

Adams County Legal Journal

Vol. 39

April 3, 1998

No. 45, pp. 269-274

IN THIS ISSUE

**HARTZELL FENCE, INC.
VS.
MUSSELMAN, ET AL.**

Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



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

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

Second-class postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-54 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of May, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situated in Conewago Township, Adams County, Pennsylvania, known as Lot No. 61 in Sherry Village, as shown on the final subdivision plan prepared by Donald E. Worley, R.S., recorded in Adams County, Pennsylvania Recorder of Deeds Office in Plat Book 20, page 10, being more particularly bounded and described as follows:

LOT NO. 61

BEGINNING at a point at the intersection of the Northern edge of Providence Drive and the Eastern edge of Sherry Drive as shown on said plan of Sherry Village; thence along a curve to the right on the Eastern edge of Sherry Drive the radius of which is 1130.36 feet for an arc distance of 78.28 feet and have a chord bearing in distance of North 31 degrees 7 minutes 28 seconds West, 78.26 feet to a point at the Southern corner of Lot No. 62 as shown on said plan; thence along said Lot No. 62 North 57 degrees 32 minutes 54 seconds East, 133.10 feet to a point at the Western corner of Lot No. 60 as shown on said plan; thence along said Lot No. 60 South 24 degrees 50 minutes 47 seconds East, 112.15 feet to a point on the Northern edge of Providence Drive as shown on said plan; thence along a curve to the left on the Northern edge of Providence Drive, the radius of which is 948.83 feet for an arc distance of 120 feet and having a chord bearing and distance of South 60 degrees 30 minutes 53 seconds West, 119.92 feet to a point at the intersection of the Northern edge of Providence Drive and the Eastern edge of Sherry Drive, the point and place of BEGINNING.

TAX PARCEL NUMBER: 1-145

TITLE TO SAID PREMISES IS VESTED IN Craig M. Shaffer and Brenda L. Shaffer, husband and wife by Deed from Gregory J. Orndorff and Veronica J. Orndorff, his wife and Jeffrey S. Orndorff and E. Orndorff, his wife dated 5/12/83 recorded 5/24/83 in Record Book 368 Page 284.

SEIZED and taken into execution as the property of **Craig M. Shaffer and Brenda L. Shaffer** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 19, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/27, 4/3 & 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-1207 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of May, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situated, lying, and being in Latimore Township, Adams County, Pennsylvania, and being more particularly described as (Lot 1471) on a plan of Lots of Lake Meade Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds for Adams County, in Miscellaneous Volume 1, Page 23, and subject to all legal highways, easements, rights of way and restrictions of record.

UNDER AND SUBJECT to restrictions, conditions, and easements as more fully set forth in Deed Book 268 at Page 1038.

TAX PARCEL NUMBER: 1-16

TITLE TO SAID PREMISES IS VESTED IN Jack Cletus Orner, Jr. and Patricia K. Orner, his wife by Deed from Larry E. Stough and Judith A. Stough, husband and wife and Daniel L. Rodgers and Linda L. Rodgers, husband and wife dated 8/19/92 recorded 8/24/92 in Record Book 638 Page 1084.

SEIZED and taken into execution as the property of **Jack Cletus Orner, Jr. and Patricia K. Orner** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
February 26, 1998.

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

in his office on May 25, 1998, and distribution will be made in accordance with schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.
3/20, 27 & 4/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on March 4, 1998 for TAYLOR'S MOBILE TECH, INC.

The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania, as amended.

Paige Macdonald-Matthes, Esquire
Cunningham & Chernicoff, P.C.
4/3

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 DON OTT RACING ENGINES, INC. and its registered office is located at the following: 265 Peepytown Road, East Berlin, PA 17316.

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: building and rebuilding racing engines.

4. The Articles of Incorporation were filed with the Corporation Bureau of the Department of State on 3-9-98.

4/3

HARTZELL FENCE, INC. VS. MUSSELMAN, ET AL.

1. Preliminary objections are the exclusive method to object to a lien claim filed and objections may be filed either to the claim or to the complaint which is later filed.
2. Objection may be filed to both the lien and the complaint but the same objections may not be repeated.
3. Remedial work will not extend the time for filing a mechanic's lien claim unless circumstances indicate the performance was continuous and a substantial intervening period may deprive claimant of the right to file a claim.
4. If the parties modify their original agreement and work is performed in accordance therewith, performance for purposes of filing a mechanic's lien claim may be extended but continuity is required.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 581-1996, HARTZELL FENCE, INC. VS. WILLIAM R. MUSSELMAN, JR. AND SANDRA S. MUSSELMAN.

David Cleaver, Esq., for Plaintiff
Scott Dinner, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., May 8, 1997.

Plaintiff/Claimant filed its Mechanics Lien Claim December 9, 1996. The claim alleged that claimant contracted with defendants/owners for the installation of a fence, which consisted of a portion of aluminum and a portion of wood (cedar privacy). Paragraph 4 states that the work subject to the claim was completed on or about October 4, 1996 and ¶6 alleges that owners have failed to pay \$5,514.10 of a contract price of \$8903.00.

Owners filed preliminary objections February 26, 1997, stating that claimant substantially completed the work in November, 1995 and that labor and material provided thereafter were to "compensate for the deficiencies in the work which had been previously done." ¶4

Claimant filed its answer to these allegations on April 1, 1997. Including was the following:

3.

Denied. It is specifically denied that the plaintiff completed the work as of November of 1995. In fact, paragraph 3 of the defendants' Preliminary Objections does not state that the work was completed but only that it was "substantially completed" as of November 1995. Section 1201 of the Mechanics Lien Law defines "completion of work" to mean "performance of the last of the labor or

delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs." The lien may be filed within four (4) months after completion of the work. On September 24, 1996, defendants' counsel, Scott M. Dinner, Esquire, wrote to George T. Hartzell, President of Hartzell Fence Company and stated in the first paragraph: "The Musselmans want the following done to complete the contract."

This paragraph (3) went on to allege that the specific demands for completion were included in a letter attached as Exhibit A (it wasn't).

As the case approached argument, each party filed a brief to which were attached various documents. Neither has objected to exhibits of the other and authenticity has been tacitly admitted. Therefore, we will consider them.

Claimant's brief provided the missing September letter, along with certain other documents. Owners provided many of the same letters. Placing letters and other documents in chronological order, it would seem the following transpired:

1. An agreement, consisting of a proposal to Sandy Musselman dated July 12, 1995, was signed by Sandra S. Musselman¹, with no date for her signature appearing on the document. The contract price was \$7,421.00.

2. Owner's counsel provide a punch list by letter dated September 13, 1996. The letter stated, inter alia, "Once these items /services have been substantially furnished to Mr. and Mrs. Musselman, I will release \$4,500. of the \$5,000. in escrow funds I now hold." One item on the punch list was an additional double swing gate.

3. Claimant responded with a change order dated September 16, 1996, and transmitted by letter bearing even date. The change order added work, increased the contract price to \$8903.00, and stated, inter alia, that claimant was willing to "straighten the wooden stockade fencing subject to reasonable limits due to excessive winter conditions last year and normal warping of wood." Claimant was unwilling to provide a gate free of charge.

Included in language of claimant's transmitting letter was letter was the following: "We have a contract with change order. I do not wish to

¹The fact that only Ms. Musselman signed has not been made an issue. See *Guistra Development Co., Inc. v. Lee*, 428 Pa. Super 394, 631 A.2d 199 (1993).

sign another contract which is what your letter of September 13, 1996 amounts to with defects I have alluded to.”

4. A change order identical to that described in Paragraph 3 was dated September 19, 1996, and contained the following additional language, “payments of \$1,800.00 and \$1,586.90 have been made toward the balance of \$8,903.00.”

5. Owners’ counsel wrote to claimant September 24, 1996. The first sentence was “The Musselmans want the following to be done to complete the contract.” Again a demand was made for an additional free gate.

A factual record cannot be established beyond this point.

Consideration of the preliminary objections must be limited to matters of record. Either party could have requested a hearing, or the right to take and submit depositions, but neither did. The court has no duty to do this sua sponte. *Mele Construction Company, Inc. v. Crown American Corporation*, 421 Pa. Super 569, 618 A.2d 956 (1992) alloc dn in 536 Pa. 627, 637 A.2d 288. However, it is proper to consider documents that have been made part of the record, id., and we view the letters and documents in this light.

Preliminary objections are the exclusive method to object to a lien claim filed. However, failure to file objections does not constitute a waiver of the right to raise the objection as a defense in subsequent proceedings. Objections may be filed either to the claim or to the complaint which is later filed. *Standard Pennsylvania Practice 2d, Mechanics’ Liens*, §105: 162. Actually, objections may be filed to both, but the same objections may not be repeated. *Larue v. Frock*, 33 *Adams Co. L.J.* 109 (1991); *I.H. Crouse & Sons v. White*, 20 *Adams Co. L.J.* 1, 6 D & C 3d 231 (1978). The usual rules apply. A claim will be dismissed only in cases which are clear and free from doubt. *Chambers v. Todd Steel Picking, Inc.* 323 Pa. Super 119, 470 Pa. 159 (1983); *Mele Construction Co., Inc. v. Crown American Corp.*, supra.

Neither counsel have been able to provide Pennsylvania cases precisely on point. Each has discussed two rather old opinions rendered by our highest court.

Supreme Court discussed the time from which the statutory period to file would begin in *Homeopathic Ass’n v. Harrison & Bro.*, 120 Pa. 28, 13 A. 501 (1888), and *W.H. Harrison & Bro. v. Homeopathic Ass’n et al*, 134 Pa. 558, 19 A. 804 (1890). There do not appear to be any more

recent opinions issued in this Commonwealth. Claimant cites cases in other jurisdictions which apply a good faith rule and hold that, if work performed, or material furnished was required by contract and not provided for the mere purpose of extending the time in which the lien may be filed, time may be calculated from the time of such work or material. See, e.g. *C.H. Sanders, Co. v. BHAP Housing Development Fund Co.*, (CA2 NY) 903 F 2d114 reh den. (CA2) 1990 US App Lexis 14319; later proceeding (ED NY) 750 F. Supp 67, reh den. (ED NY) 1990 US Dist Lexis 15057. He also calls to the court's attention that time in some jurisdiction is determined solely by whether the work or material is expressly required under the terms of the contract. See, e.g. *Huffman Wholesale Supply Co., v. Terry*, 240 Ark. 399, 399 SW 2d 658 (1966).

Lastly, claimant points out that other jurisdictions have held that time is calculated from the time that material is replaced or for which substitution is made, if done at the insistence of an owner claiming that the contract is incomplete or unacceptable because of some imperfection. See, e.g. *Akers & Co. v. Weil*, 251 Ky. 689, 65 SW2d 712 (1933).

It has been said that it is difficult to precisely define when an improvement or contract has been completed, since cases must be determined from the language of a particular jurisdiction's mechanic's lien statute, the provisions of the contract and surrounding facts and circumstances. 53 Am Jur 2d Mechanics' Liens §201. Nevertheless, certain generalizations may be made.

1. Timeliness often depends upon whether work was done under an original contract or a separate and later contract. If the latter, different time limits are applied to each of the two contracts.

2. Therefore, it is important whether the work was required under the terms of the original contract.

3. In the absence of bad faith, mere delay in completing a contract will not invalidate the claim. However, substantial completion may define the time if the owner has accepted the improvement, later work is undertaken for bad faith, is trivial in nature, or if delay is unreasonable.

4. Remedial work performed pursuant to a contract will establish the date from which time is calculated, but not that done pursuant to a guarantee.

5. Timeliness is generally for the finder of fact to determine.
id.

The Supreme Court decisions, *supra*, reflect some, but not all of these conclusions. In the first case, the court said that a crucial element in determining whether a claim has been timely filed is the continuity of work. There was also discussion about whether a stove was gratuitously provided, as opposed to having been furnished as a result of an owner's demand. A further point perhaps makes other discussion mere dictum. The court said that a stove was not part of a building, was furnished six months after work was completed and was completed and was a proper subject of a mechanic's lien. Judgement on a lien was stricken. Despite the fact that the stove was not an improvement, the court grounded its decision, at least in part, on the fact that the article was not provided during the course of continuous work.

The issue concerning the nature of the stove resurfaced in the later opinion. Additionally, the court said:

It was held in *McKeivey v. Jarvis*, 87 Pa. 414, that work done to compensate defective performance of a contract for work and material in the construction of a building will not preserve the lien, but that work substituted for that called for in the contract may do so. In the former case the contract is unchanged, the work is done without charge to the owner or contractor, and to make good the previous default of the mechanic or material-man; in the latter, the work is done under a contract modified by the agreement of all parties interested in it.

134 Pa. 565

We interpret the language in these two cases to indicate that, in our jurisdiction, remedial work will not extend the time unless circumstances indicate that performance was continuous. A substantial intervening period may deprive claimant of the right to file a claim. It might be, of course, that substantial delay would indicate that work was pursuant to the contract. If the parties modify their original agreement and work is performed in accordance therewith, performance may be extended. However, continuity is required.

It is not possible to resolve issues at the present time. Application of the rule, as we discern it, will depend upon a determination of facts. There are indications that work was continuous, as is illustrated by an ongoing dispute between the parties. There is also an indication that a

winter of freezing and thawing rendered the fence unacceptable and that owner's demands were for claimant to make good on his work.

Preliminary objections, therefore, must be overruled.

ORDER

AND NOW this 8th day of May 1997, preliminary objections are overruled.

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 EMILY G. AMPSPACHER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrator: Clair L. Ampsacher, 996 Brough Road, Abbottstown, PA 17301

Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY S. EHRHART, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Kenneth W. Ehrhart, 455 Deerfield Drive, Hanover, PA 17331

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

ESTATE OF MARJORIE R. EICHELBERGER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: PeoplesBank, A Codorus Valley Company, 105 Leader Heights Road, P.O. Box 2887, York, PA 17405-2887

Attorney: John J. Shorb

ESTATE OF FRED A. FLEISCHER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ronald E. Fleischer, 1357 Deerfield Drive, State College, PA 16803

Attorney: Gary A. Delafield, Esquire, Delafield, McGee, Jones & Kauffman, 300 South Allen Street, Suite 300, State College, PA 16801-4841

ESTATE OF DOLORES A. KENNEDY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Robert H. Kennedy, 312 Benning Avenue, Gettysburg, PA 17325

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

ESTATE OF EVELYN S. KUHN a/k/a EVELYN MARIE KUHN, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Administratrix: Sharon A. Kuhn, 215 S. Water Street, New Oxford, PA 17350

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

ESTATE OF NELLIE M. MARTIN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrices: Patricia M. Wentz, 3 Chinkapin Drive, New Oxford, PA 17350; Janet E. Felch, 112 Sanford Avenue, Hanover, PA 17331; Beatrice B. Strausbaugh, 1931 Centennial Road, Hanover, PA 17331

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

ESTATE OF MAURICE H. McDONALD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Michael W. McDonald, 167 Hood Drive, Canfield, OH 44406

ESTATE OF MERLE E. NEIDERER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Richard P. Neiderer, 1090 Water Drive, Hanover, PA 17331; Charles W. Neiderer, 2700 Francis Scott Key Highway, Taneytown, MD 21787

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

ESTATE OF MIRIAN L. THOMAS, DEC'D

Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325

Attorney: Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF HARRY G. LAMBERT, a/k/a HARRY GRANT LAMBERT, III, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Rita L. Pohlman
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17334

ESTATE OF MILDRED E. MILLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Paul A. Miller, 598 Fuhrman Mill Road, Hanover, PA 17331

Attorney: Harold A. Eastman, Jr., Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF REGINA C. SANDERS a/k/a REGINA B. SANDERS, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrices: Janet Currens, 2890 Fairfield Road, Gettysburg, PA 17325; Florence Metz, 175 Old Mill Road, Gettysburg, PA 17325

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

ESTATE OF GOLDIE E. STEVENS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: Kenneth E. Stevens, 90 Wiermans Mill Road, York Springs, PA 17372

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

THIRD PUBLICATION

ESTATE OF BETTY JANE DICKERSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Jean Ann Dickerson, 117 Conewago Drive, Hanover, PA 17331; Herbert E. Dickerson, 30 Waterside Plaza, Apartment 35-E, New York, NY 10010

Attorney: Miller & Shultz, 249 York Street, Hanover, PA 17331

ESTATE OF BURNELL A. FEESER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Anthony Thomas Feeser, 8671 San Toccoa Drive, Orlando, Florida 32825; Kathy Ann Powers, RR-1, Box 38, Belle Fourche, South Dakota 57717

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

ESTATE OF ESTHER A. GUISE, DEC'D

Late of York Springs, Adams County, Pennsylvania

Co-Administrators: George E. Guise, 819 Yellow Hill Road, Biglerville, PA 17307; Robert E. Guise, P.O. Box 188, Gardners, PA 17324

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

ESTATE OF AGNES LILLIAN LINZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Jane M. Phillips and Kathleen Loverde

Attorney: Menges, Gent & McLaughlin, 1157 Eichelberger Street, Hanover, PA 17331

ESTATE OF GLADYS M. STERNER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Adams County National Bank, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law,

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-N-687 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of May, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a 5/8 inch rebar to be set at the northeastern corner of this lot where it intersects with the northwestern corner of land now or formerly of M. Lisa Bard; thence running by land now or formerly of M. Lisa Bard, South 21 degrees 00 minutes 00 seconds East, 105.17 feet to a 2 inch pipe found on line of land now or formerly of Clinton and Charlene Atha; thence running by land now or formerly of Clinton and Charlene Atha, through a 2 inch pipe found in a curb which is set back 73.41 feet from the end of this course and crossing the Center Mills Road, South 73 degrees 51 minutes 43 seconds West, 204.69 feet to a 5/8 inch rebar to be set along the Opossum Creek and on line of land now or formerly of the Aspers Community Fire Company; thence running along Opossum Creek and by the land now or formerly of the Aspers Community Fire Company, North 11 degrees 00 minutes 00 seconds West, 99.11 feet to a drill rod to be set; thence re-crossing the Center Mills Road and running in and along the curb and sidewalk situate on the South side of Aspers Road - North, North 72 degrees 00 minutes 00 seconds East, 187.00 feet to a 5/8 inch rebar to be set at the corner of land now or formerly of M. Lisa Bard, the point and place of BEGINNING. CONTAINING .457 acres more or less.

The description was taken from a draft of survey of Robert A. Sharrah, R.S. dated July 19, 1995.

Being the same which Oscar E. Centeno and Maribel Centeno, by her attorney-in-fact, Berlid Plaza, by deed dated July 21, 1995, which said deed is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1057 at page 299, sold and conveyed unto Jose S. Molina and Isidro V. Lopez.

SEIZED and taken into execution as the property of **Jose S. Molina and Isidro V. Lopez** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 18, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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April 10, 1998

No. 46, pp. 275-278

IN THIS ISSUE

**COMMONWEALTH
VS.
DANIELS**

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



Member FDIC

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LOT NO. 61

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TAX PARCEL NUMBER: 1-145

TITLE TO SAID PREMISES IS VESTED IN Craig M. Shaffer and Brenda L. Shaffer, husband and wife by Deed from Gregory J. Orndorff and Veronica J. Orndorff, his wife and Jeffrey S. Orndorff and E. Orndorff, his wife dated 5/12/83 recorded 5/24/83 in Record Book 368 Page 284.

SEIZED and taken into execution as the property of **Craig M. Shaffer and Brenda L. Shaffer** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
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As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.
3/27, 4/3 & 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN to all persons interested or who may be affected that the corporation by the name of The DOOR CHRISTIAN COMMUNITY CENTER, INC., having its registered address at 3883 Old Harrisburg Road, Gettysburg, Adams County, Pennsylvania 17325, filed its Articles of Incorporation with the Pennsylvania Department of State on October 23, 1997, and has been organized under the provisions of the Non-Profit Corporation Law of 1988, 15 Pa. C.S.A. Section 5101 et seq., as amended, for the following purpose: to own and operate a Christian community center and all related activities.

Joseph A. Macaluso, Esquire
9614 Rowe Run Loop
Shippensburg, PA 17257

4/10

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, 54 Pa. C.S.A. §301, et seq., that an Application to conduct business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of RED PATCH MARKETING was filed in the office of the Secretary of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, on February 5, 1998. The business is located at 64 S.W. Confederate Avenue, Gettysburg, Pennsylvania, 17325. The name and address of the person who is a party to the registration is Salvatore F. Prezioso, 64 S.W. Confederate Avenue, Gettysburg, Pennsylvania, 17325.

Henry O. Heiser, III
Swope, Heiser & McQuaide
104 Baltimore Street
Gettysburg, PA 17325

4/10

COMMONWEALTH VS. DANIELS

1. Evidence of aliases, especially coupled with flight, are admissible to show consciousness of guilt.
2. Neither the Sentencing Code nor guidelines place time limits on prior convictions.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-601-96 COMMONWEALTH OF PENNSYLVANIA VS. FREDERICK CHARLES DANIELS.

Michael George, Esq., District Attorney
Joanne Taylor Floyd, Esq. for Defendants

STATEMENT PURSUANT TO (P.A.R.APP.P.) 1925

Spicer, P.J., May 15, 1997.

On October 13, 1994, Gina Tasselmyer, a trooper with the Pennsylvania State Police was working in an undercover capacity at a location in Gettysburg known as Hamilton's Tavern. While doing so, she purchased a quantity of cocaine from a black male she only knew as Rob. Although the actual transaction took only 30 seconds, the trooper was in the seller's presence around twenty minutes, had a good opportunity to observe him, paid close attention to detail and made notes shortly after the incident. They first met at the bar, then went to a table to transact business. During this time, defendant was within an arm's length of the trooper. The establishment's interior was moderately lighted and no physical or mental condition affected the trooper's ability to observe. Except for some minor discrepancies, such as entering W (for white) and substituting B (for black), which were immediately corrected on her report, Tasselmyer's written description was consistent with defendant's appearance.

The trooper did not file charges immediately because of an ongoing drug investigation. She saw defendant at least twice between the incident and December 16, 1994. The two exchanged pleasantries, with defendant asking Tasselmyer if she remembered him (she said yes) and if she needed anything (she said no). When charges were filed on November 10, 1994, defendant was identified as John Doe, a/k/a Rob.

Sometime between November 15, 1994 and December 16, 1994 Trooper Kenneth Hassinger, the prosecutor, and at least one other police officer, entered Hamilton's Tavern, took defendant outside and photographed him. This procedure was certainly unusual, even irregular, but related only to the means by which two photographs were obtained. We were not asked to suppress the photographs, nor were

they used at trial. The photography session had nothing to do with Tasselmyer's identification. When shown the pictures, on December 16, 1994, the trooper immediately identified defendant as the seller. Police then used the name *Dennis Childes*, one of the defendant's many aliases. Subsequent to arrest in April, 1995, the police obtained information which led them to believe defendant's name was Carl Johnson. Defendant signed a bail piece using that name on April 28, 1995.

Defendant appeared with counsel, Barbara Entwistle, Esq., at his preliminary hearing on May 22, 1995. Commonwealth withdrew the charges because of evidentiary problems, then refiled on May 24, 1995. Thereafter, police were unable to locate defendant and a warrant was issued June 5, 1995. On June 9, 1995, three aliases were entered in NCIC. The police asked Ms. Entwistle if she knew the whereabouts of her client, sent fugitive notices, and inquired at a residence at which defendant was believed to stay (Ms. Margaret Smith) without success. Defendant was finally apprehended in Florida on July 16, 1996.

Defendant waived formal arraignment on September 13, 1996, entered a plea of not guilty, and requested a jury trial. On October 28, 1996, defense counsel was granted an extension of time in which to file an omnibus pretrial motion. After several continuances, this application was finally heard December 27, 1996. Two requests were made: 1) suppression of Tasselmyer's identification because of the suggestiveness of the photograph identification on December 16, 1994; 2) Dismissal under Pa. R.Crim.P. 1100.

The undercover officer was shown only one person's photograph. Assuming that this was suggestive, any identification resulting from that view should have been suppressed unless the Commonwealth demonstrated, by clear and convincing evidence, that subsequent identifications were based on an independent source. We found it did.

All one-on-one confrontations are not per se suggestive, Commonwealth v. Toro, 432 Pa. Super 383, 638 A.2d 991 (1994), nor did we find it to be the case sub judice. Although the time span between the crime and confrontation is generally the critical factor, we think other circumstances may be considered. Tasselmyer was familiar with police procedure and could hardly be said to have been influenced by fellow officers. She gave a description of a man who frequented Hamilton's Tavern and other policemen went to the location to photograph someone meeting her description. She adamantly maintained that her positive and unwavering identifications resulted solely from observations prior to having been shown the photographs. In its denial of the motion to suppress, entered December 27, 1996, this court

accepted her testimony and found, based upon a totality of evidence, an independent basis for the identification. The conclusion was based upon a clear and convincing standard.

This judge, without intending to recite an exhaustive list, listed four considerations. However, time was a definite consideration and all five factors described in appellate decisions were considered. These included: 1) Tasselmyer's opportunity to view defendant at the scene of the crime and on at least two occasions thereafter; 2) her degree of attention; 3) the accuracy of her prior description; 4) the level of certainty of her identification at the hearing and earlier confrontations, and; 5) the length of time between the crime and confrontation. *Commonwealth v. Abdul-Sallaam*, 544 Pa. 514, 678 A.2d 342 (1996).

The fifth presents some mild problems, but we found the witness to be candid and truthful. It should be kept in mind that she is trained and made a conscious effort to be observant in order to accurately remember and identify the drug dealer who transferred cocaine. We had no hesitancy in accepting her testimony.

A Rule 1100 motion was also rejected. Trooper Hassinger testified that defendant used six different aliases with a corresponding number of different birth dates. We have ready described the efforts made to discover defendant's whereabouts.

There was no suggestion that the first prosecution was dismissed to circumvent the rule. Thus the period considered began with the filing of the second complaint. *Commonwealth v. Schafer*, 394 Pa. Super 493, 576 A.2d 392 (1990); alloc. den. 527 Pa. 644, 593 A.2d 417 (1991). The circumstances compare with those in *Commonwealth v. Fisher*, 545 Pa. 233, 681 A.2d 130 (1996). Actually, a much longer delay was rejected as a reason for dismissal by our highest court in that case (8 years).

Defendant, not the Commonwealth, was accountable for the delay occasioned by his aliases and flight. Excludable time ran to the earliest possible trial date. *Commonwealth v. Wentzel*, 434 Pa. Super. 76, 641 A.2d 1207 (1994), alloc. den. 539 Pa. 667, 652 A.2d 838 (1994).

On January 3, 1997, Defendant filed a motion in limine seeking to exclude from evidence a scanner, wooden handle and ID with a different name which had been seized by the police at the time of the arrest. Defendant further sought to exclude "that Defendant slandered him (Trooper Hassinger) racially and professionally, said that the charge could not hurt him, that he (Defendant) has spent lengthy time in jail, that the police could not successfully prosecute him, and acknowledged using an assume (sic) name at one point in the prosecution."

The order entered January 13, 1997, refused the motion as to possession by defendant of an ID card with a different name at the time of his arrest (Defendant's picture was on the identification card), statements that a \$40 rock would not hurt defendant and that defendant had not given a correct name. This evidence was held to be relevant to show consciousness of guilt.

Evidence of aliases, especially coupled with flight, are admissible to show consciousness of guilt. *Commonwealth v. Toro*, supra.

A jury found defendant guilty January 16, 1997. A presentence investigation was ordered and sentencing deferred until February 24, 1997. Defendant was ordered to undergo imprisonment in a state correctional institution for not less than 22 months, nor more than 48 months.

After sentencing, defendant changed counsel and moved to modify sentence. The motion was considered and denied April 15, 1997. The sole grounds presented was that the court relied upon stale convictions in computing defendant's prior record score. We found this lacking in merit. Neither the Sentencing Code nor guidelines place time limits on prior convictions. *Commonwealth v. Johnson*, 421 Pa. Super 433, 618 A.2d 421 (1992).

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 ANNA M. DREYER, a/k/a ANNA S. DREYER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Robert C. Dreyer, 190 Crocus Avenue, Floral Park, NY 11001; Dorothy E. Schroeder, 65 Southview Drive, Biglerville, PA 17307

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

ESTATE OF MARIA GREENE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Charles Markel and Peggy Markel, 220 Lincoln Way West, New Oxford, PA 17350

Attorney: Daniel M. Frey, Daniel M. Frey & Associates, P.C., 14 Center Square, Hanover, PA 17331

ESTATE OF JOHN W. HANKEY, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Virginia G. Stauffer, 411 McSherry Woods Drive, Littlestown, PA 17340

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

ESTATE OF LLOYD H. HATHAWAY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Vera Ruth Hathaway, 1859 Emmitsburg Road, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CATHLEEN JENNIFER HAYES, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrators: Brian R. Hayes, Box 1237, Hanover, PA 17331; Sheila Field, 38A York Street, Gettysburg, PA 17325

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

ESTATE OF LOIS KADEL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William T. Poole, Jr., 620 Valley Lane, Towson, MD 21286

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

ESTATE OF ANNE STITH ORDEMANN, a/k/a ANNE M. STITH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: James E. Stith, 1061 Dutchneck Road, Middletown, DE 19709

Attorney: Chester G. Schultz, Esquire, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF LUCILLE E. WALLEN, DEC'D

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

Executor: Michael C. Wallen, Sr., 154 Hamilton Drive, Abbottstown, PA 17301

ESTATE OF WILLIAM S. WITTER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Mary E. Witter, 1856 Carrolls Tract Road, Orrtanna, PA 17353

Attorney: Thomas M. Painter, Ullman and Painter, 10 East Main Street, Waynesboro, PA 17268

SECOND PUBLICATION

ESTATE OF EMILY G. AMSPACHER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrator: Clair L. Ampsacher, 996 Brough Road, Abbottstown, PA 17301

Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY S. EHRHART, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Kenneth W. Ehrhart, 455 Deerfield Drive, Hanover, PA 17331

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

ESTATE OF MARJORIE R. EICHELBARGER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: PeoplesBank, A Codorus Valley Company, 105 Leader Heights Road, P.O. Box 2887, York, PA 17405-2887

Attorney: John J. Shorb

ESTATE OF FRED A. FLEISCHER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ronald E. Fleischer, 1357 Deerfield Drive, State College, PA 16803

Attorney: Gary A. Delafield, Esquire, Delafield, McGee, Jones & Kauffman, 300 South Allen Street, Suite 300, State College, PA 16801-4841

ESTATE OF DOLORES A. KENNEDY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Robert H. Kennedy, 312 Benning Avenue, Gettysburg, PA 17325

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

ESTATE OF EVELYN S. KUHN, a/k/a EVELYN MARIE KUHN, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Administratrix: Sharon A. Kuhn, 215 S. Water Street, New Oxford, PA 17350

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

ESTATE OF NELLIE M. MARTIN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrices: Patricia M. Wentz, 3 Chinkapin Drive, New Oxford, PA 17350; Janet E. Felch, 112 Sanford Avenue, Hanover, PA 17331;

Beatrice B. Strausbaugh, 1931 Centennial Road, Hanover, PA 17331

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

ESTATE OF MAURICE H. MCDONALD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Michael W. McDonald, 167 Hood Drive, Canfield, OH 44406

ESTATE OF MERLE E. NEIDERER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Richard P. Neiderer, 1090 Water Drive, Hanover, PA 17331; Charles W. Neiderer, 2700 Francis Scott Key Highway, Taneytown, MD 21787

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

ESTATE OF MIRIAN L. THOMAS, DEC'D

Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325

Attorney: Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

Continued on next page

ESTATE NOTICES (cont.)

THIRD PUBLICATION

ESTATE OF HARRY G. LAMBERT, a/k/a HARRY GRANT LAMBERT, III, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executrix: Rita L. Pohlman
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17334

ESTATE OF MILDRED E. MILLER, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Executor: Paul A. Miller, 598 Fuhrman Mill Road, Hanover, PA 17331
Attorney: Harold A. Eastman, Jr., Puhl & Eastman, 16 Lincoln Square, Get-

ESTATE OF REGINA C. SANDERS a/k/a REGINA B. SANDERS, DEC'D
Late of the Borough of Carroll Valley, Adams County, Pennsylvania
Executrices: Janet Currens, 2890 Fairfield Road, Gettysburg, PA 17325; Florence Metz, 175 Old Mill Road, Gettysburg, PA 17325
Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GOLDIE E. STEVENS, DEC'D
Late of Huntington Township, Adams County, Pennsylvania
Executor: Kenneth E. Stevens, 90 Wiermans Mill Road, York Springs, PA 17372
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325
17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-N-687 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of May, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a 5/8 inch rebar to be set at the northeastern corner of this lot where it intersects with the northwestern corner of land now or formerly of M. Lisa Bard; thence running by land now or formerly of M. Lisa Bard, South 21 degrees 00 minutes 00 seconds East, 105.17 feet to a 2 inch pipe found on line of land now or formerly of Clinton and Charlene Atha; thence running by land now or formerly of Clinton and Charlene Atha, through a 2 inch pipe found in a curb which is set back 73.41 feet from the end of this course and crossing the Center Mills Road, South 73 degrees 51 minutes 43 seconds West, 204.69 feet to a 5/8 inch rebar to be set along the Opossum Creek and on line of land now

or formerly of the Aspers Community Fire Company; thence running along Opossum Creek and by the land now or formerly of the Aspers Community Fire Company, North 11 degrees 00 minutes 00 seconds West, 99.11 feet to a drill rod to be set; thence re-crossing the Center Mills Road and running in and along the curb and sidewalk situate on the South side of Aspers Road - North, North 72 degrees 00 minutes 00 seconds East, 187.00 feet to a 5/8 inch rebar to be set at the corner of land now or formerly of M. Lisa Bard, the point and place of BEGINNING. CONTAINING .457 acres more or less.

The description was taken from a draft of survey of Robert A. Sharrah, R.S. dated July 19, 1995.

Being the same which Oscar E. Centeno and Maribel Centeno, by her attorney-in-fact, Berlid Plaza, by deed dated July 21, 1995, which said deed is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1057 at page 299, sold and conveyed unto Jose S. Molina and Isidro V. Lopez.

SEIZED and taken into execution as the property of **Jose S. Molina and Isidro V. Lopez** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 18, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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Adams County Legal Journal

Vol. 39

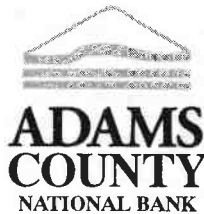
April 17, 1998

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COMMONWEALTH
VS.
THERMOLIEN

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

Business Office - 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193
Second-class postage paid at Gettysburg, PA 17325.

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that a certificate of organization for a domestic limited liability corporation was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about April 9, 1998, for the purpose of obtaining a Certificate of Incorporation of a Pennsylvania limited liability company, organized under the Limited Liability Company Law of 1994, Act of December 7, 1994, P.L. 703.

The name of the corporation is BRIAR CREEK, LIMITED.

The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any lawful act, including, but not limited to, land acquisition and development and such other business for which the corporation may be organized under the Pennsylvania Corporation Law.

Wolfe & Rice
47 West High Street
Gettysburg, PA 17325

4/17

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 March 11, 1998, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is M.S. WARNER GENERAL CONSTRUCTION INC.

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

M.S. WARNER GENERAL
CONSTRUCTION, INC.
65 Sherrill Drive
New Oxford, PA 17350

4/17

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CHANGE OF NAME
NO. 98-S-307

IN RE: Austin Eugene Reitz

NOTICE

NOTICE IS HEREBY GIVEN that on March 27, 1998, the Petition of Stanley D. Shoop, natural father of Austin Eugene Reitz was filed in the above-named Court praying for a Decree to change the name of said child to Austin Eugene Shoop.

The Court has fixed Monday, June 29, 1998 at 9:00 a.m. in the Adams County Courthouse as the time and place for a hearing on said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said Petitioner shall not be granted.

Michelle R. Calvert, Esquire
Griffie & Associates
200 North Hanover Street
Carlisle, PA 17013

4/17

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Atha, through a 2 inch pipe found in curb which is set back 73.41 feet from the end of this course and crossing the Center Mills Road, South 73 degrees 51 minutes 43 seconds West, 204.69 feet to a 5/8 inch rebar to be set along the opossum Creek and on line of land now or formerly of the Aspers Community Fire Company; thence running along Opossum Creek and by the land now or formerly of the Aspers Community Fire Company, North 11 degrees 00 minutes 00 seconds West, 99.11 feet to a drill rod to be set; thence recrossing the Center Mills Road and running in and along the curb and sidewalk situate on the South side of Aspers Road - North, North 72 degrees 00 minutes 00 seconds East, 187.00 feet to a 5/8 inch rebar to be set at the corner of land now or formerly of M. Lisa Bard' the point and place of BEGINNING. CONTAINING .457 acres more or less. The description was taken from a draft of survey of Robert . Sharrah, R.S. dated July 19, 1995. Being the same which Oscar E. Centeno and Maribel Centeno, by her attorney-in-fact, Berlid Plaza, by deed dated July 2, 1995, which said deed is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1057 at page 299, sold and conveyed unto Jose S. Molina and Isidro V. Lopez.

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4/3, 10 & 17

COMMONWEALTH VS. THERMOLIEN

1. There are no constitutional mandates requiring either prospective or retroactive application of decisions and instead, courts should consider various factors.
2. The decision in *Commonwealth vs. Besch* 544 Pa. 1, 674 A.2d 655 (1996) should not be retroactively applied in this case.
3. Plea counsel cannot be considered ineffective for failing to predict future developments of the law.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-854-94 and CC-569-94 COMMONWEALTH OF PENNSYLVANIA VS. EDMOND THERMOLIEN A/K/A THERMOLIEN EDMOND.

Shawn Wagner, Esq., Deputy Attorney General
Kevin Robinson, Esq., for Defendant

OPINION ON PCRA PETITION

Spicer, P.J., May 29, 1997.

We begin by noting that defendant's second PCRA petition has been filed to only CC-854-94, but that issues in that case cannot be resolved without also considering CC-569-94. Further, on March 25, 1997, the caption in CC-854-94 was amended to include the name defendant claimed as his own. The caption in CC-569-94 shall be similarly amended.

After having been charged with a number of drug related charges, defendant appeared with counsel and an interpreter on March 6, 1996, to plead guilty to seven counts of possession with intent to deliver cocaine, 35 Pa. C.S.A. §780-113(a) (30), in CC-569-94. At the same time, he pled guilty to a corrupt organization charge, 18 Pa.C.S.A. §911, and criminal conspiracy, id §903, in CC-854-94. The sentencing structure arranged by agreement resulted in an aggregate of six years to twelve years on the (a)(30) and conspiracy charges and a concurrent six years to fifteen years on the corrupt organization prosecution. Thus, total confinement of not less than six years nor more than fifteen years was imposed immediately after the plea.

Somewhat after sentencing, defendant moved to withdraw his guilty plea, claiming that he did not understand the interpreter who translated plea and sentencing proceedings. This court conducted a hearing May 31, 1995, after which the motions were denied. The undersigned found that defendant clearly understood what occurred and that his plea was knowingly, intelligently and voluntarily entered.

Plea, sentencing and hearing proceedings were transcribed and filed of record. Transcripts appear in folder B in CC-569-94.

Defendant filed an appeal from May 31, 1995, order and this court provided a 1925 statement, on June 27, 1995. Defendant discontinued his appeal March 8, 1996.

The first PCRA petition was filed May 27, 1996. When defendant and PCRA counsel appeared for a pre-hearing conference on July 23, 1996, they were told to submit authority, within 20 days, supporting their contention that the sentence was illegal. When nothing was provided, this court entered an order dismissing the PCRA petition. That order, dated October 27, 1996, recited that any illegality issue would be addressed through a 1925 statement, if an appeal were filed. None was. Instead, defendant filed his second PCRA petition on February 14, 1997.

The second petition raised the same issue, which was whether Supreme Court's decision in *Commonwealth v. Besch*, 544 Pa. 1, 674 A.2d 655 (1996) rendered defendant's plea invalid and his sentence illegal.

It is undisputed that defendant did not infiltrate an established business and subvert it to racketeering purposes. Thus, he would be exonerated from the charge were it currently filed. However, defendant's sentence occurred before the *Besch* decision, his appeal was grounded on a narrow factual issue involving his understanding of the of the patois dialect spoken by his interpreter, and the appeal was withdrawn before *Besch* was decided.

It is important to mention that defendant's plea arrangement involved more than a corrupt organization charge. Commonwealth eschewed mandatory sentences on delivery charges to fashion the six to fifteen. The same results could have been easily obtained using only delivery charges. We mentioned, in the beginning of this opinion, that both cases must be considered. Defendant may not address the corrupt organization plea in a vacuum. The entire bargain must be considered.

Although not an issue, it is obvious that the plea was knowingly voluntarily and intelligently entered. A thorough colloquy was pursued. Defendant fully understood the minimum and maximum sentences that would be imposed. *Commonwealth v. Persinger*, 532 Pa. 317, 615 A.2d 1305 (1992).

Although it has been said that courts have been retroactive for almost a thousand years, there are no constitutional mandates requiring either prospective or retroactive application of decisions. *Blackwell v. Commonwealth State Ethics Commission*, 527 Pa. 172, 589 A.2d 1094

(1991). Instead, courts should consider various factors, which we shall now discuss:

1) The purpose to be served by the new rule: Supreme Court's decision was based strictly on statutory construction and concentrated on the statute's lengthy preamble. *Besch*, therefore, merely announced legislative intent and served no other policy.

2) Extent of reliance on the old rule: Commonwealth certainly relied on an interaction which made defendant's action fall within the statute's bane. It could easily have fashioned a different agreement, with obviously valid charges, that would have achieved the same results. Defendant, by pleading as he did, also relied on the old interpretation.

3) The effect on administration of justice of retroactivity: Invalidating defendant's plea to one count would require that corresponding pleas to other charges also be vacated. The finality of the plea agreement would be destroyed, with no discernible benefit to defendant and a great deal of inconvenience to Commonwealth. Defendant was not pressured into pleading as he did. This was not a case in which defendant protested his innocence.

4) New principle overrules clear past precedent upon which litigants relied, which were not foreshadowed: The interpretation assumed by the parties was justified. Superior Court had upheld the statute's application to illegitimate enterprises. *Commonwealth v. Youcabian*, 339 Pa. Super. 413, 489 A.2d 228 (1985). This interpretation persisted for some eleven years. As the dissent in *Besch* indicates, the United States Supreme Court adopted the same approach, consistent with a long line of federal decisions. *United States v. Turkette*, 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed. 2d 246 (1981). Thus, Pennsylvania Supreme Court's decision clearly was a break from established precedence.

5) Prior history: Many decisions have interpreted statutes with similar wording, but without Pennsylvania's preamble, differently. *id.*

6) Inequity of retroactivity: It would serve no purpose, other than delay and possible lengthy litigation, to allow defendant to escape the consequences of a plea bargain which he fully understood and voluntarily embraced.

Thus, we conclude that the decision in *Commonwealth v. Besch*, *supra.*, should not be retroactively applied to this case.

PCRA counsel has suggested that plea counsel may have been ineffective for withdrawing defendant's appeal. Had he not done so, the argument that *Besch* should apply would be strengthened.

Defendant's appeal involved a factual dispute which the record clearly resolved. There was really no basis for the appeal. Further, plea counsel cannot be considered ineffective for failing to predict future

developments of the law. Commonwealth v. Carter, 409 Pa. Super 184, 597 A.2d 1156 (1991), alloc., den. 530 Pa. 664, 610 A.2d 44 (1992).

ORDER

AND NOW, this 29th day of May, 1997, the captions in both of the above entitled cases are amended to add both names by which defendant is known. The PCRA petition is dismissed. The Clerk of Courts is directed to forthwith mail a copy of this order and its accompanying opinion to defendant, certified mail, return receipt requested.

Defendant is notified that he has the right to appeal from this order to Superior Court. His appeal must be filed within the next thirty days. Assigned counsel will file, perfect and litigate the appeal if, but only if, defendant requests him to do so.

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 CARL E. ALTLAND, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania
Administratrix: Sandra R. Hartlaub, 20 N. Emigs Mill Road, York, PA 17404

Attorney: Sharon E. Myers, Esquire, 29 North Duke Street, York, PA 17401

ESTATE OF MICHAEL STUART BAKER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Executors: Brian M. Baker; Bradley T. Baker

Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157 Eichelberger Street, Hanover, PA 17331

ESTATE OF MILLARD H. CHRONISTER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Darby Joan Shaffer, 34 Ditzler Avenue, P.O. Box 207, Biglerville, PA 17307

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17307

ESTATE OF MARY I. HARTMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executrix: Ruth Jeanne Bream, 170 Bingaman Road, Orrtanna, PA 17353

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

ESTATE OF ALICE E. MITCHELL, DEC'D

Late of Union Township, Adams County, Pennsylvania
Executrix: Linda Marie Householder, 15 Cedar Lane, Hanover, PA 17331

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

SECOND PUBLICATION

ESTATE OF ANNA M. DREYER, a/k/a ANNA S. DREYER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Robert C. Dreyer, 190 Crocus Avenue, Floral Park, NY 11001; Dorothy E. Schroeder, 65 Southview Drive, Biglerville, PA 17307

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

ESTATE OF MARIA GREENE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Charles Markel and Peggy Markel, 220 Lincoln Way West, New Oxford, PA 17350

Attorney: Daniel M. Frey, Daniel M. Frey & Associates, P.C., 14 Center Square, Hanover, PA 17331

ESTATE OF JOHN W. HANKEY, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Virginia G. Stauffer, 411 McSherry Woods Drive, Littlestown, PA 17340

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

ESTATE OF LLOYD H. HATHAWAY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Vera Ruth Hathaway, 1859 Emmitsburg Road, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CATHLEEN JENNIFER HAYES, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrators: Brian R. Hayes, Box 1237, Hanover, PA 17331; Sheila Field, 38A York Street, Gettysburg, PA 17325

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

ESTATE OF LOIS KADEL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: William T. Poole, Jr., 620 Valley Lane, Towson, MD 21286

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

ESTATE OF ANNE STITH ORDEMANN, a/k/a ANNE M. STITH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: James E. Stith, 1061 Dutchneck Road, Middletown, DE 19709

Attorney: Chester G. Schultz, Esquire, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF LUCILLE E. WALLEN, DEC'D

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

Executor: Michael C. Wallen, Sr., 154 Hamilton Drive, Abbottstown, PA 17301

ESTATE OF WILLIAM S. WITTER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Mary E. Witter, 1856 Carrolls Tract Road, Orrtanna, PA 17353

Attorney: Thomas M. Painter, Ullman and Painter, 10 East Main Street, Waynesboro, PA 17268

THIRD PUBLICATION

ESTATE OF EMILY G. AMSPACHER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrator: Clair L. Ampsacher, 996 Brough Road, Abbottstown, PA 17301

Attorney: Donald W. Dorr, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY S. EHRHART, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Kenneth W. Ehrhart, 455 Deerfield Drive, Hanover, PA 17331

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

ESTATE OF MARJORIE R. EICHELBERGER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: PeoplesBank, A Codorus Valley Company, 105 Leader Heights Road, P.O. Box 2887, York, PA 17405-2887

Attorney: John J. Shorb

ESTATE OF FRED A. FLEISCHER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Ronald E. Fleischer, 1357 Deerfield Drive, State College, PA 16803

Attorney: Gary A. Delafield, Esquire, Delafield, McGee, Jones & Kauffman, 300 South Allen Street, Suite 300, State College, PA 16801-4841

ESTATE OF DOLORES A. KENNEDY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Robert H. Kennedy, 312 Benning Avenue, Gettysburg, PA 17325

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

ESTATE NOTICES (cont.)

ESTATE OF EVELYN S. KUHN, a/k/a
EVELYN MARIE KUHN, DEC'D

Late of the Borough of New Oxford,
Adams County, Pennsylvania
Administratrix: Sharon A. Kuhn, 215
S. Water Street, New Oxford, PA
17350

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

ESTATE OF NELLIE M. MARTIN, DEC'D
Late of Cumberland Township, Ad-
ams County, Pennsylvania

Executrices: Patricia M. Wentz, 3
Chinkapin Drive, New Oxford, PA
17350; Janet E. Feltch, 112 Sanford
Avenue, Hanover, PA 17331;
Beatrice B. Strausbaugh, 1931
Centennial Road, Hanover, PA
17331

Attorney: Keith R. Nonemaker, Es-
quire, Rudisill, Guthrie,
Nonemaker, Guthrie & Yingst, 40
York Street, Hanover, PA 17331

ESTATE OF MAURICE H. McDONALD,
DEC'D

Late of Cumberland Township, Ad-
ams County, Pennsylvania

Executor: Michael W. McDonald, 167
Hood Drive, Canfield, OH 44406

ESTATE OF MERLE E. NEIDERER,
DEC'D

Late of Conewago Township, Adams
County, Pennsylvania

Executors: Richard P. Neiderer, 1090
Water Drive, Hanover, PA 17331;
Charles W. Neiderer, 2700 Francis
Scott Key Highway, Taneytown,
MD 21787

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

ESTATE OF MIRIAN L. THOMAS,
DEC'D

Executor: Adams County National
Bank, Lincoln Square, Gettysburg,
PA 17325

Attorney: Puhl & Eastman, 16 Lin-
coln Square, Gettysburg, PA 17325

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the
filing with the Department of State of the
Commonwealth of Pennsylvania, on
March 13, 1998, under the Fictitious
Name Act, of an Application for the reg-
istration of the fictitious name PAST CON-
NECTIONS with its principal office or
place of business at P.O. Box 272,
Fairfield, PA 17320. The name and ad-
dress of the person who is party to the
registration is: Timothy G. Buczkows

Donald G. Oyler
112 Baltimore Street
Gettysburg, PA 17325

4/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Ar-
ticles of Incorporation have been filed
with the Department of State of the Com-
monwealth of Pennsylvania, with respect
to a corporation which has been incorpo-
rated under the Business Corporation
Law of 1988. The name of the corpora-
tion is FAIRFIELD FOUR SEASONS,
INC.

Wendy Weikal-Bauchat, Esquire
116 Baltimore Street
Gettysburg, PA 17325

4/17

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.*



Kevin William Gibson, Esquire
214 North Jackson Street
Media, Pennsylvania 19063
(800) 648-8597
(610) 565-3800

Adams County Legal Journal

Vol. 39

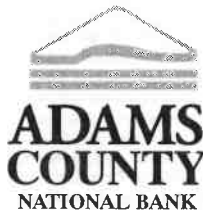
April 24, 1998

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and
COMMONWEALTH VS. SHAW

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

Subscribers within Adams County should send subscriptions direct to the business office. Subscribers outside of Adams County should send subscriptions to Wm. W. Gaunt & Sons, Inc., 3011 Gulf Drive, Holmes Beach, FL 34217-2199. Postmaster: Send address changes to Adams County Legal Journal, 112 Baltimore Street, Gettysburg, PA 17325.

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

Second-class postage paid at Gettysburg, PA 17325.

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-92 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Reading Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Township Road 574 at a corner of lands now or formerly of Donald Linebaugh, thence along the lands of said Donald Linebaugh and through a reference pin set back ten and eight-tenths (10.8) feet from the center of said road, North fifty-eight (58) degrees East three hundred (300) feet to a point at lands now or formerly of Joseph L. Eshleman and wife, of which this was formerly a part; thence along same South, fifty-one (51) degrees thirty (30) minutes East one hundred fifty (150) feet to a point at lands now or formerly of Joseph L. Eshleman and wife; thence along same South fifty-eight (58) degrees West three hundred (300) feet to a point at the center line of Township Road 574; thence in and through the said center line of Township Road North fifty-one (51) degrees thirty (30) minutes West one hundred fifty (150) feet to a point and place of beginning.

BEING Tax Parcel #L-7-23-C.

TITLE TO SAID PREMISES IS VESTED IN James R. Cousler, Jr. and Margaret E. Cousler by Deed from Walter G. Sieling and Marian C. Sieling, husband and wife, dated 3/2/88 and recorded 3/11/88 in Record Book 482 page 271.

SEIZED and taken into execution as the property of **Barbara L. Kuhn, James R. Cousler, Jr. and Margaret E. Cousler** and to be sold by me

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
March 27 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/24, 5/1 & 8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-55 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 29th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land lying and being in Mount Pleasant Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING for a point in the middle of a public road identified as Township Road T-428 (Storms Store Road) and at lands now or formerly of James A. Seymore, Lot No. 1; thence through and across one-half (1/2) of said Township Road T-428 and along lands now or formerly of James A. Seymore, North fifty-three (53) degrees nine (9) minutes forty-two (42) seconds West, three hundred seven and ninety-seven hundredths (307.97) feet to a steel pin at lands now or formerly of Dacin, Inc., thence along said lands North thirty-five (35) degrees twenty-three (23) minutes fifty (50) seconds East, one hundred thirty and sixteen hundredths (130.16) feet to a steel pin at lands now or formerly of Thomas L. Myerg; thence along said lands and through a steel pin located twenty-three and eighty-five hundredths (23.85) feet from the center of Township Road T-428, South fifty-two (52) degrees forty-nine (49) minutes thirty (30) seconds East, three hundred eleven and twenty-five hundredths (311.25) feet to a point in the middle of the aforementioned Township Road T-428 (Storms Store Road); thence through and along Township Road T-428, South thirty-six (36) degrees fifty (50) minutes eighteen (18) seconds West, One Hundred twenty-eight and twenty-nine hundredths (128.29) feet to a point in the middle of Township Road T-428 (Storms Store Road), the place of BEGINNING. CONTAINING 40,000 square feet.

THE ABOVE described tract of land has been prepared in keeping with a survey and plan rendered by Mort, Brown & Associates and identified as Lot No. 2 on said plan. The subdivision of Lot No. 2 from a larger tract of land has been

approved by the Mount Pleasant Township Planning Commission, the Mount Pleasant Township Supervisors and reviewed by Adams County Planning Commission, all in keeping with the Subdivision ordinance of Mount Pleasant Township and said plan has been recorded in the Recorder of Deeds Office in and for Adams County, Pennsylvania, in Plan Book 32 at page 13.

Tax Parcel # J-13-35-E

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

Raymond W. Newman
Sheriff

Sheriff's Office, Gettysburg, PA
April 9, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 22, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/24, 5/1 & 8

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, with respect to a corporation which has been incorporated under the Business Corporation Law of 1988. The name of the corporation is AD GLORIAM DEI, INC.

Wendy Weikal-Beauchat, Esquire
116 Baltimore Street
Gettysburg, PA 17325

4/24

ARTICLES OF INCORPORATION

Articles of Incorporation for WHERLEY TRAILER, INC., were filed with the PA Department of State on March 4, 1998, pursuant to the Business Corporation Law of 1998.

Walton V. Davis
Solicitor

4/24

MCLAUGHLIN VS. WALLS

1. In determining whether a contract is ambiguous, the agreement is viewed as a whole, not in discrete units.
2. The mere fact that parties disagree as to meaning does not make a contract ambiguous.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-551, MATTHEW G. AND SHERRY MCLAUGHLIN VS. THOMAS L. AND DOROTHY E. WALLS.

Chester G. Schultz, Esq., for Plaintiffs
Arthur J. Becker, Jr. Esq., for Defendants

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., June 2, 1997.

On October 29, 1996, the court sustained a demurrer to count one of an amended complaint, ruled that the objection to count two was a speaking demurrer, and granted plaintiffs leave to file a second amended complaint. Then, as now, count I was based upon a business relationship involving the purchase, repair and resale of automobiles. The dealings between the parties were governed by a handwritten agreement. We observed, during the course of discussion, that there were other provisions in that agreement which were not pertinent to the issue in question at that time, and which concerned defaults by customers, warranties and risk of non performance and repossession.

Plaintiffs filed a second amended complaint, seeking \$3,743.00 as reimbursement for their investments in 18 cars which were repossessed by defendant, but which have not been sold. It is plaintiff's position that defendant's obligation in this regard is absolute, and is not contingent upon sale of vehicles. The pertinent contract provision reads as follows:

Cars not being paid for must be repro'd by WALLS after 7 payments late. If car can not be repro'd for reasons It will be a lost to both Walls and McLaughlin.

Cars repro'd—Matt must get Full investment of it first!
If car is resold with payments, then half of payments to first \$500.00 profit of original deal is paid.

We have not bothered to place sic after misspellings.

Obviously, some expressions have no commonly understood meanings. The clearest example repro'd. Evidently, the parties meant to use the slang expression repo'd, or repoed which is an abbreviation for repossessed. Neither party has argued that any other meaning was to

be ascribed to this term. However, each argues a different meaning for the term, "Matt must get Full investment of it first!" As has been mentioned, plaintiff contends that this constitutes an absolute obligation to pay plaintiffs their investment. Defendants on the other hand, argue that a sale is a necessary triggering condition to any obligation and that *first* refers to priority of payment.

Ambiguity exists if the terms of a contract are reasonably susceptible of different constructions, is obscure in meaning through indefiniteness of expression or has a double meaning. *Ardrey Insurance Agency v. Insurance Co. of Decatur*, 441 Pa. Super. 94, 656 A.2d 936 (1995). However, in determining whether the contract is ambiguous, the agreement is viewed as a whole, not in discrete units. The mere fact that parties disagree as to meaning does not make the contract ambiguous. *Halpin v. LaSalle University*, 432 Pa. Super 476, 639 A.2d 37 (1994), alloc. den. 542 Pa. Pa. 670, 668 A. 2d 1133 (1995).

The payment scheme created by the contract essentially entitled plaintiffs to the entire down payment and one half of payments until they received their investment and \$500.00 profit. One provision stated that plaintiffs would make no more than \$500.00 per vehicle, and defendants no less than \$500.00. Defendants' profits were to come from payments in case of repossession. The contract provided:

Car sold

Down payments must be turn over to Matt at time of sell,

Then half of payments till investments + \$500.00 is paid.

In light of other provisions in the agreement, the only reasonable interpretation of the provision specifically applying to repossession is that plaintiffs were entitled to priority for the amount of their investment. Whether repossessed cars were sold for a lump sum, or on an installment basis, plaintiffs would be repaid their investment before the parties would share in profits. The interpretation that plaintiffs argue places the entire risk of loss on defendants for unsold repossessed cars, when the clear import of the agreement as a whole provides otherwise. Viewing the entire contract, it is clear that a sale is required to trigger an obligation by defendants to pay.

Plaintiffs having failed to allege sales, it stands to reason that the demurrer to Count I in the second amended complaint must be sustained.

ORDER

AND NOW, this 2nd day of June, 1997, the demurrer to Count I of the second amended complaint is sustained. Defendants shall have twenty days to file an answer to Count II.

COMMONWEALTH VS. SHAW

Probable cause which existed for Defendant's arrest gave the officer grounds to request results of a blood test performed by hospital personnel for medical reasons.

In the Court of Common Pleas, Adams County, Pennsylvania, COMMONWEALTH OF PENNSYLVANIA VS. DAVID R. SHAW, Criminal No. CC-816-96.

Michael A. George, Esq., D.A.
Samuel A. Gates, Esq., for Defendant

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

Spicer, P.J., June 10, 1997.

Defendant appeals from a sentence imposed May 23, 1997, and which followed a bench trial. Preceding trial, some discussion ensued about a plea of nolo contendere, but opted for trial to preserve his right to appeal this court's refusal to suppress the results of a blood test. All essential facts are undisputed.

The suppression motion was litigated on January 22, 1997. After a brief hearing, an adjudication denied the request. The order recited facts. Those were considered, along with testimony at the preliminary hearing in determining defendant's guilt.

The portion of U.S. Route 15 which by-passes Gettysburg is accessible only at interchanges. On August 29, 1996, around 3:40 p.m., defendant was in the process of exiting 15 by the south ramp. His van slid through a stop sign into the path of a westbound car on State Route 394, and was struck on the driver's side. Trooper Todd Hershey, of the Pennsylvania State Police, arrived at the scene while both drivers were present. The car driver was standing in the roadway and defendant was in the ambulance, preparatory to being transported to the Gettysburg Hospital. The trooper's on-scene investigation revealed 32 feet of skid marks beginning in the south bound ramp and ending in 394. He determined that defendant had slid through the stop sign and caused the accident. In plain view, within the van's interior, were several opened and empty Busch beer cans, a cooler with ice and full cans of beer. All items were easily accessible to the van's driver. There were no passengers in the van.

The officer then went to the Gettysburg Hospital and spoke with Dr. William Steinour, who is an emergency room physician. Dr. Steinour told Trooper Hershey that defendant was under the influence. The trooper then approached defendant and asked if he were the driver of the van. When, defendant answered "yes," the officer noticed slurred

speech, blood shot, glassy eyes and the odor of alcoholic beverages. Trooper Hershey formed the opinion that defendant was under the influence of alcohol and knew defendant was the driver of the van.

After informing defendant of his Miranda rights and the provisions of implied consent law, the officer related that the hospital would be drawing a blood sample for treatment purposes, and that Hershey would get the results. The trooper knew that a blood sample would be withdrawn and intended to follow an informal arrangement between the hospital and police to obtain the results. A few minutes later, a sample was obtained by hospital personnel. Defendant's consent was neither requested nor obtained, and his only comment was to request that the officer tell him the results.

The officer called the hospital and obtained the results about an hour and a half later. After charges were filed, the results were subpoenaed.

Defendant conceded that test results were admissible under federal law, but argued that the Pennsylvania constitution provided defendant with broader protection. Citing the concurring opinions in *Commonwealth v. Reidel*, 539 Pa. 172, 651 A. 2d 135 (1994), defendant argued that Trooper Hershey's failure to specifically request the hospital to draw a blood sample required suppression. This court rejected the argument, ruling that probable cause which existed for defendant's arrest gave the officer grounds to request results of a test performed by hospital personnel for medical reasons.

At the time of sentencing, defence counsel conceded that this case is ruled by recent decision in *Commonwealth v. Barton*, Pa. Super. 690 A.2d 293 (1997). Facts are very similar. Defence counsel apparently learned that Barton will seek allocatur. If Supreme Court denies the request, defence counsel indicated he will withdraw this appeal.

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 GLENN R. SHIELDS, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Ellen V. Shields, 151 Woodcrest Drive, Gettysburg, PA 17325
Attorney: Charles W. Wolf, Esquire, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HAZEL A. SMALL, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executor: Glenn Hartzel, 2444 Chambersburg Road, Biglerville, PA 17307
Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GRACE M. SURBEY, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Executrix: Dorothy L. Rice, 1409 Rolling House Drive, Frederick, MD 21703
Attorney: Puhl & Eastman, Esquires, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MARGARET B. WALMER, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Co-Administrators: Samuel P. Walmer, 6598 Williamsburg Blvd., Arlington, VA 22213; Charles R. Walmer, 90 Fairmount Road, Aspers, PA 17304; Kathleen W. (Walmer) Marinucci, 7713 Newington Forest Avenue, Springfield, VA 22153; Edythe A. (Walmer) Sarnoff, 108 Moore Street, Princeton, NJ 08540
Attorney: John R. White, Esquire, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROY M. WILLIAMS, SR., a/k/a ROY M. WILLIAMS, DEC'D
Late of the Borough of York Springs, Adams County, Pennsylvania
Executrix: Neva E. Williams, 420 Main Street, York Springs, PA 17373
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF CARL E. ALTLAND, DEC'D
Late of the Borough of Abbottstown, Adams County, Pennsylvania
Administratrix: Sandra R. Hartlaub, 20 N. Emigs Mill Road, York, PA 17404
Attorney: Sharon E. Myers, Esquire, 29 North Duke Street, York, PA 17401

ESTATE OF MICHAEL STUART BAKER, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Executors: Brian M. Baker; Bradley T. Baker
Attorney: Douglas H. Gent, Esquire, Menges, Gent & McLaughlin, 1157 Eichelberger Street, Hanover, PA 17331

ESTATE OF MILLARD H. CHRONISTER, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executrix: Darby Joan Shaffer, 34 Ditzler Avenue, P.O. Box 207, Biglerville, PA 17307
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17307

ESTATE OF MARY I. HARTMAN, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Ruth Jeanne Bream, 170 Bingaman Road, Orrtanna, PA 17353
Attorney: Gary E. Hartman, Esquire, Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ALICE E. MITCHELL, DEC'D
Late of Union Township, Adams County, Pennsylvania
Executrix: Linda Marie Householder, 15 Cedar Lane, Hanover, PA 17331
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ANNA M. DREYER, a/k/a ANNA S. DREYER, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executors: Robert C. Dreyer, 190 Crocus Avenue, Floral Park, NY 11001; Dorothy E. Schroeder, 65 Southview Drive, Biglerville, PA 17307
Attorney: Puhl & Eastman, Esquires, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MARIA GREENE, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executors: Charles Markel and Peggy Markel, 220 Lincoln Way West, New Oxford, PA 17350
Attorney: Daniel M. Frey, Daniel M. Frey & Associates, P.C., 14 Center Square, Hanover, PA 17331

ESTATE OF JOHN W. HANKEY, DEC'D
Late of Union Township, Adams County, Pennsylvania
Executrix: Virginia G. Stauffer, 411 McSherry Woods Drive, Littlestown, PA 17340
Attorney: John W. Phillips, Esquire, 101 W. Middle Street, Gettysburg, PA 17325

ESTATE OF LLOYD H. HATHAWAY, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Vera Ruth Hathaway, 1859 Emmitsburg Road, Gettysburg, PA 17325
Attorney: Bernard A. Yannetti, Jr., Esquire, Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CATHLEEN JENNIFER HAYES, DEC'D
Late of the Borough of Gettysburg, Adams County, Pennsylvania
Administrators: Brian R. Hayes, Box 1237, Hanover, PA 17331; Sheila Field, 38A York Street, Gettysburg, PA 17325
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF LOIS KADEL, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executor: William T. Poole, Jr., 620 Valley Lane, Towson, MD 21286
Attorney: John A. Wolfe, Esquire, Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

ESTATE OF ANNE STITH ORDEMANN, a/k/a ANNE M. STITH, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executor: James E. Stith, 1061 Dutchneck Road, Middletown, DE 19709
Attorney: Chester G. Schultz, Esquire, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF LUCILLE E. WALLEN, DEC'D
Late of the Borough of East Berlin, Adams County, Pennsylvania
Executor: Michael C. Wallen, Sr., 154 Hamilton Drive, Abbottstown, PA 17301

ESTATE OF WILLIAM S. WITTER, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executor: Mary E. Witter, 1856 Carrolls Tract Road, Orrtanna, PA 17353
Attorney: Thomas M. Painter, Ullman and Painter, 10 East Main Street, Waynesboro, PA 17268

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is EXPLORE & MORE, INC.

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

4/24

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act (54 Pa. C.S. §311, effective March 16, 1983), that the Fictitious Name of S&S SUTLER OF GETTYSBURG was registered in the Office of the Secretary of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania on March 23, 1998. The principal office or place of business is 135 Kime Avenue, P.O. Box 218, Bendersville, Pennsylvania 17306. The persons interested in and owning said business are Peter T. Sheads and Debra M. Sheads, 135 Kime Avenue, P.O. Box 218, Bendersville, Pennsylvania 17306.

4/24

IN THE COURT
OF COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 98-S-335
Action in Divorce

BRIAN JAY GUIHER, Plaintiff,
vs.
MICHELLE JEAN GUIHER, Defendant.

NOTICE

TO: Michelle Jean Guiher

Your husband, Brian Jay Guiher, has filed a Divorce Complaint against you, stating that your marriage is irretrievably broken and you and your husband are separated and have lived separate and apart for a period in excess of two years. He has requested the Court to enter a decree of divorce.

You may request marriage counseling. A list of marriage counselors is available in the office of the Prothonotary, Adams County Courthouse, 111 Baltimore Street, Gettysburg, Pennsylvania.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

IF YOU WISH TO DEFEND, YOU MUST PROMPTLY ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE YOUR DEFENSES OR OBJECTIONS IN WRITING WITH THE COURT. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND A DECREE OF DIVORCE MAY BE ENTERED AGAINST YOU BY THE COURT, WITHOUT FURTHER NOTICE.

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

Court Administrator
Adams County Courthouse
111 Baltimore Street
Gettysburg, PA 17325
(717) 334-6781

4/24

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 98-S-336
Action in Divorce, a.v.m.

CECILIA A. SEGURA, Plaintiff,
vs.

JOSE FRANCISCO SEGURA,
Defendant.

NOTICE TO DEFEND
AND CLAIM RIGHTS

TO: Jose Francisco Segura, Defendant;

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the Court. A judgment may also be entered against you for any other claim or relief requested in these papers by the Plaintiff. You may lose money or property or other rights important to you.

When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary, Room 104, Adams County Courthouse, Gettysburg, Pennsylvania 17325.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELE-

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

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Telephone: (717) 337-9846

4/24

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

CRIMINAL
CC-848-96 CC-849-96

COMMONWEALTH,

vs.

HECTOR LUA GARCIA and
VICTOR MANUEL LUA.

NOTICE

Notice is hereby given that the following Order of Court has been issued:

ORDER OF COURT

AND NOW, this 31st day of March, 1998, upon motion by the District Attorney of Adams County, a Rule is issued on Hector Lua Garcia and Victor Manuel Lua by personal service or advertisement, to show cause, if any they have, why the seven hundred eighty dollars (\$780.00) U.S. Currency should not be forfeited to the Commonwealth of Pennsylvania, specifically to the Drug Forfeiture Account. Rule returnable Tuesday May 12, 1998, at 9:00 A.M. and to be heard at that time.

ATTEST:

Peggy J. Breighner
Clerk of Courts

BY THE COURT:

/s/ Oscar F. Spicer President Judge

Notice: You have the right to defend. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the Court, or appear in person on May 12, 1998, at 9:00 A.M.

You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice.

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

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone (717) 337-9846

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