

Adams County Legal Journal

ol. 38

November 1, 1996

No. 23, pp. 135-138

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO.

REISTERSTOWN FEDERAL
SAVINGS BANK

vs.

TIMOTHY M. FRIEDEL and
BART W. BAUERLIEN, t/d/b/a
B & T CUSTOM HOMES

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money

claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have 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 Officer
Adams County Court House
111 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone: (717) 334-6781

AVISO

USTED HA SIDO DEMANDADO EN LA CORTE. Si usted desea defenderse de las quejas expuestas en las paginas siguientes, debe tomar accion dentro de veinte (20) dias a partir de la fecha en que recibio la demanda y el aviso. Usted debe presentar comparecencia escrita en persona o por abogado y presentar en la Corte por escrito persona o por abogado y presentar en la Corte por escrito sus defensas o sus objeciones a las

demandas en su contra.

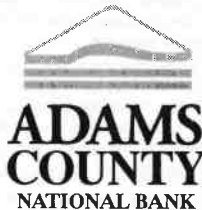
Se le avisa que si no se defiende, el caso puede proceder sin usted y la Corte puede decidir en su contra sin mas aviso o notificacion por cualquier dinero reclamado en la demanda o por cualquier otra queja o compensacion reclamados por el Demandante. USTED PUEDE PERDER DINERO, O PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI USTED NO TIENE O NO CONOCE UN ABOGADO, VAYA O LLAME A LA OFICINA EN LA DIRECCION ESCRITA ABAJO PARA AVERIGUAR DONDE PUEDE OBTENER ASISTENCIA LEGAL.

County Referral Officer
Adams County Court House
111 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone: (717) 334-6781

11/1

Commitment:
The philosophy upon which
Adams County National Bank is
founded and upon which we are planning
for your future financial needs today.



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. 94-N-321 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT OF LAND situate, lying and being in Menallen Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the centerline of Pennsylvania Route 34, Biglerville-Carlisle Road, at lands of Gettysburg Industrial Development Authority; THENCE by said lands and through a chisel mark in center of concrete headwall set back 14.80 feet on the line, South 64 Degrees 41 Minutes 10 seconds East, 308.90 feet to an existing iron pin; THENCE continuing by said lands South 48 degrees 7 Minutes East, 46.99 feet to a point at Lot Number 2 on the hereinafter recited draft; THENCE by said lot South 22 Degrees 2 Minutes 50 Seconds West, 506.02 feet to a point at lands of Billie W. and Sandra M. Haymaker; THENCE by said lands and through an existing steel stake in tree root set back 137.61 feet from the end of this course and through an existing iron pin set back 27.26 feet from the end of this course, North 62 Degrees 28 Minutes 45 Seconds West, 402.46 feet to a point in the centerline of said Pennsylvania Route 34; THENCE in said Pennsylvania Route 34 North 27 Degrees 31 Minutes 15 Seconds East, 503.47 feet to the place of beginning.

CONTAINING 4.421 acres, more or less.

BEING Lot Number 1 on a draft of survey dated August 5, 1985, prepared by Boyer Surveys, and recorded in Adams County Plat Book 42 at 78.

BEING the same premises which Harris F. Gustafson and Betty M. Gustafson granted and conveyed unto Thomas B. Birks and Anita L. Birks by Deed dated September 26, 1986 and recorded in the Office of the Recorder of Deeds for Adams County on September 26, 1986 in Deed Book 437, Page 217.

SEIZED and taken into execution as the property of **Thomas B. Birks and Anita L. Birks**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
May 7, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/18, 25 & 11/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-639 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land SITUATE, lying and being in the Borough of Carroll Valley, formerly Liberty Township, County of Adams and Commonwealth of Pennsylvania, being Lot No. 41 in Section RH, bounded and described as follows, to wit:

BEGINNING at a point in the center of Brasmer Lane at Lot 40; thence by said lot North 2 degrees 37 minutes 20 seconds East, 185.23 feet to Lot No. 70; thence by said lot and by Lot No. 69 South 87 degrees 22 minutes 40 seconds East, 200 feet to Lot No. 42; thence by said Lot South 2 degrees 37 minutes 20 seconds West, 185.23 feet to a point in the center of said Brasmer Lane; thence in said Brasmer Lane, North 87 degrees 22 minutes 40 seconds West, 200 feet to the place of beginning.

THE above description was taken from a plan of lots labeled "Section RH of Charnita, Inc." dated 8/8/68, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book 1, at page 32.

TAX PARCEL NO. 159, MAP NO. 41

TITLE to said premises is vested in George A. Zeigler, III by Deed from James E. Bowling dated 4/7/93 and recorded 4/14/93 in Deed Book 710 Page 216.

SEIZED and taken into execution as the property of **George A. Zeigler, III**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/1, 8 & 15

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with and approved by the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 26th day of September, 1996, for the purpose of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the Pennsylvania Business Corporation Law of 1933, P. L. 364, as amended.

The name of the corporation is GEBHART POLE BUILDINGS, INC. The purpose of the corporation is to engage in and to do any and all business for which Pennsylvania business corporation may be lawfully formed, including but not limited to pole building and general construction of commercial and residential buildings. The location and post office address of its initial registered office is R.D.#1, Box 250, Lincolnway East, Abbottstown, PA 17301.

John J. Mooney, III, Esquire
250 York St.
Hanover, PA 17331

11/1

KIMMEY VS. HOOVER, ET UX

1. If the averments of the Complaint are sufficient to enable the responding party to file his answer, the motion raising the insufficient specificity of the Complaint will be denied.
2. While an oral agreement regarding a loan is subject to the four year statute of limitations, when the period commences is another matter and is not automatically based upon the date the loan was made.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-1001, WILLIAM KIMMEY VS. DONALD N. HOOVER AND SALLY A. HOOVER.

John M. Crabbs, Esq., for Plaintiff
Samuel A. Gates, Esq., for Defendants

OPINION ON DEFENDANTS' PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Kuhn, J., March 13, 1996.

Plaintiff, William Kimmey, filed a complaint against Defendants, Donald N. Hoover and Sally A. Hoover, alleging that beginning in 1990 and continuing through October, 1992, he made numerous loans to them totaling \$13,180.81 but that despite demand they had only repaid him the sum of \$481.00. Defendants filed preliminary objections which are now before the Court for disposition.

The first objection challenges the sufficiency of the averment relating to a portion of the loans. Plaintiff attached an exhibit to his complaint wherein he listed the various dates when monies were advanced to Defendants. The last item states "Between September, 1990 and October, 1992, additional funds were loaned in the amount of \$4,605.82." The litigation having been filed on October 26, 1995, Defendants argue that some, if not all, of the claims may be precluded by the four year statute of limitations. 42 Pa. C.S.A. §5525.¹ They claim that without more specificity they are unable to determine, from the pleading, which sums might have been advanced prior to October 26, 1991, and therefore subject to the defense.

Preliminary objections raising the insufficient specificity of a complaint are permitted under Pa. R.C.P. 1028(a)(3). Generally, in ruling on such a motion the question to be decided is whether the complaint is sufficiently clear to enable the defendant to prepare a response or whether it informs him with accuracy and completeness of the specific

¹ Subsection (3) speaks to causes of action based upon an express contract not founded upon an instrument in writing.

basis on which recovery is sought so he may know, without question, upon what grounds to make his defense. 2 Goodrich Amram 2d §1017(b):21. The standard of pleading required by Pa. R.C.P. 1019(a) calls for material facts to be stated in a concise and summary form. Broad discretion is allowed because some courts find this standard incapable of precise measurement. See *In re: Barnes Foundation*, ___ Pa. Super. ___, ___, 661 A.2d 889, 895-6 (1995). If the averments are sufficient to enable the responding party to file his answer the motion will be denied. *Tanon v. Knouse*, 34 Ad. Co. L.J. 207, 209 (1992).

Although the challenged averment is not a model of pleading draftsmanship it is nevertheless sufficient to allow a response. Whether sums were loaned to Defendants between September, 1990 and October, 1992 in the amount of \$4,605.82 is as well known to Defendants as to Plaintiff. Evidentiary matter providing greater detail is available through discovery.

Whether the pleading was sufficiently specific to allow Defendants to raise the statute of limitations affirmative defense will not form the basis of sustaining preliminary objections in this case. No doubt an oral agreement regarding a loan is subject to the four year statute of limitations. When the period commences is another matter and is not automatically based upon the date the loan was made. See *Gurenlian v. Gurenlian*, 407 Pa. Super. 102, 595 A.2d 145 (1991). Denying the motion will not preclude Defendants from raising the limitations defense in new matter.

Defendants' second objection addresses the prayer for relief. Plaintiff simply demanded judgment against Defendants "in an amount within the Arbitration limits of this Court." This prayer clearly violates Pa. R.C.P. 1028(a)(2). However, it is clear to any reader of the Amended Complaint that Plaintiff is seeking \$12,699.81 which is the balance of the purported loans less credits. In consideration of the liberal construction to be given the Rules, Pa. R.C.P. 126, we see no reason to require Plaintiff to replead.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 13th day of March, 1996, Defendants' Preliminary Objections to Plaintiff's Amended Complaint is denied. Defendants are granted twenty (20) days from the date of mailing of this Order to file their Answer.

SEAY VS. STEINOUR, ET AL.

1. A Motion to Strike is not a substitute for a Motion for a More Specific Pleading.
2. Where a Plaintiff sues several Defendants jointly, alleging liability jointly or in the alternative, separate counts are not required.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-617, AMELIA SEAY VS. DOCTOR WILLIAM J. STEINOUR AND THE GETTYSBURG HOSPITAL.

James W. Harris, Esq. for Plaintiff
Evan Black, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., March 26, 1996.

This is a malpractice action against a doctor and the hospital where he practices. Plaintiff seeks damages for what she describes as an improper diagnosis and treatment of a fractured ankle. The complaint alleges that the doctor wrongly diagnosed the injury as a sprain. She has joined the doctor and the hospital in one count, Count II, alleging agency and vicarious liability.

Defendants move to strike certain allegations. They have not sought a more specific pleading, but assert that failure to list specific facts from which negligence can be inferred violates Pa. R.C.P. 1019.

It is true that conclusions, alone, cannot form the basis for liability. However, there is nothing wrong with conclusions if they are supported by factual allegations. *United Air Lines Federal Credit Union v. Furtado*, 32 A.C.L.J. 43 (1990). This is important, as applied to the case before us, because a motion to strike is not a substitute for a motion for a more specific pleading.

A failure to adequately plead sufficient facts is not a failure to conform to a rule of court and may not be remedied by a motion to strike off a pleading. A motion to strike is not a substitute for a motion for a more specific pleading.

2 Goodrich Amram 2d. §1017(b):12, page 256.

We find the motion to strike, based on Rule 1019, lacking in merit as to all parts of the complaint except one. In ¶ 14(d), plaintiff alleges "He was otherwise negligent and careless as discovery may further reveal." Since, obviously, no factual allegations appear in the complaint to support this averment, it is stricken. Plaintiff's remedy is to

seek leave to amend if and when discovery produces facts which would support allegations of negligence.

Defendants further seek to have Count II stricken because both the doctor and the hospital are joined in one count. In 2 Goodrich Amram 2d, § 1020(a):3, it is stated, “[w]here a plaintiff sues several defendants jointly, alleging liability jointly or in the alternative, separate counts are not required.”

That is the case sub judice.

ORDER OF COURT

AND NOW, this 26th day of March, 1996, Paragraph 14(d) is stricken. Otherwise, preliminary objections are dismissed. Defendants shall have twenty (20) days in which to file an answer to the amended complaint.

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-844
Action to Quiet Title

LPG LIMITED, TRUSTEE, Plaintiff,
vs.

JAMES D. LINDNER and BARBARA L. LINDNER, husband and wife, their heirs, successors or assigns, Defendants.

TO: JAMES D. LINDNER and BARBARA L. LINDNER, husband and wife, their heirs, administrators, successors and assigns

TAKE NOTICE that on September 26, 1996, LPG Limited, Trustee, filed a Complaint in Action to Quiet Title, against James D. Lindner and Barbara L. Lindner, husband and wife, their heirs, administrators, successors and assigns, averring that LPG Limited, Trustee, is the owner of the real property described herein. The Complaint requests the Court to extinguish any possible interest you may have in said real estate. The subject property is a tract of land situate in Liberty Township, Adams County, Pennsylvania, and described as follows:

ALL that certain tract of land situated in Carroll Valley, Adams County, Pennsylvania, being more particularly described as Charnita Area Section B, Lot No. 323, as shown on records in the Adams County Mapping Department and recorded in the Office of Recorder of Deeds of Adams County, Pennsylvania in Miscellaneous Docket 4 at Page 654, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING THE SAME WHICH Charnita, Inc. by its deed dated June 29, 1967 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 262 at Page 585 on June 30, 1967, sold and conveyed unto James D. Lindner and Barbara L. Lindner, Grantors herein.

The Complaint requested the Court to enter a Decree and Order that the title of the property described above is in the Plaintiffs, and that the Defendants be forever barred from asserting any right, lien, title or interest in the said land inconsistent with the interests of the Plaintiffs as set forth in their Complaint.

WHEREFORE, by Order dated October 17, 1996, the Court of Common Pleas of Adams County, Pennsylvania, has ordered that service of the Complaint be made on the above Defendants, their respective heirs, personal representatives, successors and assigns, by publication. Plaintiffs will request the Court to enter a final judgment ordering that any possible legal interest the Defendants might have had in the property be extinguished.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set

forth in the Complaint filed in the Adams County Court of Common Pleas at No. 96-S-844 and described hereinabove, you must take action within twenty (20) days after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiff. You may lose property or other rights important to you.

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

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
717-334-6781

HARTMAN & YANNETTI
Gary E. Hartman, Esq.
Attorney for Plaintiffs
126 Baltimore Street
Gettysburg, PA 17325

11/1

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

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

HARRY L. RAMAGE and
DAVID A. KRULAC, Plaintiffs,
vs.

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

ORDER

AND NOW, TO WIT, this 7th day of June, 1996, an Affidavit of Service of the Complaint with Notice to Plead having been filed, and no Answer having been made by the Defendants, the Estate of Charles W. Rankin, his heirs and assigns, and Bruce W. Rankin, Administrator, upon Motion of Edna M. Moore, Attorney for the Plaintiffs, THIS COURT HEREBY ORDERS THAT:

A. The Defendants, the Estate of Charles W. Rankin, his heirs and assigns, and Bruce W. Rankin, Administrator, shall be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest or claim of the Plaintiffs set forth in their Complaint unless the Defendants seek an action or ejection or other appropriate relief within ten (10) days hereafter. If such action is not taken within this 10-day period, the Prothonotary, on Praecipe of the Plaintiffs, shall enter final judgment.

B. The Adams County Tax Claim Bureau, and all entities claiming under it, shall be forever barred from asserting any lien in or to said real property, or any part thereof, adverse to Plaintiffs with respect to 1993, or earlier, county, township or school taxes.

C. Upon the entry of final judgment, the Plaintiffs are declared the sole and absolute owners, in law and in equity, of the real property subject to this suit and which is more fully described in the document attached hereto and marked as "Exhibit A."

D. Upon the entry of final judgment, the Recorder of Deeds of Adams County shall record a copy of this Order.

BY THE COURT,
/S/ OSCAR F. SPICER
P.J.

EXHIBIT "A"

Charnita Area Section RA, Lot 27, as shown on a plan of lots labeled "Section RA, Charnita," dated September 3, 1938, and recorded in Plat Book 1 at Page 33.

Sold as the property of Charles W. Rankin Estate, as described in the deed of Charnita, Inc., a Pennsylvania corporation, by their deed dated June 28, 1969, and recorded in the Office of the Recorder of Deeds, Adams County, Pennsylvania in Deed Book 278 at Page 125 on October 7, 1969. This property subject to existing restrictions.

Sale No. 123

11/1

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 ALBERT M. BYARD, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executrix: Kimberly Tabor, 1197 Old Waynesboro Pike, Fairfield, PA 17320
 Attorney: Donald G. Oyler, 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF BETTY SUE MATTERN, DEC'D

Late of York Springs, Adams County, Pennsylvania
 Executor: Charles W. Mattern, 724 Quaker Church Road, York Springs, PA 17372
 Attorney: John M. Crabbs, Esq., 202 Broadway, Hanover, PA 17331

ESTATE OF WILFRED B. SCHEIVERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania
 Co-Executors: Ethel M. Scheivert, 39 Fawn Avenue, New Oxford, PA 17350; Michael R. Scheivert, 34 Delaware Avenue, Littlestown, PA 17340
 Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF ETHEL M. STERNER, DEC'D

Late of Union Township, Adams County, Pennsylvania
 Co-Executors: Ruth L. Grove, 34 Pine Grove Road, Hanover, PA 17331; Glenn W. Sterner, 830 Pine Grove Road, Hanover, PA 17331; Clyde L. Sterner, 886 Pine Grove Road, Hanover, PA 17331
 Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GEORGE P. WOOD, DEC'D

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

SECOND PUBLICATION

ESTATE OF NORMAN J. HOFFMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Robert M. Gillelan, P.O. Box 505, Biglerville, PA 17307
 Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KATHRYN LORRAINE HOOVER, DEC'D

Late of Reading Township, Adams County, Pennsylvania
 Co-executors: Fred M. Ensor, 5346 Carlisle Pike, New Oxford, PA 17350; Rosalie A. Davis, 335 Greenbrier Road, York Springs, PA 17372
 Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF NELLIE G. STAUB, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executors: Adams County National Bank, Lincoln Square Office, P.O. Box 4566, Gettysburg, PA 17325; Louis T. Guthrie, Esquire, 40 York Street, Hanover, PA 17331
 Attorney: Louis T. Guthrie, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF PAULINE H. BENNEY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Henry Stock, 2 Berlin Road, New Oxford, PA 17350; Martha M. Stock, 2371 Carlisle Pike, Hanover, PA 17331
 Attorney: Donald E. Albright, Esquire, 515 Carlisle Street, Hanover, PA 17331

ESTATE OF JOHN B. CHISNELL, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executrix: Cheryl R. Putman, 2409 Hanover Road, Gettysburg, PA 17325
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RUTH A. CONAWAY, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: Maurice G. Neiman, 257 Abbottstown Pike, Abbottstown, PA 17301; Bank of Hanover and Trust Company, Trust Dept., 25 Carlisle Street, Hanover, PA 17331
 Attorney: Daniel M. Frey, Crabbs & Frey, 14 Center Square, Hanover, PA 17331

ESTATE OF THEODORE C. DANIELS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executrix: Elizabeth W. Daniels, 232 North Fourth Street, Gettysburg, PA 17325
 Attorney: Chester G. Schultz, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF WILLIAM C. MEARNES, SR., DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania
 Executrix: Carolyn T. Dorsett, 4 Crescent Place, Cranford, NJ 07016
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Gladys M. Howard, appointed as such on February 5, 1965, has filed its First and Final Account and a Statement of Proposed Distribution with the Clerk of Courts of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on November 25, 1996, at 9:00 a.m.

Peggy J. Breighner, Clerk
 Hartman & Yannetti, Esqs.
 126 Baltimore Street
 Gettysburg, PA 17325

10/25, 11/1 & 8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-N-622 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two tracks or land situate in the Borough of Carroll Valley, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1: BEGINNING at a point in the center of Pennsylvania Route No. 116 at Lot No. 15CR; thence by said lot, South 60 degrees 32 minutes 40 seconds West 164.39 feet to Lot No. 37CR; thence by said lot, North 29 degrees 16 minutes West 136.15 feet to Lot No. 13CR; thence by said lot, North 63 degrees 54 minutes 40 seconds East 139.55 feet to a point in the center of said Pennsylvania Route No. 116; thence in said Pennsylvania Route No. 116, South 40 degrees 21 minutes East 130.32 feet to the place of BEGINNING. Being known as Lot No. 14CR in Section B, Charnita.

Tract No. 1 is SUBJECT TO restrictions as set forth in Adams County Deed Book 264 at page 1136.

TRACT NO. 2: BEGINNING at a point in the center of Pennsylvania Route No. 116 at Lot No. 16CR; thence by said lot, South 60 degrees 44 minutes West 181.29 feet to Lot No. 36CR; thence by said lot, North 29 degrees 16 minutes West 100 feet to Lot No. 14CR; thence by said lot, North 60 degrees 32 minutes 40 seconds East 164.39 feet to a point in the center of said Pennsylvania Route No. 116; thence in said Pennsylvania Route No. 116 by a curve to the right, the radius of which is 1,910.08 feet, for an arc distance of 101.96 feet to the place of BEGINNING. Being known as Lot No. 15CR in Section B, Charnita.

Tract No. 2 is SUBJECT TO restrictions as set forth in Adams County Deed Book 305 at page 1032.

The above descriptions were taken from a plan of lots labeled "Section B Supplemental 2, Charnita" and dated July 10, 1985, prepared by Gordon L. Brown, P. S., recorded in Adams County Miscellaneous Docket 5 at page 370.

BEING the same which William C. Garde and Barbara L. Garde, his wife, by deed dated February 10, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 514 at page 530, conveyed to Edward Ray Wachter, the Defendant herein.

TOGETHER WITH rights and SUBJECT TO restrictions, conditions, reservations and easements as contained in the above recited deed.

SEIZED and taken into execution as the property of **Edward Ray Wachter**, and to be sold by me

Bernard V. Miller
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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10/25, 11/1 & 8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-273 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land located in the County of Adams, Borough of Gettysburg, and Commonwealth of Pennsylvania, described as follows:

BEGINNING at a point on the western property line of Ridge Avenue along line of lot now or formerly of Albert W. Butterfield, where it intersects the southern property line of McMillan Street; thence along the southern property line of McMillan Street South 73 degrees 55 minutes 25 seconds East, 100.00 feet to a point at corner of Lot No. 2 on the draft of survey hereinafter referred to; thence along Lot No. 2 South 16 degrees 11 minutes 00 seconds West, 107.65 feet to a point at land of the United States Government, Dept. of Interior; thence along land of the United States Government North 73 degrees 23 minutes 58 seconds West, 100.00 feet to corner of lot now or formerly of Albert W. Butterfield; thence along lot now or formerly of Albert W. Butterfield, North 16 degrees 10 minutes 46 seconds East, 106.73 feet to a point, the place of BEGINNING.

CONTAINING 10,719 square feet.

HAVING THEREON erected a dwelling house known and numbered as 524 McMillan Street, Gettysburg, Pennsylvania.

The above description was taken from draft of survey entitled "Final Plan Gertrude P. Winebrenner Est." prepared by Donald E. Worley, Professional Land Surveyor, dated April 10, 1985 and re-

corded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat 41, Page 80, designated as Lot No. 1.

BEING THE SAME TRACT OF LAND that Charlotte W. Swope and Jane W. Kenny, Executrixes of the Estate of Gertrude A. Winebrenner, by their deed dated May 16, 1985 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 400, page 933, sold and conveyed unto Richard E. Simpson and Martha E. Simpson, husband and wife, Mortgagors herein.

Seized, taken in execution and to be sold as the property of Richard E. Simpson and Martha E. Simpson, judgment debtors and real owners.

SEIZED and taken into execution as the property of **Richard E. Simpson and Martha E. Simpson**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 15, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/1, 8 & 15

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on October 7, 1996, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is **JAMES ZARTMAN PLASTERING, INC.**

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

James Zartman Plastering, Inc.
315 Berlin Road
New Oxford, PA 17350

Adams County Legal Journal

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No. 24, pp. 139-144

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-227 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in Township Road No. T-484, known as Hoffman Road, at the Southwest corner of land now or formerly of Stewart E. Davis; thence by said land now or formerly of Stewart E. Davis and running through an iron pin located (20) feet from the place of begining, North seventy-seven (77) degrees twenty-eight (28) minutes twenty (20) seconds East, two hundred thirty-two (232) feet to an iron pin; thence by other land of John Kappes, deceased, South twelve (12) degrees thirty-one (31) minutes forty (40) seconds East, one hundred eighty-seven and seventy-six hundredths (187.76) feet to an iron pin; thence by land now or formerly of Paul F. Kriger and wife, and running through an iron pin located twenty (20) feet from the end of this line, South seventy-seven (77) degrees twenty-eight (28) minutes twenty (20) seconds West, to hundred thirty-two (232) feet to a railroad spike in Township Road No. T-484, known as Hoffman Road; thence in said Township Road, north twelve (12) degrees thirty-one (31) minutes forty (40)

seconds West, one hundred eighty-seven and seventy-six hundredths (187.76) feet to the railroad spike, the place of BEGINNING. CONTAINING ONE (1) ACRE.

The description herein was taken from the mortgage from John R. Plank and Irene M. Plank to The Gettysburg National Bank, predecessor in interest to PNC Bank, N.A., as recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, at Record Book 413 at page 262 et seq.

This property is improved with a dwelling.

SEIZED and taken into execution as the property of **John R. Plank and Irene M. Plank** and to be sold by me

Bernard V. Miller
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/8, 15 & 22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State, Commonwealth of Pennsylvania, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation under the "Business Corporation Law of 1988," as amended, of the Commonwealth of Pennsylvania. The name of the Corporation is **KIMBERLEY'S KORNER, INC.**

Andrew F. Kagen, Esquire
Solicitor

11/8

INCORPORATION NOTICE

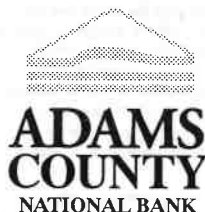
NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about October 9, 1996 for **D.C. DISTRIBUTING, INC.** The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

The purpose for which said corporation is formed are that: The corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Act of December 21, 1988, P.L. 1444, its amendments and supplements, under the provisions of which said Act this corporation is incorporated.

Stonesifer and Kelley
Solicitor

11/8

Quality Customer Service.
Our promise to you every day.



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. 96-S-639 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land SITUATE, lying and being in the Borough of Carroll Valley, formerly Liberty Township, County of Adams and Commonwealth of Pennsylvania, being Lot No. 41 in Section RH, bounded and described as follows, to wit:

BEGINNING at a point in the center of Brasmer Lane at Lot 40; thence by said lot North 2 degrees 37 minutes 20 seconds East, 185.23 feet to Lot No. 70; thence by said lot and by Lot No. 69 South 87 degrees 22 minutes 40 seconds East, 200 feet to Lot No. 42; thence by said Lot South 2 degrees 37 minutes 20 seconds West, 185.23 feet to a point in the center of said Brasmer Lane; thence in said Brasmer Lane, North 87 degrees 22 minutes 40 seconds West, 200 feet to the place of beginning.

THE above description was taken from a plan of lots labeled "Section RH of Charnita, Inc." dated 8/8/68, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book 1, at page 32.

TAX PARCEL NO. 159, MAP NO. 41

TITLE to said premises is vested in George A. Zeigler, III by Deed from James E. Bowling dated 4/7/93 and recorded 4/14/93 in Deed Book 710 Page 216.

SEIZED and taken into execution as the property of **George A. Zeigler, III**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

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

11/1, 8 & 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-646 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land, situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to-wit:

BEGINNING at a point on the southern right-of-way line of South Lincoln Drive, a 60 feet wide right-of-way, at corner of Lot No. 51 on the subdivision plan hereinafter referred to; thence along the southern right-of-way line of South Lincoln Drive, by a curve to the left having a radius of 185 feet, the long chord bearing and distance of which is South 34 degrees 26 minutes 52 seconds East, 57.26 feet for an arc distance of 57.49 feet to a point at Lot No. 49 on the subdivision plan hereinafter referred to; thence along Lot No. 49, South 46 degrees 38 minutes 57 seconds West, 127.87 feet to a point at lands now or formerly of Robert J. Krisley; thence along said Krisley's land, North 59 degrees 10 minutes 57 seconds West 60 feet to a point at other lands of Joseph A. Myers Real Estate, Inc.; thence along said last mentioned lands, North 08 degrees 19 minutes 00 seconds West, 47.87 feet to a point at Lot No. 51 on the subdivision plan hereinafter referred to; thence along Lot No. 51, North 64 degrees 27 minutes 19 seconds East, 131.94 feet to a point on the southern right-of-way line of South Lincoln Drive, the point and place of Beginning. (CONTAINING 10,957 square feet and being Lot No. 50 on final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 15, 1987, revised October 8, 1987, designated as File No. G-97, and recorded in The Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, Page 44.)

Being the same real estate conveyed to Raymond W. Speelman by deed of Joseph A. Myers Real Estate, Inc., a

Pennsylvania corporation, dated August 29, 1989 and recorded in Adams County Record Book 523, Page 885.

Improved with a two story dwelling (being one side of a duplex) and having a street address of 237 S. Lincoln Drive, Hanover, Pennsylvania 17331.

SEIZED and taken into execution as the property of **Raymond W. Speelman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/8, 15 & 22

NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Gladys M. Howard, appointed as such on February 5, 1965, has filed its First and Final Account and a Statement of Proposed Distribution with the Clerk of Courts of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on November 25, 1996, at 9:00 a.m.

Peggy J. Breighner, Clerk
Hartman & Yannetti, Esqs.
126 Baltimore Street
Gettysburg, PA 17325

10/25, 11/1 & 8

COMMONWEALTH VS. TRIVITT

1. Where there was a reasonable basis for counsel's action his ineffectiveness has not been shown.
2. Extrajudicial statements introduced to explain conduct are not hearsay and may be introduced.

In the Court of Common Pleas, Adams County, Pennsylvania,
Criminal No. CC-79-95 COMMONWEALTH OF PENNSYLVANIA VS. MITCHELL EZRA TRIVITT.

Roy Keefer, Esq., for the Commonwealth
Gregory Lensbower, for Defendant

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

Spicer, P.J., March 20, 1996.

Defendant was found guilty, by a jury on November 9, 1995, of rape by forcible compulsion, rape by threat of forcible compulsion, rape involving a victim incapable of consent, statutory rape, involuntary deviate sexual intercourse involving forcible compulsion, involuntary deviate sexual intercourse involving a victim under the age of 16, indecent assault without consent and indecent assault, involving a victim under the age of 14. Sentence was imposed December 12, 1995, with various concurrent terms of imprisonment in a state correctional institution being ordered. The longest sentence was 66 months to 132 months.

Defendant filed post sentence motions which raised ineffectiveness of trial counsel, a claim that the verdicts were against the weight of the evidence and further claiming trial errors. A hearing was conducted February 21, 1996. The transcript of this proceeding incorrectly lists it as a PCRA hearing and gave an erroneous date of February 21, 1995. Following the hearing, the court considered all issues raised by defendant and dismissed defendant's motions. A full explanation of the court's reasons and analysis is fully set forth in the transcript of that proceeding, which was filed March 11, 1996. A full transcript of trial proceedings also appears in the file.

This case involves sexual mistreatment of a girl, who was under the age of 11, at the hands of her stepfather. At trial, C.D., the victim, described contact and sexual penetration of her mouth and vagina. Two Pennsylvania State Police Officers testified for the Commonwealth. Trooper Carey Lee McElheny described an inculpatory statement made by Trivitt during the course of a polygraph examination. Defendant took the stand to deny improper sexual contact

with the victim and produced various witnesses, including C.D.'s mother and cousins to describe statements by the victim that she (C.D.) would do anything, including lying, to get defendant out of the house.

Issues that have been raised include the following:

1. Ineffective assistance of counsel:

(a) the polygraph examination. Defendant has argued that trial counsel improperly allowed him to submit to a polygraph examination. As we explained following the post sentence hearing, counsel was faced with a difficult case, involving a minor witness who had evidenced some emotional problems. The examination results would have been inadmissible, *Commonwealth v. Schneider*, 386 Pa. Super. 202, 562 A.2d 868 (1989), and counsel had no reason to believe defendant would make an inculpatory statement. Counsel was hopeful that a good result would convince the District Attorney to exercise his discretion and either reduce the charges, or drop them entirely. Thus, while there might be arguable merit to defendant's assertion, there was a reasonable basis for counsel's action. Thus, ineffectiveness has not been shown. *Commonwealth v. Crawley*, 541 Pa. 408, 663 A.2d 676 (1995)

(b) failure to move for suppression. Defendant argues that trial counsel should have moved to suppress his inculpatory remarks made to Trooper McElheny. It is obvious that there would have been no basis for him to have done this. The interrogation was clearly non custodial. Defendant, furthermore, waived both his Fifth and Sixth amendment rights. The trooper did not engage in trickery or deceit to obtain the statement. By its nature, it displays voluntary exclamation. The statement was admissible. *Commonwealth v. Schneider*, supra.

(c) failure to call a witness. Originally, defendant argued that the testimony of Terri Flemig constituted after discovered evidence. Ms. Flemig was a foster parent who provided a home for C.D. after allegations of abuse and before trial. It quickly became apparent that Ms. Flemig's testimony was available at time of trial and that she was interviewed by trial counsel. The focus then shifted to whether counsel should have called her as a defense witness.

Ms. Flemig had little to offer in the way of exculpation. She may have provided additional testimony as to C.D.'s motives for wanting defendant out of her home, but did not relate, to counsel, that C.D. made statements inconsistent with trial testimony. Thus,

defendant was unable to show that counsel's failure to present the witness prejudiced him. This is fatal. *Commonwealth v. Crawley*, *supra*.

2. Weight or sufficiency of evidence: This attack is based simply and solely on the assertion that C.D. was not a credible witness. However, her testimony was never shaken concerning the pivotal allegations of intercourse and assault. The jury heard testimony of motive and possible prior inconsistencies. We pointed out that the verdicts did not shock this judge's sense of justice. Issues were strictly for the jury to determine. *Commonwealth v. Holmes*, 444 Pa.Super 257, 663 A.2d 771 (1995)

3. Trial error: Trooper McElheny was allowed, over objection, to describe a statement made to him to defendant during the polygraph examination. Defendant said that C.D.'s mother told him that C.D. reported that defendant came home drunk and was after her. As a result, defendant said he quit drinking.

The defense objection was based on hearsay. The jury was given limiting instruction, immediately upon reception of the testimony.

Extrajudicial statements introduced to explain conduct are not hearsay and may be introduced. The court must balance probative value against prejudice. Defendant's statement that he quit drinking, after being accused of sexual misconduct while drunk, was probative of his guilt. Since all declarants testified at trial, there was no prejudice. *Commonwealth v. Jones*, 540 Pa. 442, 658 A.2d 746 (1995).

This statement is provided pursuant to Pa. R.P.App.P. 1925.

AMERICAN STATES INSURANCE COMPANIES VS. SNADER

Since the insurance policy was written by the insurance company, any ambiguity will be interpreted against the company.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-1108, AMERICAN STATES INSURANCE COMPANIES VS. TRACY L. SNADER, ADMINISTRATRIX OF THE ESTATE OF WAYNE K. SNADER, DECEASED.

Paul W. Grego, Esq., Plaintiff

Eric J. Wiener, Esq. and James R. Carroll, Esq., for Defendant

OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS

Kuhn, J., March 28, 1996.

On November 30, 1995, Plaintiff, American States Insurance Company, filed an action for declaratory judgment against Defendant, Tracy L. Snader, Administratrix of the Estate of Wayne K. Snader, Deceased. The background for this action occurred on May 10, 1995, when Wayne K. Snader was involved in a fatal vehicular accident in Dauphin County, Pennsylvania. At the time Mr. Snader was operating a dump truck for his employer, Brenize's Trucking. The dump truck was insured under an insurance policy issued by Plaintiff to Brenize's Trucking. According to the instant Complaint Defendant is seeking underinsured motorist benefits under the policy. Plaintiff argues that Defendant's recovery is limited to Workmen's Compensation benefits or, in the alternative, to a maximum underinsured coverage of \$35,000.

Defendant filed preliminary objections seeking a stay of all proceedings and an order that the issue of coverage be submitted to arbitration. The policy in question contains the following language:

ARBITRATION

a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "underinsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured," then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. . .

Defendant contends that whether the estate is "legally entitled to recover damages from the owner" of the vehicle is an issue which can be arbitrated pursuant to this policy provision. Plaintiff holds the view that whether Workmen's Compensation benefits preclude coverage is an issue "concerning coverage" and is not arbitrable.

With the exception of the last sentence of the above quoted arbitration clause that language is identical to the language found in the policy in *Brennan v. General Accident Fire and Life Assurance Corp., Ltd.*, 324 Pa. 542, 574 A.2d 580 (1990). In *Brennan* our Supreme Court stated that,

A review of the language of the arbitration clause reveals that arbitration is mandated whenever the in-

sured and the insurer disagree as to when a party is legally entitled to recover damages. There is no limit to the jurisdiction of the arbitrators over what issues may be submitted and in fact the policy declares that all disputes between the insurance company and the insured will be arbitrated. The instant dispute, in its broadest sense, involves a disagreement as to the amount of damages which Appellant would and could possibly receive under the policy. This court has held, since the insurance policy was written by the Appellee, any ambiguity will be interpreted against the Appellee... Given the broad scope of authority given the arbitrators, we have little difficulty in concluding that the dispute herein is a matter specifically within the scope of the arbitration clause. 524 Pa. at 549, 574 A.2d at 583 (citation omitted).

Although *Brennan* and its progeny is helpful in defining the scope of arbitration clauses in underinsurance policies those cases are only partially helpful in resolving this case. In *Brennan* here the broad scope of authority for arbitration was without express exception while in this case there is a specific exclusion set forth in the last sentence regarding "coverage." At first glance the first and second sentence of the arbitration clause appear in conflict. Such ambiguity would suggest that arbitration is available for the instant dispute because the contract language would be construed against the drafter.

There is, however, a more cogent analysis that leads this Court to authorize arbitration of this dispute. It appears that the exclusionary language in the arbitration clause is included in this policy by authority of the Pennsylvania Insurance Department. In *Pennsylvania Bulletin*, Vol. 24, No. 16, April 16, 1994, the Insurance Department set forth permissible arbitration provisions for automobile insurance policies. Those provisions mirror the *Brennan* policy and the instant policy, except for the exclusionary sentence. The Department currently also allows arbitration clauses to exclude disputes as to stacking, waivers, residency, statutes of limitation or whether a claimant is an insured under the coverage. 31 Pa. Code §63.103.

If the purpose of the sentence excluding arbitration for disputes of coverage in this case is to exclude questions of whether a claimant

is an insured then arbitration is not excluded here. An insured under this policy is anyone occupying a covered vehicle. The parties do not dispute that Mr. Snader occupied a vehicle covered by the policy at the time of the accident.

Under that portion of the underinsured endorsement titled "coverage" the policy reads that Plaintiff will pay all sums the insured is legally entitled to recover as compensatory damages from the owner of the underinsured vehicle after the limits of liability policies have been exhausted or a settlement between the insured and the insurer of the underinsured vehicle has been effectuated. As noted above, to exclude issues of "coverage" (the amounts the insured is legally entitled to recover) from arbitration while at the same time submitting to arbitration disputes whether the insured is legally entitled to recover damages and the amount thereof is logically inconsistent and ambiguous.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 28th day of March, 1996, Defendant's Preliminary Objections are granted. The issue of whether Defendant is entitled to underinsurance benefits and the amount thereof or whether Defendant is limited to receipt of Workmen's Compensation benefits shall be submitted to arbitration. Meanwhile, all proceedings are stayed.

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 G. RICHARD BALDWIN, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: George R. Baldwin, 45 Dug Hill Road, Biglerville, PA 17307

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

ESTATE OF KATHRYN W. CRAIG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Kathleen B. Ellwood, a/k/a, Kathleen B. Elwood, 1918 Pagebrook Rd., Silver Spring, MD 20903

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

ESTATE OF STEWART W. EICHELBERGER, DEC'D

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

Executrix: Mary Eichelberger Giambalvo, a/k/a, Mary A. Giambalvo of 315 Lyndhurst Road, York, Pennsylvania 17402

Attorney: Audrey E. Woloshin

ESTATE OF FRED A. KUHN, DEC'D

Late of Gettysburg, Pennsylvania

Administrator C.T.A.: Paul Kuhn

Attorney: Richard C. Ruben, 113 Locust Street, Harrisburg, PA 17101

ESTATE OF LETHA A. KEPNER MYERS, DEC'D

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

Executor: Clarence C. Cullison, 2315 Mummasburg Road, Gettysburg, PA 17325

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

SECOND PUBLICATION

ESTATE OF ALBERT M. BYARD, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Kimberly Tabor, 1197 Old Waynesboro Pike, Fairfield, PA 17320

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

ESTATE OF BETTY SUE MATTERN, DEC'D

Late of York Springs, Adams County, Pennsylvania

Executor: Charles W. Mattern, 724 Quaker Church Road, York Springs, PA 17372

Attorney: John M. Crabbs, Esq., 202 Broadway, Hanover, PA 17331

ESTATE OF WILFRED B. SCHEIVERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Ethel M. Scheivert, 39 Fawn Avenue, New Oxford, PA 17350; Michael R. Scheivert, 34 Delaware Avenue, Littlestown, PA 17340

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

ESTATE OF ETHEL M. STERNER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Co-Executors: Ruth L. Grove, 34 Pine Grove Road, Hanover, PA 17331; Glenn W. Sterner, 830 Pine Grove Road, Hanover, PA 17331; Clyde L. Sterner, 886 Pine Grove Road, Hanover, PA 17331

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

ESTATE OF GEORGE P. WOOD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

THIRD PUBLICATION

ESTATE OF NORMAN J. HOFFMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Robert M. Gillelan, P.O. Box 505, Biglerville, PA 17307

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

ESTATE OF KATHRYN LORRAINE HOOVER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-executors: Fred M. Ensor, 5346 Carlisle Pike, New Oxford, PA 17350; Rosalie A. Davis, 335 Greenbrier Road, York Springs, PA 17372

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

ESTATE OF NELLIE G. STAUB, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Adams County National Bank, Lincoln Square Office, P.O. Box 4566, Gettysburg, PA 17325; Louis T. Guthrie, Esquire, 40 York Street, Hanover, PA 17331

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-N-622 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of November, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two tracks or land situate in the Borough of Carroll Valley, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1: BEGINNING at a point in the center of Pennsylvania Route No. 116 at Lot No. 15CR; thence by said lot, South 60 degrees 32 minutes 40 seconds West 164.39 feet to Lot No. 37CR; thence by said lot, North 29 degrees 16 minutes West 136.15 feet to Lot No. 13CR; thence by said lot, North 63 degrees 54 minutes 40 seconds East 139.55 feet to a point in the center of said Pennsylvania Route No. 116; thence in said Pennsylvania Route No. 116, South 40 degrees 21 minutes East 130.32 feet to the place of BEGINNING. Being known as Lot No. 14CR in Section B, Charnita.

Tract No. 1 is SUBJECT TO restrictions as set forth in Adams County Deed Book 264 at page 1136.

TRACT NO. 2: BEGINNING at a point in the center of Pennsylvania Route No. 116 at Lot No. 16CR; thence by said lot, South 60 degrees 44 minutes West 181.29 feet to Lot No. 36CR; thence by said lot, North 29 degrees 16 minutes West 100 feet to Lot No. 14CR; thence by said lot, North 60 degrees 32 minutes 40 seconds East 164.39 feet to a point in the center of said Pennsylvania Route No. 116; thence in said Pennsylvania Route No. 116 by a curve to the right, the radius of which is 1,910.08 feet, for an arc distance of 101.96 feet to the place of BEGINNING. Being known as Lot No. 15CR in Section B, Charnita.

Tract No. 2 is SUBJECT TO restrictions as set forth in Adams County Deed Book 305 at page 1032.

The above descriptions were taken from a plan of lots labeled "Section B Supplemental 2, Charnita" and dated July 10, 1965, prepared by Gordon L. Brown, R. S., recorded in Adams County Miscellaneous Docket 5 at page 370.

BEING the same which William C. Garde and Barbara L. Garde, his wife, by deed dated February 10, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 514 at page 530, conveyed to Edward Ray Wachter, the Defendant herein.

TOGETHER WITH rights and SUBJECT TO restrictions, conditions, reservations and easements as contained in the above recited deed.

SEIZED and taken into execution as the property of **Edward Ray Wachter**, and to be sold by me

Bernard V. Miller
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 16, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

10/25, 11/1 & 8

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-273 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land located in the County of Adams, Borough of Gettysburg, and Commonwealth of Pennsylvania, described as follows:

BEGINNING at a point on the western property line of Ridge Avenue along line of lot now or formerly of Albert W. Butterfield, where it intersects the southern property line of McMillan Street; thence along the southern property line of McMillan Street South 73 degrees 55 minutes 25 seconds East, 100.00 feet to a point at corner of Lot No. 2 on the draft of survey hereinafter referred to; thence along Lot No. 2 South 16 degrees 11 minutes 00 seconds West, 107.65 feet to a point at land of the United States Government, Dept. of Interior; thence along land of the United States Government North 73 degrees 23 minutes 58 seconds West, 100.00 feet to corner of lot now or formerly of Albert W. Butterfield; thence along lot now or formerly of Albert W. Butterfield, North 16 degrees 10 minutes 46 seconds East, 106.73 feet to a point, the place of BEGINNING.

CONTAINING 10,719 square feet.

HAVING THEREON erected a dwelling house known and numbered as 524 McMillan Street, Gettysburg, Pennsylvania.

The above description was taken from draft of survey entitled "Final Plan Gertrude P. Winebrenner Est." prepared by Donald E. Worley, Professional Land Surveyor, dated April 10, 1985 and re-

corded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat 41, Page 80, designated as Lot No. 1.

BEING THE SAME TRACT OF LAND that Charlotte W. Swope and Jane W. Kenny, Executrixes of the Estate of Gertrude A. Winebrenner, by their deed dated May 16, 1985 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 400, page 933, sold and conveyed unto Richard E. Simpson and Martha E. Simpson, husband and wife, Mortgagors herein.

Seized, taken in execution and to be sold as the property of Richard E. Simpson and Martha E. Simpson, judgment debtors and real owners.

SEIZED and taken into execution as the property of **Richard E. Simpson and Martha E. Simpson**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 15, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 14 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.

1/1, 8 & 15

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed in the Department of State on behalf of BUFORD BIOMEDICAL, INC., a business corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988.

Duane, Morris & Heckscher
305 North Front Street
Post Office Box 1003
Harrisburg, PA 17108-1003

11/8

Adams County Legal Journal

v. 38

November 15, 1996

No. 25, pp. 145-150

NOTICE

A public hearing to identify and prioritize issues to be explored by the Third Circuit Task Force on Equal Treatment in the Courts will be held on Monday, November 18, 1996 from 4:00 p.m. to 6:00 p.m. at the Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA.

"THE TASK FORCE IS CHARGED WITH CONDUCTING A COMPREHENSIVE EXAMINATION OF THE TREATMENT OF ALL PARTICIPANTS IN THE JUDICIAL PROCESS... IN THE THIRD CIRCUIT TO ASSURE EQUALITY, REGARDLESS OF GENDER, RACE AND ETHNICITY."

Preliminary areas identified for the study include:

- Court System Interaction
- Court Personnel and Employment Practices
- Appointments by Judges
- Special Issues in Criminal Justice
- Special Issues in Bankruptcy
- Special Issues Relating to Juries
- Special Issues Relating to Language
- Intersection of Race and Gender

Any person or organization wishing to testify or to submit written comments, or seeking further information, should contact Mary E. D'Andrea, Clerk of Court, at 235 North Washington Avenue, Scranton, PA 18501-1148, (717/347-1795) no later than November 13, 1996.

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, November 25, 1996, at 9:00 o'clock a.m.

DUSMAN—Orphans' Court Action Number OC-119-96. The First and Final Account of William H. Dusman, Executor of the Estate of Roswell F. Dusman, deceased, late of Oxford Township, Adams County, Pennsylvania.

LOCHBAUM—Orphans' Court Action Number OC-120-96. The First and Final Account of Regina A. Roth and Bernard E. Lochbaum, Executors of the Estate of Dorothy E. Lochbaum, deceased, late of Franklin Township, Adams County, Pennsylvania.

CLAPSADL—Orphans' Court Action Number OC-152-96. The First and Final Account of Mary T. Mickley and Jane C. Reed, Executrices of the Last Will and Testament of Ruth K. Clapsadl, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

BAIR—Orphans' Court Action Number OC-124-96. The First and Final Account of Marie E. Bair Sanders, Administratrix of the Estate of Gregory A. Bair, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

SHRIVER—Orphans' Court Action Number OC-122-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Frank R. Shriver, deceased, late of Straban Township, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Frank R. Shriver, deceased, under P.E.F. Code §3501.2.

STRALEY—Orphans' Court Action Number OC-129-96. The First and Final Account of Alma M. Straley and Amy Kaye Straley, Executrices of the Last Will and Testament of Erma C. Straley, deceased, late of Cumberland Township, Adams County, Pennsylvania.

HUFF—Orphans' Court Action Number OC-130-96. The First and Final Account of Joan W. Huff and Craig L. Yingling, Executors of the Will of Floyd C. Huff, deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

LYNN—Orphans' Court Action Number OC-135-96. The First and Final Account of Diana L. Dillman, Administratrix of the Estate of John Henry Lynn, deceased, late of Roanoke, Virginia.

MILLER—Orphans' Court Action Number OC-136-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Arthur A. Miller, deceased, late of Berwick Township, Adams County, Pennsylvania.

O'CONNOR—Orphans' Court Action Number OC-137-96. The First and Final Account of PNC Bank, NA, Executor of the Estate of George F. O'Connor, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

HOYT—Orphans' Court Action Number OC-15-96. The First and Final Account of PNC Bank, N.A., successor to the Gettysburg National Bank, Executor of the Last Will and Testament of Helen Hoyt, a/k/a Helen G. Hoyt, deceased, late of Straban Township, Adams County, Pennsylvania.

KEBIL—Orphans' Court Action Number OC-37-90. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Robert P. Kebil, deceased, late of Gettysburg Borough, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Robert P. Kebil, deceased, under P.E.F. Code Sec. 3501.2.

Peggy J. Breighner
Clerk of Courts

11/15, 22

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-639 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land SITUATE, lying and being in the Borough of Carroll Valley, formerly Liberty Township, County of Adams and Commonwealth of Pennsylvania, being Lot No. 41 in Section RH, bounded and described as follows, to wit:

BEGINNING at a point in the center of Brasmer Lane at Lot 40; thence by said lot North 2 degrees 37 minutes 20 seconds East, 185.23 feet to Lot No. 70; thence by said lot and by Lot No. 69 South 87 degrees 22 minutes 40 seconds East, 200 feet to Lot No. 42; thence by said Lot South 2 degrees 37 minutes 20 seconds West, 185.23 feet to a point in the center of said Brasmer Lane; thence in said Brasmer Lane, North 87 degrees 22 minutes 40 seconds West, 200 feet to the place of beginning.

THE above description was taken from a plan of lots labeled "Section RH of Charnita, Inc." dated 8/8/68, prepared by Gordon L. Brown, R.S., recorded in Adams County Plat Book 1, at page 32.

TAX PARCEL NO. 159, MAP NO. 41

TITLE to said premises is vested in George A. Zeigler, III by Deed from James E. Bowling dated 4/7/93 and recorded 4/14/93 in Deed Book 710 Page 216.

SEIZED and taken into execution as the property of **George A. Zeigler, III**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

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

11/1, 8 & 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-646 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land, situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to-wit:

BEGINNING at a point on the southern right-of-way line of South Lincoln Drive, a 60 feet wide right-of-way, at corner of Lot No. 51 on the subdivision plan hereinafter referred to; thence along the southern right-of-way line of South Lincoln Drive, by a curve to the left having a radius of 185 feet, the long chord bearing and distance of which is South 34 degrees 26 minutes 52 seconds East, 57.26 feet for an arc distance of 57.49 feet to a point at Lot No. 49 on the subdivision plan hereinafter referred to; thence along Lot No. 49, South 46 degrees 38 minutes 57 seconds West, 127.87 feet to a point at lands now or formerly of Robert J. Knisley; thence along said Knisley's land, North 59 degrees 10 minutes 57 seconds West 60 feet to a point at other lands of Joseph A. Myers Real Estate, Inc.; thence along said last mentioned lands, North 08 degrees 19 minutes 00 seconds West, 47.87 feet to a point at Lot No. 51 on the subdivision plan hereinafter referred to; thence along Lot No. 51, North 64 degrees 27 minutes 19 seconds East, 131.94 feet to a point on the southern right-of-way line of South Lincoln Drive, the point and place of Beginning. (CONTAINING 10,957 square feet and being Lot No. 50 on final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 15, 1987, revised October 8, 1987, designated as File No. G-97, and recorded in The Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, Page 44.)

Being the same real estate conveyed to Raymond W. Speelman by deed of Joseph A. Myers Real Estate, Inc., a

Pennsylvania corporation, dated August 29, 1989 and recorded in Adams County Record Book 523, Page 885.

Improved with a two story dwelling (being one side of a duplex) and having a street address of 237 S. Lincoln Drive, Hanover, Pennsylvania 17331.

SEIZED and taken into execution as the property of **Raymond W. Speelman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/8, 15 & 22

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, the Fictitious Names Act (54 Pa. C.S.A. Sec. 311), there was filed with the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on November 5, 1996, an Application for Registration of the fictitious name **MUSIC IN THE HOUSE**, the address of the principal office or place of business of the business to be carried on, under or through said name being 160 Wierman's Mill Road, York Springs, PA 17372. The names and addresses of all persons who are parties to the registration are: Horace E. Crone, III, 220 Forest Drive, New Oxford, PA 17350 and Rose Parr, 160 Wierman's Mill Road, York Springs, PA 17372.

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

11/15

UTZ POTATO CHIP CO., INC., ET AL VS. YORK
PARACHUTING CENTER INC., ET AL

1. Where a successor judge is asked to reconsider the conclusions of an unavailable predecessor, he or she is empowered to reconsider those issues to the same extent as the former judge could have done.

2. There is no questions but that a Court in equity has the power to modify or vacate an injunctive decree previously granted by it if the circumstances and situation of the parties have so changed as to make it just and equitable to do so and if the Court feels that the protection given to the Complainant is no longer necessary.

3. A party is indispensable when he has such an interest that a final decree cannot be made without affecting that party or leaving the controversy in such a condition that the final determination may be wholly inconsistent with equity and good conscience.

In The Court Of Common Pleas, Adams County, Pennsylvania, Civil No. 6 Feb. Term 1976, UTZ POTATO CHIP CO., INC., HANOVER SHOE FARMS, INC., ROBERT B. SCHRIVER, FRANCIS J. MURREN, LEWIS J. KLUNK AND ELSIE M. BANGE VS. YORK PARACHUTING CENTER INC., CYPRIAN N. GEBHART AND BETTY J. GEBHART.

Robert E. Campbell, Esq., for Plaintiff

John J. Mooney, Esq., for Defendant

OPINION ON MOTION TO DISSOLVE OR
MODIFY INJUNCTION

Spicer, P.J., March 20, 1996.

Cyprian N. Gebhart and Betty J. Gebhart, (Gebhart), two of the original defendants in this action, have moved to dissolve or modify an injunction entered absolute December 28, 1977, by the Honorable John A. MacPhail, who was then the President Judge of this court. York Parachuting Center, Inc. has not participated in the present proceedings, and it is not known whether the legal entity still exists. Plaintiffs, mainly Utz Potato Chip Co., now Utz Quality Food, and Hanover Shoe Farms, Inc., argue that this court, "under the circumstances, has no authority to modify or vacate the injunction." (letter 2-27-96).

The objection entails a two part analysis. First, we must determine whether the court, under any circumstance, could dissolve or modify Judge MacPhail's order. If such authority exists, we would then inquire whether such authority should be exercised in light of the particular circumstances of this case.

Generally, judges of coordinate jurisdiction sitting in the same court and in the same case should not overrule the decisions of each other. However, this rule is not absolute as there are times when a judge cannot avoid placing himself or herself in such a position due to the

death, retirement or expiration of the judicial commission of his or her predecessor. Where, as is the case sub judice, a successor judge is asked to reconsider the conclusions of an unavailable predecessor, he or she is empowered to reconsider those issues to the same extent as the former judge could have done. *Hutchison by Hutchison v. Luddy*, 417 Pa.Super. 93, 611 A.2d 1280 (1992).

The law applicable to modifications and dissolutions of injunctions has been summarized by Superior Court, in *Soja v. Factoryville Sportsmen's Club*, 416 Pa.Super. 29, 610 A.2d 491 (1992). That court discussed four criteria described in *Ladner v. Siegel*, 298 Pa. 487, 148 A. 699 (1930), all connected by and, then went on to say:

Even more insightful into the disjunctive nature of the *Ladner* criteria is *Tamango v. Waiters and Waitresses Union*, 373 Pa. 457, 96 A.2d 145, 146 (1953), wherein the Supreme Court explicitly deleted reference to *Ladner's* "ends of justice" and "change in the law" criteria in deciding whether to dissolve an injunction; to wit:

There is, of course, no question but that a court in equity has the power to modify or vacate an injunctive decree previously granted by it if the circumstances and situation of the parties have so changed as to make it just and equitable to do so and if the court feels that the protection given to the complainant is no longer necessary. *Ladner v. Siegel* (No. 4), 298 Pa. 487, 495, 496, 148 A. 699, 701, 68 A.L.R. 1172. It was stated in that case in 298 Pa. at page 497, 148 A. at page 702, that "The modification of a decree in a preventative injunction is inherent in the court which granted it, and may be made *** if, in its discretion judicially exercised, it believes the ends of justice would be served by a modification *** ." And, further, 298 Pa. at page 495, 148 A. at page 701, that while an injunctive decree "is an adjudication of the facts and the law applicable thereto, it is none the less executory and continuing as to the purpose or object to be attained ***. It operates until vacated, modified or dissolved." And, again, 298 Pa. at page 500, 148 A. at page 703 that "A decree preventing [an injury to a property right] does not give to the complaining party a perpetual or vested right either in the remedy, the law governing the order, or the effect of it. He is not entitled to the same measure at all times and under all circumstances. A decree protecting a property right is

given subject to the rules governing modification, suspension or dissolution of an injunction. The decree is an ambulatory one, and marches along with time affected by the nature of the proceeding.

373 Pa. at 460-61, 96 A.2d at 146-47

610 A.2d at 493, 494

Thus, it is clear that the court has power to dissolve or modify the injunction if there has been a change in circumstances and the situation. *id.*

Having determined that the law bestows authority to alter or modify Judge MacPhail's decree, we must next examine the record to determine if changes in facts or circumstances justify such action.

Plaintiffs argue that York Parachuting Center's (YPC) failure to participate in these proceedings deprives the court of jurisdiction. That defendant's absence has not been directly explained, but testimony makes it amply clear that another entity conducts parachuting activities at the airport. We fail to see how YPC's participation is essential or lack thereof fatal. Supreme Court defines an indispensable party as follows: "A party is indispensable when he has such an interest that a final decree cannot be made without affecting it or leaving the controversy in such a condition that the final determination may be wholly inconsistent with equity and good conscience." *Van Buskirk v. Van Buskirk*, 527 Pa. 218, 223, 590 A.2d 4, 7 (1991). It is clear that Judge MacPhail's injunction primarily affects Gebhart and use of land. YPC is hardly an indispensable party to Gebhart's request for modification or dissolution.

An apparent problem arises from what appears to be a bare-bones state of the record with respect to the 1977 proceedings. Judge MacPhail entered only three specific findings of fact. However, it is true, as plaintiffs suggest, that other facts were discussed in the adjudication, which we accept as true. Beginning in 1974, parachuting activities were conducted at the Gebhart airport. The adjudication recites that plaintiffs began their action "when a number of the parachutists missed the assigned target area and dropped onto lands of the plaintiffs causing destruction of crops and "spooking" of the horses." Some 78 jumps landed outside the target area in 1975 and 1976. A log of jumps was maintained by YPC, each jumper was required to maintain insurance, and a jump-master flew with each group participating in a jump. Plaintiffs complained that they could not afford to police their lands for trespassers or to ascertain damages caused by them. More crop damage resulted whenever an attempt was

made to determine damages caused by jumpers. Plaintiffs also said that trespassing jumpers hurried to leave, causing more damage, and that it was impossible to identify them. Although there is no specific finding concerning the value of horses pastured on lands of Hanover Shoe Farms, we can assume that they were, and are, very valuable.

We conducted a hearing on February 15, 1996, and heard testimony from William Hanrahan, Clifford Weaver, Linda Wells, Edward J. Miller, Susan E. Sentz, Dr. Peter Bryce, Robert Shriver, Paul Spears and Michael Rice. Hanrahan and Weaver are experienced sky divers and, from their testimony, it is apparent that significant improvements have been made in parachutes since Judge MacPhail's order. Maneuverability and landing speed are the most significant. Landing was described as comparable to stepping off a chair.

Despite improvements, however, the possibility or errant landings continue to exist. Judge MacPhail cited admissions by defendants that 78 chutists missed the targeted area in 1975-76. At that time, inexperience was given for the most important reason for out jumps. Strangely, during the latest hearing, we heard that experienced jumpers miss more often than inexperienced counterparts, probably because they open chutes at a lower altitude. Wind, disorientation, equipment failure and loss of glasses were cited as reasons for misses. Four people landed in areas owned by Utz and Hanover Shoe Farms. One, an instructor, opted to land rather than battle the wind. Another instructor landed with his student, who had been forced to land because of equipment malfunction. One person did not open his chute and died, falling in a plowed field.

Jumpers usually landed close to a road and were described as departing quickly.

Plaintiffs, especially Hanover Shoe Farms, remain apprehensive about the possibility of damages that could result from parachuting. The amount of insurance which jumpers are required to carry certainly would be inadequate if a horse was destroyed. Dr. Bryce and Edward Miller described these animals as generally passive, but both said horses may stampede and run through fences if alarmed. However, no injuries have ever been ascribed to parachuting, although Mr. Miller testified that the two chutists who landed caused a stampede. This fact was denied by Linda Myers. Although horses may have been stimulated into running, we do not find "stampede" to be an accurate description of what occurred. Dr. Bryce testified that a pregnant mare may injure her foal if she falls. Although he knew of no miscarriages which have resulted from such accidents, he said that a foal was killed during a stampede. It is not clear when this occurred and what sparked

the behavior, but it may have been caused by noises from a vehicular accident on the public road adjoining Hanover Farms' property.

Presently, as was the case in 1976, plaintiffs do not have the manpower to police their property.

After careful consideration, we are satisfied that Judge MacPhail's order should be modified.

It must be kept in mind that trespass, and not the enjoined activity, is the real harm that should be prevented. Although trespass into an open field is ordinarily not a serious matter, plaintiffs are certainly entitled to an injunction prohibiting unwanted incursions. From the record, it would seem that traffic along the public road carries a greater chance for significant damage than parachuting. The question becomes whether it is necessary to enjoin the activity which results in trespass.

Defendants' inability to assure that no jumper might land in forbidden territory is not dispositive the outcome of this case. If defendant were a dairy farmer, for example, it would seem unlikely that a court would direct him to go out of business just because he couldn't guarantee that cattle might not break through fencing and stray.

Judge MacPhail considered less stringent restrictions on defendants' activities, said they appeared reasonable on the surface, but were, in his opinion, unenforceable. This writer, on the other hand, was very impressed with Hanrahan and Weaver and monitoring they described. We find it unlikely that a chutist would effect an unrecorded landing outside the designated area.

In short, we are inclined to suspend the injunction as it applies to the activity of sky jumping and/or parachuting, and enjoin trespass. The suspension will remain in effect only as long as the conditions described in the attached order are observed. Looking to the criminal law for guidance, we determine that a \$300.00 civil penalty would be an appropriate means of discouraging trespasses. If conditions are not met, or trespasses become a serious problem, plaintiffs may request an end to the suspension.

ORDER OF COURT

AND NOW, this 20th day of March, 1996, the decree of December 18, 1977 and March 24, 1977 is modified as follows:

For as long as defendants faithfully comply with the terms and conditions of this order, the injunction against sky diving or parachuting is suspended. Instead, defendants are enjoined from trespassing on lands of plaintiffs, either directly or through participants in sky diving

or parachuting activities, agents, employees, invitees or business guests. Defendants must

1. Provide plaintiffs with an accurate schedule of sky diving or parachuting activities at least three days prior to the occurrence of such activities.

2. Maintain an accurate log of jumps and the identity of jumpers who land on lands of plaintiffs.

3. Provide plaintiffs with a list of participants in the activities, the names of trespassers and location of occurrence of such trespasses within three days after the activity.

4. Pay to plaintiffs the sum of \$300.00, as a civil fine for the use of the particular plaintiff involved, for each and every trespass on lands of a plaintiff.

5. Require each jumper to maintain liability insurance as is now done.

Plaintiffs shall have the right to request an end to the suspension upon noncompliance by defendants or any part of these conditions, or if trespasses cause significant inconvenience or damage.

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-762
Action to Quiet Title
Charnita Lot W-30

JAMIE M. ESPY, a/k/a JAMIE M.
MCGLAUGHLIN, Plaintiff,

vs.

WILLIE JOYNER and MAMIE JOYNER,
husband and wife, and BERTHA MAE
GRISHAM, their heirs, administrators,
successors and assigns, Defendants.

TO: WILLIE JOYNER and MAMIE
JOYNER, husband and wife, and BER-
THA MAE GRISHAM, their heirs, admin-
istrators, successors and assigns

You are notified that an Order has been entered on October 21, 1996, directing that within thirty (30) days after this publication, you shall commence an Action in Ejectment or other appropriate action against the Plaintiff above to assert any claim you may have in and to the lands herein described or be forever barred from asserting any right, lien, title or interest inconsistent with the interest or claim set forth in Plaintiff's Complaint with respect to the land herein described:

ALL that tract of land situate, lying and being in Liberty Township, Adams County, Pennsylvania, being more particularly described as Lot No. 30 in Section W on a plan of lots labeled "Section W of Charnita," dated January 3, 1970, and recorded in Adams County Plat Book No. 1 at Page 66, and subject to all legal highways, easements, rights of way and restrictions of record.

BEING THE SAME which Charnita, Inc., a Pennsylvania corporation, by deed dated December 13, 1971, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 298 at Page 101, sold and conveyed unto Willie Joyner and Mamie Joyner, husband and wife, and Bertha Mae Grisham; and BEING THE SAME which the Adams County Tax Claim Bureau, by their deed dated November 1, 1987, and recorded in the aforementioned office in Record Book 474 at Page 315, sold and conveyed unto Ann K. McGee and Christopher A. McGee; and BEING THE SAME which Anne K. McGee, also known as Ann K. McGee, and James J. McGee, her husband, and Christopher A. McGee and Juanita D. McGee, his wife, by their deed dated July 18, 1995, and recorded in the aforementioned office in Record Book 1064 at Page 142, sold and conveyed unto Jamie M. Espy, Plaintiff herein.

Hartman & Yannetti
Gary E. Hartman
Attorney for Plaintiff
126 Baltimore Street
Gettysburg, PA 17325

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the Shareholders and Directors of State Restaurant, Inc., a Pennsylvania corporation, with a registered office at 255 Chambersburg Street, Gettysburg, Pennsylvania, have approved a proposal that the Corporation voluntarily dissolve, and that the Board of Directors is now engaged in winding up and settling the affairs of the Corporation under the provisions of Section 1975 of the Pennsylvania Business Corporation Law of 1988 as amended.

Robert E. Campbell
Campbell & White, Solicitors

11/15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-227 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in Township Road No. T-484, known as Hoffman Road, at the Southwest corner of land now or formerly of Stewart E. Davis; thence by said land now or formerly of Stewart E. Davis and running through an iron pin located (20) feet from the place of beginning, North seventy-seven (77) degrees twenty-eight (28) minutes twenty (20) seconds East, two hundred thirty-two (232) feet to an iron pin; thence by other land of John Kappes, deceased, South twelve (12) degrees thirty-one (31) minutes forty (40) seconds East, one hundred eighty-seven and seventy-six hundredths (187.76) feet to an iron pin; thence by land now or formerly of Paul F. Kriger and wife, and running through an iron pin located twenty (20) feet from the end of this line, South seventy-seven (77) degrees twenty-eight (28) minutes twenty (20) seconds West, to hundred thirty-two (232) feet to a railroad spike in Township Road No. T-484, known as Hoffman Road; thence in said Township Road, north twelve (12) degrees thirty-one (31) minutes forty (40) seconds West, one hundred eighty-seven and seventy-six hundredths (187.76) feet to the railroad spike, the place of BEGINNING. CONTAINING ONE (1) ACRE.

The description herein was taken from the mortgage from John R. Plank and Irene M. Plank to The Gettysburg National Bank, predecessor in interest to PNC Bank, N.A., as recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, at Record Book 413 at page 262 et seq.

This property is improved with a dwelling.

SEIZED and taken into execution as the property of John R. Plank and Irene M. Plank and to be sold by me

Bernard V. Miller
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/8, 15 & 22

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 REBECCA S. EALY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrices: Edra Ealy Potter, 535 Glenwyn Dr., Littlestown, PA 17340; Linda Jane Stauffer, R. D. #3, Box 3261, Hillview Rd., Spring Grove, PA 17362

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

ESTATE OF ESTHER S. JOHNSON a/k/a ESTHER VALERIA JOHNSON a/k/a ESTHER SPIESE JOHNSON, DEC'D

Late of The Brethren Home, 2990 Carlisle Pike, New Oxford, PA 17350, Oxford Township, Adams County, Pennsylvania

Executor: Warren M. Eshbach, 3960 Pinchtown Road, Thomasville, PA 17364

ESTATE OF MARION STROUSE SCHARF a/k/a MARION S. SCHARF, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Elise K. Scharf, P. O. Box 3338, Gettysburg, PA 17325

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

ESTATE OF GLENN L. STERNER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Kenneth E. Sterner, 1111 Granada Lane, Mechanicsburg, PA 17055; Charles R. Sterner, 337 Semmes Drive, Wilmington, NC 28412; Marie E. Hoffman, 585 Hoffman Road, Gettysburg, PA 17325

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

ESTATE OF HELEN A. ZEILMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Ethel S. Breighner, 516 Moul Avenue, Hanover, PA 17331; Ruth S. McCarthy, 511A Shalom Drive, New Oxford, PA 17350

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

SECOND PUBLICATION

ESTATE OF G. RICHARD BALDWIN, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: George R. Baldwin, 45 Dug Hill Road, Biglerville, PA 17307

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

ESTATE OF KATHRYN W. CRAIG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Kathleen B. Ellwood, a/k/a, Kathleen B. Elwood, 1918 Pagebrook Rd., Silver Spring, MD 20903

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

ESTATE OF STEWART W. EICHELBERGER, DEC'D

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

Executrix: Mary Eichelberger Giambalvo, a/k/a, Mary A. Giambalvo of 315 Lyndhurst Road, York, Pennsylvania 17402

Attorney: Audrey E. Woloshin

ESTATE OF FRED A. KUHN, DEC'D

Late of Gettysburg, Pennsylvania

Administrator C.T.A.: Paul Kuhn

Attorney: Richard C. Ruben, 113 Locust Street, Harrisburg, PA 17101

ESTATE OF LETHA A. KEPNER MYERS, DEC'D

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

Executor: Clarence C. Cullison, 2315 Mummasburg Road, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF ALBERT M. BYARD, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Kimberly Tabor, 1197 Old Waynesboro Pike, Fairfield, PA 17320

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

ESTATE OF BETTY SUE MATTERN, DEC'D

Late of York Springs, Adams County, Pennsylvania

Executor: Charles W. Mattern, 724 Quaker Church Road, York Springs, PA 17372

Attorney: John M. Crabbs, Esq., 202 Broadway, Hanover, PA 17331

ESTATE OF WILFRED B. SCHEIVERT, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Ethel M. Scheivert, 39 Fawn Avenue, New Oxford, PA 17350; Michael R. Scheivert, 34 Delaware Avenue, Littlestown, PA 17340

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

ESTATE OF ETHEL M. STERNER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Co-Executors: Ruth L. Grove, 34 Pine Grove Road, Hanover, PA 17331; Glenn W. Sterner, 830 Pine Grove Road, Hanover, PA 17331; Clyde L. Sterner, 886 Pine Grove Road, Hanover, PA 17331

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

ESTATE OF GEORGE P. WOOD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

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

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

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 95-S-603

CHARLES H. MORT and
AGNES A. MORT, Plaintiffs,
vs.

SUSAN L. BRINGEN, her spouse,
heirs, and assigns and
CECILIA A. FASULO, her spouse, heirs
and assigns, Defendants.

ORDER OF COURT

AND NOW, this 4th day of Nov., 1996, upon consideration of the attached Motion, the following is HEREBY ORDERED:

1. Defendant Cecilia A. Fasulo, her spouse, heirs and assigns, having been timely served a Complaint and Notice to Defend and having been further served a Notice of Default Judgment, has failed to respond by filing an answer, preliminary objection, or other pleading;

2. Defendant Cecilia A. Fasulo, her spouse, heirs and assigns, shall be forever barred from asserting any right, lien or interest in the land inconsistent with the interest or claim of Plaintiffs, unless Defendants take such action as this ORDER directs within thirty (30) days from the date of service of this Order on thereon;

3. Defendant Cecilia A. Fasulo, her spouse, heirs and assigns, must file an answer, preliminary objection, or other pleading within thirty (30) days from the date of the service of this ORDER;

4. If Defendant Cecilia A. Fasulo, her spouse, heirs or assigns, fails to respond within the thirty-day period, the Prothonotary on praecipe of Plaintiffs shall enter final judgment in favor of Plaintiff and against Defendants.

By the court,
/s/ Oscar F. Spicer

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-273 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land located in the County of Adams, Borough of Gettysburg, and Commonwealth of Pennsylvania, described as follows:

BEGINNING at a point on the western property line of Ridge Avenue along line of lot now or formerly of Albert W. Butterfield, where it intersects the southern property line of McMillan Street; thence along the southern property line of McMillan Street South 73 degrees 55 minutes 25 seconds East, 100.00 feet to a point at corner of Lot No. 2 on the draft of survey hereinafter referred to; thence along Lot No. 2 South 16 degrees 11 minutes 00 seconds West, 107.65 feet to a point at land of the United States Government, Dept. of Interior; thence along land of the United States Government North 73 degrees 23 minutes 58 seconds West, 100.00 feet to corner of lot now or formerly of Albert W. Butterfield; thence along lot now or formerly of Albert W. Butterfield, North 16 degrees 10 minutes 46 seconds East, 106.73 feet to a point, the place of BEGINNING.

CONTAINING 10,719 square feet.

HAVING THEREON erected a dwelling house known and numbered as 524 McMillan Street, Gettysburg, Pennsylvania.

The above description was taken from draft of survey entitled "Final Plan Gertrude P. Winebrenner Est." prepared by Donald E. Worley, Professional Land Surveyor, dated April 10, 1985 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat 41, Page 80, designated as Lot No. 1.

BEING THE SAME TRACT OF LAND that Charlotte W. Swope and Jane W. Kenny, Executrixes of the Estate of Gertrude A. Winebrenner, by their deed dated May 16, 1985 and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 400, page 933, sold and conveyed unto Richard E. Simpson and Martha E. Simpson, husband and wife, Mortgagors herein.

Seized, taken in execution and to be sold as the property of Richard E. Simpson and Martha E. Simpson, judgment debtors and real owners.

SEIZED and taken into execution as the property of **Richard E. Simpson and Martha E. Simpson**, and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 15, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/1, 8 & 15

NOTICE

NOTICE HEREBY IS GIVEN that the Board of Gettysburg Area Industrial Development Authority (the "Authority"), a Pennsylvania industrial development authority having its registered office at 112 Baltimore Street, Gettysburg, Adams County, Pennsylvania, has adopted a resolution proposing an amendment to its Articles of Incorporation; the Authority has submitted the proposed amendment to the Borough of Gettysburg, Adams County, Pennsylvania (the "Borough"), the incorporator of the Authority; the Borough, by Ordinance duly enacted, has adopted and approved the amendment to the Articles of Incorporation of the Authority; the Borough intends to file Articles of Amendment to the Articles of Incorporation of the Authority with the Secretary of the Commonwealth of Pennsylvania on November 20, 1996; such Articles of Amendment are to be filed under provisions of the Industrial and Commercial Development Authority Law, approved August 23, 1967, P.L. 251, as amended, supplemented and renamed the Economic Development Financing Law, Act No. 1993-74, as amended; and the nature and character of such proposed amendment is to amend the Articles of Incorporation so as to increase the term of existence of such Authority, by amending paragraph (e) of the Articles of Incorporation in its entirety to read as follows:

"(e) The term of existence of the Authority shall end on November 1, 2046."

By Order of the Council of
The Borough of Gettysburg,
Adams County, Pennsylvania

11/15

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 24, 1996 for BLH INDUSTRIES, INC. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

The purpose for which said corporation is formed are that: The corporation shall have unlimited power to engage in and do any lawful act concerning any and all lawful business for which corporations may be incorporated under the Act of December 21, 1988, P.L. 1444, its amendments and supplements, under the provisions of which said Act this corporation is incorporated.

Stonesifer and Kelley
Solicitor

11/15

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Fictitious Name Registration has been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, pursuant to the Fictitious Names Act, setting forth that **Warren G. Rudisill is the only person owning or interested in a business**, the character of which is screen printing and embroidery, and that the name, style and designation under which said business is and will be conducted is **RUDISILL'S SCREEN PRINTING & EMBROIDERY**, and the address of the principal office or place of business of said business is 223 Chambersburg Street, Gettysburg, PA 17325.

Warren G. Rudisill
223 Chambersburg Street
Gettysburg, PA 17325

11/15

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 October 18, 1996, pursuant to the Fictitious Name Act, setting forth that **Bollinger & Bollinger Enterprises, Inc. of R.D.#3, Box 3329B, Thoman Road, Spring Grove, PA 17362 is the only entity owning or interested in a business**, the character of which is the sale of antiques and collectibles and that the name, style and designation under which said business is and will be conducted is **B & B ANTIQUE CROSSINGS** and the location where said business is and will be conducted is 214B West Golden Lane, New Oxford, PA 17350.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

11/15

Adams County Legal Journal

Vol. 38

November 22, 1996

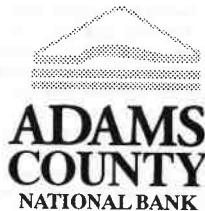
No. 26, pp. 151-154

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Advanced Issues in Estate Administration*. Thursday, December 5, 1996—9:00 a.m. Room 307B, Adams County Courthouse—6 C.L.E. credits in substantive law and 0 C.L.E. credits in ethics. Registration through P.B.I.

11/22

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



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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. 96-S-646 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land, situate, lying and being in Conewago Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to-wit:

BEGINNING at a point on the southern right-of-way line of South Lincoln Drive, a 60 feet wide right-of-way, at corner of Lot No. 51 on the subdivision plan hereinafter referred to; thence along the southern right-of-way line of South Lincoln Drive, by a curve to the left having a radius of 185 feet, the long chord bearing and distance of which is South 34 degrees 26 minutes 52 seconds East, 57.26 feet for an arc distance of 57.49 feet to a point at Lot No. 49 on the subdivision plan hereinafter referred to; thence along Lot No. 49, South 46 degrees 38 minutes 57 seconds West, 127.87 feet to a point at lands now or formerly of Robert J. Knisley; thence along said Knisley's land, North 59 degrees 10 minutes 57 seconds West 60 feet to a point at other lands of Joseph A. Myers Real Estate, Inc.; thence along said last mentioned lands, North 08 degrees 19 minutes 00 seconds West, 47.87 feet to a point at Lot No. 51 on the subdivision plan hereinafter referred to; thence along Lot No. 51, North 64 degrees 27 minutes 19 seconds East, 131.94 feet to a point on the southern right-of-way line of South Lincoln Drive, the point and place of Beginning. (CONTAINING 10,957 square feet and being Lot No. 50 on final subdivision plan for Diller's Village, Phase Three, prepared by Donald E. Worley, Registered Surveyor, dated August 15, 1987, revised October 8, 1987, designated as File No. G-97, and recorded in The Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 48, Page 44.)

Being the same real estate conveyed to Raymond W. Speelman by deed of Joseph A. Myers Real Estate, Inc., a Pennsylvania corporation, dated August 29, 1989 and recorded in Adams County Record Book 523, Page 885.

Improved with a two story dwelling (being one side of a duplex) and having

a street address of 237 S. Lincoln Drive, Hanover, Pennsylvania 17331.

SEIZED and taken into execution as the property of **Raymond W. Speelman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 18, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/8, 15 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-227 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of December, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a railroad spike in Township Road No. T-484, known as Hoffman Road, at the Southwest corner of land now or formerly of Stewart E. Davis; thence by said land now or formerly of Stewart E. Davis and running through an iron pin located (20) feet from the place of beginning, North seventy-seven (77) degrees twenty-eight (28) minutes twenty (20) seconds East, two hundred thirty-two (232) feet to an iron pin; thence by other land of John Kappes, deceased, South twelve (12) degrees thirty-one (31) minutes forty (40) seconds East, one hundred eighty-seven and seventy-six hundredths (187.76) feet to an iron pin; thence by land now or formerly of Paul F. Kriger and wife, and running through an iron pin located twenty

(20) feet from the end of this line, South seventy-seven (77) degrees twenty-eight (28) minutes twenty (20) seconds West, to hundred thirty-two (232) feet to a railroad spike in Township Road No. T-484, known as Hoffman Road; thence in said Township Road, north twelve (12) degrees thirty-one (31) minutes forty (40) seconds West, one hundred eighty-seven and seventy-six hundredths (187.76) feet to the railroad spike, the place of BEGINNING. CONTAINING ONE (1) ACRE.

The description herein was taken from the mortgage from John R. Plank and Irene M. Plank to The Gettysburg National Bank, predecessor in interest to PNC Bank, N.A., as recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, at Record Book 413 at page 262 et seq.

This property is improved with a dwelling.

SEIZED and taken into execution as the property of **John R. Plank and Irene M. Plank** and to be sold by me

Bernard V. Miller
Sheriff

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 30, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/8, 15 & 22

COMMONWEALTH VS. BROOKS

1. The focus of a pre-trial habeas corpus is on whether the Commonwealth possesses sufficient evidence to require a Defendant to be held in government custody until he may be brought to trial.

2. Where Defendant was an accomplice to the crime of robbery in which a murder was committed he is therefore subject to prosecution for the charge of felony murder, or murder in the second degree.

3. The nexus which renders all members of a criminal conspiracy responsible for the acts of any of its members is the unlawful agreement.

4. Despite the fact that an individual co-conspirator did not contemplate a killing, where such killing is a natural and probable consequence of a co-conspirator's conduct, murder is not beyond the scope of the conspiracy.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-109-96, COMMONWEALTH OF PENNSYLVANIA VS. JAMES T. BROOKS.

Michael A. George, Esq., District Attorney

Roy A. Keefer, Esq., for Defendant

OPINION ON PETITION FOR WRIT OF HABEAS CORPUS

Spicer, P. J., March 21, 1996.

Defendant seeks a dismissal of murder charges against him, through a writ of habeas corpus. The Commonwealth relies on a transcript of the preliminary hearing and the testimony of Sheryl Beall, introduced at a hearing March 18, 1996.

The focus of a pre-trial habeas corpus is on whether the Commonwealth possesses sufficient evidence to require a defendant to be held in government custody until he may be brought to trial (citation omitted). A petition for a writ of habeas corpus "is the proper means for testing the finding that the Commonwealth has sufficient evidence to establish a prima facie case." *Commonwealth v. Morman*, 373 Pa.Super 360, 363, 541 A.2d 356, 357 (1988). Proof of a prima facie case consists of the following: "the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused committed the offense." *Commonwealth v. McBride*, 528 Pa. 153, 158, 595 A.2d 589,591 (1991).

Commonwealth v. Lutz, 443 Pa.Super 262, 266, 661 A.2d 405, 407 (1995)

Evidence supports the following facts: On January 17, 1996, Terry Lee Monn found the body of John Aiken, at the decedent's residence

at 370 Railroad Lane, Orrtanna, Adams County Pennsylvania. Mr. Aiken was a 77 year old man who lived alone at that address. Death was caused by a gunshot wound, which entered the right forehead one and a quarter inches above the midpoint of the right eyebrow. It was a contact wound.

Police interviewed several persons concerning the crime, including defendant, James Theodore Brooks. Brooks told Officer Dennis P. Kern, of the Pennsylvania State Police, that he knew the victim, having done work for him in the past. Brooks said he had spent the night at Mr. Aiken's house on several occasions. He related that he, Donald Copenhaver and Warren Bibb discussed going to Mr. Aiken's house. Once there, they were refused entrance, but Bibb forced the door open, went inside, then returned with a 20 gauge shotgun which he handed to Brooks, while instructing Brooks to remain at the door. He then heard two shots, after which Bibb came carrying a 22 caliber rifle with a scope. The trio then left, with guns, in Copenhaver's car. Bibb kissed Copenhaver on the back of Copenhaver's head, and said: 'We shot the old fuck for \$90.00.'

Brooks told Trooper Kern that he was the only one of his group who smoked Raleigh cigarettes, Mr. Aiken smoked Cambridge cigarettes. A Raleigh was found, turned backward in front of the victim.

Ms. Beall testified that she was at home on January 16, 1996, and overheard a conversation between Brook, Bibb, and Copenhaver. Although she didn't listen to every word, she said the trio discussed robbing Mr. Aiken. Copenhaver said that the victim had a lot of money and a checkbook. Bibb said that "if the old man got in the way, they would have to shoot him." The three men left in Copenhaver's car, with their stated destination being the Aiken residence.

We start our review with what is considered the clearest count, felony murder. The statute, 18 Pa. C.S.A § 2502 (b) defines felony murder as a homicide committed "while defendant was engaged as a principal or an accomplice in the perpetration of a felony."

This phrase is defined as "The act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery..." See Commonwealth v. Lewis, 423 Pa.Super 94, 620 A.2d 516 (1993).

Obviously, Brooks was an accomplice to the crime of robbery and is subject to prosecution for the charge of felony murder, or murder in the second degree.

The statute defines murder in the first degree as an intentional killing. 18 Pa.C.S.A. § 2502 (a). "Intentional killing" is defined as

killing by means of poison, or by lying in wait, or any other kind of willful, deliberate and premeditated killing.

Although some jurisdictions distinguish between an intentional killing and one done with premeditation, Pennsylvania does not. Specific intent can be formed in a fraction of a second. There is no requirement for any particular amount of time in which to deliberate. *Commonwealth v. Donnelly*, 439 Pa.Super. 70, 653 A.2d 35 (1995). Such intent can be inferred from the use of a deadly weapon upon a vital part of the body. *Commonwealth v. Williams*, 541 Pa. 84, 660 A.2d 1316 (1995), as can malice, *Commonwealth v. Cruz Centeno*, __Pa.Super.__, 668 A.2d 536 (1995). Killing with malice constitutes third degree murder. *id.*

The essence of a criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal object be accomplished. By its very nature, it is frequently susceptible to proof only by circumstantial evidence. Although it cannot be established by mere suspicion or conjecture, it may be inferentially established by the relationship, conduct or circumstances of the parties. Relevant, but not sufficient by themselves, are association, presence at the scene of the crime, knowledge of the commission of the crime, and, in some instances participation in the object of the conspiracy. *Commonwealth v. Gibson*, __Pa.Super.__, 668 A.2d 552 (1995)

All these factors are present, plus the description a conversation between the parties, given by Ms. Beall. The evidence is sufficient to establish conspiracy and, this being so, statements by Bibb are admissible against Brooks.

In *Commonwealth v. Gaynor*, 417 Pa.Super. 417, 612 A.2d 1010 (1992), Gaynor and a man named Johnson were engaged in a gunfight. A bullet fired by Johnson killed a child. Gaynor was convicted of first degree murder and Superior Court reversed, saying “ [a]ll cases wherein shared criminal intent has been found have involved a finding that the actual slayer and non slayer were accomplices or co-conspirators in the criminal offense charged.” 612 A.2d at 1012. The same court has said:

All theories of vicarious responsibility for criminal conduct require the existence of shared criminal intent. (citation omitted). The nexus which renders all members of a criminal conspiracy responsible for the acts of any of its members is the unlawful agreement. (citations omitted). The law in Pennsylvania is settled that each conspirator is criminally responsible for the actions of his co-conspira-

tors, provided it is in the furtherance of the criminal design.
(Citations omitted) *****

Accordingly, despite the fact that an individual co-conspirator did not contemplate a killing, where such killing is a natural and probable consequence of a co-conspirator's conduct, murder is not beyond the scope of the conspiracy.

Commonwealth v. La, 433 Pa.Super. 432, 449, 640 A.2d 1336, 1345 (1994).

Were it not for Ms. Beall's testimony, we might agree that evidence fails to support first degree murder, since the parties left her home without guns. However, Bibb's statement clearly places murder within the scope of the parties' unlawful agreement.

We conclude, therefore, that defendant is not entitled to the relief he seeks.

Accordingly, the attached order is entered.

ORDER OF COURT

AND NOW, this 21st day of March, 1996, defendant's petition for writ of habeas corpus is denied. The court reporter is directed to transcribe and file of record the testimony of Sheryl Beall. Copies shall be provided counsel.

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 SARA H. CAREY, DEC'D

Late of 1111 Chambersburg Road, Gettysburg, Pennsylvania 17325
Administratrixes: Wanda Carey, 1111 Chambersburg Road, Gettysburg, PA 17325; Marcy Kidd, 1141 Nissley Road, Lancaster, PA 17601

Attorney: Tracy M. Sheffer, Esq., P. O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF CRAIG ALLEN DYARMAN, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Chad J. Dyarman

Attorney: Samuel A. Gates, Gates & Mooney, 250 York Street, Hanover, PA 17331

ESTATE OF NAOMI E. FRYMYER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Co-Executrixes: Susan A. Frymyer Smith, 382 Wilson Avenue, Hanover, PA 17331; Darlene L. Hawbaker, 861 Littlestown Road, Littlestown, PA 17340

Attorney: Timothy J. Shultis, Esquire, Miller & Shultis, 118 Carlisle Street, Suite 110, Hanover, PA 17331

ESTATE OF ADELE M. KEECH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Farmers Bank, a Division of Dauphin Deposit Bank and Trust Company of Hanover, 13 Baltimore Street, Hanover, PA 17331

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

ESTATE OF CECIL VAN DOREN, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Doris C. Van Doren, 5475 Wingborne Court, Columbia, MD 21045

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

SECOND PUBLICATION

ESTATE OF REBECCA S. EALY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrices: Edra Ealy Potter, 535 Glenwyn Dr., Littlestown, PA 17340; Linda Jane Stauffer, R. D. #3, Box 3261, Hillview Rd., Spring Grove, PA 17362

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

ESTATE OF ESTHER S. JOHNSON a/k/a ESTHER VALERIA JOHNSON a/k/a ESTHER SPIESE JOHNSON, DEC'D

Late of The Brethren Home, 2990 Carlisle Pike, New Oxford, PA 17350, Oxford Township, Adams County, Pennsylvania

Executor: Warren M. Eshbach, 3960 Pinchtown Road, Thomasville, PA 17364

ESTATE OF MARION STROUSE SCHARF a/k/a MARION S. SCHARF, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Elise K. Scharf, P. O. Box 3338, Gettysburg, PA 17325

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

ESTATE OF GLENN L. STERNER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Kenneth E. Sterner, 1111 Granada Lane, Mechanicsburg, PA 17055; Charles R. Sterner, 337 Semmes Drive, Wilmington, NC 28412; Marie E. Hoffman, 585 Hoffman Road, Gettysburg, PA 17325

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

ESTATE OF HELEN A. ZEILMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Ethel S. Breighner, 516 Moul Avenue, Hanover, PA 17331; Ruth S. McCarthy, 511A Shalom Drive, New Oxford, PA 17350

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

THIRD PUBLICATION

ESTATE OF G. RICHARD BALDWIN, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: George R. Baldwin, 45 Dug Hill Road, Biglerville, PA 17307

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

ESTATE OF KATHRYN W. CRAIG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Kathleen B. Ellwood, a/k/a, Kathleen B. Ellwood, 1918 Pagebrook Rd., Silver Spring, MD 20903

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

ESTATE OF STEWART W. EICHELBERGER, DEC'D

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

Executrix: Mary Eichelberger Giambalvo, a/k/a, Mary A. Giambalvo of 315 Lyndhurst Road, York, Pennsylvania 17402

Attorney: Audrey E. Woloshin

ESTATE OF FREDA A. KUHN, DEC'D

Late of Gettysburg, Pennsylvania

Administrator C.T.A.: Paul Kuhn
Attorney: Richard C. Ruben, 113 Locust Street, Harrisburg, PA 17101

ESTATE OF LETHA A. KEPNER MYERS, DEC'D

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

Executor: Clarence C. Cullison, 2315 Mummasburg Road, Gettysburg, PA 17325

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

NOTICE

Adams County Tax Claim Bureau hereby gives notice that it presented a Consolidated Return of Sale to the Court of Common Pleas of Adams County, Pennsylvania on November 12, 1996, of the Sale of Real Estate for delinquent taxes made September 13 & 30, 1996. The Consolidated Return of Sale was confirmed nisi on November 12, 1996. Objections or exceptions thereto may be filed by any owner or lien creditor within thirty (30) days after the Court has made a confirmation nisi of the Consolidated Return or the Return will be confirmed absolutely.

Adams County Tax Claim Bureau
By: Danielle Asper, Director

11/22

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing with the Department of State of the Commonwealth of Pennsylvania, on October 23, 1996, under the Fictitious Name Act, of an Application for the registration of the fictitious name CCE CUSTOM CORRESPONDENCE ETC. with its principal office or place of business at 223 Baltimore Street, Suite A-108, Gettysburg, Pennsylvania 17325. The name and address of the person who is party to the registration is: Karen A. White, 302 Conewago Street, P.O. Box 100, Arendtsville, Pennsylvania 17303.

Pyle and Entwistle
25 South Washington Street
Gettysburg, PA 17325

11/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on September 27, 1996, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is AUTO AUDIO & ACCESSORIES, INC.

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

Auto Audio & Accessories, Inc.
11 Buford Drive
East Berlin, PA 17316

11/22

NOTICE

NOTICE IS HEREBY GIVEN that, on October 1, 1996, the Petition for Change of Name of Cody Allen Parrish was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of CODY ALLEN PARRISH to CODY ALLEN SHOE-MAKER.

The Court has fixed December 23, 1996, at 9:00 a.m., in Courtroom Number 1 as the date and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

Alison H. Peterson, Esq.
Peterson & Peterson
Attorneys for Petitioner
515 Carlisle Street
Hanover, PA 17331
(717) 632-7171

11/22, 29 & 12/6

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, November 25, 1996, at 9:00 o'clock a.m.

DUSMAN—Orphans' Court Action Number OC-119-96. The First and Final Account of William H. Dusman, Executor of the Estate of Roswell F. Dusman, deceased, late of Oxford Township, Adams County, Pennsylvania.

LOCHBAUM—Orphans' Court Action Number OC-120-96. The First and Final Account of Regina A. Roth and Bernard E. Lochbaum, Executors of the Estate of Dorothy E. Lochbaum, deceased, late of Franklin Township, Adams County, Pennsylvania.

CLAPSADL—Orphans' Court Action Number OC-152-96. The First and Final Account of Mary T. Micklely and Jane C. Reed, Executrices of the Last Will and Testament of Ruth K. Clapsadl, deceased, late of Hamiltonban Township, Adams County, Pennsylvania.

BAIR—Orphans' Court Action Number OC-124-96. The First and Final Account of Marie E. Bair Sanders, Administratrix of the Estate of Gregory A. Bair, deceased, late of the Borough of McSherrystown, Adams County, Pennsylvania.

SHRIVER—Orphans' Court Action Number OC-122-96. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Frank R. Shriver, deceased, late of Straban Township, Adams County, Penn-

sylvania, including accounting of said bank as Attorney-in-Fact for Frank R. Shriver, deceased, under P.E.F. Code §3501.2.

STRALEY—Orphans' Court Action Number OC-129-96. The First and Final Account of Alma M. Straley and Amy Kaye Straley, Executrices of the Last Will and Testament of Erma C. Straley, deceased, late of Cumberland Township, Adams County, Pennsylvania.

HUFF—Orphans' Court Action Number OC-130-96. The First and Final Account of Joan W. Huff and Craig L. Yingling, Executors of the Will of Floyd C. Huff, deceased, late of Mt. Joy Township, Adams County, Pennsylvania.

LYNN—Orphans' Court Action Number OC-135-96. The First and Final Account of Diana L. Dillman, Administratrix of the Estate of John Henry Lynn, deceased, late of Roanoke, Virginia.

MILLER—Orphans' Court Action Number OC-136-96. The First and Final Account of Adams County National Bank, Executor of the Estate of Arthur A. Miller, deceased, late of Berwick Township, Adams County, Pennsylvania.

O'CONNOR—Orphans' Court Action Number OC-137-96. The First and Final Account of PNC Bank, NA, Executor of the Estate of George F. O'Connor, deceased, late of Gettysburg Borough Adams County, Pennsylvania.

HOYT—Orphans' Court Action Number OC-15-96. The First and Final Account of PNC Bank, N.A., successor to the Gettysburg National Bank, Executor of the Last Will and Testament of Helen Hoyt, a/k/a Helen G. Hoyt, deceased, late of Straban Township, Adams County, Pennsylvania.

KEBIL—Orphans' Court Action Number OC-37-90. The First and Final Account of Adams County National Bank, Executor of the Last Will and Testament of Robert P. Kebil, deceased, late of Gettysburg Borough, Adams County, Pennsylvania, including accounting of said bank as Attorney-in-Fact for Robert P. Kebil, deceased, under P.E.F. Code Sec. 3501.2.

Peggy J. Breighner
Clerk of Courts

11/15, 22

Adams County Legal Journal

Vol. 38

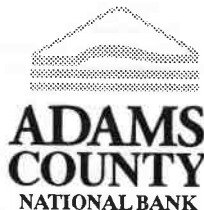
November 29, 1996

No. ²⁷~~36~~, pp. 155-158

CONTINUING LEGAL EDUCATION PROGRAMS

1. *Advanced Issues in Estate Administration*. Thursday, December 5, 1996—9:00 a.m. Room 307B, Adams County Courthouse—6 C.L.E. credits in substantive law and 0 C.L.E. credits in ethics. Registration through P.B.I.

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



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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. 96-S-724 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of January, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land SITUATE, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 186 in Section J., Charnita Development, bounded and described as follows:

BEGINNING at a point in the cul de sac of Crossland Trail; thence in said cul de sac and by Lot No. 185, South 82 degrees 2 minutes 20 seconds East, 196.44 feet to land now or formerly of Columbia Gas Co.; thence by said lands, South 66 degrees 15 minutes East, 5.6 feet to land now or formerly of George F. Herring; thence by said lands, South 23 degrees 45 minutes West, 135 feet to lands now or formerly of George C. Steinberger; thence by said lands, North 66 degrees 15 minutes West, 75 feet to a point; thence continuing by said lands South 23 degrees 45 minutes West, 85.51 feet to Lot No. 202; thence by said lot, North 87 degrees 23 minutes 40 seconds West, 131.11 feet to Lot No. 187; thence by said lot, North 3 degrees 11 minutes 40 seconds West, 200 feet to a point in the center of said Crossland Trail; thence in said Crossland Trail, South 87 degrees 23 minutes 40 seconds East, 100 feet to the place of beginning.

TOGETHER with a right of way and easement over the private roads indicated on said lot plan recorded in Adams County Plat Book No. 1 at page 24, for means of ingress, egress and regress.

BEING 3 Crossland Trail, Fairfield, PA 17320

TAX PARCEL No. 2-21

TITLE to said premises is vested in Gordon M. Sachs and Lisa H. Sachs, husband and wife, by Deed from Douglas S. Penvose and Karen M. Penvose, husband and wife, dated 9/27/90 and recorded 9/27/90 in Deed Book 568, Page 255.

SEIZED and taken into execution as the property of **Gordon M. Sachs and Lisa H. Sachs** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
November 13, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 10, 1997, 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.

11/29, 12/6 & 13

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the Shareholder and Directors of Gettysburg Video, Inc., a Pennsylvania corporation, with a registered address at 26 Springs Avenue, Gettysburg Shopping Center, Gettysburg, Pennsylvania, but with a last address at 209 West Street, Gettysburg, Pennsylvania, have approved a proposal that the Corporation voluntarily dissolve, and that the Board of Directors is now engaged in winding up and settling the affairs of the Corporation under the provisions of Section 1975 of the Pennsylvania Business Corporation Law of 1988 as amended.

Robert E. Campbell
Campbell & White
Solicitors

11/29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, on October 9, 1996, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is FLO GENTLY, INC.

John W. Phillips, Esq.
101 West Middle Street
Gettysburg, PA 17325
Attorney for Corporation

11/29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 1, 1996, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is 194 IMPORTS, INC.

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

194 IMPORTS, INC.
680 Hanover Pike
Littlestown, PA 17341

11/29

NOTICE

NOTICE IS HEREBY GIVEN that, on October 1, 1996, the Petition for Change of Name of Cody Allen Parrish was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of CODY ALLEN PARRISH to CODY ALLEN SHOEMAKER.

The Court has fixed December 23, 1996, at 9:00 a.m., in Courtroom Number 1 as the date and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

Alison H. Peterson, Esq.
Peterson & Peterson
Attorneys for Petitioner
515 Carlisle Street
Hanover, PA 17331
(717) 632-717

11/22, 29 & 12/6

EYLER VS. HOBBS, ET AL.

1. The Legislature of a State has the power to prescribe new rules of evidence, providing they do not deprive any person of his constitutional rights.
2. A party challenging the constitutionality of a statute has a heavy burden of rebutting the presumption of constitutionality and showing that the statute clearly, plainly and palpably violates either the Federal or Pennsylvania constitutions.
3. There are three levels of scrutiny when statutes distinguish between one class of people and another and the level depends upon the particular interest involved.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-719 RONALD L. EYLER AND LISA J. EYLER, ADMINISTRATORS OF THE ESTATE OF AMANDA L. EYLER, DECEASED AND RONALD L. EYLER AND LISA J. EYLER, INDIVIDUALLY VS. STEPHEN C. HOBBS, JAMES L. HOBBS, AND J. L. HOBBS & SONS VS. RONALD L. EYLER AND LISA J. EYLER.

Leah B. Graff, Esq. for Plaintiffs

Karl R. Hildabrand, Esq., for Defendant

Robert A. Lerman, Esq., for Additional Defendants

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., March 25, 1996.

According to the pleadings, Ronald L. Eyler (Ronald) was driving his 1977 Ford LTD eastward on S.R. 16 in Hamiltonban Township, Adams County, on December 22, 1994. Several persons, including Lisa J. Eyler (Lisa) and Amanda L. Eyler (Amanda), were passengers in the automobile. At about 12:34 P.M. he stopped his vehicle, in preparation of making a left turn, and was struck from the rear by a 1979 dump truck driven by Stephen C. Hobbs.

Ronald and Lisa were Amanda's parents. Perhaps we have missed something, but our review of the pleadings fails to unearth Amanda's age, her injuries or where she was sitting. The complaint alleges that the accident injured Ronald and Lisa and killed Amanda and defendants allege, in New Matter, that Ronald and Lisa failed to "properly and adequately secure the infant in the appropriate child restraint seat, seat belts, safety equipment or the like." ¶ 39(b). Defendants joined Ronald and Lisa as additional defendants through New Matter.

Both parents filed answers as additional defendants, and included New Matter of their own. After defendants replied, Ronald and Lisa filed preliminary objections in the nature of a motion to strike and a demurrer. It would appear the challenge should more properly be considered a motion for judgment on the proceedings, but since

standards are the same, we ignore the distinction. See *Edmonds v. Western Pennsylvania Hospital Radiology Association*, 414 Pa.Super 567, 607 A.2d 1083 (1992). We review the pleadings to determine if, accepting as true defendants' well pleaded facts, it is clear that defendants are not entitled to the relief they seek. *id.*

At issue are the provisions of the Child Passenger Protection law, 75 Pa. C.S.A. §4581. Subsection (a) (1) of that act requires an operator of a vehicle to fasten a child securely in a child passenger restraint system and provides criminal penalties for non compliance. Subsection (e), however, provides, in part:

In no event shall a violation or alleged violation of this subchapter be used as evidence in a trial of any civil action; nor shall any jury in a civil action be instructed that any conduct did constitute or could be interpreted by them to constitute a violation of this subchapter; nor shall failure to use a child passenger restraint system or safety seat belt system be considered as contributory negligence, nor shall failure to use such system be admissible as evidence in the trial of any civil action.

Defendants argue that the act applies only to operators and that Lisa, at least, cannot take advantage of the provisions. Unfortunately, the statute plainly states otherwise. See *Commonwealth v. Shoup*, 423 Pa.Super 12, 620 A.2d 15 (1993), which held that a criminal defendant could not contend that a passenger's failure to wear seat belts was a causative factor of her death, under subsection (f) of the Act.

Defendants argue that the statute is unconstitutional. The record fails to indicate that notice has been given to the Attorney General, pursuant to Pa. R.C.P. 235. Although failure to comply with a differently written Rule of Appellate Procedure, 501, has been held to waive the argument, *Butler v. Rolling Hill Hospital*, 382 Pa.Super. 330, 555 A.2d 205 (1989), such would not seem to be the case at this level. We, therefore, ignore the dereliction.

Defendants' argument would seem to be foreclosed by *Dranzo v. Winterhalter*, 395 Pa.Super 578, 577 A.2d 1349 (1990), where that court said:

Wrightman's challenge is to a legislatively established rule of evidence. It is well settled that the legislature of a state has the power to prescribe new rules of evidence, providing they do not deprive any person of his constitutional rights. See 29 AmJur2d §9 (1967). Enactments of the General Assembly enjoy a strong presumption of

constitutionality with all doubts resolved in favor of sustaining the constitutionality of the legislation. (citation omitted). A party challenging the constitutionality of a statute has a heavy burden of rebutting the presumption of constitutionality and showing that the statute clearly, plainly and palpably violates either the Federal or Pennsylvania constitutions. ****

Absent a fundamental right, the standard of review for a substantive due process challenge is whether the statute at issue has a reasonable basis, "whether it was irrational for the law to have been passed at all,... that there is no relationship between the statute and a legitimate state interest.

577 A.2d at 1354, 1355

Defendants, however, argue that the decision in *Dranzo* is not binding, because the statute's challenger, in that case, conceded that no fundamental right was involved. Even so, it is clear that the right of a litigant to recover damages as a result of another party's negligence is not a fundamental right. *Dansby v. Thomas Jefferson University Hospital*, 424 Pa.Super. 549, 623 A.2d 816 (1993).

Defendants argue that important rights, at least, are at stake and Superior Court's review was not based on the correct standard, citing Supreme Court's decision in *James v. SEPTA*, 505 Pa. 137, 477 A.2d 1302 (1984). Accord, *Dansby*, supra. At issue in *James* was whether notice requirements contained in 66 P.S. §2036, now 42 Pa.C.S.A. §5522, violated equal protections considerations. Specifically, the court considered whether there was unlawful discrimination between government and non-government tortfeasors, in that one injured as a result of governmental negligence was required to give notice within six months of the injury, with no comparable obligation when a private tortfeasor was involved.

Supreme Court described three levels of scrutiny when statutes distinguish between one class of people and another. The level depends upon the particular interest involved. When classifications affect fundamental rights, that is rights grounded in the constitution, strict scrutiny was required. An intermediate level, involving important rights, involves heightened scrutiny and the least degree of examination concerns rights neither important nor fundamental. Under this somewhat relaxed review, all that is required is that the classification bear a rational relationship to a legitimate government interest.

Defendants have not told us what classification is involved. We assume they argue that the legislature has established a set of litigants who are precluded from introducing relevant evidence about another party's negligence. It is far from clear this is the case. Admissibility of evidence relating to failure to wear seat belts was far from settled when the legislation became effective. See *Parise v. Fehnel*, 267 Pa.Super. 79, 406 A.2d 345 (1979) (inadmissible, at least, without expert testimony); *McKee v. Southeast Delco School District*, 354 Pa.Super. 433, 512 A.2d 28 (1986) (admissible, based on a contractual duty); *Turner v. Scaife*, 44 D.&C. 3rd 349 (Lycoming County 1987) (admissible). It can be argued that the legislature merely removed the uncertainty in this area.

The statute has already met the minimum standard test, *Dranzo v. Winterhalter*, supra., so there is no need to inquire into the legitimacy of the government interest. Moreover, it is clear that the governmental purpose is important. Safety standards were promoted, but with allowances made for difficulties in enforceability and infringement upon motorists' rights. See, for a history and purposes of the act, as applied to criminal law, *Commonwealth v. Henderson*, 444 Pa.Super 170, 663 A.2d 728 (1995). In addition to *Dranzo*, Superior Court has indicated that legislative action regarding the admissibility of evidence in cases other than when seat belt violations are in issue are valid. Although a constitutional issue apparently as not raised in *Commonwealth v. Shoup*, supra, it would seem that a defendant's interest in remaining out of jail for a minimum of three and a half years would be as important, if not more so, as the right to recover damages.

Thus, we find the statute to be constitutional as it applies to this case. To repeat something said earlier, it is not certain the statute changed anything. At most, it can only clearly be said that, prior to enactment, seat belt defenses might be raised only when defendant was under a contractual obligation to use them.

Our order may not seem to reflect the parties' understanding of issues, it reflects our understanding of the state of the record.

ORDER OF COURT

AND NOW, this 25th day of March, 1996, preliminary objections are treated as a motion for judgment on the pleadings. Based upon this court's interpretation of 75 Pa. C.S. §1581, judgment is entered in favor of the additional defendants and against defendants.

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 CHARLES J. CARBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executrix: Rose M. Topper, 290 Hanover Street, New Oxford, PA 17350
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF LEO J. FUNK, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executor: Adams County National Bank, Trust Office, Lincoln Square, Gettysburg, PA 17325
 Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVA S. SHEARER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
 Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325
 Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANNA M. TIPTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Charles F. Tipton, 78 Lake View Drive, Gettysburg, PA 17325
 Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF JOHN MARSHALL TRENT, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania
 Administratrix: Sandra E. McCleef, 2215 Biglerville Road, Lot 47, Gettysburg, PA 17325
 Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF BYRON WRIGHT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
 Executor: Adams County National Bank, P. O. Box 4566, Gettysburg, PA 17325
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF HAZEL S. YOUNG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executor: Clarence M. Swinn, Jr., 29 East Lincoln Ave., Gettysburg, PA 17325
 Attorney: Richard E. Thrasher, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF SARAH E. CAREY, DEC'D

Late of 1111 Chambersburg Road, Gettysburg, Pennsylvania 17325
 Administratrix: Wanda Carey, 1111 Chambersburg Road, Gettysburg, PA 17325; Marcy Kidd, 1141 Nissley Road, Lancaster, PA 17601
 Attorney: Tracy M. Sheffer, Esq., P. O. Box 215, 20 West Main Street, Fairfield, PA 17320

ESTATE OF CRAIG ALLEN DYARMAN, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
 Executor: Chad J. Dyarman
 Attorney: Samuel A. Gates & Mooney, 250 York Street, Hanover, PA 17331

ESTATE OF NAOMI E. FRYMYER, DEC'D

Late of Union Township, Adams County, Pennsylvania
 Co-Executrices: Susan A. Frymyer Smith, 382 Wilson Avenue, Hanover, PA 17331; Darlene L. Hawbaker, 861 Littlestown Road, Littlestown, PA 17340
 Attorney: Timothy J. Shultis, Esquire, Miller & Shultis, 118 Carlisle Street, Suite 110, Hanover, PA 17331

ESTATE OF ADELE M. KEECH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executor: Farmers Bank, a Division of Dauphin Deposit Bank and Trust Company of Hanover, 13 Baltimore Street, Hanover, PA 17331
 Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CECIL VAN DOREN, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
 Executrix: Doris C. Van Doren, 5475 Wingborne Court, Columbia, MD 21045
 Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF REBECCA S. EALY, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
 Executrices: Edra Ealy Potter, 535 Glenwyn Dr., Littlestown, PA 17340; Linda Jane Stauffer, R. D. #3, Box 3261, Hillview Rd., Spring Grove, PA 17362
 Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

ESTATE OF ESTHER S. JOHNSON a/k/a ESTHER VALERIA JOHNSON a/k/a ESTHER SPIESE JOHNSON, DEC'D

Late of The Brethren Home, 2990 Carlisle Pike, New Oxford, PA 17350, Oxford Township, Adams County, Pennsylvania
 Executor: Warren M. Eshbach, 3960 Pinchtown Road, Thomasville, PA 17364

ESTATE OF MARION STROUSE SCHARF a/k/a MARION S. SCHARF, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executrix: Elise K. Scharf, P. O. Box 3338, Gettysburg, PA 17325
 Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF GLENN L. STERNER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executors: Kenneth E. Sterner, 1111 Granada Lane, Mechanicsburg, PA 17055; Charles R. Sterner, 337 Semmes Drive, Wilmington, NC 28412; Marie E. Hoffman, 585 Hoffman Road, Gettysburg, PA 17325
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF HELEN A. ZEILMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executrices: Ethel S. Breighner, 516 Moul Avenue, Hanover, PA 17331; Ruth S. McCarthy, 511A Shalom Drive, New Oxford, PA 17350
 Attorney: G. Steven McKonily, 119 Baltimore Street, Hanover, PA 17331

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State, on November 19, 1996, for HOSPITALITY MANAGEMENT CORP. with offices located at 35 West Fleet Street, Abbottstown Borough, Adams County, Pennsylvania. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

William W. Hafer, Esquire
Solicitor

11/29

NOTICE OF APPLICATION FOR
CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN of the filing with the Department of State of the Commonwealth of Pennsylvania, on November 1, 1996, under the provisions of the Business Corporation Law of 1988, of an Application for Certificate of Authority by FALCON GROUP, INC., a corporation incorporated under the laws of New York, with its principal office at 9 Willow Street, Brooklyn, New York 11201. The address of this corporation's registered office in this Commonwealth is 223 Baltimore Street, Gettysburg, Adams County, Pennsylvania 17325.

Pyle and Entwistle
25 South Washington Street
Gettysburg, PA 17325

11/29

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing with the Department of State of the Commonwealth of Pennsylvania, on November 1, 1996, under the Fictitious Name Act, of an Application for the registration of the fictitious name FALCON GROUP HOLDING CO., with its principal office or place of business at 223 Baltimore Street, Gettysburg, Pennsylvania 17325. The names and addresses of the person and entity who are party to the registration are: Peter Pfau, 9 Willow Street, Brooklyn, New York 11201; and Falcon Group, Inc., 9 Willow Street, Brooklyn, New York 11201.

Pyle and Entwistle
25 South Washington Street
Gettysburg, PA 17325

11/29

VACANCY ANNOUNCEMENT

United States District Court -
Middle District of Pennsylvania

PRO SE LAW CLERK
Scranton, Pennsylvania

The United States District Court for the Middle District of Pennsylvania is seeking qualified candidates for the position of Pro Se Law Clerk. The Pro Se Law Clerk provides legal assistance to the Court in connection with prisoner petitions and complaints. General responsibilities include substantive screening after filing of all prisoner and inmate petitions and motions, including state habeas corpus petitions, motions to vacate sentence, and civil rights complaints. The position involves drafting appropriate recommendations and orders for the Court's approval.

The Pro Se Law Clerk will keep abreast of changes in the law to aid the Court in Adjusting to new legislation in the pro se area and will review the docket of pending prisoner litigation to assure the proper progress of such cases. Compiling statistics and preparing periodic reports which reflect the status and flow of cases is also required.

A successful candidate must be a law school graduate and possess excellent interpersonal skills, a positive attitude, and the ability to work in a team environment. Computer literacy in WordPerfect and legal research is required. Starting salary is JSP 9-14 (\$30,196.00 to \$61,348.00) depending on experience and bar membership.

Applicants should send a cover letter, resume and short writing sample to:

Clerk
U.S. District Court
P. O. Box 1148
Scranton, PA 18501

The closing date for the position is December 6, 1996. The Court is an Equal Opportunity Employer.