

Adams County Legal Journal

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December 3, 2004

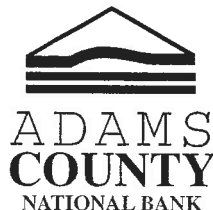
No. 28, pp. 177-181

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OLD GUARD VS. BAST ET AL

This opinion continues to next issue (12/10/2004)

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-826 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot, parcel, piece of ground situate in Reading Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a steel pin set Twenty-five (25) feet from the center line of State Highway Route 234, said steel pin being a corner of land now or late of George C. Kimmel and the Southwest corner of the tract herein conveyed; thence by said Kimmel land, North seventeen (17) degrees fifty-seven (57) minutes West, one hundred eighty-five and forty-two hundredths (185.42) feet to a steel pin at corner of land now or late of Charles R. Keller; thence by said Keller land, North fifty-two (52) degrees forty-five (45) minutes East, sixty-six and fifty-eight hundredths (66.58) feet to a steel pin at the Northwest corner of Lot No. 2 on Plan of Lots of Charles R. Keller; thence by said Lot No. 2, South thirty-seven (37) degrees fifteen (15) minutes East, one hundred seventy-five (175) feet to a steel pin set twenty-five (25) feet from the center line of State Highway Route 234; thence along said State Highway Route 234, South fifty-two (52) degrees forty-five (45) minutes West, one hundred twenty-seven and nine tenths (127.9) feet to a steel pin, the place of BEGINNING.

THE ABOVE DESCRIPTION was taken from a draft of survey dated August 4, 1956, by J.H. Rife, R.E., and designated as Lot No. 1 on said survey.

HAVING erected thereon a dwelling known as 60 Stoney Point Road, New Oxford, PA 17350

Parcel No. J08-0016A

BEING the same premises which Kermitt V. Bluhm and Glenda G. Bluhm, by their Deed dated 12/29/2001 and recorded on 01/22/2002, in the Adams County, Pennsylvania, in the Recorder of Deeds Office in Deed Book Volume

2543, page 333, granted and conveyed unto Kevin J. Crouse and Traci L. Crouse, husband and wife.

SEIZED and taken into execution as the property of **Kevin J. Crouse & Traci L. Crouse** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 31, 2005, 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.

11/19, 24 & 12/3

NOTICE OF AMENDMENT TO
ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that WORLDWIDE INTERNET DIRECTORY ASSISTANCE, INC. OF BIGLERVILLE, PA, a Pennsylvania corporation with its registered office located at Biglerville, PA, has filed with the Commonwealth of Pennsylvania, Department of State, on October 22, 2004, Articles of Amendment to its Articles of Incorporation in compliance with the requirements of 15 PA C.S. § 1915 (relating to articles of amendment), and that the nature and character of the amendment is as follows:

The name of the Corporation is changed from WORLDWIDE INTERNET DIRECTORY ASSISTANCE, INC. to SENIOR STRATEGIES, INC.

Senior Strategies, Inc.
929 Carlisle Road
Biglerville, PA 17307

12/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on November 22, 2004, with the Department of State of the Commonwealth of Pennsylvania for ROUND TOP SEWAGE COOPERATIVE, INC., a non-profit cooperative corporation organized under the Cooperative Corporation Law of 1988, for the purpose of providing "sewage collection and treatment services to its Members and to promote and protect the interests of its Members, without deriving profit, either directly or indirectly."

Janet L. Miller, Esq.
Hawke McKeon Sniscak & Kennard LLP
Harrisburg Energy Center
100 North Tenth Street
Harrisburg, PA 17101
(717) 236-1300

12/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on November 22, 2004, with the Department of State of the Commonwealth of Pennsylvania for C D S COOPERATIVE, INC., a nonprofit cooperative corporation organized under the Cooperative Corporation Law of 1988, for the purpose of providing "sewage collection services to its Members and to promote and protect the interests of its Members, without deriving profit, either directly or indirectly."

Janet L. Miller, Esq.
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12/3

OLD GUARD VS. BAST ET AL

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

2. The duty to defend does not arise simply because allegations have been made against an insured. The duty to defend the action against the Defendants is fixed solely by the allegations in the underlying complaint. If the complaint alleges an injury, which is actually or potentially within the scope of the policy, then Plaintiff must defend the action until the claim is limited to a recovery, which the policy does not cover.

3. The factual allegations set forth in the complaint rather than the cause of action averred determines whether coverage is triggered. Therefore, in determining whether there is a duty to defend, the court must accept the factual allegations as true and, if true, decide whether those facts bring the claim within the policy's coverage.

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

5. In determining whether an insurance contract provides coverage for the underlying claim, this Court's focus must be the reasonable expectations of the insured. Those expectations are determined after examining the totality of the particular insurance transaction. If the limitations of the policy are clear and unambiguous, the insured may not complain if the claim is not covered. However, any provision limiting coverage, which is ambiguous, must be interpreted in favor of the insured and against the insurer.

6. Pennsylvania courts have held that intentional acts are not "occurrences" as they are not accidental in nature. An act is "intentional" when the insured desired to cause the consequences of his act or if he acted knowing that such consequences were substantially certain to result. An intended harm exclusionary clause is ambiguous as a matter of law and, thus, should be construed against the insurer "Intended" and "expected" are synonymous and connote an element of conscious awareness on the part of the insured.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 01-S-1267, OLD GUARD INSURANCE COMPANY VS. DR. WILLIAM R. BAST, JOANNE S. BAST, SWAN LAKE STABLES, INC., WILLIAM M. TATE, JR., STEPHANIE M. GREEN, THOMAS H. HAGER, THOMAS H. DACHEUX AND ANDREW H. DOWLING.

Gregory S. Hirtzel, Esq., for Plaintiff

Jordan Cunningham, Esq., for Defendant Basts

Kuhn, P.J., December 18, 2003

OPINION ON PLAINTIFF'S MOTION FOR JUDGMENT
ON THE PLEADINGS

Before the Court for disposition is a Motion for Judgment on the Pleadings filed by Plaintiff, on June 10, 2003, against Dr. William R. Bast, Joanne S. Bast, Swan Lake Stables, Inc., William M. Tate, Jr., Stephanie M. Green, Thomas H. Hager, Thomas H. Dacheux, and Andrew H. Dowling (collectively "Defendants"). For the reasons set forth herein, Plaintiff's motion is granted.

LEGAL STANDARD

Pennsylvania Rule of Civil Procedure 1034 provides:

(a) After the relevant pleadings are closed but before such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings. (b) The court shall enter such judgment or order as shall be proper on the pleadings.

A motion for judgment on the pleadings is similar to a demurrer. It may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. *Melon Bank, N.A. v. National Union Ins. Co. of Pittsburgh, PA*, 768 A.2d 865, 868 (Pa. Super. 2001), citing *CitiCorp North America, Inc. v. Thornton*, 707 A.2d 536, 538 (Pa. Super. 1998). This Court must limit its consideration to the pleadings and attached relevant documents and exhibits. See *Board of Public Education of School District of Pittsburgh v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 709 A.2d 910, 912 (Pa. Super. 1998).

BACKGROUND

The relevant background is as follows: The Basts reside at 162 Schoolhouse Road, Littlestown, Mount Pleasant Township, Adams County. They are the owners of a corporation known as Swan Lake Stables, Inc., which is principally located at 381 Flatbush Road.

In 1997, the Basts' daughter was receiving horse riding lessons from Tate. Subsequently, in August of that year, Mr. Bast and Tate entered into a partnership agreement related to the ownership, training, and development of a horse named Carloose.

Eventually, Tate began working for Swan Lake Stables. Tate and Green began residing at 228 Flatbush Road, which is property owned

by the Basts. Tate and Green moved personal property, including horses and associated paraphernalia, to the farm.

In late fall, 2000, the Basts received information, which led them to believe that Tate was having intimate relations with their minor daughter. On December 9, 2000, they along with Constables Dacheux and Hager, entered 228 Flatbush Road. At the time, the Basts were represented by Attorney Dowling. Tate's employment with Swan Lake Stables was terminated.

The Basts and Swan Lake Stables, Inc., are the named insureds and additional insured, respectively, under an insurance policy (FO 28654 DB) issued by Plaintiff. This policy was effective from July 10, 2000 to July 10, 2001. Tate and Green are the plaintiffs in two separate lawsuits filed in this Court against the Basts, Swan Lake Stables, Inc., Hager, Dacheux, and Dowling (collectively "underlying Defendants"). On March 23, 2001, Tate and Green filed a Complaint (Docket No. 01-S-305), and then an Amended Complaint on May 7, 2001, asserting five causes of action, namely Count I-Replevin, Count II-Dissolution of Partnership, Count III-Deprivation of Civil Rights Under 42 §U.S.C. 1983, Count VI-Invasion of Privacy, and Count V-Trespass.¹ The second complaint (Docket No. 01-S-304), also filed on March 23, 2001 and only against the Basts and Swan Lake Stable, Inc., seeks injunctive relief regarding their horses and other personal property in the possession of the Basts.

In Count III of their Amended Complaint, Tate and Green allege that on or about December 9, 2000:

Defendants, Dr. William Bast, Joanne S. Bast, Thomas H. Hager, Thomas H. Dacheux, at the direction of Defendant Andrew H. Dowling, Esquire, forcefully, unlawfully and without Plaintiffs' consent broke into and entered Plaintiffs' residence... [and that,] [d]uring the course of breaking and entry into said premises, Defendants, inter alia, drilled out locks on the doors of the Plaintiffs' residence; searched for and confiscated numerous private papers belonging to Plaintiffs; restrained Plaintiffs from entering the residence for a period of time and

¹By Order, dated June 25, 2001, this Court severed Count I-Replevin and Count II-Dissolution of Partnership from Counts III-V of the Amended Complaint.

Defendants Hager and Dacheux invaded Plaintiffs' residence armed with handguns throughout this time.

They also claim that "during this invasion by Defendants, when Plaintiffs were belatedly allowed limited access to said premises, Defendants Hager and Dacheux remained present, armed with handguns, and threatened Plaintiffs with armed force if they interfered with the unlawful removal, inter alia, of Plaintiffs' property from said residence." Tate and Green further allege:

[T]hrough the device of "criminal trespass" correspondence from Defendant Dowling directed to Plaintiffs, Defendants and their armed agents have precluded and continue to preclude Plaintiffs' access to Swan Lake Stables, Inc. property and...the places where Plaintiffs' equine property is located...[and that] Defendants Hager and Dacheux, armed, have from time to time trespassed on Plaintiffs' leasehold; continued to maintain an armed vigil at the Swan Lake Stables, Inc. property; repeatedly, directly and through other agents, with accompanying threats of force, denied Plaintiffs, through force of arms and threats, access to their equine property and the quiet enjoyment of their leasehold property.

In Count IV, Tate and Green allege, "Defendants, by and through various agents, intentionally intruded upon the Plaintiff's solitude, seclusion and private affairs." Finally, in Count V, they assert, "Defendants, by and through various agents and at the direction of Defendant Andrew H. Dowling, Esquire, did, without provocation, notice, appropriate court order or legal basis, trespass upon Plaintiff's leasehold on December 9, 2000, supra, and thereafter at various times."

In their complaint for injunctive relief, Tate and Green contend that the Basts and Swan Lake Stables, Inc.'s "wrongful detention" of the horses has prevented Tate and Green from providing care to, training or showing their horses. They allege, "As a consequence of Defendants' lack of expertise in the care of horses, the health, well-being and training of said horses has been deficient."

By letter dated June 13, 2001, Plaintiff notified the Basts and Swan Lake Stables, Inc. that upon review of Tate and Green's above referenced complaints, it did not believe it has any responsibility

under the terms of the insurance policy to defend or indemnify Defendants for the alleged claims. Plaintiff subsequently filed a Complaint for Declaratory Relief on November 29, 2001 and then an Amended Complaint on June 19, 2002, regarding its duty to defend the underlying Defendants.

On August 30, 2001, the underlying Defendants filed their Answer with New Matter and Counterclaim to Tate and Green's Amended Complaint. Their counterclaims, together with Counts I and II of Tate and Green's Amended Complaint, were addressed by this Court via order dated July 21, 2003.

On September 4 and 25, 2001, respectively, Tate and Green commenced Chapter 13 proceedings in Federal Bankruptcy Court. As part of that litigation, they filed a claim for return of property against Swan Lake Stables, Inc. and the Basts. Plaintiff did not provide Swan Lake Stables, Inc. or the Basts with legal representation in that matter.

On September 16, 2002, Defendants filed their answer to the Amended Complaint for declaratory judgment, which included new matter and a counterclaim. In its counterclaim, Swan Lake Stables, Inc. alleges that pursuant to the insurance policy, Plaintiff owed a duty to defend it in the above-mentioned bankruptcy action. Accordingly, Swan Lake Stables, Inc. seeks declaratory judgment asking this Court to determine its rights, duties, and liabilities under the policy as they relate to the underlying matter. On June 10, 2003, Plaintiff filed its reply to new matter and an answer to the counterclaim, in which it denied having owed a duty to defend Swan Lake Stables, Inc. in the bankruptcy action. Also, on that date, Plaintiff filed its motion for judgment on the pleadings and brief in support thereof, to which Defendants filed a response with new matter on July 3, 2003. Plaintiff, then, filed its reply to Defendants' new matter on July 24, 2003.

Continued to next issue (12/10/2004)

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 LEILA JANE BEHNEY, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executors: James C. Behney, 180 South Ridge Road, York Springs, PA 17372; Chester R. Behney, 2027 North Second Street, Harrisburg, PA 17102

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

ESTATE OF MARY S. LAWRENCE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Donna M. Groft, 136 Conewago Drive, Hanover, PA 17331

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

ESTATE OF MARGARET H. PECHER, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrices: Catherine V. Pecher, 585 Pecher Road, Fairfield, PA 17320; Mary Helen Pecher, 19 Crossland Trail, Fairfield, PA 17320

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

ESTATE OF CARROLL TIMOTHY SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Marie A. Smith, 204 N. Oxford Avenue, McSherrystown, PA 17344

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

ESTATE OF VICTORIA L. VARGAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Administrators: Kelly A. Wiley, 75 E. Broadway, Gettysburg, PA 17325; Keith A. Smith, 520 Bon-Ox Road, Gettysburg, PA 17325

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

SECOND PUBLICATION

ESTATE OF GERTRUDE L. DANISON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Carole F. Taylor, c/o Marc W. Witzig, Esq., Cunningham & Chernicoff, P.C., 2320 North Second Street, Harrisburg, PA 17110

Attorney: Marc W. Witzig, Esq., Cunningham & Chernicoff, P.C., 2320 North Second Street, Harrisburg, PA 17110

ESTATE OF ANN L. FALLON, DEC'D

Late of Union Township, Adams County, Pennsylvania

Louis Joseph Fallon, Jr., 48 Ashfield Drive, Littlestown, PA 17340

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

ESTATE OF CHARLES S. FROCK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Beverly Ann McGurk, 3606 Pleasant Valley Road, York, PA 17402

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

ESTATE OF WILLIAM A. YOST, DEC'D

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

Personal Representative: Jeanne Anna Yost, 11978 Arlington Mill Road, Union Bridge, MD 21791

Attorney: William S. Dick, Esq., Dick, Stein & Schemel, LLP, 13 W. Main Street, Suite 210, Waynesboro, PA 17268

THIRD PUBLICATION

ESTATE OF LEONIDE V. BOWLING, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: David P. Knox, 1275 Old Harrisburg Road, Gettysburg, PA 17325

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

ESTATE OF IRMA L. SHORB, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Brenda L. Lenahan, 516 Dundee Road, Glencoe, IL 60022; Barbara L. Ziegler, 5125 E. 6th Avenue, Denver, CO 80220

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

ESTATE OF STANLEY L. SHORB, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Brenda L. Lenahan, 516 Dundee Road, Glencoe, IL 60022; Barbara L. Ziegler, 5125 E. 6th Avenue, Denver, CO 80220

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-893 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing P.K. nail in the centerline of New Chester Road (T-514) at corner of land now or formerly of Donna Melhorn; thence along said Melhorn land and passing through an existing steel rod 35.00 feet from the beginning hereof, South 74 degrees 21 minutes 10 seconds East, 70.00 feet to an existing steel rod; thence continuing along the same, South 64 degrees 41 minutes 40 seconds East, 264.82 feet to an existing steel rod; thence continuing along the same, North 15 degrees 38 minutes 50 seconds East, 64.43 feet to an existing steel rod at corner of land of Alfred F. Weaver; thence along said Weaver land, North 42 degrees 21 minutes 25 seconds East, 44.77 feet to a steel rod; thence continuing along the same, South 74 degrees 21 minutes 10 seconds East, 307.27 feet to a steel rod; thence continuing along the same, South 15 degrees 38 minutes 50 seconds West, 200.00 feet to an angle iron on line of land now or formerly of Mark K. Widerman; thence along said Widerman land and passing through a steel rod 328.39 feet from the beginning hereof and passing through an existing steel rod 35.00 feet from the end hereof, North 74 degrees 21 minutes 10 seconds West, 703.39 feet to an existing railroad spike in the centerline of New Chester Road aforesaid; thence continuing in the centerline of New Chester Road, North 33 degrees 04 minutes 10 seconds East, 146.73 feet to the point and place of BEGINNING. CONTAINING 2.500 acres.

THE above description was taken from a preliminary and Final Plan of property of Alfred F. Weaver, by Adams County Surveyors, dated September 26, 1995 and recorded in Adams County Plat Book 68, Page 65, being Lot No. 3 thereon.

Map I-10, Parcel 68.

TITLE TO SAID PREMISES IS VESTED IN James K. Weaver and Tracy L. Weaver, husband and wife by Deed from Alfred F. Weaver and Regina A. Weaver, husband and wife dated 3/8/1996 and recorded 3/20/1996, in Record Book 1161 Page 328.

Premises being: 595 New Chester Road, New Oxford, PA 17350

Tax Parcel No. 68 MAP I-10

SEIZED and taken into execution as the property of **James K. Weaver & Tracy Weaver a/k/a Tracy L. Weaver** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on January 31, 2005, 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.

11/24, 12/3 & 10

INCORPORATION NOTICE

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

1. The name of the Corporation is: AVC, INC.
2. The Corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

John M. Crabbs
Solicitor

12/3

Adams County Legal Journal

Vol. 46

December 10, 2004

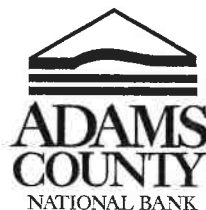
No. 29, pp. 182-189

IN THIS ISSUE

OLD GUARD VS. BAST ET AL

This opinion continued from last issue (12/3/2004)

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-943 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT lot of ground situate, lying and being in the Borough of Carroll Valley (formerly Liberty Township, Adams County, Pennsylvania, being Lot No. 172 in Section K, more particularly bounded and described as follows, to-wit:

BEGINNING at a point in the center of Snow Bird Trail at Lot No. 173; thence by said lot, South 25 degrees 15 minutes 35 seconds West, 225 feet to Lot No. 146; thence by said lot, North 64 degrees 44 minutes 25 seconds West, 100 feet to Lot No. 171; thence by said lot, North 25 degrees 15 minutes 35 seconds East, 225 feet to a point in the center of said Snow Bird Trail, thence in said Snow Bird Trail, South 64 degrees 44 minutes 25 seconds East, 100 feet to the place of BEGINNING.

THE above description was taken from a Plan of Lots labeled "Section K, Charnita", dated March 3, 1969, prepared by Evans, Hagan and Holdefer and recorded in Adams County Plat Book 1 at Page 42.

TOGETHER with the right of way and easement

BEING KNOWN AS: 30 Snowbird Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of Ernest L. Hurley & Carolyn Hurley a/k/a Carolyn G. Hurley and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-893 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing P.K. nail in the centerline of New Chester Road (T-514) at corner of land now or formerly of Donna Melhorn; thence along said Melhorn land and passing through an existing steel rod 35.00 feet from the beginning hereof, South 74 degrees 21 minutes 10 seconds East, 70.00 feet to an existing steel rod; thence continuing along the same, South 64 degrees 41 minutes 40 seconds East, 264.82 feet to an existing steel rod; thence continuing along the same, North 15 degrees 38 minutes 50 seconds East, 64.43 feet to an existing steel rod at corner of land of Alfred F. Weaver; thence along said Weaver land, North 42 degrees 21 minutes 25 seconds East, 44.77 feet to a steel rod; thence continuing along the same, South 74 degrees 21 minutes 10 seconds East, 307.27 feet to a steel rod; thence continuing along the same, South 15 degrees 38 minutes 50 seconds West, 200.00 feet to an angle iron on line of land now or formerly of Mark K. Widerman; thence along said Widerman land and passing through a steel rod 328.39 feet from the beginning hereof and passing through an existing steel rod 35.00 feet from the end hereof, North 74 degrees 21 minutes 10 seconds West, 703.39 feet to an existing railroad spike in

the centerline of New Chester Road aforesaid; thence continuing in the centerline of New Chester Road, North 33 degrees 04 minutes 10 seconds East, 146.73 feet to the point and place of BEGINNING. CONTAINING 2.500 acres.

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Map I-10, Parcel 68.

TITLE TO SAID PREMISES IS VESTED IN James K. Weaver and Tracy L. Weaver, husband and wife by Deed from Alfred F. Weaver and Regina A. Weaver, husband and wife dated 3/8/1996 and recorded 3/20/1996, in Record Book 1161 Page 328.

Premises being: 595 New Chester Road, New Oxford, PA 17350

Tax Parcel No. 68 MAP I-10

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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.

11/24, 12/3 & 10

INSURER'S DUTY TO DEFEND AND INDEMNIFY

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

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

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

THE INSURANCE POLICY

The relevant policy provisions are found in the Personal Liability Coverage Form and the Farm Excess Liability Insurance Form as well as the related endorsements. The Personal Liability Coverage Form provides, in pertinent part:

PRINCIPAL COVERAGES

Coverage L—Liability—“We” pay, up to “our” “limit”, all sums for which an “insured” is liable by law because of “bodily injury” or “property damage” caused by an “occurrence” to which this coverage applies...

Policy Form GL-2 provides the following definitions:

8. [“B]odily injury” means bodily harm to a person and includes sickness, disease, or death. This also includes required care and loss of services.

14. “Occurrence” means an accident, including repeated exposures to similar conditions, that results in “bodily injury” or “property damage” during the policy period.

16. “Property damage” means physical injury to tangible property. This includes loss of use.

EXCLUSIONS

“We” do not pay for a loss if one or more of the following excluded events apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded event.

1. Exclusions That Apply to Coverage L and M—This Personal Liability Coverage does not apply to:

j. “bodily injury” or “property damage” which is expected by, directed by, or intended by the “insured”; or that is the result of intentional and malicious acts of the “insured”. However, this exclusion does not apply to “bodily injury” that arises out of the use of reasonable force to protect people or property.

This policy also includes Farm Excess Liability Insurance, which provides liability coverage for “injury” and “damage” resulting from an “occurrence.” The endorsement contains the following pertinent definitions:

5. Damage means direct physical damage to tangible property of others caused by an occurrence including loss of use of such property.

7. Injury means bodily injury or mental harm to others caused by an occurrence. It also means libel, slander, false arrest, wrongful

detention, wrongful eviction or entry, malicious prosecution, humiliation, invasion of privacy, or defamation of character.

10. Occurrence means an event or series of related events that unexpectedly and unintentionally causes injury or damage during the policy period.

The Farm Excess Liability Insurance also provides the following exclusion, “We do not provide coverage for injury or damage intentionally caused by you, at your direction, or with your knowledge or consent.”

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

ALLEGATIONS SET FORTH IN THE UNDERLYING COMPLAINTS

First, we address whether the incidents alleged in Tate and Green’s Amended Complaint in 01-S-305 amount to an “occurrence” under the Basts’ and Swan Lake Stables, Inc.’s insurance policy. Plaintiff argues that the alleged conduct in the Amended Complaint does not constitute an “occurrence” because the underlying Defendants’ conduct was intentional, not “accidental,” and is therefore precluded under the exclusionary clause. We agree.

As mentioned above, the Personal Liability Coverage Form defines “occurrence” as “[a]n accident, including repeated exposures to similar conditions, that results in ‘bodily injury’ or ‘property damage’ during the policy period.” Pennsylvania courts have held that intentional acts are not “occurrences” as they are not accidental in nature. See generally, *Sclabassi v. Nationwide Mutual Fire Insurance Company*, 789 A.2d 699 (Pa. Super. 2001), *Gene’s*

Restaurant, Inc. v. Nationwide Insurance Company, 548 A.2d 246-47 (Pa. 1988). An act is “intentional” when the “[the insured] desired to cause the consequences of his act or if he acted knowing that such consequences were substantially certain to result.” *United Services Automobile Association v. Elitzky*, 517 A.2d 982, 989 (Pa. Super. 1986), quoting *Nationwide Mutual Insurance Company v. Hassinger*, 473 A.2d 171, 175 (Pa. Super. 1984). The court in *Elitzky* held that an intended harm exclusionary clause is ambiguous as a matter of law and, thus, should be construed against the insurer. 517 A.2d at 989. It further concluded that “intended” and “expected” are synonymous and connote an element of conscious awareness on the part of the insured. *Id.* at 990. If the insured does not have the ability to formulate an intent, the resulting act cannot be intentional. *Hassinger*, 473 A.2d at 176.

Accepting the allegations in the underlying complaint as true, it is clear that the underlying Defendants’ actions were not “occurrences” as defined by their insurance policy. As previously stated, Tate and Green allege that the underlying Defendants forcefully and without their consent entered their premises (Hager and Dacheux entering with handguns), drilled out locks on the doors, searched for and confiscated their private papers, and restrained them from entering their residence. They also allege that the underlying Defendants precluded their access to Swan Lake Stables; that Hager and Dacheux were armed and trespassed on Plaintiffs’ property; and that they were denied access to their equine property and the quiet enjoyment of their leasehold property. There is no doubt these allegations indicate that the underlying Defendants acted with conscious awareness when performing these actions and with the intended desire (or at least the reasonable expectation) of achieving the results of removing certain property from the residence and prohibiting Tate and Green’s access to the property. There is no alleged conduct by the underlying Defendants, which indicates that their actions were accidental in nature. Moreover, Counts IV and V, which are grounded in intentional tort claims, set forth facts of the underlying Defendants’ alleged intentional acts of invasion of privacy and trespass. Accordingly, there is no coverage under the Personal Liability Coverage policy because the underlying Amended Complaint does not allege a set of facts indicating that the purported injury or damage

resulted from an “occurrence” (i.e. an accident or repeated exposures to a similar condition).

Second, this Court concludes that the alleged actions of the underlying Defendants are precluded under the exclusionary clause contained within this policy. As noted above, the policy excludes “‘bodily injury’ or ‘property damage’ which is expected by, directed by, or intended by the ‘insured’; or that is the result of intentional and malicious acts of the ‘insured’.” Tate and Green’s alleged injuries/damages are of the type intended or expected as a result of the alleged intentional actions of the underlying Defendants. That is to say, the underlying Defendants’ alleged intentional acts are of such a nature that an expectation of or an intent to inflict the type of harm purportedly sustained by Tate and Green can be inferred as a matter of law. See *Erie Insurance Exchange v. Fry*, 39 Pa. D. & C.4th 20, 28-29 (1998).

Third, we conclude that the underlying Defendants’ alleged actions are likewise not covered under the Farm Excess Liability policy. Similar to the analysis previously discussed herein, this policy covers injury and damage resulting from an “occurrence,” that is, events that unexpectedly and unintentionally cause injury or damage. Since we have concluded that the underlying Defendants’ alleged actions were intentional in nature, their actions do not constitute “occurrences,” as defined by this portion of the policy.

Defendants argue that the actions taken by the Basts and Swan Lake Stables, Inc. were not intended to have the result of taking the personal property owned by Tate or Green or of intending to injure them. They claim that they lawfully entered the premises and all actions were taken upon the advice of counsel, Dowling. Although Defendants’ arguments may indeed be valid, for the purposes of determining whether Plaintiff has a duty to defend the underlying Defendants, this Court must examine Tate and Green’s factual allegations in the underlying Amended Complaint and request for injunctive relief (01-S-305 and 01-S-304, respectively) and decide whether, if accepted as true, they give rise to coverage under the insurance policy. See *Aetna Casualty and Surety Comp. v. Roe*, *supra*.

Defendants also contend that Tate and Green’s claims focus upon allegations of wrongful, and thus reckless, acts, which would trigger

Plaintiff's duty to defend them. They argue that acts reckless in nature meet the definition of an "occurrence." Defendants rely on Black's Law Dictionary definition of "wrongful," which is defined as "injurious, heedless, unjust, reckless or unfair infringement." Black's Law Dictionary 1788 (4th ed. 1951). They also cite to *Kline v. The Kemper Group*, 826 F.Supp. 123, 128-29 (M.D. Pa. 1993), for the proposition that an "occurrence" is "harm brought about by negligent or reckless conduct, but not by an intentional act on the part of the insured." Defendants argue that because Tate and Green present allegations of deficient and/or negligent care of the horses by the Basts (as set out in the request for injunctive relief), as well as the Basts' "wrongful" conduct, such allegations amount to negligence and/or recklessness, which is the type of conduct defined as an "occurrence" in *Kline*.

Also, Defendants contend that Plaintiff has a duty to defend them pursuant to the reasoning in *General Accident Insurance Company of America v. Allen*, 692 A.2d 1089, 1095 (Pa. 1997), in which our Supreme Court ruled that where a complaint against an insured avers facts that would support a recovery under the policy, coverage is triggered and the insurer has a duty to defend until such time that the claim is confined to a recovery that the policy does not cover. They assert that since Tate and Green's allegations involve both intentional as well as negligent and wrongful acts, Plaintiff has a duty to defend them. We disagree with Defendants' contentions.

This Court has determined that the facts set out in the allegations contained in the Amended Complaint and request for injunctive relief, accepted as true, indicate that the underlying Defendants' conduct, if actionable, was intentional in nature. Simply because Tate and Green characterize the alleged conduct as "wrongful," does not necessarily make it "reckless" or "negligent." If we gave credence to this contention, then every time a plaintiff characterizes an alleged act as "wrongful," an otherwise non-covered claim would be transformed into a covered claim that the insurance company would be obligated to defend under a policy similar to that in the case *sub judice*. See *Mutual Benefit Insurance Company v. Haver*, 725 A.2d 743, 745 (Pa. 1999) (allowing the language of the complaint alone to control coverage determinations would "encourage litigation through the use of artful pleadings designed to avoid exclusions").

In addition, the court in *Kline* clearly stated that an intentional act by the insured does not constitute an “occurrence.” Again, since we have concluded that the allegations as set out in the Amended Complaint indicate that Defendants’ actions were intentional in nature, under *Kline*, the claims do not give place a duty on Plaintiff to defend the underlying Defendants.

Furthermore, Tate and Green’s averment in their complaint for injunctive relief, that as a result of the Basts’ and Swan Lake Stables, Inc.’s wrongful detention of the horses and lack of expertise in the care of the animals, the health, well-being, and training of the horses has been deficient, if found true, likewise does not indicate negligent or reckless conduct. They also claim that they have been prevented from providing care to, training or showing their horses. However, nowhere in this complaint do Tate and Green allege facts, which indicate that the Basts and Swan Lake Stables, Inc. acted negligently when providing care for the animals. Rather, the allegations indicate that by intentionally precluding Tate and Green’s access to Swan Lake Stables, they have been denied access to the horses. We note that the purpose of this action for injunctive relief is to regain possession of the horses and other property that allegedly has been wrongfully and intentionally detained by the Basts and Swan Lake Stables, Inc. Thus, Tate and Green’s averments are again alleging intentional conduct that, pursuant to the analysis set out above, does not constitute an “occurrence” and is thereby not covered by the subject insurance policy.

Finally, we turn to Swan Lake Stables, Inc.’s request for declaratory relief regarding Plaintiff’s lack of representation in the preceding bankruptcy action. In its answer to Plaintiff’s amended complaint for declaratory relief, Swan Lake Stables, Inc. asserts a counterclaim in which it alleges that Plaintiff owed it a duty to represent its interest in the motion to turn over property action filed by Tate and Green in the United States Bankruptcy Court. Our Court was not presented with a copy of the above-referenced pleading. We, therefore, infer that Tate and Green’s bankruptcy action listed the property in the claim for injunctive relief as part of the bankrupts’ estate. Also, we surmise that they requested that this wrongfully and intentionally held property be turned over to the trustee. Yet again, this proceeding is grounded in the allegation that Swan Lake Stables,

Inc. wrongfully and intentionally retained Tate and Green's property, which is conduct not covered by its insurance policy.

Accordingly, the attached Order is entered.

ORDER OF THE COURT

AND NOW, this the 18th day of December, 2003, Plaintiff's Motion for Judgment on the Pleadings is granted.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-929 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point on the right-of-way line of Potomac Street at Lot No. 125 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 125, North twenty-nine (29) degrees thirty-nine (39) minutes thirteen (13) seconds East, one hundred twenty-four and four hundredths (124.04) feet to a point at Lot No. 123 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 123, South fifty-six (56) degrees fifty-five (55) minutes two (02) seconds East, one hundred nine and ninety-one hundredths (109.91) feet to a point on the right-of-way line of Shenandoah Court as shown on the hereinafter referenced Subdivision plan; thence along the right-of-way line of Shenandoah Court, South thirty-three (33) degrees four (04) minutes fifty-eight (58) seconds West, eighty (80.00) feet to a point at the intersection of Shenandoah Court and Potomac Street as shown on the hereinafter referenced subdivision plan; thence along the intersection of Shenandoah Court and Potomac Street, by a curve to the right, having a radius of forty (40.00) feet, an arc length of sixty and forty-four hundredths (60.44) feet, and along chord bearing and distance of South seventy-six (76) degrees twenty-two (22) minutes six (06) seconds West, fifty-four and eighty-five hundredths (54.85) feet to a point on the right-of-way line of Potomac Street; thence along the right-of-way line of Potomac Street, North sixty (60) degrees twenty (20) minutes forty-seven (47) seconds West, sixty-five (65.00) feet to a point, the point and place of BEGINNING. CONTAINING a total area of 12.536 square feet.

The above description being Lot No. 124 on the Phase I Final Plan for Heritage Hill II, prepared by Martin and Martin, Incorporated, dated July 7, 1995, which said Subdivision plan was recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, on April 10, 1996, in Plat Book 69, at Page 04.

Tax Parcel #14-36

TITLE TO SAID PREMISES IS VESTED IN Hunter E. Matassa and Beverly L. Matassa, his wife by Deed from Heritage Hill, II and New Age Associates, Inc. dated 9/13/96 and recorded 9/17/96 in Record Book 1259, Page 349.

Premises being: 25 Shenandoah Court, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Hunter E. Matassa & Beverly L. Matassa** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-906 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being on the South side of Linden Avenue in the Village of Midway, Conewago Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING on the North by Linden Avenue; on the South by a public alley; on the East by Lot No. 5 on the plat of lots hereinafter referred to, and on the West by lands now or formerly of Bernard L. Schuchart and wife. Having a frontage on Linden Avenue of thirty (30) feet and extending in depth of equal width throughout one hundred sixty-five (165) feet to the public alley. Said tract is known as Lot No. 4, in Block 3 on the plat of lots of Hanover Improvement Company, which plat is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book WW, at page 600.

TITLE TO SAID PREMISES IS VESTED IN Albert T. Crigger II and Sonya R. Zito as joint tenants with Right of Survivorship by Deed from Dennis Mundell and Rebecca J. Mundell, his wife dated 4/30/1999 and recorded 4/30/1999, in Record Book 1822 Page 169.

Premises being: 330 Linden Avenue, Hanover, PA 17331

Tax Parcel No. 141A Map#8

SEIZED and taken into execution as the property of **Albert T. Crigger & Sonya R. Zito** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the 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 CUSTOM QUALITY PLUMBING & HEATING, INC.

Henry O. Heiser, III, Esq.
104 Baltimore Street
Gettysburg, PA 17325

12/10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-904 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land located in Reading Township, Adams County, Pennsylvania, shown as Tract No. 2 on the final subdivision plan prepared for Edward C. Wallen, Sr. dated December 29, 1998, and about to be recorded in the Adams County, Pennsylvania, Recorder of Deeds Office and shown as Lot No. 2 on said plan, more particularly bounded and described as follows:

BEGINNING at a steel pin set located at the Eastern corner of Lot No. 1 as shown on said plan; thence along Lot No. 1 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set located at lands now or formerly of Gene H. Shenberger; thence by said lands of Shenberger South 49 degrees 40 minutes 18 seconds East 306.54 feet to an existing iron pipe at lands now or formerly of David W. Diehl; thence by lands of David W. Diehl North 22 degrees 54 minutes 02 seconds East 167.70 feet to an existing iron pipe at other lands of the grantors herein; thence by same North 49 degrees 40 minutes 18 seconds West 256.31 feet to a steel pin set, the point and place of BEGINNING.

CONTAINING 1.034 acres

TOGETHER with the right to use the stone driveway as it is extended across Lot No. 1 as shown on the aforesaid subdivision plan. The rights and responsibilities related to the use and maintenance of the driveway as between owners of Lots 1 and 2 are set forth in a Declaration of Right-of-Way and Responsibilities previously recorded in the aforesaid Recorder of Deeds Office.

TITLE TO SAID PREMISES IS VESTED IN Lori Sue Wallen, widow by reason of the following

BEING THE SAME PREMISES which Edward C. Wallen, Sr. and Darlene K. Wallen, his wife by Deed dated 4/22/1999 and recorded on 6/9/1999 in the County of Adams in Record Book 1849, Page 20 conveyed unto Edward C. Wallen, Jr. and Lori Sue Wallen, his wife.

AND THE SAID Edward C. Wallen, Jr. died on 9/30/2001 whereby title to said premises became vested in Lori Sue Wallen by operation of law and right of survivorship.

Premises being: 22 Miller Road, New Oxford, PA 17350

Tax Parcel No, MAP#J7 PARCEL #69

SEIZED and taken into execution as the property of **Edward J. Wallen, Jr. a/k/a Edward C. Wallen, Jr., Deceased & Lori Sue Wallen** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
NO. OC-53-04

IN RE: ESTATE OF IVONNE M. SALAZAR, Deceased

NOTICE TO LUIGGY J. SALAZAR

You, Luiggy J. Salazar, have been named as a party in an action instituted against you in this Court by John James Mooney, III, Esquire, as attorney for the Estate of Ivonne M. Salazar, Deceased. John James Mooney, III, Esquire, as attorney for the Estate of Ivonne M. Salazar, Deceased, alleges that you have breached your fiduciary duties as Administrator/Personal Representative of the Estate of Ivonne M. Salazar, Deceased. John James Mooney, III, Esquire, as attorney for the Estate of Ivonne M. Salazar, Deceased, is also requesting that this Court remove you as Administrator/Personal Representative of the Estate of Ivonne M. Salazar, Deceased.

You, Luiggy J. Salazar, are hereby notified to appear at a Hearing on the Petition for Removal of Personal Representative for Mismanagement of Estate Assets on December 21, 2004, at 3:00 p.m., in Courtroom No. 3 of the Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania 17325. All other interested parties should also appear on the above date and time to show cause, if any, why the request of the Petitioner should not be granted.

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

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

County Referral Office
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone: (717) 337-9846

John James Mooney, III, Esq.
Attorney for the Estate of Ivonne M. Salazar, Deceased
Mooney & Associates
230 York Street
Hanover, Pennsylvania 17331

12/10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the 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: ADAMS COUNTY PROPERTY INVESTORS, INC.

Henry O. Heiser, III, Esq.
104 Baltimore Street
Gettysburg, PA 17325

12/10

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 ODETTA E. STREVIG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Ronald W. Strevig, 323 Parkway Dr., Littlestown, PA 17340; Gary G. Strevig, 160 Newark St., Littlestown, PA 17340

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

ESTATE OF JOAN M. WILT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: James P. Wilt, 61 E. Stevens Street, Gettysburg, PA 17325

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

ESTATE OF JOANNA S. WOLLET, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Personal Representatives: Joyce I. Kopp, 366 Maple Ave., Hanover, PA 17331; Deborah A. Grove, 628 Eichelberger Street, Hanover, PA 17331

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

SECOND PUBLICATION

ESTATE OF LEILA JANE BEHNEY, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executors: James C. Behney, 180 South Ridge Road, York Springs, PA 17372; Chester R. Behney, 2027 North Second Street, Harrisburg, PA 17102

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

ESTATE OF MARY S. LAWRENCE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Donna M. Groft, 136 Conewago Drive, Hanover, PA 17331

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

ESTATE OF MARGARET H. PECHER, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrices: Catherine V. Pecher, 585 Pecher Road, Fairfield, PA 17320; Mary Helen Pecher, 19 Crossland Trail, Fairfield, PA 17320

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

ESTATE OF CARROLL TIMOTHY SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Marie A. Smith, 204 N. Oxford Avenue, McSherrystown, PA 17344

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

ESTATE OF VICTORIA L. VARGAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Administrators: Kelly A. Wiley, 75 E. Broadway, Gettysburg, PA 17325; Keith A. Smith, 520 Bon-Ox Road, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF GERTRUDE L. DANISON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Carole F. Taylor, c/o Marc W. Witzig, Esq., Cunningham & Chernicoff, P.C., 2320 North Second Street, Harrisburg, PA 17110

Attorney: Marc W. Witzig, Esq., Cunningham & Chernicoff, P.C., 2320 North Second Street, Harrisburg, PA 17110

ESTATE OF ANN L. FALLON, DEC'D

Late of Union Township, Adams County, Pennsylvania

Louis Joseph Fallon, Jr., 48 Ashfield Drive, Littlestown, PA 17340

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

ESTATE OF CHARLES S. FROCK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Beverly Ann McGurk, 3606 Pleasant Valley Road, York, PA 17402

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

ESTATE OF WILLIAM A. YOST, DEC'D

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

Personal Representative: Jeanne Anna Yost, 11978 Arlington Mill Road, Union Bridge, MD 21791

Attorney: William S. Dick, Esq., Dick, Stein & Schemel, LLP, 13 W. Main Street, Suite 210, Waynesboro, PA 17268

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-842 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT IMPROVED lot of ground situate, lying and being on the West side of North Second Street, in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a mark on the West curb line of North Second Street, aforesaid, at lands now or formerly of Angela M. Fink; thence by lands now or formerly of Angela M. Fink and through an iron pin on the inside pavement line, South sixty-eight (68) degrees West, one hundred fifty-seven and two tenths (157.2) feet to an iron pin at lands now or formerly of Richard J. Neiderer and M. Mildred Neiderer; thence by lands now or formerly of Richard J. Neiderer and M. Mildred Neiderer, North eighteen and three-fourth (18-3/4) degrees West, twenty (20) feet to an iron pin at lands now or formerly of Lee J. Eline and Josephine N. Eline; thence by said lands now or formerly of Lee J. Eline and Josephine N. Eline, North sixty-three and one-fourth (63-1/4) degrees East, one hundred fifty-eight and five tenths (158.5) feet through an iron pin on the inside pavement line to a mark on the West curb of North Second Street aforesaid; thence by the West curb of North Second Street, South eighteen and three-fourth (18-3/4) degrees East, thirty-three (33) feet to a mark, the place of BEGINNING.

MAP 1, PARCEL 7.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

FICTITIOUS NAME NOTICE

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 10, 2004, pursuant to the Fictitious Name Act, setting forth that Gerlach Ventures, Inc., of 2819 Carlisle Pike, New Oxford, PA 17350, is the only entity owning or interested in a business, the character of which is a fitness center and that the name, style and designation under which said business is and will be conducted is CURVES and the location where said business is and will be conducted is 2819 Carlisle Pike, New Oxford, PA 17350.

Guthrie, Nonemaker, Yingst & Hart
Solicitor

12/10

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 or about October 5, 2004, for the incorporation of GETTY PAK, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the manufacture of contract packaging and light assembly, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 35 N. Hay Street, Gettysburg, PA 17325.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitors

12/10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the 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 MON-REAN RESOURCES, INC.

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

12/10

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 or about September 28, 2004, for the incorporation of J & J MOTORING, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of flathead hauling of materials and over-the-road trucking, together with any legal function of a corporation under PA law. The initial registered office of the corporation is 1185 Bullfrog Road, Fairfield, PA 17320.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitors

12/10

Adams County Legal Journal

Vol. 46

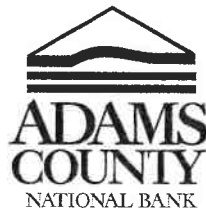
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Strong.
Rooted Upon Traditional Values.
Dedicated to Quality.
Customer Service.
Dependable.
Branching Into The Future.
Our Commitment Is You.



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-943 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT lot of ground situate, lying and being in the Borough of Carroll Valley (formerly Liberty Township, Adams County, Pennsylvania, being Lot No. 172 in Section K, more particularly bounded and described as follows, to-wit:

BEGINNING at a point in the center of Snow Bird Trail at Lot No. 173; thence by said lot, South 25 degrees 15 minutes 35 seconds West, 225 feet to Lot No. 146; thence by said lot, North 64 degrees 44 minutes 25 seconds West, 100 feet to Lot No. 171; thence by said lot, North 25 degrees 15 minutes 35 seconds East, 225 feet to a point in the center of said Snow Bird Trail; thence in said Snow Bird Trail, South 64 degrees 44 minutes 25 seconds East, 100 feet to the place of BEGINNING.

THE above description was taken from a Plan of Lots labeled "Section K, Charnita", dated March 3, 1969, prepared by Evans, Hagan and Holdefer and recorded in Adams County Plat Book 1 at Page 42.

TOGETHER with the right of way and easement

BEING KNOWN AS: 30 Snowbird Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of Ernest L. Hurley & Carolyn Hurley a/k/a Carolyn G. Hurley and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-904 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land located in Reading Township, Adams County, Pennsylvania, shown as Tract No. 2 on the final subdivision plan prepared for Edward C. Wallen, Sr. dated December 29, 1998, and about to be recorded in the Adams County, Pennsylvania, Recorder of Deeds Office and shown as Lot No. 2 on said plan, more particularly bounded and described as follows:

BEGINNING at a steel pin set located at the Eastern corner of Lot No. 1 as shown on said plan; thence along Lot No. 1 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set located at lands now or formerly of Gene H. Shenberger; thence by said lands of Shenberger South 49 degrees 40 minutes 18 seconds East 306.54 feet to an existing iron pipe at lands now or formerly of David W. Diehl; thence by lands of David W. Diehl North 22 degrees 54 minutes 02 seconds East 167.70 feet to an existing iron pipe at other lands of the grantors herein; thence by same North 49 degrees 40 minutes 18 seconds West 256.31 feet to a steel pin set, the point and place of BEGINNING.

CONTAINING 1.034 acres

TOGETHER with the right to use the stone driveway as it is extended across Lot No. 1 as shown on the aforesaid subdivision plan. The rights and responsibilities related to the use and maintenance

of the driveway as between owners of Lots 1 and 2 are set forth in a Declaration of Right-of-Way and Responsibilities previously recorded in the aforesaid Recorder of Deeds Office.

TITLE TO SAID PREMISES IS VESTED IN Lori Sue Wallen, widow by reason of the following

BEING THE SAME PREMISES which Edward C. Wallen, Sr. and Darlene K. Wallen, his wife by Deed dated 4/22/1999 and recorded on 6/9/1999 in the County of Adams in Record Book 1849, Page 20 conveyed unto Edward C. Wallen, Jr. and Lori Sue Wallen, his wife,

AND THE SAID Edward C. Wallen, Jr. died on 9/30/2001 whereby title to said premises became vested in Lori Sue Wallen by operation of law and right of survivorship.

Premises being: 22 Miller Road, New Oxford, PA 17350

Tax Parcel No. MAP#J7 PARCEL #69

SEIZED and taken into execution as the property of Edward J. Wallen, Jr. a/k/a Edward C. Wallen, Jr., Deceased & Lori Sue Wallen and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

STULL VS. POSNER

1. In order to protect the timeliness of an action under 42 Pa.C.S.A. §5103, a litigant, upon having his case dismissed in federal court for lack of jurisdiction, must promptly file a certified copy of the transcript of the final judgment of the federal court, and at the same time, a certified transcript of the pleadings from the federal action.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 03-S-415. JOHN STULL VS. DR. POSNER.

Don Bailey, Esq., for Plaintiff

Cindy L. Nicholson, Esq., for Defendant

Kuhn, P.J., December 22, 2003

OPINION PURSUANT TO DEFENDANT'S MOTION TO STRIKE TRANSFER/PRAECIPE TO TRANSFER

Before this Court is Defendant's Motion to Strike Transfer/Praecipec to Transfer. For the reasons set forth herein, said motion is granted.

The case involves a dispute with regard to Plaintiff's Praecipec to transfer a supplemental state medical malpractice claim from the United States Court for the Middle District of Pennsylvania ("district court") to this Court, pursuant to 28 U.S.C. §1367(d) and 42 Pa.C.S.A. §5103(b). The factual background is gathered from the pleadings filed in this Court.

FACTUAL AND PROCEDURAL BACKGROUND

On June 2, 2001, Plaintiff filed a Complaint in district court, wherein he alleges that on or about May 20, 1999, he was remitted to the Adams County Prison and was incarcerated for 6 months. He further alleges that during his incarceration, the Warden of Adams County Prison, several corrections officers, and Dr. Posner intentionally denied him medical care and treatment by refusing to permit wrappings on his legs allegedly necessary for the treatment of burns he suffered a year and a half prior to his incarceration. These allegations formed the basis of an Eighth Amendment violation of Plaintiff's rights and conspiracy to deny him his Eighth Amendment rights, pursuant to 42 U.S.C. §1983. Plaintiff also contends that Defendant committed medical malpractice in the treatment of Plaintiff for his burns during his incarceration in Adams County Prison. The federal action proceeded through the completion of discovery, including the exchange of expert reports and the taking of all

depositions. On or about March 14, 2003, the Prison and Plaintiff settled the civil rights claim on behalf of the warden, the prison, and Dr. Posner, leaving only the supplemental state medical malpractice claim. On or about April 4, 2003, the Prison filed a Motion to Dismiss all claims relating to the civil rights action. At the time the Motion to Dismiss was filed, Dr. Posner filed a Motion for Summary Judgment as to the medical malpractice claim.

By Order dated April 9, 2003, the Honorable John E. Jones, III of the district court, dismissed Plaintiff's supplemental state claim of negligence/medical malpractice based on lack of jurisdiction pursuant to 28 U.S.C. §1367(c)(3),¹ noting that Plaintiff retains the option to assert this claim in state court.² Accordingly, on April 23, 2003, Plaintiff filed his Praecipe with this Court directing the Prothonotary to file an enclosed copy of a complaint, which was identical to the complaint filed in the federal action. Plaintiff also included a copy of Judge Jones' Memorandum and Order. Therefore, the docket remained inactive for nearly four months.

On August 12, 2003, Defendant filed his "Motion of Defendant, Dr. Posner to Strike Transfer/Praecipe to Transfer" and his brief in support thereof, alleging that all claims before this Court should be dismissed on the grounds that 42 Pa.C.S.A. §5103 is inapplicable, and/or if the statute is applicable, Plaintiff failed to promptly comply with the language of the statute. By Order of this Court, dated August 18, 2003, a rule was issued upon Plaintiff to show cause why Defendant was not entitled to the relief requested in its motion to strike. On September 9, 2003, Plaintiff filed "Plaintiff's Response/Answer to Defendant Posner's Motion to Strike Transfer/Praecipe to Transfer" as well as "Plaintiff's Brief in

¹The statute provides:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution...(c) The district courts may decline to exercise supplemental jurisdiction over a claim...if...(3) the district court has dismissed all claims over which it has original jurisdiction.

28 U.S.C. §1367(c)(3).

²Because the district court dismissed the state medical malpractice claim, it declined to decide Defendant's pending motion for summary judgment. The court ordered Defendant's motion dismissed as moot.

Opposition to Defendant's Motion to Strike." In such, he argues that he has complied with all applicable statutes and Defendant's arguments are frivolous.

DISCUSSION

We start with Defendant's first contention that 42 Pa.C.S.A. §5103 (Transfer of erroneously filed matters) is not applicable in this case because Plaintiff's claim was not erroneously filed in federal court. Section 5103 provides:

- (a) General rule.—If an appeal or other matter is taken to or brought in a court...of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court...shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court...of this Commonwealth.
- (b) Federal cases.—(1) Subsection (a) shall also apply to any matter transferred or remanded by any United States court for a district embracing any part of this Commonwealth. In order to preserve a claim under Chapter 55 (relating to limitation of time), a litigant who timely commences an action or proceeding in any United States court for a district embracing any part of this Commonwealth is not required to commence a protective action in a court...of this Commonwealth. Where a matter is filed in any United States court for a district embracing any part of this Commonwealth and the matter is dismissed by the United States court for lack of jurisdiction, any litigant in the matter filed may transfer the matter to a court...of this Commonwealth by complying with the transfer provisions set forth in paragraph (2).

* * * * *

The policy behind this section is to preserve a cause of action timely filed in federal court on the ground that the plaintiff should not lose his opportunity to litigate the merits of the claim simply because

he erred regarding federal jurisdiction. *Commonwealth v. Lambert*, 765 A.2d 306, 320 (Pa.Super. 2000).

Defendant argues that this statute only applies to those matters that were erroneously filed in federal court and subsequently dismissed for lack of jurisdiction. He asserts that because Plaintiff's supplemental state claim was not erroneously filed in federal court and was later dismissed (not for lack of jurisdiction but because the district court discretionarily declined to continue to exercise its jurisdiction³), the statute is not applicable to this case. We undoubtedly disagree.

In *Collins v. Greene County Memorial Hospital*, 615 A.2d 760, 762 (Pa.Super. 1992), our Superior Court spoke directly on this issue. In this case, plaintiff filed a lawsuit grounded in a federal claim based upon the Civil Rights Act of 1964 and several state claims, which were before the federal court on the basis of pendent jurisdiction. Following a settlement between the parties on the federal claim, the court entered a judgment on that claim. Subsequently, the court dismissed the remaining state claims for lack of jurisdiction. Seven months later, plaintiff filed a certified copy of the complaint, pleadings, and final judgment from the district court, as well as a praecipe to transfer, with the appropriate state court. The dissent, to which Defendant cites, claimed that the case is not included within the scope of Section 5103 because the statute must be read as allowing transfer only when the transferring court lacks jurisdiction over the entire matter. *Id.* at 767-769. However, as the majority insightfully points out:

[T]he purpose of [Section 5103] would be frustrated by such a construction. To hold otherwise would require the filing of State protective actions every time a federal claim with pendent state claims is filed in Federal court on the off chance that if the federal claim is resolved, the litigant will be barred from pursuing the state claim. This is the very problem, the elimination of duplication of effort, which this statute was designed to prevent.

Furthermore, it seems equally logical to construe the language of this statute to include cases with facts similar to

³ See footnote 1.

those present here. After all, once a federal claim is resolved, the entire “matter” or “action” before the federal court is a state action made up of state claims, and therefore when the federal court dismisses the “matter” for lack of jurisdiction, the provisions of §5103(b) may be used to effect transfer of the action.

Id. at 762, fn 1. The court concluded that the statute applied in that case and proceeded to then examine whether the plaintiffs promptly transferred the case to state court. *Id.*

Here, the facts are quite similar to those in *Collins*. Plaintiff filed suit in district court claiming a civil rights violation as well as a supplemental state claim against Defendant sounding in medical malpractice. The federal claim was eventually settled, leaving only the state claim. The district court subsequently dismissed the state claim for lack of jurisdiction, noting that Plaintiff retained the option to assert it in state court. Approximately two weeks after the district court’s order of dismissal, Plaintiff filed his Praecipe to transfer the state claim to this Court. Therefore, pursuant to the reasoning in *Collins*, Section 5103 is certainly applicable in the case *sub judice*. To rule otherwise would squarely contradict the court’s ruling in *Collins*.

Next, we must determine whether Plaintiff complied with Section 5103(b)(2) when transferring the state claim from district court to this Court. Defendant argues that Plaintiff failed to comply with the statute, as he did not promptly file a certified copy of the transcript of the final judgment of the district court or any of the related pleadings. He asserts that as a result of this noncompliance, the state action against him should be stricken as the statute of limitations has lapsed. We agree.

Section 5103(b)(2) provides:

(2) Except as otherwise prescribed by general rules, or by order of the United States court, such transfer may be effected by filing a certified transcript of the final judgment of the United States court and the related pleadings in a court or magisterial district of this Commonwealth. The pleadings shall have the same effect as under the practice in the United States court, but the transferee court or district justice may require that they be amended to conform to the practice in this Commonwealth.

42 Pa.C.S.A. §5103(b)(2) (emphasis added). Because this statute is void of any time limitation on transferring a claim from district court to state court, the court in *Williams v. F.L. Smithe Machine Company, Inc.*, 577 A.2d 907 (Pa.Super. 1990), established a general “promptness” requirement. In *Williams*, two weeks after the district court dismissed plaintiffs entire action based on lack of jurisdiction, plaintiffs filed a new complaint and attached certified copies of the district court docket and a copy of the court’s order. Approximately one month later, plaintiffs filed copies of the pleadings that had been filed in district court. Seven months from the district court’s order, plaintiffs filed certified copies of the federal pleadings. The court ruled that plaintiff’s partial compliance with the statute 2 weeks after the district court’s order of dismissal and full compliance approximately 7 months thereafter, did not warrant the “harsh result of dismissal” of the remaining state claims. *Id.* However, the *Williams* court then stated:

[W]e now emphasize that in order to protect the timeliness of an action under 42 Pa.C.S.A. §5103, a litigant, upon having his case dismissed in federal court for lack of jurisdiction, must promptly file a certified copy of the transcript of the final judgment of the federal court, and at the same time, a certified transcript of the pleadings from the federal action.

Id. at 910 (emphasis added).

The *Collins* court reiterated the requirement of plaintiffs to act promptly in effectuating a transfer of a federal case, which was dismissed for lack of jurisdiction, to state court. It expanded upon the analysis of the promptness requirement by analogizing it to caselaw requiring a plaintiff to attempt service within thirty days of filing a writ of summons. 615 A.2d at 762-763. The court found that a seven-month delay in plaintiffs’ full compliance with the statute, which occurred before showing any gesture of their intent to seek relief in state court, to be dispositive against them. *Id.* Subsequently, in *Ferrari v. Antonacci*, 689 A.2d 320, 323 (Pa.Super. 1997), the court reinforced its ruling in *Collins*, holding that a nearly

one-year delay in filing with state court does not comport with the promptness requirement of the statute.⁴

We find that precedent, regarding the promptness requirement, is well established by *Williams*, *Collins*, and *Ferrari*. Beginning with *Williams* and each case thereafter, the court stresses that in order to protect the timeliness of an action, plaintiff must promptly file a certified copy of the transcript of the final judgment of the district court along with a certified copy of the pleadings from that court. The court has further noted that “[plaintiffs] cannot claim that because of a lack of interpretative case law under 5103, they did not know what was required of them.” *Ferrari*, 689 A.2d at 323, quoting *Collins*, 615 A.2d at 762.

Here, when Plaintiff filed his Praeceptum for transfer after 2 weeks from the date of the federal court’s order, he included an uncertified original time stamped copy of the complaint filed in district court and an uncertified copy of the district court’s opinion. Plaintiff failed to include a certified copy of the order from district court and certified copies of the related pleadings filed in that court.⁵ In fact, this Court has yet to receive any of these certified documents. Therefore, although Plaintiff’s Praeceptum for transfer, filed only 2 weeks after the

⁴Most recently, the court has again reviewed the statute’s promptness requirement in *Kelly v. Hazleton General Hospital, et al.*, No. 219 MDA (Pa.Super. Nov. 17, 2003) (available Dec. 16, 2003, on LEXIS-NEXIS). Although we realize that this case is not yet published in an official reporter and therefore does not have precedential value, we consider it noteworthy. Our disposition in this case would be the same even without the benefit of the Superior Court’s analysis in *Kelly*. In *Kelly*, plaintiff filed suit in district court grounded in a federal civil rights claim as well as state law claims. The district court dismissed her case for want of jurisdiction; approximately two weeks later, plaintiff filed a new complaint in state court. Nearly nine months later, plaintiff filed her praecipe to transfer the federal court order and opinion, as well as her amended complaint filed with that court. *Id.* After reviewing the reasoning set forth in *Williams*, *Collins*, and *Ferrari*, the *Kelly* court determined that *Williams* carved out a onetime exception to the requirements of the statute due to the lack of case law governing the time allowed for plaintiffs to comply with the statute. *Id.* The court held that given the precedent established by these three cases, counsel for plaintiff had no excuse for failing to satisfy the promptness requirement of the statute. *Id.*

⁵Defendant’s brief in support of its motion to strike indicates that all defendants in the underlying federal proceeding filed answers to Plaintiff’s Complaint on September 4, 2001. Also, it is clear that Defendant filed a Motion for Summary Judgment, regarding the medical malpractice claim, with the district court. Certified copies of these pleadings, along with any others filed in district court, were required to be attached to Plaintiff’s Praeceptum to transfer filed with this Court.

district court's judgment, timely shows his intent to pursue the state claim in this Court, the transfer is not prompt, as Plaintiff failed to comply with the requirements of Section 5103(b)(2).

Plaintiff argues that the statute only requires a stamped copy of the original complaint filed in district court. However, this contention clearly contradicts the language of the statute as well as our Superior Court's interpretation of this statute. Plaintiff also claims that Defendant is "elevating form over substance." Because we find that with each emerging case the court establishes an increasingly stringent adherence to the requirements of the statute, Plaintiff's argument is not persuasive. Although this Court would prefer to allow Plaintiff to pursue his medical malpractice claim on the merits rather than deny him this opportunity due to attorney error, shifting the burden to the adverse party is a less appealing option. See *Kelly, supra*, citing *Rothman v. Fillette*, 469 A.2d 543, 545 (Pa. 1983).

Because we find that Plaintiff's Praeceptum to transfer should be stricken, the state medical malpractice claim against Defendant should likewise be stricken with prejudice, as Plaintiff has allowed the statute of limitations to lapse.⁶

Accordingly, the attached Order is entered.

ORDER

AND NOW, this the 22nd day of December, 2003, Defendant's Motion to Strike Transfer/Praeceptum to Transfer is granted.

⁶In Pennsylvania, the statute of limitations for filing a medical malpractice claim is two years. 42 Pa.C.S.A. §5524(2), *Murphy v. Diogenes A. Saavedra, M.D., P.C.*, 746 A.2d 92, 94 (Pa. 2000). The general rule is that once the prescribed statutory period has expired, the party is barred from bringing suit unless it is established that an exception to this rule applies. *Id.* The "discovery rule" is one such exception. It provides that where the existence of the injury is not known to the complaining party and such knowledge cannot be reasonably ascertained within the prescribed statutory period, the limitation period does not begin to run until the discovery of the injury is reasonably possible. *Id.*

Here, Plaintiff alleges that he suffered injury during his 6-month incarceration, due to Defendant's negligent care. Accordingly, Plaintiff "discovered" his injury during this time period. The latest possible point in time that Plaintiff made this discovery was his last day of incarceration, which was in November 1999. Thus, since Plaintiff's Praeceptum to transfer is stricken, his medical malpractice claim now well exceeds the two-year statute of limitations.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-929 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point on the right-of-way line of Potomac Street at Lot No. 125 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 125, North twenty-nine (29) degrees thirty-nine (39) minutes thirteen (13) seconds East, one hundred twenty-four and four hundredths (124.04) feet to a point at Lot No. 123 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 123, South fifty-six (56) degrees fifty-five (55) minutes two (02) seconds East, one hundred nine and ninety-one hundredths (109.91) feet to a point on the right-of-way line of Shenandoah Court as shown on the hereinafter referenced Subdivision plan; thence along the right-of-way line of Shenandoah Court, South thirty-three (33) degrees four (04) minutes fifty-eight (58) seconds West, eighty (80.00) feet to a point at the intersection of Shenandoah Court and Potomac Street as shown on the hereinafter referenced subdivision plan; thence along the intersection of Shenandoah Court and Potomac Street, by a curve to the right, having a radius of forty (40.00) feet, an arc length of sixty and forty-four hundredths (60.44) feet, and along chord bearing and distance of South seventy-six (76) degrees twenty-two (22) minutes six (06) seconds West, fifty-four and eighty-five hundredths (54.85) feet to a point on the right-of-way line of Potomac Street; thence along the right-of-way line of Potomac Street, North sixty (60) degrees twenty (20) minutes forty-seven (47) seconds West, sixty-five (65.00) feet to a point, the point and place of BEGINNING. CONTAINING a total area of 12,536 square feet.

The above description being Lot No. 124 on the Phase I Final Plan for Heritage Hill II, prepared by Martin and Martin, Incorporated, dated July 7, 1995, which said Subdivision plan was recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, on April 10, 1996, in Plat Book 69, at Page 04.

Tax Parcel #14-36

TITLE TO SAID PREMISES IS VESTED IN Hunter E. Matassa and Beverly L. Matassa, his wife by Deed from Heritage Hill, II and New Age Associates, Inc. dated 9/13/96 and recorded 9/17/96 in Record Book 1259, Page 349.

Premises being: 25 Shenandoah Court, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Hunter E. Matassa & Beverly L. Matassa** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-906 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being on the South side of Linden Avenue in the Village of Midway, Conewago Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING on the North by Linden Avenue; on the South by a public alley; on the East by Lot No. 5 on the plat of lots hereinafter referred to, and on the West by lands now or formerly of Bernard L. Schuchart and wife. Having a frontage on Linden Avenue of thirty (30) feet and extending in depth of equal width throughout one hundred sixty-five (165) feet to the public alley. Said tract is known as Lot No. 4, in Block 3 on the plat of lots of Hanover Improvement Company, which plat is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book WW, at page 600.

TITLE TO SAID PREMISES IS VESTED IN Albert T. Crigger II and Sonya R. Zito as joint tenants with Right of Survivorship by Deed from Dennis Mundell and Rebecca J. Mundell, his wife dated 4/30/1999 and recorded 4/30/1999, in Record Book 1822 Page 169.

Premises being: 330 Linden Avenue, Hanover, PA 17331

Tax Parcel No. 141A Map#8

SEIZED and taken into execution as the property of **Albert T. Crigger & Sonya R. Zito** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-856 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four tracts of land situated, lying and being in Liberty Township, Adams County, Pennsylvania, being Lot Nos. 13, 14, 15, and 16, of "Stone Manor Farm", more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a railroad spike in Topper Road (T-312) at land now or formerly of Charles T. and Anna H. Kemper; thence by said land, North 88 degrees 13 minutes 42 seconds East, 1,207.57 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 374.24 feet to an iron pin at Lot No. 15; thence by said lot, South 88 degrees 13 minutes 42 seconds West, 793.41 feet to an iron pin at Lot No. 14; thence by said lot, North 4 degrees 55 minutes 5 seconds East, 130 feet to an iron pin; thence continuing by said lot, South 88 degrees 13 minutes 42 seconds West, 400 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 5 degrees 30 minutes East, 175 feet to a railroad spike; thence continuing in said Topper Road (T-312), North 10 degrees 8 minutes 40 seconds West, 70 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 1 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 13.

SUBJECT TO the restrictions contained in Record Book 444 at Page 769.

TRACT NO. 2: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 13; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 400 feet to an iron pin; thence continuing by said lot by Lot No. 15, South 4 degrees 55 minutes 5 seconds West, 244.98 feet to an iron pin; thence continuing by Lot No. 15, South 88 degrees 13 minutes 42 seconds West, 400 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 4 degrees 3 minutes 5 seconds East, 98.44 feet to railroad spike; thence continuing in said Topper Road (T-312), North 5 degrees 30 minutes East, 146.56 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 2 was taken from a draft of survey

dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 14.

SUBJECT TO the restrictions contained in Record Book 365 at Page 539.

TRACT NO. 3: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 14; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 400 feet to an iron pin; thence continuing by said lot, North 4 degrees 55 minutes 5 seconds East, 114.98 feet to an iron pin at Lot No. 13; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 793.41 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 510.39 feet to an iron pin at Lot No. 16; thence by said lot, North 87 degrees 48 minutes 12 seconds West, 1,172.40 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312); North 10 degrees 38 minutes 33 seconds West, 50 feet to a railroad spike; thence continuing in said Topper Road (T-312), North 4 degrees 3 minutes 5 seconds East, 263.90 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 3 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 15.

TRACT NO. 4: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 15; thence by said lot, South 87 degrees 48 minutes 12 seconds East, 1,172.40 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 347 feet to an iron pin at Lot No. 17; thence by said lot, South 87 degrees 37 minutes 57 seconds West, 1,063.17 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 10 degrees 38 minutes 33 seconds West, 442.37 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 4 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 16.

Tract Nos. 3 and 4, are SUBJECT TO the restrictions contained in Record Book 359 at Page 1096.

SEIZED and taken into execution as the property of **Wyndemeir on Lake Myton, Inc.** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/17, 22 & 30

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, for BAPTISTE-LEONARD, INC. on December 6, 2004. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

McNeess Wallace & Nurick LLC
Attorneys at Law
100 Pine Street
Harrisburg, PA 17101

12/17

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 KATHARINE A. KINT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Michael A. Kint, 1280 Good Intent Road, Gettysburg, PA 17325; Ellis H. Kint, Jr., 2682 Baltimore Pike, Gettysburg, PA 17325

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

ESTATE OF CLINTON L. RHODES, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Timothy W. Rhodes, 405 Defone Avenue, McSherrystown, PA 17344

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

ESTATE OF MARGERY M. WEIKERT, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Administratrix: Kathryn Anne Boyer, 23 High Street, Biglerville, PA 17307

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

SECOND PUBLICATION

ESTATE OF ODETTA E. STREVIG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Ronald W. Strevig, 323 Parkway Dr., Littlestown, PA 17340; Gary G. Strevig, 160 Newark St., Littlestown, PA 17340

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

ESTATE OF JOAN M. WILT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: James P. Wilt, 61 E. Stevens Street, Gettysburg, PA 17325

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

ESTATE OF JOANNA S. WOLLET, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Personal Representatives: Joyce I. Kopp, 366 Maple Ave., Hanover, PA 17331; Deborah A. Grove, 628 Eichelberger Street, Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF LEILA JANE BEHNEY, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executors: James C. Behney, 180 South Ridge Road, York Springs, PA 17372; Chester R. Behney, 2027 North Second Street, Harrisburg, PA 17102

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

ESTATE OF MARY S. LAWRENCE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Donna M. Groft, 136 Conewago Drive, Hanover, PA 17331

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

ESTATE OF MARGARET H. PECHER, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrices: Catherine V. Pecher, 585 Pecher Road, Fairfield, PA 17320; Mary Helen Pecher, 19 Crossland Trail, Fairfield, PA 17320

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

ESTATE OF CARROLL TIMOTHY SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Marie A. Smith, 204 N. Oxford Avenue, McSherrystown, PA 17344

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

ESTATE OF VICTORIA L. VARGAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Administrators: Kelly A. Wiley, 75 E. Broadway, Gettysburg, PA 17325; Keith A. Smith, 520 Bon-Ox Road, Gettysburg, PA 17325

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-842 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz:

ALL THAT IMPROVED lot of ground situate, lying and being on the West side of North Second Street, in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a mark on the West curb line of North Second Street, aforesaid, at lands now or formerly of Angela M. Fink; thence by lands now or formerly of Angela M. Fink and through an iron pin on the inside pavement line, South sixty-eight (68) degrees West, one hundred fifty-seven and two tenths (157.2) feet to an iron pin at lands now or formerly of Richard J. Neiderer and M. Mildred Neiderer; thence by lands now or formerly of Richard J. Neiderer and M. Mildred Neiderer, North eighteen and three-fourth (18-3/4) degrees West, twenty (20) feet to an iron pin at lands now or formerly of Lee J. Eline and Josephine N. Eline; thence by said lands now or formerly of Lee J. Eline and Josephine N. Eline, North sixty-three and one-fourth (63-1/4) degrees East, one hundred fifty-eight and five tenths (158.5) feet through an iron pin on the inside pavement line to a mark on the West curb of North Second Street aforesaid; thence by the West curb of North Second Street, South eighteen and three-fourth (18-3/4) degrees East, thirty-three (33) feet to a mark, the place of BEGINNING.

MAP 1, PARCEL 7.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 24, 2004, pursuant to the Fictitious Name Act, setting forth that Michael D. Carroll, of 18 Wheaton Drive, Littlestown, PA 17340, is the only person owning or interested in a business, the character of which is electrical contracting and that the name, style and designation under which said business is and will be conducted is L-TOWN ELECTRIC and the location where said business is and will be conducted is 18 Wheaton Drive, Littlestown, PA 17340.

Guthrie, Nonemaker, Yingst & Hart
Solicitor

12/17

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that a Certificate of Organization - Domestic Limited Liability Company was filed with the Commonwealth of Pennsylvania, Department of State, in Harrisburg, Pennsylvania, on November 23, 2004 under the provisions of the Pennsylvania Limited Liability Company Law of 1994 as amended.

The name of the Limited Liability Company is TSJ PROPERTIES, LLC.

TSJ PROPERTIES, LLC has as its purpose the engaging in all lawful business for which limited liability companies may be organized.

Arthur J. Becker, Jr., P.C.
Arthur J. Becker, Jr., Esq.
Attorneys for TSJ Properties, LLC

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for DTM LAND DEVELOPMENT, INC., were filed with the Pennsylvania Department of State Corporation Bureau on or about November 15, 2004 under the provisions of the Business Corporation Law of Commonwealth of Pennsylvania.

Wolfe & Rice, LLC
Solicitor
47 West High Street
Gettysburg, PA 17325

12/17

Adams County Legal Journal

Vol. 46

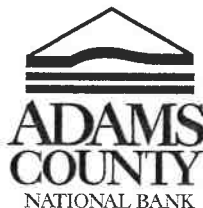
December 22, 2004

No. 31, pp. 198-200

IN THIS ISSUE

CITIBANK VS. WEAVER

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-943 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT lot of ground situate, lying and being in the Borough of Carroll Valley (formerly Liberty Township, Adams County, Pennsylvania, being Lot No. 172 in Section K, more particularly bounded and described as follows, to-wit:

BEGINNING at a point in the center of Snow Bird Trail at Lot No. 173; thence by said lot, South 25 degrees 15 minutes 35 seconds West, 225 feet to Lot No. 146; thence by said lot, North 64 degrees 44 minutes 25 seconds West, 100 feet to Lot No. 171; thence by said lot, North 25 degrees 15 minutes 35 seconds East, 225 feet to a point in the center of said Snow Bird Trail; thence in said Snow Bird Trail, South 64 degrees 44 minutes 25 seconds East, 100 feet to the place of BEGINNING.

THE above description was taken from a Plan of Lots labeled "Section K, Charnita", dated March 3, 1969, prepared by Evans, Hagan and Holdefer and recorded in Adams County Plat Book 1 at Page 42.

TOGETHER with the right of way and easement

BEING KNOWN AS: 30 Snowbird Trail, Fairfield, PA 17320

SEIZED and taken into execution as the property of Ernest L. Hurley & Carolyn Hurley a/k/a Carolyn G. Hurley and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-904 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land located in Reading Township, Adams County, Pennsylvania, shown as Tract No. 2 on the final subdivision plan prepared for Edward C. Wallen, Sr dated December 29, 1998, and about to be recorded in the Adams County, Pennsylvania, Recorder of Deeds Office and shown as Lot No. 2 on said plan, more particularly bounded and described as follows:

BEGINNING at a steel pin set located at the Eastern corner of Lot No. 1 as shown on said plan, thence along Lot No. 1 South 40 degrees 19 minutes 42 seconds West 160.00 feet to a steel pin set located at lands now or formerly of Gene H. Shenberger; thence by said lands of Shenberger South 49 degrees 40 minutes 18 seconds East 306.54 feet to an existing iron pipe at lands now or formerly of David W. Diehl; thence by lands of David W. Diehl North 22 degrees 54 minutes 02 seconds East 167.70 feet to an existing iron pipe at other lands of the grantors herein; thence by same North 49 degrees 40 minutes 18 seconds West 256.31 feet to a steel pin set, the point and place of BEGINNING.

CONTAINING 1.034 acres

TOGETHER with the right to use the stone driveway as it is extended across Lot No. 1 as shown on the aforesaid subdivision plan. The rights and responsibilities related to the use and maintenance

of the driveway as between owners of Lots 1 and 2 are set forth in a Declaration of Right-of-Way and Responsibilities previously recorded in the aforesaid Recorder of Deeds Office.

TITLE TO SAID PREMISES IS VESTED IN Lori Sue Wallen, widow by reason of the following

BEING THE SAME PREMISES which Edward C. Wallen, Sr. and Darlene K. Wallen, his wife by Deed dated 4/22/1999 and recorded on 6/9/1999 in the County of Adams in Record Book 1849, Page 20 conveyed unto Edward C. Wallen, Jr and Lori Sue Wallen, his wife.

AND THE SAID Edward C. Wallen, Jr. died on 9/30/2001 whereby title to said premises became vested in Lori Sue Wallen by operation of law and right of survivorship.

Premises being: 22 Miller Road, New Oxford, PA 17350

Tax Parcel No. MAP#J7 PARCEL #69
SEIZED and taken into execution as the property of Edward J. Wallen, Jr. a/k/a Edward C. Wallen, Jr., Deceased & Lori Sue Wallen and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

CITIBANK VS. WEAVER

1. A court's jurisdiction is a threshold issue which may be evaluated at anytime. Thus a challenge to a court's jurisdiction over the subject matter of an action is properly filed by preliminary objection.

2. When a party uses a preliminary objection to challenge the subject matter jurisdiction of a court, the court's function is to determine whether the law will bar recovery due to the lack of such jurisdiction.

3. The test of whether a court has subject matter jurisdiction over a controversy is whether the court is competent to determine controversies of the general class to which the case presented for consideration belongs. This inquiry is separate and distinct from the question of a party's standing to bring an action or assert a claim, whether the plaintiff's complaint is demurrable, whether the plaintiff can establish his or her claims, or whether the court should ultimately conclude that the relief sought should not be granted.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 03-S-1126, CITIBANK (SOUTH DAKOTA) N.A., VS.
LAURENA A. WEAVER.

Burton Neil, Esq., for Plaintiff
Defendant *pro se*

George, J., January 7, 2004

OPINION

The Plaintiff, Citibank (South Dakota) N.A. (hereinafter referred to as "Citibank"), initiated this matter by filing a complaint seeking to collect debt from the Defendant, Laurena A. Weaver (hereinafter referred to as "Weaver"), resulting from Weaver's use of a credit card Citibank issued to her. Citibank seeks damages in the amount of \$4,571.02 plus attorney fees and costs.

In response to Citibank's Complaint, Weaver, acting *pro se*¹, filed a Preliminary Objection alleging a lack of subject matter jurisdiction based upon Citibank's failure to comply with federal collection statutes. For the reasons set forth below, Weaver's Preliminary Objection is denied.

¹ Citibank, in opposition to Weaver's Preliminary Objection, has attached a number of exhibits to its brief. The exhibits are copies of *pro se* pleadings filed by other defendants in other jurisdictions in Pennsylvania and appear to be substantially similar, if not identical, to the current pleading filed by Weaver. The exhibits consist of pleadings filed in Beaver County (*Citibank (South Dakota) N.A. v. Tina Shannon*, No. 11322-203); Dauphin County (*Citibank (South Dakota) N.A. v. Nancee L. Holley*, No. 2003-CV-3652); and Lancaster County (*Citibank (South Dakota) N.A. v. Todd M. Barclay*, CI-03-07909). Citibank suggests that Weaver's pleading is part of an organized effort to avoid debt collection.

A court's jurisdiction is a threshold issue which may be evaluated at any time. *McCutcheon v. Philadelphia Electric Inc. Co.*, 788 A.2d 345, 349 (Pa. 2002). Thus, a challenge to a court's jurisdiction over the subject matter of an action is properly filed by preliminary objection. Pa.R.C.P. 1028(a)(1); see also *Wagner v. Wagner*, 731 A.2d 632 (Pa.Super. 1999), appeal granted in part, 750 A.2d 821 (Pa. 2000) and rev'd on other grounds, 768 A.2d 1112 (Pa. 2001). When a party uses a preliminary objection to challenge the subject matter jurisdiction of a court, the court's function is to determine whether the law will bar recovery due to the lack of such jurisdiction. *Kazos v. Diakakis*, 660 A.2d 1359, 1361 (Pa.Super. 1995).

The test of whether a court has subject matter jurisdiction over a controversy is whether the court is competent to determine controversies of the general class to which the case presented for consideration belongs. *Dynamic Sports Fitness v. Community YMCA*, 768 A.2d 375, 379 (Pa.Cmwlth. 2001), overruled to a limited extent on unrelated grounds, *Selfspot, Inc. v. Butler County Family YMCA*, 818 A.2d 587, 593-94 (Pa.Cmwlth 2003). This inquiry is separate and distinct from the question of a party's standing to bring an action or assert a claim, whether the plaintiff's complaint is demurrable, whether the plaintiff can establish his or her claims, or whether the court should ultimately conclude that the relief sought should not be granted. *Dynamic Sports Fitness*, 768 A.2d at 379-80.

Clearly, this Court has jurisdiction to review the types of claims presented by Citibank. This jurisdiction is founded in the general grant of unlimited jurisdiction to the Courts of Common Pleas for all actions or proceedings, except as established by statute or general rule, set forth in Section 931 of the Judicial Code, 42 Pa.C.S. § 931. Weaver's Preliminary Objection appears to invoke a statutory defense which, as indicated, is a completely different question than subject matter jurisdiction.

Accordingly, Weaver's Preliminary Objection is dismissed.²

² Citibank filed Preliminary Objections to Weaver's Preliminary Objection alleging the failure of Weaver's pleading to conform to Pennsylvania Rules of Civil Procedure 1019(a) and 1017(a); the impropriety of Weaver's pleading as a "speaking" demurrer; the insufficient specificity of Weaver's pleading and a challenge to the legal sufficiency of Weaver's Preliminary Objection. Although Citibank's Preliminary Objections to Weaver's Preliminary Objection appear to be well-founded, the Court has chosen to refrain from legal analysis of those issues and, rather, has chosen to address the substance, or lack thereof, of Weaver's Preliminary Objection in light of its clearly frivolous nature.

ORDER OF COURT

AND NOW, this 7th day of January, 2004, the Defendant's Preliminary Objection is dismissed. The Defendant shall file an Answer within twenty (20) days of the date of this Order. Failure to do so may result in default judgment being entered against the Defendant.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-929 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point on the right-of-way line of Potomac Street at Lot No. 125 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 125, North twenty-nine (29) degrees thirty-nine (39) minutes thirteen (13) seconds East, one hundred twenty-four and four hundredths (124.04) feet to a point at Lot No. 123 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 123, South fifty-six (56) degrees fifty-five (55) minutes two (02) seconds East, one hundred nine and ninety-one hundredths (109.91) feet to a point on the right-of-way line of Shenandoah Court as shown on the hereinafter referenced Subdivision plan; thence along the right-of-way line of Shenandoah Court, South thirty-three (33) degrees four (04) minutes fifty-eight (58) seconds West, eighty (80.00) feet to a point at the intersection of Shenandoah Court and Potomac Street as shown on the hereinafter referenced subdivision plan; thence along the intersection of Shenandoah Court and Potomac Street, by a curve to the right, having a radius of forty (40.00) feet, an arc length of sixty and forty-four hundredths (60.44) feet, and along chord bearing and distance of South seventy-six (76) degrees twenty-two (22) minutes six (06) seconds West, fifty-four and eighty-five hundredths (54.85) feet to a point on the right-of-way line of Potomac Street; thence along the right-of-way line of Potomac Street, North sixty (60) degrees twenty (20) minutes forty-seven (47) seconds West, sixty-five (65.00) feet to a point, the point and place of BEGINNING CONTAINING a total area of 12,536 square feet.

The above description being Lot No. 124 on the Phase I Final Plan for Heritage Hill II, prepared by Martin and Martin, Incorporated, dated July 7, 1995, which said Subdivision plan was recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, on April 10, 1996, in Plat Book 69, at Page 04.

Tax Parcel #14-36

TITLE TO SAID PREMISES IS VESTED IN Hunter E. Matassa and Beverly L. Matassa, his wife by Deed from Heritage Hill, II and New Age Associates, Inc. dated 9/13/96 and recorded 9/17/96 in Record Book 1259, Page 349.

Premises being: 25 Shenandoah Court, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Hunter E. Matassa & Beverly L. Matassa** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-906 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying and being on the South side of Linden Avenue in the Village of Midway, Conewago Township, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING on the North by Linden Avenue, on the South by a public alley; on the East by Lot No. 5 on the plat of lots hereinafter referred to, and on the West by lands now or formerly of Bernard L. Schuchart and wife. Having a frontage on Linden Avenue of thirty (30) feet and extending in depth of equal width throughout one hundred sixty-five (165) feet to the public alley. Said tract is known as Lot No. 4, in Block 3 on the plat of lots of Hanover Improvement Company, which plat is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book WW, at page 600.

TITLE TO SAID PREMISES IS VESTED IN Albert T. Crigger II and Sonya R. Zito as joint tenants with Right of Survivorship by Deed from Dennis Mundell and Rebecca J. Mundell, his wife dated 4/30/1999 and recorded 4/30/1999, in Record Book 1822 Page 169.

Premises being: 330 Linden Avenue, Hanover, PA 17331

Tax Parcel No. 141A Map#8

SEIZED and taken into execution as the property of **Albert T. Crigger & Sonya R. Zito** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for DREAM ON ENTERPRISES. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

Turner and O'Connell
4415 North Front Street
Harrisburg, PA 17110

12/22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-856 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four tracts of land situated, lying and being in Liberty Township, Adams County, Pennsylvania, being Lot Nos. 13, 14, 15, and 16, of "Stone Manor Farm", more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a railroad spike in Topper Road (T-312) at land now or formerly of Charles T. and Anna H. Kemper; thence by said land, North 88 degrees 13 minutes 42 seconds East, 1,207.57 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 374.24 feet to an iron pin at Lot No. 15; thence by said lot, South 88 degrees 13 minutes 42 seconds West, 793.41 feet to an iron pin at Lot No. 14; thence by said lot, North 4 degrees 55 minutes 5 seconds East, 130 feet to an iron pin; thence continuing by said lot, South 88 degrees 13 minutes 42 seconds West, 400 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 5 degrees 30 minutes East, 175 feet to a railroad spike; thence continuing in said Topper Road (T-312), North 10 degrees 8 minutes 40 seconds West, 70 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 1 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 13.

SUBJECT TO the restrictions contained in Record Book 444 at Page 769.

TRACT NO. 2: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 13; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 400 feet to an iron pin; thence continuing by said lot and by Lot No. 15, South 4 degrees 55 minutes 5 seconds West, 244.98 feet to an iron pin; thence continuing by Lot No. 15, South 88 degrees 13 minutes 42 seconds West, 400 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 4 degrees 3 minutes 5 seconds East, 98.44 feet to railroad spike; thence continuing in said Topper Road (T-312), North 5 degrees 30 minutes East, 146.56 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 2 was taken from a draft of survey

dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 14.

SUBJECT TO the restrictions contained in Record Book 365 at Page 539.

TRACT NO. 3: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 14; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 400 feet to an iron pin; thence continuing by said lot, North 4 degrees 55 minutes 5 seconds East, 114.98 feet to an iron pin at Lot No. 13; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 793.41 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 510.39 feet to an iron pin at Lot No. 16; thence by said lot, North 87 degrees 48 minutes 12 seconds West, 1,172.40 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312); North 10 degrees 38 minutes 33 seconds West, 50 feet to a railroad spike; thence continuing in said Topper Road (T-312), North 4 degrees 3 minutes 5 seconds East, 263.90 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 3 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 15.

TRACT NO. 4: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 15; thence by said lot, South 87 degrees 48 minutes 12 seconds East, 1,172.40 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 347 feet to an iron pin at Lot No. 17; thence by said lot, South 87 degrees 37 minutes 57 seconds West, 1,063.17 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 10 degrees 38 minutes 33 seconds West, 442.37 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 4 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 16.

Tract Nos. 3 and 4, are SUBJECT TO the restrictions contained in Record Book 359 at Page 1096.

SEIZED and taken into execution as the property of Wyndemir on Lake Myton, Inc. and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/17, 22 & 30

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, January 3, 2005, at 9:00 a.m.

MILLER—Orphans' Court Action Number OC-110-04. The First and Final Account of Donald G. Miller and Owen L. Miller, Co-Executors of the Estate of Melvin G. Miller, deceased, late of Butler Township, Adams County, Pennsylvania.

SCHRIVER—Orphans' Court Action Number OC-120-04. The First and Final Account of Phyllis W. Horick, Executrix of the Estate of Nita Weaner Schriver, deceased, late of Straban Township, Adams County, Pennsylvania.

KING—Orphans' Court Action Number OC-124-04. The First and Final Account of Charles Biesecker, Executor of the Estate of Margaret E. King, deceased, late of Straban Township, Adams County, Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

12/22 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-487 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point on the center line of Township Road (T-842) known as Fish and Game Road and Lot No. 7 of the hereinafter referenced subdivision plan; thence along said Lot No. 7 and through a steel pin on line set back twenty-nine and sixteen hundredths (29.16) feet from said starting point, North fifty-seven (57) degrees twenty-one (21) minutes forty-nine (49) seconds East, five hundred two and eighteen hundredths (502.18) feet to a steel pin at Lot No. 1 of said plan; thence along same South twelve (12) degrees fifty-six (56) minutes twenty (20) seconds East, three hundred twenty-seven and nineteen hundredths (327.19) feet to a steel pin at Lot No. 9 of said plan; thence along same and through a steel pin on line set back twenty-six and fifty hundredths (26.50) feet from the termination of this course, South sixty (60) degrees zero (00) minutes two (02) seconds West, four hundred eighty-four and seven hundredths (484.07) feet to a point on the center line of Township Road (T-842) known as Fish and Game Road; thence along same the following three courses and distances; 1) North twenty-five (25) degrees forty-one (41) minutes nineteen (19) seconds West, thirty-five (35) feet to a point; thence 2) North thirteen (13) degrees nineteen (19) minutes nineteen (19) seconds West, one hundred twenty-eight and forty-seven hundredths (128.47) feet to a point said point being one and two hundredths (1.02) feet West of the centerline of Fish and Game Road; thence 3) North thirteen (13) degrees thirty-two (32) minutes twenty-one (21) seconds West, two hundred twenty-six and six hundredths (226.06) feet to a point at Lot No. 7, the point and place of BEGINNING, CONTAINING 3.407 acres and identified as Lot No. 8 on a plan of lots prepared by George M. Wildasin, CE, Inc. on August 14, 1999 as revised on September 27, 1999. Said plan is recorded in the Recorder of Deeds Office in and for Adams County, Pennsylvania, in Map Book 77, page 65.

SUBJECT, NEVERTHELESS, to the following restrictions:

1. All new utility lines shall be installed underground.

2. No single or double wide mobile homes shall be placed on the lot at any time, either temporarily or permanently.

3. Only a single family dwelling shall be placed on the lot. If the dwelling is a ranch style. The square footage of the living area must be at least 1,200. If the dwelling is a cape cod style or 1-1/2 stories, the square footage of the living area must be at least 1,400. If the dwelling is of a two story nature, the square footage of the living area must be at least 1,600.

4. Dwelling plans must be approved by the developer or his assigns.

5. No commercial poultry or swine operations of any nature, including, but not limited to the raising or processing of poultry or swine shall be permitted.

6. The restriction set forth in Number 3, above, shall not be construed to prohibit a lot owner from constructing or erecting accessory buildings, including but not limited to garages, sheds, and small barns to house horses, for example, that are reasonable and customary as a accessory uses to a single-family dwelling.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: 1205 Fish and Game Road, East Berlin, Pennsylvania 17316

BEING THE SAME PREMISES WHICH Ronald L. Hoke and Jeanne M. Hoke, by Deed dated 5/2/00 and recorded 5/19/00 in Adams County Deed Book 2053, Page 88, granted and conveyed unto Randy W. Feight and Michelle L. Feight.

SEIZED IN EXECUTION AS THE PROPERTY OF MICHELLE L. FEIGHT AND RANDY W. FEIGHT UNDER ADAMS COUNTY JUDGMENT NO. 03-S-487.

MAP & PARCEL L6-46

SEIZED and taken into execution as the property of **Randy W. Feight & Michelle L. Feight** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/22, 30 & 1/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-842 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of January, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT IMPROVED lot of ground situate, lying and being on the West side of North Second Street, in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING at a mark on the West curb line of North Second Street, aforesaid, at lands now or formerly of Angela M. Fink; thence by lands now or formerly of Angela M. Fink and through an iron pin on the inside pavement line, South sixty-eight (68) degrees West, one hundred fifty-seven and two tenths (157.2) feet to an iron pin at lands now or formerly of Richard J. Neiderer and M. Mildred Neiderer; thence by lands now or formerly of Richard J. Neiderer and M. Mildred Neiderer, North eighteen and three-fourth (18-3/4) degrees West, twenty (20) feet to an iron pin at lands now or formerly of Lee J. Eline and Josephine N. Eline; thence by said lands now or formerly of Lee J. Eline and Josephine N. Eline, North sixty-three and one-fourth (63-1/4) degrees East, one hundred fifty-eight and five tenths (158.5) feet through an iron pin on the inside pavement line to a mark on the West curb of North Second Street aforesaid; thence by the West curb of North Second Street, South eighteen and three-fourth (18-3/4) degrees East, thirty-three (33) feet to a mark, the place of BEGINNING.

MAP 1, PARCEL 7.

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 14, 2005, 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.

12/10, 17 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-860 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two tracts of land situate in Freedom Township, Adams County, Pennsylvania, bounded and described as follows:

Tract No. 1:

BEGINNING at a stake at the West side of the State Highway leading from Gettysburg to Emmitsburg at lands now or formerly of Robert Witherow and Mrs. Leslie Kennel; thence by lands now or formerly of Mrs. Leslie Kennel, South 77 degrees West 442.2 feet to a stake; thence by lands now or formerly of Fred W. Green, North 25 degrees East 125 feet to a stake; thence by the same, North 77 degrees East 442.2 feet to a point in the State Highway aforesaid; thence along said State Highway and land now or formerly of Robert Witherow, South 25 degrees West 125 feet to a stake, the place of BEGINNING. CONTAINING 1 acre, more or less.

Tract No. 2:

BEGINNING at a point in the State Highway Route 15, leading from Emmitsburg to Gettysburg, with an iron pin set back along the line; thence in the center of said Highway, South 25-1/2 degrees West 107.5 feet to a point in the said Highway, with an iron pin set back along the line; thence by land now or formerly George Kennell North 85-1/2 degrees West 409.5 feet to an iron pin; thence by land now or formerly of Calvin Dennis Manahan, also known as Calvin D. Manahan, North 80 degrees East 450.2 feet to a point in said Highway, with an iron pin set back along the line, the place of BEGINNING. CONTAINING 76 perches and 18 square feet, more or less.

The above-described two tracts of land are the same which Allen J. Sebold and Dorothy E. Sebold, husband and wife, by their Deed dated March 27, 1989, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 518, at page 227, sold and conveyed unto Helene D. Keese and Lory A. Keese, as joint tenants with the right of survivorship and not as tenants in common, Mortgagors herein.

SEIZED and taken into execution as the property of Helene D. Keese & Lory A. Keese and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/22, 30 & 1/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-991 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing magnetic spike in the center line of Crouse Road (Township Road T-412) at corner of land now or formerly of Winifred Thomson, thence by said land of Winifred Thomson, and by land now or formerly of Robert Slapp, passing through a steel rod set back 25.0 feet from the last mentioned point, and also passing through an existing steel rod set back 274.96 feet from the next mentioned point, South 43 degrees, 22 minutes, 15 seconds West, 825.18 feet to an existing steel rod on line of land now or formerly of Mary Schildt et al; thence by said land of Mary Schildt et al, North 40 degrees, 31 minutes, 10 seconds West, 85.00 feet to an existing steel rod; thence continuing by same, South 47 degrees, 31 minutes, 50 seconds West, 125.00 feet to a concrete monument at corner of Lot No. 1 on the hereinafter referred to plan of lots; thence by said Lot No. 1, North 47 degrees, 20 minutes, 55 seconds West, 390.00 feet to a steel rod; thence continuing by same, North 43 degrees, 54 minutes, 45 seconds East, 445.64 feet to a steel rod; thence continuing by said Lot No. 1, South 46 degrees, 05 minutes, 15 seconds East, 67.73 feet to a concrete monument; thence continuing by same, passing through a steel rod set back 25.0 feet from the next mentioned point, North 43 degrees, 54 minutes, 45 seconds East, 641.28 feet to a magnetic spike,

three (3) feet West of the center line of Crouse Road; thence in said Crouse Road, South 27 degrees, 31 minutes, 00 seconds East, 429.20 feet to an existing magnetic spike in the center line of said Crouse Road (Township Road T-412), the point and place of BEGINNING, CONTAINING 10.001 acres.

THE ABOVE description was taken from a plan of lots prepared by Adams County Surveyors, dated June 25, 1998, recorded in Plat Book 75 at page 22, designating the above as Lot #2.

MAP G-18, PARCEL 3B

TITLE TO SAID PREMISES IS VESTED IN Gregory L. Crouse and Pamela L. Crouse, husband and wife by Deed from Craig A. Redding and Catherine M. Redding, husband and wife dated 3/4/1999 and recorded 3/9/1999 in Record Book 1782, Page 269.

SEIZED and taken into execution as the property of Gregory L. Crouse & Pamela L. Crouse and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/22, 30 & 1/7

LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the home office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 15th, 2005 to elect directors and to transact any other business properly presented.

Attest
Marilyn Q. Butt
President, Treasurer, Director

12/22, 30, 1/7 & 14

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 GERALD E. BROUGH a/k/a GERALD EDWARD BROUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Doris Elizabeth Brough, 141 York St., Gettysburg, PA 17325

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

ESTATE OF CARRIE R. EISENHART, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Personal Representatives: B. Scott Eisenhart, 322 A High Rock Rd., Hanover, PA 17331; Joy A. Daugherty, 322 A High Rock Rd., Hanover, PA 17331

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

SECOND PUBLICATION

ESTATE OF KATHARINE A. KINT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Michael A. Kint, 1280 Good Intent Road, Gettysburg, PA 17325; Ellis H. Kint, Jr., 2682 Baltimore Pike, Gettysburg, PA 17325

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

ESTATE OF CLINTON L. RHODES, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Timothy W. Rhodes, 405 Delone Avenue, McSherrystown, PA 17344

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

ESTATE OF MARGERY M. WEIKERT, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Administratrix: Kathryn Anne Boyer, 23 High Street, Biglerville, PA 17307

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

THIRD PUBLICATION

ESTATE OF ODETTA E. STREVIG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Ronald W. Strevig, 323 Parkway Dr., Littlestown, PA 17340; Gary G. Strevig, 160 Newark St., Littlestown, PA 17340

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

ESTATE OF JOAN M. WILT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: James P. Wilt, 61 E. Stevens Street, Gettysburg, PA 17325

Attorney: Catherine J. Gault, Esq., 31 S. Washington Street, Gettysburg, PA 17325-2112

ESTATE OF JOANNA S. WOLLET, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Personal Representatives: Joyce I. Kopp, 366 Maple Ave., Hanover, PA 17331; Deborah A. Grove, 628 Eichelberger Street, Hanover, PA 17331

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

Adams County Legal Journal

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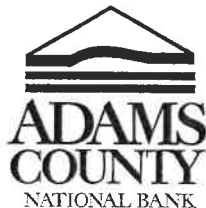
December 30, 2004

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REESE VS. HARMAN

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-487 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING for a point on the center line of Township Road (T-842) known as Fish and Game Road and Lot No. 7 of the hereinafter referenced subdivision plan; thence along said Lot No. 7 and through a steel pin on line set back twenty-nine and sixteen hundredths (29.16) feet from said starting point, North fifty-seven (57) degrees twenty-one (21) minutes forty-nine (49) seconds East, five hundred two and eighteen hundredths (502.18) feet to a steel pin at Lot No. 1 of said plan; thence along same South twelve (12) degrees fifty-six (56) minutes twenty (20) seconds East, three hundred twenty-seven and nineteen hundredths (327.19) feet to a steel pin at Lot No. 9 of said plan; thence along same and through a steel pin on line set back twenty-six and fifty hundredths (26.50) feet from the termination of this course, South sixty (60) degrees zero (00) minutes two (02) seconds West, four hundred eighty-four and seven hundredths (484.07) feet to a point on the center line of Township Road (T-842) known as Fish and Game Road; thence along same the following three courses and distances; 1) North twenty-five (25) degrees forty-one (41) minutes nineteen (19) seconds West, thirty-five (35) feet to a point; thence 2) North thirteen (13) degrees nineteen (19) minutes nineteen (19) seconds West, one hundred twenty-eight and forty-seven hundredths (128.47) feet to a point said point being one and two hundredths (1.02) feet West of the centerline of Fish and Game Road; thence 3) North thirteen (13) degrees thirty-two (32) minutes twenty-one (21) seconds West, two hundred twenty-six and six hundredths (226.06) feet to a point at Lot No. 7, the point and

place of BEGINNING, CONTAINING 3.407 acres and identified as Lot No. 8 on a plan of lots prepared by George M. Wildasin, CE, Inc. on August 14, 1999 as revised on September 27, 1999. Said plan is recorded in the Recorder of Deeds Office in and for Adams County, Pennsylvania, in Map Book 77, page 65.

SUBJECT, NEVERTHELESS, to the following restrictions:

1. All new utility lines shall be installed underground.
2. No single or double wide mobile homes shall be placed on the lot at any time, either temporarily or permanently.
3. Only a single family dwelling shall be placed on the lot. If the dwelling is a ranch style, The square footage of the living area must be at least 1,200. If the dwelling is a cape cod style or 1-1/2 stories, the square footage of the living area must be at least 1,400. If the dwelling is of a two story nature, the square footage of the living area must be at least 1,600.
4. Dwelling plans must be approved by the developer or his assigns.
5. No commercial poultry or swine operations of any nature, including, but not limited to the raising or processing of poultry or swine shall be permitted.
6. The restriction set forth in Number 3. above, shall not be construed to prohibit a lot owner from constructing or erecting accessory buildings, including but not limited to garages, sheds, and small barns to house horses, for example, that are reasonable and customary as a accessory uses to a single-family dwelling.

HAVING THEREON ERECTED A DWELLING HOUSE KNOWN AS: 1205 Fish and Game Road, East Berlin, Pennsylvania 17316

BEING THE SAME PREMISES WHICH Ronald L. Hoke and Jeanne M. Hoke, by Deed dated 5/2/00 and recorded 5/19/00 in Adams County Deed Book 2053, Page 88, granted and conveyed unto Randy W. Feight and Michelle L. Feight.

SEIZED IN EXECUTION AS THE PROPERTY OF MICHELLE L. FEIGHT AND RANDY W. FEIGHT UNDER ADAMS COUNTY JUDGMENT NO. 03-S-487.

MAP & PARCEL L6-46

SEIZED and taken into execution as the property of **Randy W. Feight & Michelle L. Feight** and to be sold by me,

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/22, 30 & 1/7

LEGAL NOTICE

NOTICE IS HEREBY GIVEN, that the Shareholder and Director of FALCON GROUP, INC. d/b/a FALCON GROUP HOLDING CO., a New York Corporation, most recently conducting business at 223 Baltimore Street, Gettysburg, Pennsylvania, has approved a Resolution to Withdrawal from doing business in the Commonwealth of Pennsylvania. This Notice of Intent to Withdraw is given pursuant to 15 Pa. C.S.A. Section 4129 relating to the application for Termination of Authority of a Foreign Business Corporation.

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

12/30

REESE VS. HARMAN

1. There are two types of recognized judicial arbitration: voluntary arbitration of pending judicial matters and compulsory arbitration. In voluntary arbitration of pending judicial matters, a civil matter or issue may be referred by consent of the parties for hearing (42 Pa.C.S.A. §7362). Section 7362(d) permits appeals from voluntary arbitration.

2. However, in compulsory arbitration, similar matters not involving title to real property where the amount in controversy does not exceed \$25,000.00 "shall first be submitted to and heard by a board of three members of the bar of the court" (42 Pa.C.S.A. §7361). The right to appeal a compulsory arbitration award is set forth in Section 7361(d) and allows that "Any party to a matter shall have the right to appeal for trial *de novo* in the court...."

3. Absent a clear waiver of the parties' right to appeal for a trial *de novo*, in accordance with the compulsory arbitration statute, a waiver of that right cannot be found.

4. Although the right of appeal from a compulsory arbitration award is a substantial right, it is not absolute and therefore can be subjected to reasonable conditions. Agreeing that the compulsory arbitration award be binding is one such condition.

5. Under common law arbitration, the award ... is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable, or unconscionable award.

6. Pennsylvania courts have interpreted this section (of common law arbitration) to require that any challenge to an arbitration award be made in an appeal to the Court of Common Pleas by filing a petition to vacate or modify the arbitration award within 30 days of the date of the award.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 99-S-1115, GEORGE W. REESE, SR. VS. KENNETH
HOWARD HARMAN.

John J. Mooney, Esq., for Plaintiff

Peter Foster, Esq., for Defendant

Kuhn, P.J., January 22, 2004

OPINION PURSUANT TO PLAINTIFF'S MOTION TO QUASH APPEAL OF ARBITRATORS' AWARD

Before this Court is Plaintiff's Motion to Quash Appeal of Arbitrators' Award. For the reasons set forth herein, said Motion is granted.

The case involves a dispute regarding Defendant's right to appeal the arbitrators' award entered on August 5, 2003 in favor of Plaintiff and against Defendant in the amount of \$12,500.00 plus costs. The procedural and factual backgrounds are taken from the pleadings, exhibits and affidavits.

PROCEDURAL AND FACTUAL BACKGROUNDS

On December 9, 1999, George W. Reese, Sr. ("Plaintiff") filed a Complaint against Kenneth Howard Harman ("Defendant") for Harassment and Simple Assault claiming compensatory and punitive damages in an amount in excess of \$30,000.00. On January 7, 2000, Defendant filed his Answer and New Matter, which Plaintiff responded to on January 18, 2000. By Order dated April 5, 2000, this Court marked the case for trial during the September 11, 2000 two-week term. After several continuances, the matter was finally listed for the Civil Trial Term beginning the week of May 13, 2002.

A Pre-Trial Conference, attended by counsel, was held on April 15, 2002. Following the conference, the Court issued an Order, which, at the suggestion of counsel included, *inter alia*, "5. The parties shall notify the Court within two (2) weeks whether binding arbitration is an acceptable resolution of this matter."¹ On April 25, 2002, Plaintiff's counsel informed this Court, that upon concurrence of Defendant's counsel the parties "will be pursuing arbitration" and requested that the matter be removed from the trial list. Accordingly, on May 1, 2002, this Court ordered that "based upon representation from counsel for the Plaintiff, and with the concurrence of defense counsel, the parties will be pursuing arbitration and, therefore, the case is removed from the trial list."

Nevertheless, not until May 9, 2003 did Plaintiff file a praecipe² requesting the Prothonotary to refer the matter to arbitrators in accordance with the Rules of Court and the Arbitration Laws of Pennsylvania. A board of three arbitrators was appointed on May 12, 2003. No written arbitration agreement exists.

On August 5, 2003, an arbitration hearing took place and an award was given in favor of Plaintiff and against Defendant in the sum of \$12,500.00 plus costs. The same day the judgment/award was entered by the Prothonotary.

On August 18, 2003, Defendant filed his "Notice of Appeal from Award of Board of Arbitrators to the Prothonotary," wherein he

¹ At this point, jury selection was to commence in 17 days. Although Plaintiff's counsel acknowledged that a verdict might be entered below the compulsory arbitration limit, he never conceded that point.

² The praecipe was entitled "Praecipe For Reference to Arbitrators in Cases at Issue Involving \$25,000.00 or Less, Not Involving Title to Real Estate."

demanded a jury trial and paid \$500.00 as compensation for the arbitrators. On September 18, 2003, Plaintiff filed the present motion. Defendant filed his Answer and New Matter on September 22, 2003, which Plaintiff responded to on October 8, 2003.

Each attorney has filed an Affidavit stating their understandings. Defendant's counsel attested that his intent in suggesting that the matter be decided by arbitration was that it be resolved through compulsory arbitration. Plaintiff's counsel attested that it was his intention that the matter be submitted to binding arbitration.

DISCUSSION

The sole issue before this Court is whether Defendant has a right to appeal from the award of the arbitrators. This determination depends on the nature of the arbitration to which the matter was submitted. Plaintiff argues that the parties submitted to voluntary binding arbitration and, therefore, any award given by the arbitrators would be final (i.e. non-appealable). Defendant, on the other hand, contends that the parties submitted to compulsory arbitration and, thus, any award is appealable with a right to trial *de novo*. Because the parties did not construct a written arbitration agreement specifying the terms of the arbitration, including whether the award be binding, I must look at the various forms of arbitration under Pennsylvania law and focus my analysis on the conduct of the parties and surrounding circumstances prior to submission of the matter to arbitration.

The Pennsylvania Consolidated Statutes Annotated governs statutory (§§7301-7320),³ common law (§§7341 and 7342) and judicial arbitration (§§7361 and 7362). There are two types of recognized judicial arbitration: voluntary arbitration of pending judicial matters (§7362) and compulsory arbitration (§7361). In voluntary arbitration of pending judicial matters, a civil matter or issue may be referred by consent of the parties for hearing. 42 Pa.C.S.A. §7362.

³ Statutory arbitration proceedings are known collectively as the Pennsylvania Uniform Arbitration Agreement ("UAA"). Two requirements must be met in order for arbitration to fall under the UAA: 1) the agreement to arbitrate must be in writing, and 2) the agreement must expressly provide for arbitration under the UAA. *Midomo Co. v. Presbyterian Housing Dev. Co.*, 739 A.2d 180, 183 (Pa.Super. 1999); 42 Pa.C.S.A. 7302(a). The arbitration proceedings in this case clearly do not fall within the scope of statutory arbitration, as the parties did not devise a written agreement to arbitrate.

Section 7362(d) permits appeals from voluntary arbitration on the following grounds:

Appeal.—Any party to a matter referred under this section shall have such rights of appeal, if any, as shall be prescribed by general rules. Where no right to appeal is prescribed by general rule, all parties shall be deemed to have waived any right to appeal which they might otherwise enjoy under the Constitution of Pennsylvania or otherwise in mutual consideration of an expeditious final disposition of the matter, but no such waiver shall apply if it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

42 Pa.C.S.A. §7362(d).

However, in compulsory arbitration, similar matters not involving title to real property where the amount in controversy does not exceed \$25,000.00 “shall first be submitted to and heard by a board of three members of the bar of the court.” 42 Pa.C.S.A. §7361. The right to appeal a compulsory arbitration award is set forth in Section 7361(d) and allows that “Any party to a matter shall have the right to appeal for trial de novo in the court...” 42 Pa.C.S.A. §7361(d).

In determining which statutory provision governs the instant case, this Court first looks to our Superior Court’s analysis in *Jonnet Development Corporation v. Service Employees International Union Local 585*, 427 A.2d 682 (Pa.Super. 1981), for guidance. In this case, Jonnet Development Corporation (“Jonnet”) initiated action by filing a complaint against the union for rentals due under a lease agreement. Subsequently, a court order was entered and consented to by counsel, stipulating that the matter be submitted to arbitration for a final determination. The order provided that the matter be heard by an arbitrator “without necessity to proceed with litigation” and that the arbitrator’s “decision shall constitute a final determination of the claims of the parties.” An arbitration hearing was held and an award given, which Jonnet challenged by filing a Notice of Appeal from the arbitrator’s award with the trial court. The union moved to quash the appeal, arguing that the award was final and non-appealable. *Id.*

I note that the *Jonnet* court makes no reference to a written arbitration agreement. Rather, the only written document evidencing the parties' willingness to submit the case to arbitration is, as here, the trial court's order.

Superior Court examined this matter under 42 Pa.C.S.A. §7362 (Voluntary arbitration of pending judicial matters). *Jonnet* relied upon the Allegheny County Local Court Rules as constituting the "general rules" referred to in this section. *Id.* at 683. The court concluded that because Local Court Rules promulgated by the Courts of Common Pleas do not constitute "general rules" and *Jonnet* did not assert misconduct, corruption, fraud or denial of a hearing, it failed to establish support for its right to appeal. Therefore, the court held that the parties' right to appeal was waived pursuant to Section 7362(d). *Id.* at 684. The *Jonnet* court further noted that the language of the trial court's order providing that the arbitration award be a final determination of the matter bolsters the contention that the parties intended to waive their right to appeal the award. *Id.*

Like the court in *Jonnet*, I find that the arbitration in the present case falls under the statutory provision of Section 7362 (Voluntary arbitration of pending judicial matters). Similar to the facts in *Jonnet*, here Plaintiff initiated a civil action against Defendant that subsequently was referred to arbitration upon the consent of counsel. Also, Defendant, as the challenging party, filed a Notice of Appeal from the arbitrators' award with this Court, which Plaintiff moved to quash, arguing that the award was final and non-appealable. Accordingly, in order for Defendant to appeal from the arbitrators' award, he needs to show that such an appeal is prescribed by general rule or assert denial of a hearing and/or misconduct, corruption or fraud in the arbitration proceedings. Defendant has failed to make such an assertion, and therefore has no grounds for an appeal. Consequently, I conclude that the parties waived their right to appeal under Section 7362(d).

Also, I find that the parties' conduct and the surrounding circumstances prior to submission of the matter to arbitration demonstrates the parties' intention to voluntarily refer the case to arbitration and to be bound by the arbitrators' award. During the Pre-Trial Conference held on April 15, 2002, the parties discussed removing the case from the trial list and submitting it to arbitration. Although the parties dispute whether the discussion involved binding or compulsory

arbitration, I find that this Court's Order, dated that same day, dispels any confusion.⁴ In said order, I instructed the parties to notify this Court within two weeks whether "binding arbitration is an acceptable resolution of this matter." (emphasis added).⁵ By letter dated April 25, 2002, Plaintiff's counsel indicated that, after conferring with his client, "we will be pursuing arbitration," and that Defendant's counsel "concur[s] with this request." This letter was clearly in response to this Court's April 15, 2002 Order. As such, I find that Plaintiff's reference to arbitration necessarily implies binding arbitration.⁶

Accordingly, by further Order, dated May 1, 2002, this Court ordered the removal of the matter from the trial list because the parties were "pursuing arbitration." I recognize that the court in *Jonnet* considered the trial court's order, which explicitly stated that the matter be heard by an arbitrator without necessity to proceed with litigation and that the arbitrator's decision shall constitute a final determination of the claims, significant in supporting the union's contention that the arbitration award was final and non-appealable. Although this Court's May 1, 2002 Order referring the matter to arbitration does not explicitly provide for "binding arbitration," pursuant to the above analysis, this general language does not prove dispositive in favor of Defendant when considered against the background of the April 15, 2002 Order.

Had Defendant intended the matter to be pursued by compulsory, non-binding arbitration, then he should have indicated such to the Court at least sometime prior to the arbitration hearing. Defendant had ample time to clarify his intention during the 14 months of inaction in this case. However, he failed to do so. Therefore, the arbitration proceeded as referenced in this Court's April 15, 2002 Order, that being, binding arbitration.

⁴ While the undersigned does not have total recall of counsel's discussion at the conference, my notes specifically refer to "binding arbitration." I do not recall, nor do my notes reflect, mention of "compulsory" arbitration.

⁵ This time period was imperative because the trial term was to commence on May 13, 2002.

⁶ Judges must be able to assume that lawyers read court orders and that when attorneys respond to a specific question, they do not mean something else without being clear. Here, counsel was directed to indicate prior to April 29, 2002 whether "binding" arbitration was acceptable. Only one response came during that time frame and it did not state that the parties are pursuing compulsory arbitration instead of binding arbitration.

Defendant, on the other hand, argues that the conduct of the parties and the surrounding circumstances prior to submission of the case to arbitration establishes that the parties intended the matter to be pursued under compulsory arbitration. This Court initially notes that over two years had lapsed from the time this action was commenced on December 9, 1999 to the time when the parties consented to submit the matter to arbitration on April 25, 2002. During that time, this Court did not receive a motion to compel arbitration under §7361 from either party. In fact, Plaintiff's complaint sought damages in excess the monetary limit for compulsory arbitration under the statute.⁷

In support of his position that the parties agreed to compulsory arbitration, Defendant relies significantly on *Wagner v. Oneida Motor Freight, Inc.*, 3 Pa. D. & C.3d 23 (Bucks 1976), *aff'd*, 249 A.2d 630 (Pa.Super. 1977), for the proposition that absent a clear waiver of the parties' right to appeal for a trial *de novo*, in accordance with the compulsory arbitration statute, a waiver of that right cannot be found.

In *Wagner*, plaintiff, in moving to quash defendant's appeal of the arbitrators' award, argued that, after a jury had been called but before the jury was sworn and the trial begun, the case was submitted to arbitration by agreement of counsel upon stipulation that the amount in controversy did not exceed the statutory limit. *Id.* at 25. Plaintiff contended that his intention to submit the matter to arbitration at such a late date was that the arbitration award be final and that the parties waived any right to appeal. The court found that plaintiff's counsel's deposition only supported his intention and did not, in turn, establish that defendant or defendant's counsel ever intended that the submission to arbitration be a waiver of the parties' right to appeal. The court, therefore, concluded that absent a clear waiver of that right, which the court found was not present on the record, such waiver could not be found. *Id.*

⁷ Although not dispositive, the Court can conceive of no practical reason for Plaintiff to agree to an arbitration proceeding from which an appeal could be taken. He was on the verge of trial. Defendant had made a nominal settlement offer and there would be no reason to believe he would not appeal a sizable award in Plaintiff's favor. Defendant, however, could well benefit from binding arbitration. He would know the limits of his exposure. Attorney's fees before an arbitration panel are generally less than if counsel prepares for a jury trial. Furthermore, he well could believe that three attorneys might be less sympathetic to Plaintiff and/or more conservative in an award.

Wagner is distinguishable from the case at hand in that here, after the Pre-Trial Conference where the parties discussed the option of submitting the case to arbitration, this Court ordered the parties to respond within two weeks whether binding arbitration was an acceptable resolution of the matter. As stated above, Plaintiff's letter notifying this Court that the parties agreed to pursue arbitration was clearly in response to this Court's Order referring to binding arbitration. It follows then that since neither party indicated their intention to pursue compulsory, non-binding arbitration, the parties were answering the Court's question and intended to submit the matter to binding arbitration. Such intention is further supported by Defendant's failure to advise this Court of his desire to pursue compulsory, non-binding arbitration during the 14 months of inaction in the case. Thus, *Wagner* provides little guidance on this matter, since in the instant case, it is clear that the parties originally intended to submit the case to binding arbitration, thereby waiving their right to appeal.⁸

Defendant further relies on Plaintiff's praecipe to the Prothonotary to bolster his position that the parties agreed to refer the case to compulsory arbitration. On May 9, 2003, Plaintiff filed his "Praecipe for Reference to Arbitrators in Cases at Issue Involving \$25,000.00 or less, not Involving Title to Real Estate." Defendant asserts that this praecipe submitted the case to the compulsory arbitration process under 42 Pa.C.S.A. §7361 and Adams County Local Rule of Court. Yet, nowhere in the praecipe does Plaintiff indicate under which statutory provision or local rule the case is to be submitted for arbitration. Perhaps Defendant construes Plaintiff's choice of title for the praecipe to imply such statutory and local authority.

Although this issue raises some concern, this Court is not willing to accept the implication suggested by Defendant. Again, given that the parties' agreement to arbitrate was in response to this Court's April 15, 2002 Order referring to binding arbitration and neither

⁸Defendant also contends that in order for an arbitration to be rendered binding and non-appealable, the language in the arbitration agreement must provide that the arbitrators' award be "final" or "final and binding." However, the case law, to which Defendant cites to support his contention, simply does not require such language in an arbitration agreement to render an award binding/non-appealable.

party specified that the arbitration be otherwise, I do not find the title to the praecipe to be of such significant magnitude as to prove dispositive against Plaintiff.

Even if this Court concluded that the case was submitted to compulsory arbitration, the disposition would remain the same because the parties agreed that the judgment be binding. Although the right of appeal from a compulsory arbitration award is a substantial right, it is not absolute and therefore can be subjected to reasonable conditions. *Rosenberg v. Monteverde & Hemphill, P.C., et al.*, 688 A.2d 1210, 1212 (Pa.Super. 1997), citing *Meta v. Yellow Cab Company of Philadelphia*, 294 A.2d 898 (Pa.Super. 1972). Agreeing that the compulsory arbitration award be binding is one such condition. See *Rosenberg*, 688 A.2d at 1212 (trial court did not abuse its discretion by enforcing an agreement made by the parties to be bound by a compulsory arbitration award).

Here, based upon my prior analysis, the parties' agreement to arbitrate is an agreement to the condition that the arbitration award be binding on the parties. I find, then, that even if this matter was submitted to compulsory arbitration, the condition that the award be binding was nevertheless agreed upon. Therefore, Defendant has no right to appeal the arbitrators' award under §7361(d).⁹

Finally, this Court notes that if it determined that the case had been submitted to common law arbitration, the same result would occur. Section 7341 (Common law arbitration) provides, "The award...is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable, or unconscionable award." 42 Pa.C.S.A. §7341.

⁹ I do believe Defendant is entitled to the return of his attorney's check for the amount of \$500.00, representing compensation of the arbitrators, which he filed with his Notice of Appeal pursuant to the Pennsylvania Rules of Civil Procedure 1308(a). This section provides that a party appealing a compulsory arbitration award must, *inter alia*, make "...payment to the prothonotary of the compensation of the arbitrators not exceeding fifty percent of the amount in controversy...." Adams County Local Rules of Court 1302(d)(1) sets forth compensation of the arbitrators as follows, "...the chairman shall be paid two hundred dollars (\$200.00) and the two members one hundred and fifty dollars (\$150.00),..." Local Rules of Court 1302(d)(1). Since this Court does not find that the case was submitted to compulsory arbitration, Defendant was not required to provide the Prothonotary with payment for compensation of the arbitrators.

The arbitrators are the final judges of both law and fact, and an arbitration award is not subject to reversal for a mistake of either. *Sage v. Mitchell S. Greenspan, Esq., et al.*, 765 A.2d 1139, 1142 (Pa.Super. 2000), citing *Prudential Prop. & Cas. Ins. Co. v. Stein*, 683 A.2d 683, 684 (Pa.Super. 1996).

To appeal a common law arbitration award, a party must file his challenge in conformity with Section 7342(b), which provides, "On application of a party made more than 30 days after an award is made by an arbitrator under 7341 (relating to common law arbitration) the court shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order..." 42 Pa.C.S.A. 7324(b). Pennsylvania courts have interpreted this section to require that any challenge to an arbitration award be made in an appeal to the Court of Common Pleas by filing a petition to vacate or modify the arbitration award within 30 days of the date of the award. *Sage*, 765 A.2d at 1142, citing *Hall v. Nationwide Mut. Ins. Co.*, 629 A.2d 954 (Pa.Super. 1993). Specifically, Defendant is required to raise alleged irregularities in the arbitration process in a timely petition to vacate or modify the arbitration award. See *Id.*

Here, Defendant filed a Notice of Appeal, not a petition to modify or vacate the award due to irregularities in the arbitration proceedings. Because he failed to follow the procedural requirements and has not established proper grounds to appeal, Defendant likewise would not prevail under common law arbitration.

Accordingly, the attached Order is entered.

ORDER OF THE COURT

AND NOW, this the 22nd day of January, 2004, Plaintiff's Motion to Quash Appeal of Arbitrators' Award is granted.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-856 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those four tracts of land situated, lying and being in Liberty Township, Adams County, Pennsylvania, being Lot Nos. 13, 14, 15, and 16, of "Stone Manor Farm", more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a railroad spike in Topper Road (T-312) at land now or formerly of Charles T. and Anna H. Kemper; thence by said land, North 88 degrees 13 minutes 42 seconds East, 1,207.57 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 374.24 feet to an iron pin at Lot No. 15; thence by said lot, South 88 degrees 13 minutes 42 seconds West, 793.41 feet to an iron pin at Lot No. 14; thence by said lot, North 4 degrees 55 minutes 5 seconds East, 130 feet to an iron pin; thence continuing by said lot, South 88 degrees 13 minutes 42 seconds West, 400 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 5 degrees 30 minutes East, 175 feet to a railroad spike; thence continuing in said Topper Road (T-312), North 10 degrees 8 minutes 40 seconds West, 70 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 1 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 13.

SUBJECT TO the restrictions contained in Record Book 444 at Page 769.

TRACT NO. 2: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 13; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 400 feet to an iron pin; thence continuing by said lot and by Lot No. 15, South 4 degrees 55 minutes 5 seconds West, 244.98 feet to an iron pin; thence continuing by Lot No. 15, South 88 degrees 13 minutes 42 seconds West, 400 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 4 degrees 3 minutes 5 seconds East, 98.44 feet to railroad spike; thence continuing in said Topper Road (T-312), North 5 degrees 30 minutes East, 146.56 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 2 was taken from a draft of survey

dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 14.

SUBJECT TO the restrictions contained in Record Book 365 at Page 539.

TRACT NO. 3: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 14; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 400 feet to an iron pin; thence continuing by said lot, North 4 degrees 55 minutes 5 seconds East, 114.98 feet to an iron pin at Lot No. 13; thence by said lot, North 88 degrees 13 minutes 42 seconds East, 793.41 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 510.39 feet to an iron pin at Lot No. 16; thence by said lot, North 87 degrees 48 minutes 12 seconds West, 1,172.40 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312); North 10 degrees 38 minutes 33 seconds West, 50 feet to a railroad spike; thence continuing in said Topper Road (T-312), North 4 degrees 3 minutes 5 seconds East, 263.90 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 3 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 15.

TRACT NO. 4: BEGINNING at a railroad spike in Topper Road (T-312) at Lot No. 15; thence by said lot, South 87 degrees 48 minutes 12 seconds East, 1,172.40 feet to an iron pin at land now or formerly of Carl R. Sturges, Thomas A. Bradford, Jr. and Walter B. Ward, Jr.; thence by said land, South 4 degrees 33 minutes 31 seconds West, 347 feet to an iron pin at Lot No. 17; thence by said lot, South 87 degrees 37 minutes 57 seconds West, 1,063.17 feet to a railroad spike in said Topper Road (T-312); thence in said Topper Road (T-312), North 10 degrees 38 minutes 33 seconds West, 442.37 feet to the place of BEGINNING.

THE ABOVE DESCRIPTION of Tract No. 4 was taken from a draft of survey dated October 10, 1980, prepared by Boyer Surveys, recorded in Plat Book 35 at Page 7, designating the above as Lot No. 16.

Tract Nos. 3 and 4, are SUBJECT TO the restrictions contained in Record Book 359 at Page 1096.

SEIZED and taken into execution as the property of Wyndemair on Lake Myton, Inc. and to be sold by me

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/17, 22 & 30

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, January 3, 2005, at 9:00 a.m.

MILLER—Orphans' Court Action Number OC-110-04. The First and Final Account of Donald G. Miller and Owen L. Miller, Co-Executors of the Estate of Melvin G. Miller, deceased, late of Butler Township, Adams County, Pennsylvania.

SCHRIVER—Orphans' Court Action Number OC-120-04. The First and Final Account of Phyllis W. Horick, Executrix of the Estate of Nita Weaner Schriver, deceased, late of Straban Township, Adams County, Pennsylvania.

KING—Orphans' Court Action Number OC-124-04. The First and Final Account of Charles Biesecker, Executor of the Estate of Margaret E. King, deceased, late of Straban Township, Adams County, Pennsylvania.

Lisa K. Grubbs
Clerk of Courts

12/22 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-860 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two tracts of land situate in Freedom Township, Adams County, Pennsylvania, bounded and described as follows:

Tract No. 1:

BEGINNING at a stake at the West side of the State Highway leading from Gettysburg to Emmitsburg at lands now or formerly of Robert Witherow and Mrs. Leslie Kennel, thence by lands now or formerly of Mrs. Leslie Kennel, South 77 degrees West 442.2 feet to a stake; thence by lands now or formerly of Fred W. Green, North 25 degrees East 125 feet to a stake; thence by the same, North 77 degrees East 442.2 feet to a point in the State Highway aforesaid; thence along said State Highway and land now or formerly of Robert Witherow, South 25 degrees West 125 feet to a stake, the place of BEGINNING. CONTAINING 1 acre, more or less.

Tract No. 2:

BEGINNING at a point in the State Highway Route 15, leading from Emmitsburg to Gettysburg, with an iron pin set back along the line, thence in the center of said Highway, South 25-1/2 degrees West 107.5 feet to a point in the said Highway, with an iron pin set back along the line; thence by land now or formerly George Kennel North 85-1/2 degrees West 409.5 feet to an iron pin; thence by land now or formerly of Calvin Dennis Manahan, also known as Calvin D. Manahan, North 80 degrees East 450.2 feet to a point in said Highway, with an iron pin set back along the line, the place of BEGINNING. CONTAINING 76 perches and 18 square feet, more or less.

The above-described two tracts of land are the same which Allen J. Sebald and Dorothy E. Sebald, husband and wife, by their Deed dated March 27, 1989, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 518, at page 227, sold and conveyed unto Helene D. Keese and Lory A. Keese, as joint tenants with the right of survivorship and not as tenants in common, Mortgagors herein.

SEIZED and taken into execution as the property of **Helene D. Keese & Lory A. Keese** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/22, 30 & 1/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-991 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 4th day of February, 2005, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing magnetic spike in the center line of Crouse Road (Township Road T-412) at corner of land now or formerly of Winifred Thomson; thence by said land of Winifred Thomson, and by land now or formerly of Robert Slapp, passing through a steel rod set back 25.0 feet from the last mentioned point, and also passing through an existing steel rod set back 274.96 feet from the next mentioned point, South 43 degrees, 22 minutes, 15 seconds West, 825.18 feet to an existing steel rod on line of land now or formerly of Mary Schildt et al; thence by said land of Mary Schildt et al, North 40 degrees, 31 minutes, 10 seconds West, 85.00 feet to an existing steel rod; thence continuing by same, South 47 degrees, 31 minutes, 50 seconds West, 125.00 feet to a concrete monument at corner of Lot No. 1 on the hereinafter referred to plan of lots; thence by said Lot No. 1, North 47 degrees, 20 minutes, 55 seconds West, 390.00 feet to a steel rod; thence continuing by same, North 43 degrees, 54 minutes, 45 seconds East, 445.64 feet to a steel rod; thence continuing by said Lot No. 1, South 46 degrees, 05 minutes, 15 seconds East, 67.73 feet to a concrete monument; thence continuing by same, passing through a steel rod set back 25.0 feet from the next mentioned point, North 43 degrees, 54 minutes, 45 seconds East, 641.28 feet to a magnetic spike,

three (3) feet West of the center line of Crouse Road; thence in said Crouse Road, South 27 degrees, 31 minutes, 00 seconds East, 429.20 feet to an existing magnetic spike in the center line of said Crouse Road (Township Road T-412), the point and place of BEGINNING. CONTAINING 10.001 acres.

THE ABOVE description was taken from a plan of lots prepared by Adams County Surveyors, dated June 25, 1998, recorded in Plat Book 75 at page 22, designating the above as Lot #2.

MAP G-18, PARCEL 3B

TITLE TO SAID PREMISES IS VESTED IN Gregory L. Crouse and Pamela L. Crouse, husband and wife by Deed from Craig A. Redding and Catherine M. Redding, husband and wife dated 3/4/1999 and recorded 3/9/1999 in Record Book 1782, Page 269.

SEIZED and taken into execution as the property of **Gregory L. Crouse & Pamela L. Crouse** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 28, 2005, 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.

12/22, 30 & 1/7

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 MARCIA E. DAYWALT a/k/a MARCIA ELAINE DAYWALT a/k/a MARCIA DAYWALT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Administrator: Ronald J. Daywalt, 11931 Loop Road, Fayetteville, PA 17222

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

ESTATE OF EVELYN H. GEESAMAN a/k/a EVELYN R. GEESAMAN, DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Personal Representative: Donald L. Geesaman, c/o Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

ESTATE OF JEAN G. RICE, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executor: William L. Rice, 108 N. Williams St., York, PA 17404

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

ESTATE OF HAROLD W. SETTLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325, Attn: Karen B. Arthur

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

ESTATE OF JAMES A. SHANEFELTER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Personal Representatives: Joseph C. Shanefelter, 6120 Baltimore Pike, Littlestown, PA 17340; Samuel A. Shanefelter, 1561 Broadway, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF GERALD E. BROUGH a/k/a GERALD EDWARD BROUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Doris Elizabeth Brough, 141 York St., Gettysburg, PA 17325

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

ESTATE OF CARRIE R. EISENHART, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Personal Representatives: B. Scott Eisenhart, 322 A High Rock Rd., Hanover, PA 17331; Joy A. Daugherty, 322 A High Rock Rd., Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF KATHARINE A. KINT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Michael A. Kint, 1280 Good Intent Road, Gettysburg, PA 17325; Ellis H. Kint, Jr., 2682 Baltimore Pike, Gettysburg, PA 17325

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

ESTATE OF CLINTON L. RHODES, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Timothy W. Rhodes, 405 Delone Avenue, McSherrystown, PA 17344

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

ESTATE OF MARGERIE M. WEIKERT, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Administratrix: Kathryn Anne Boyer, 23 High Street, Biglerville, PA 17307

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

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

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

James E. Temchack and Nancy T. Temchack, husband and wife, and Sherman H. Roe and Gladys Roe, husband and wife, Plaintiffs

vs.

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

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

YOU ARE NOTIFIED that an Order has been entered on December 6, 2004, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiffs above to assert any claim you may have in and to the lands described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in the Plaintiffs' Complaint with respect to all those three (3) tracts of land, which tracts are situate in the Borough of Biglerville, Adams County, Pennsylvania, and are more particularly bounded and described as follows:

Lot A:

BEGINNING at a magnetic spike on the edge of East York Street (S.R. 0234) and at corner of land of James E. Temchack as shown on the attached survey; thence along said land of Temchack South 34 degrees 27 minutes 50 seconds East, 180.00 feet to a at corner of Lot B; thence along said Lot B South 34 degrees 27 minutes 50 seconds East, 1.9 feet to an existing steel rod; thence along same South 34 degrees 27 minutes 50 seconds East, 10.9 feet to a steel rod along line of land of Lester Vanarsdale, Jr.; thence along said Vanarsdale land, South 55 degrees 29 minutes 15 seconds West, 12.00 feet to a steel rod at corner of Lot C; thence along said Lot C North 34 degrees 27 minutes 50 seconds West, 12.72 feet to a point at corner of land of Sherman H. Roe; thence along said Roe land North 34 degrees 27 minutes 50 seconds West, 180.00 feet to a magnetic spike on the edge of East York Street (S.R. 0234); thence along said East York Street North 55 degrees 04 minutes 45 seconds East, 12.00 feet to a magnetic spike on the edge of East York Street (S.R. 0234) and at corner of land of James E. Temchack, the point and place of BEGINNING, CONTAINING 2,310 square feet and designated as Lot A.

Lot B:

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

Lot C:

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

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

Puhl, Eastman & Thrasher
Harold A. Eastman, Jr., Esq.

220 Baltimore Street
Gettysburg, PA 17325
(717) 334-2159

Attorneys for Plaintiffs James E. Temchack and Nancy T. Temchack

Hartman & Yannetti
Gary E. Hartman, Esq.
126 Baltimore Street
Gettysburg, PA 17325
(717) 334-3105

Attorneys for Plaintiff Sherman H. Roe
12/30

LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the home office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 15th, 2005 to elect directors and to transact any other business properly presented.

Attest

Marilyn Q. Butt

President, Treasurer, Director

12/22, 30, 1/7 & 14

INCORPORATION NOTICE

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

The name of the corporation is WHISTLEPIG TRUCKING, INC.

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

Whistlepig Trucking, Inc.

36 Sedgwick Drive
East Berlin, PA 17316

12/30