conditions in the neighborhood. In addition, testimony about problems with odor, leaking oil, fumes, dumping of small amounts of material, and general driving safety hazards was heard.

Thus, it is this Court's determination that after considering the relevant case law and the objectives of the Ordinance we cannot say that the Board manifestly abused its discretion or made an error of law that would warrant a reversal.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 1st day of October, 1997, Appellants' appeal from the Conewago Township Zoning Board decision is denied.

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
545	Mickley, James E. & Jamie	Map # E06-0027A--000	\$890.44
549	Schlosser, Elliott E. & Steven E.	Map # C07-0004B--000	\$5,820.90
551	Wileman, William E. & Patricia	Map # E06-0025---000	\$ 4,324.94
MT. JOY TOWNSHIP			
557	Cecil, Harrison Ray	Map # H16-0093---001 1993 Fleetwood MH	\$1,820.94
558	Burns, Frederick K. & Kathy M.	Map #G15-0009---000	\$5,985.68
559	Cecil, Harrison Ray	Map # H16-0093-000	\$2,548.79
560	Eader, Gary R., Bremerman, Douglas, & Eader, Marceia	Map # G18-0029---000	\$2,422.54
561	Eader, Gary R., Bremerman, Douglas, & Eader, Marceia	Map # G18-0003A--000	\$4,632.03
562	Eader, Gary R. & Marceia E. G.	Map # G18-0029A--000	\$4,381.75
564	Gladfelter, Ronald E. & Shirley	Map # G14-0017D---000	\$1,474.97
565	Greiber, Thomas L.	Map # I16-0013A--	\$1,889.72
568	Hartaub, Robert A. Jr.	Map # H16-0068---000	\$4,652.65
569	Higgs, Gilbert & Mary C.	Map # G14-0011---002 1972 Flamingo MH	\$186.63
574	Mikesell, Paul M. & Lois A.	Map # H15-0064---000	\$5,057.63
575	Poole, Barry N. & Kelly A.	Map # H15-0047---000	\$5,657.86
580	Strausbaugh, William J. & Mary	Map # G17-0038-000	\$ 1,338.30
583	Justice, Phillip E.	Map # G14-0047---000	\$1,223.99
587	Martin, Colleen & Baker, Kenneth E.	Map # G18-0009---000	\$1,413.39
589	Young, Robert A. & Mary A.	Map # 008-0043---000	\$303.67
590	Arter, Jill S.	Map # G16-0020---000	\$775.04
MT. PLEASANT TOWNSHIP			
593	Ayers, Clifford & Tammie	Map # J11-0052---004 1969 Giles	\$303.05
595	Bunty, Helen	Map # J12-0061---140 1980 Liberty	\$251.05
599	Cyryca, Jeffrey & Ania J.	Map # I14-0052---000	\$3,205.52
607	Lupp, John W. L. & Eleanora P.	Map # H13-0029---006 1978 Skyline	\$277.96
608	Chronister, George & Karen	Map # J11-0052---005 1990 Derosé	\$1,341.66
611	Mullin, Richard P. & Mullin, Michael S.	Map # J11-0006A--0000	\$2,454.98
616	Russell, Thomas A. III	Map # J12-0061---145 1993 Fleetwood	\$1,226.0
617	Sheets, Martha C.	Map # I15-0047A---000	\$7,747.24
618	Shuff, Susan	Map # J12-0061---002 1984 Liberty	\$725.67
619	Smith, Roger & Jane	Map # J12-0061---060 1985 Liberty	\$577.04
621	Staub, Gary J. & Helen D. Sr.	Map # J12-0061---094 1988 Imperial	\$1,061.37
622	Talbert, Carroll E. & Jeanne	Map # H14-0032---035 1990 Chalet	\$313.20
623	Widdowson, Fred G.	Map # 002-0033---000	\$2,100.21
627	Basehoar, Charles D. & Robin L.	Map # I13-0013---000	\$708.97
634	Mills, Dwayne A. & Teresa A.	Map #002-0063---000	\$4,226.35
637	Deshong, Kenneth F. & Glenda K.	Map # J11-0058C--000	\$1,745.39
641	Wetzell, Charlotte J.	Map # J11-0052---073 1983 Derosé	\$367.37
642	French, Joseph & Charlotte	Map # J12-0061---134 1985 MH	\$616.18
643	Greentree	Map # J12-0061---099 1981 Liberty	\$288.67
644	Green Tree Consumer Discount	Map # J11-0052---011	\$195.48

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
		1975 Hillcrest	
647	Wagaman, Bryan A.	Map # J11-0052---002 1996 Souther Energy	\$323.92
648	Miller, Scott	Map # I15-0068---001 1974 Westchester	\$174.19
650	Deshong, Ronald L. C. & Sylvia J.	Map # J11-0058D---000	\$125.08
651	Woods, Roy & Barbara	Map # J12-0061---122 1984 Commadore	\$579.85
654	Moreno, Jesus Jr.	Map # J12-0061---073 1987 Skyline	\$488.90
657	Green Tree Acceptance	Map # J12-0061---049 1977 Redman	\$284.95
NEW OXFORD BOROUGH			
663	P. A. Rondeau Real Estate, Inc.	Map # 005-0167---000	\$2,562.40
664	Peters, Jack L.	Map # 008-0022---000	\$1,958.60
671	Beadle, Frank W. & Margaret L.	Map # 004-0054---000	\$2,312.66
OXFORD TOWNSHIP			
674	Baker, Kevin	Map # K11-0105F---010 1970 Rembrandt	\$121.36
681	Luckenbaugh, Clyde B. & Su Cha	Map # 010-0023---000	\$3,520.07
684	Neiderer, Steven A.	Map # J13-0027---000	\$894.01
689	Rudolf, Patrick J. & Sara A.	Map # K12-0055---000	\$4,637.17
690	Woodworth, Charles	Map # K11-0105F--012 1973 Titan	\$114.02
700	Helmer, Nancy A.	Map # 009-0053---000	\$ 3,304.80
701	Oxford Estates	Map # J11-0169---000	\$2,877.20
704	Weant, Merle C. & Gibbons, Deborah	Map # K11-0070---000	\$6,222.59
708A	Garrett, Bonnie	Map # K11-0105F---020	\$1,350.00
READING TOWNSHIP			
710	Altland, Karelene A.	Map # J08-0045---105 1979 Liberty Mobile	\$344.61
718	Crone, Denise	Map # J08-0045---135 1979 Hillcrest	\$500.02
720	Garrett, Robin M.	Map # J08-0045---020 1974 Schult	\$153.25
721	Gladfelter, Keith A. & Jacqueline	Map # 013-0105---000 M-0750	\$2,787.31
722	Grace, Richard Jr.	Map # J08-0045---107 1979 Hillcrest	\$548.18
723	Groft, Michael & Brown, Hilda	Map # J08-0045---032 1991 Skyline	\$1,139.90
727	Hulse Family Properties, Inc.	Map # J08-0057---000	\$370.67
730	Miller, Charles M. & Belinda L.	Map # 001-0038---000	\$1,764.94
735	Reese, Steven	Map # J08-0045---108 1992 Skyline	\$2,904.56
741	Stevens, Barry L.	Map # L08-0039---000	\$674.12
743	Sullivan, Ronald W.	Map # J09-0070F---000	\$2,414.44
745	Wagner, Ervin L. & Melvina	Map # L07-0065A---000	\$4,791.76
748	Spangler, Matthew W. & Alma	Map # L07-0005---034 1990 Commodore	\$1,031.48
750	Slothour, Wayne E.	Map # L07-0045---	\$1,474.15
754	Hynson, David & Debra	Map # 005-0082---000	\$171.55
755	Fair, Bradley & Tanya	Map # L07-0005---040 1981 Mansion	\$413.03
758	Cook, Donald W. & Marcia A.	Map # J08-0045---040 1983 Pineview	\$474.53
759	Linebaugh, Robert W.	Map # L07-0005---041 1985 Fleetwood	\$425.76

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
760	Mummert, Ned L.	Map # J09-0098---000	\$1,256.23
761A	Livelsberger, Douglas & Betty	Map # K07-0033A---000	\$5,900.00
STRABAN TOWNSHIP			
764	Dubbs, Donald L., Sr.	Map # H12-0095B--000	\$1,255.48
765	Fissel, Vicky I.	Map # H10-0017---105 1985 Skyline MH	\$542.86
772	Harris, Richard A. & Ronda L.	Map # 001-0079---000	\$1,000.55
773	Chesapeake Mobile Home Sales	Map # G12-0124---096 1983 Liberty	\$449.60
775	Hulse Family Properties, Inc.	Map # H11-0057---000	\$6,141.57
777	Kennedy, Annette E.	Map # G13-0066---000	\$2,599.28
778	Klinefelter, James & Dawn	Map # H10-0017---102 1985 Skyline MH	\$771.72
782	Loder, Gary L.	Map # H12-0069---000	\$7,405.74
783	Magara, Michael E. & Michelle	Map # G12-0124---086 1988 Fleetwood	\$671.47
788	McKenna, Edward J. & Patricia E.	Map # G10-0013---000	\$14,034.52
789	Hull, Timothy	Map # G12-0124---126 1989 Derose MH	\$1,005.67
790	Otero, Manuel & Carmen R.	Map # G10-0021---000	\$15,458.69
798	Shiple, Dorothy	Map #G12-0124---054 1973 Zimmer	\$323.45
799	Shultz, William & Beverly	Map # H10-0017---118 1984 Jay Skyline MH	\$569.92
800	Taughinbaugh, Jere W.	Map #H10-0061---000	\$718.96
801	Taughinbaugh, Jere W. & Sue E. a/k/a Sue Bucher	Map # H10-0062---000	\$360.08
802	Torres, Eflen & George & Emilia	Map # G12-0124---045 1975 Great Lakes MH	\$221.09
808	Speelman, Lynn	Map #H10-0017---126 1986 Skyline Fortune	\$1,308.67
809	Simmons, Lawrence M.	Map # G11-0034---000	\$5,765.75
811	Lawver, Tammy	Map #G12-0124---042 1977 Liberty	\$389.71
812	Mahalage, Michael W.	Map # G10-0013---001 1970 Pride Estate	\$171.11
816	Zartman, Gerald J.	Map # H11-0014---001 1975 Newport	\$199.21
822	Skalka, Deanna E.	Map # G11-0002A---000	\$5,023.27
826	Walls, Thomas L., Sr. & Dorothy E.	Map # I11-0023---000 1969 Skyline	\$6,613.22
502	Spangler, Robert C. & Jean M.	Map # G10-0008B---000	\$14,818.35
830	Carbajol, Judy	Map # G10-0013---006 Ayr-Way	\$98.28
831	Reed, Kenneth & Mary	Map # G12-0124---040 1973 Kenilworth	\$296.07
832	Green Tree	Map # G12-0124---099 1978 Bendix	\$311.20
834	Holyfield, David & Wilda	Map # G12-0124---039 1994 Redman	\$1,295.07
837	Wiseman, Ronnie & Evan	Map # H10-0017---139 1986 Skyline	\$723.34
TYRONE TOWNSHIP			
838	Bittle, Jay A.	Map # H07-0075---018 1996 Liberty	\$992.57
840	Betts, Woodrow W.	Map # 002-0054---000	\$2,922.85
841	Crum, Cynthia J.	Map # H06-0003---000	\$1,817.69
842	First Trust National Assoc. Trust First Trust Center	Map #H06-0110---000	\$249.92
847	Smith, Willie J. & Klick, Melissa	Map # H06-0111---	\$576.13

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
850	Wallace, Janet A. & Edward B.	Map # H06-0028B---000	\$396.17
855	Kuhn, Garry C. & Cheryl L.	Map # G04-0056---	\$1,942.19
856	Laughman, Daniel L. & Kathy S.	Map # H07-0075---011 1996 Liberty	\$1,322.73
UNION TOWNSHIP			
868	Lau, Patricia Ann	Map # J17-0176---000	\$6,859.16
869	Foltz, Paul E. V.	Map # K17-0054G---000	\$136.08
871	Hayes, Robert M. & Connie M.	Map # K17-0036---	\$3,698.37
875	Black, John David & Marian M.	Map # K17-00370---000	\$3,715.78
876	Riill, Van Thomas & Linda Kay	Map # K17-0161---	\$1,245.92
877	Hawk, Elijah B.	Map # K18-0068---000	\$276.90
YORK SPRINGS BOROUGH			
878	Bothe, Frederick A. III & Tinamarie B.	Map # 005-0051	\$1440.90
CARROL VALLEY BOROUGH			
883	Boothe, Louise M.	Map # 022-0119---000 WA-0271	\$457.10
884	Bradley, Walter S. & Bradley, Charles Jr. & Stella	Map # 043-0071---000	\$335.29
889	Farinick, Lorraine R.	Map # 023-0117---000 A-0006	\$4,490.88
890	Gist, Raymond & Peggy A.	Map # 028-0106---000	\$311.11
892	Long, Chester M. & Kathy M.	Map # 035-0086---000 B-0062CR	\$536.89
893	Moore, Kendall E.	Map # 025-0076---000 D-0094	\$210.19
894	Moore, Kendall E. & Janet L.	Map # 024-0021---000 A-0017CR	\$402.53
895	Moore, Kendall E. & Janet L.	Map # 025-0111---000 D-0041	\$160.92
896	Moore, Kendall E. & Janet L.	Map # 045-0094---000 R-0057	\$780.17
897	McClellan, John B.	Map # 019-0063---000 D-0032	\$205.76
899	Rooney, Thomas G. Jr.	Map # 003-0043---000	\$157.57
900	Sedr, William W. & Dolores C.	Map # 018-0049---000 C-0023	\$176.75
910	Bankers Trust Co. of California	Map # 034-0164---000 P-0153	\$3,429.06
913	Reed, William K. & Valerie L.	Map # 024-0046---000 A-0001CR	\$454.68
914	Weaver, John R. & Martha	Map # 046-0066---000 RC-0027	\$158.63
916	Robinson, Robert E. & Susan C.	Map # 041-0202---000 RB-0064 +	\$5,762.26
921	Balzer, Thomas J. & Frances J.	Map # 034-0085---000	\$363.47
922	Biser, Caleb L. & Rita A.	Map # 007-0118---000	\$1,503.19
924	Collett, Raymond E.	Map # 029-0207---000 B 235	\$141.63
925	Dollarton, Gloria R.	Map # 018-0006-000 A37CR	\$263.98
926	Eddinger, Daniel F.	Map # 13-0011---000	\$135.96
927	James, John A. & Glenda M.	Map # 022-0182---000 W282	\$6,434.68
928	Seifert, Eldon A.	Map # 003-0072---000 K 296	\$664.87
934	Strom, Carl R. & Margaret L.	Map # 047-0090---000 R 24	\$608.73
935	Taylor, William E. & Marie N.	Map # 027-0134---000 I 75	\$226.09

SALE #	OWNER(S) OR REPUTED OWNER(S)	DESCRIPTION	UPSET PRICE
937	Johnston, A. K. & Hoilman, Mary V.	Map # 040-0036---000 Rl 164	\$8,761.37
940	Bourexix, Bessie E. & Stephen P.	Map # 024-0011-000 A 21 CR	\$263.40
941	Cherego, Janet L.	Map # 003-0025---000 K 83	\$2,633.30
942	Flake, Glade F. & Joan A.	Map #005-0002---000 J 35	\$223.19
943	Grossman, Theodore I.	Map # 018-0043---000	\$599.79
948	Oehman, Herman B. & Mae L.	Map # 034-0142---000 E 35	\$371.98
949	Smith, Joel	Map # 013-0034---000	\$526.04
950	Sprenkle, Robert G. & Pamela M.	Map # 012-0045---000	\$1,965.11

DATE	DESCRIPTION	AMOUNT	BALANCE
1/1/98	Balance Forward	100.00	100.00
1/15/98	Check #1000	50.00	50.00
1/30/98	Check #1001	50.00	0.00
2/15/98	Check #1002	50.00	50.00
2/28/98	Check #1003	50.00	0.00
3/15/98	Check #1004	50.00	50.00
3/31/98	Check #1005	50.00	0.00
4/15/98	Check #1006	50.00	50.00
4/30/98	Check #1007	50.00	0.00
5/15/98	Check #1008	50.00	50.00
5/31/98	Check #1009	50.00	0.00
6/15/98	Check #1010	50.00	50.00
6/30/98	Check #1011	50.00	0.00
7/15/98	Check #1012	50.00	50.00
7/31/98	Check #1013	50.00	0.00

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 HARRY L. CHRONISTER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Janet E. Smith, 352 North Street, McSherrystown, PA 17344

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

ESTATE OF JOHN L. STORCH, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executrix: Joanne C. Storch, 90 Sequoia Ct., York Springs, PA 17372

SECOND PUBLICATION

ESTATE OF ELIZABETH M. BURKEE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Lena G. Lutter and Frederick T. Lutter

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

ESTATE OF RALPH M. SANGREY, DEC'D

Late of Orange County, Florida, and formerly of Franklin Township, Adams County, Pennsylvania

Executor: Joseph J. Sangrey
Attorney: Lacy Hayes, Jr., Esquire, 2216 Walnut Street, Harrisburg, PA 17103-2426

THIRD PUBLICATION

ESTATE OF HILDA M. WESCH GARRABRANT, a/k/a HILDA M. GARRABRANT, DEC'D

Late of the Mt. Joy Township, Adams County, Pennsylvania

Co-Executors: Marie Chantelau, 765 Barlow Drive, Lake Heritage, Gettysburg, PA 17325; Helen Schwarz, 1405 Pine Crest Drive, South Williamsport, PA 17702

Attorney: John A. Wolfe, Esquire, Wolfe and Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF GENEVIEVE M. LEONARD, a/k/a GENEVIEVE MARY LEONARD, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

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

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

ESTATE OF LOUELLA M. MINNICH, a/k/a LOUELLA L. MINNICH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Lois Morningred, 19 Green Hill Drive, Newport, PA 17074

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

ESTATE OF VERGIE E. SLAYBAUGH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

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

Attorney: John W. Phillips, Esquire, 101 W. Middle St., Gettysburg, PA 17325

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