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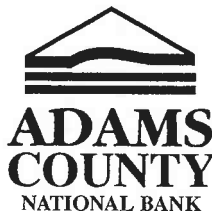
## IN THIS ISSUE

TREVDAN VS. BOCK ET AL

*This opinion continued from last issue (8/29/2003)*

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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-156 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office, located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the right-of-way line of Kevin Drive at Lot No. 115 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 115, North eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds West, one hundred forty-five and thirteen hundredths (145.13) feet to a point at Lot No. 137 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 137 and Lot No. 136 as shown on the hereinafter referenced subdivision plan, North eighty-one (81) degrees, twenty-seven (27) minutes, twenty (20) seconds East, one hundred (100.00) feet to a point at Lot No. 117 as shown on the hereinafter referenced subdivision plan; thence along said Lot No. 117, South eight (08) degrees, twenty-six (26) minutes, forty-nine (49) seconds East, one hundred forty-five and thirty hundredths (145.30) feet to a point on the right-of-way line of Kevin Drive; thence along the right-of-way line of Kevin Drive, South eighty-one (81) degrees, thirty-three (33) minutes, eleven (11) seconds West, one hundred (100.00) feet to a point, the point and place of BEGINNING. CONTAINING 14,521 square feet.

THE above description being Lot No. 116 on the Final Subdivision Plan for Delbert Piper "Colonial Acres", prepared by Mort, Brown and Associates, dated April 1, 1993, which said subdivision plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 64, Page 93.

TITLE TO SAID PREMISES IS VESTED IN M. Christopher Taylor and Robin A. Taylor, his wife by Deed from Jonathan A. Weaver, et al dated

2/24/1999 and recorded 3/2/1999, in Record Book 1775, Page 270.

Premises being: 120 Kevin Drive, New Oxford, PA 17350

Tax Parcel No. Map 13, Parcel 65

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

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/22, 29 & 9/5

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-178 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land with the improvements thereon erected, situate, lying and being in Hamilton Township, Adams County, Pennsylvania, bounded and described as follows.

BEGINNING at a point at corner of a twenty (20) foot driveway and lot now or formerly of Earl F. Small, which said point is 20 feet East of the East side of Lot No. 16 on the plan hereinafter referred to; thence along said private driveway, North 71 degrees 21 minutes East, 60 feet to a point in Lot No. 17 and land now or formerly of Wilmer N. Rohrbaugh; thence along said lands, North 21-1/4 degrees West, 135 feet to a point at or near the Conewago Creek, thence along

said Conewago Creek, South 70-1/2 degrees West, 60 feet to a point at land now or formerly of Earl F. Small, aforesaid; thence along said land, South 21-1/4 degrees East, 135 feet to a point at private driveway and the place of BEGINNING.

BEING part of a larger portion of Lot No. 17 on a plat or plan of lots prepared by A.E. Kohr on July 16, 1921.

SUBJECT, nevertheless, to the conditions and restrictions set forth in prior recorded deeds.

Property address: 160 Cottage Drive, New Oxford, PA 17350

Tax Parcel No. 17-J9-49

SEIZED and taken into execution as the property of **Nevah W. Eckard III & Renate J. Eckard** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/22, 29 & 9/5

## DISCUSSION

Pa.R.C.P. 1035.2 provides that, after the relevant pleadings are closed, any party may move for summary judgment:

whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report.

Therefore, “summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Tremco, Inc., v. Pennsylvania Manufacturers Insurance Co.*, 2002 WL 1404767, 3 (Pa.Com.Pl. 2002). It must be “clear and free from doubt” that the moving party is entitled to judgment as a matter of law. *Id.* In ruling on a motion for summary judgment, the trial court must “view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.” *Cardwell v. Chrysler Financial Corp.*, 2002 WL 1380330, 4 (Pa.Super).

Defendant, General Accident sets forth the following legal arguments in its Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment. Plaintiff’s motion for summary judgment contains no legal argument, but rather is based on a statement of uncontested facts prepared by Plaintiff and an affidavit of Plaintiff’s witness. Oral testimony alone is insufficient to establish absence of a genuine issue of material fact. Furthermore, there are several issues of material fact in dispute because a surety can assert the defenses of its principal. Additional discovery may further establish General Accident’s defenses. Plaintiff was asked to supplement its responses to General Accident’s interrogatories and request for production of documents; however, Plaintiff has not done so. This precludes all Defendants from asserting additional defenses. Finally, a surety has a right of subrogation against its principal for amounts paid pursuant to the terms of the bond; however, where the principal is ultimately proven not to be liable, the surety cannot recover any amounts it has paid notwithstanding that the payments were made in complete good faith. Therefore, if General Accident paid Plaintiff

despite Bock's contention that the claims were not owed, General Accident might never get reimbursed.

In support of its motion for summary judgment, Plaintiff provides the affidavit of Michael Altschuler, General Manager of Trevdan Building Supply. Plaintiff also provides: 25 invoices on Bock and Mica's joint account which allegedly have not been paid; a copy of the Joint Check Agreement between Bock, Mica and Trevdan; a copy of the Performance-Payment Bond; copies of Notice letters sent to Bock and St. Joseph's which are dated November 17, 1998 and December 7, 1998, and which state that Plaintiff is a beneficiary under payment bond and is owed money; and a Statement of Undisputed Material Facts which Plaintiff prepared.

General Accident maintains that Plaintiff's legal argument in support of its motion for summary judgment relies almost exclusively on Mr. Altschuler's affidavit, and contains no caselaw in support of its position. General Accident cites *Borough of Nanty-Glo v. American Surety Company*, 163 A. 523 (Pa. 1932), in arguing that a party moving for summary judgment may not rely exclusively upon oral testimony either through testimonial affidavits or deposition testimony to prove the absence of a genuine issue of material fact. Plaintiff contends that Mr. Altschuler's Affidavit is not testimonial in nature, but rather, it confirms Plaintiff's "uncontested business records" which establish General Accident's liability under its surety bond.

The Pennsylvania Supreme Court has held:

In determining the existence or non-existence of a genuine issue of material fact, courts are bound to adhere to the rule of *Nanty-Glo Borough v. American Surety Co.* . . . which holds that a court may not summarily enter a judgment where the evidence depends upon oral testimony. *RTC v. Urban Redevelopment Authority*, 638 A.2d 972, 975 (1994) (citations omitted).

Summary judgment may not be granted where the moving party relies exclusively upon oral testimony; "no matter how clear and indisputable such proof may appear, it is the province of the jury to decide the credibility of the witnesses." *Kee v. Pennsylvania Turnpike Commission*, 743 A.2d 546, 550 (Pa.Cmwlth. 1999).

As noted above, Plaintiff argues that Mr. Altschuler's credibility and demeanor are irrelevant because his testimony simply confirms

Plaintiff's uncontested business records. In fact, Bock and General Accident have contested Plaintiff's business records. They maintain that the invoices themselves are not sufficient to establish a valid bond claim because the invoices do not prove that the materials were actually delivered and received by someone at the project.<sup>4</sup> Furthermore, Bock and General Accident argue that Plaintiff's invoices are not sufficient to establish a valid bond claim because the Joint Check Agreement was not applicable. Bock and General Accident state that materials were ordered by Mica pursuant to its contract with Plaintiff, that Bock has paid Mica for all such materials, and that, if it is proven that a debt is owed to Plaintiff, Mica is responsible for payment of such debt. Therefore, because Plaintiff's business records are contested, the motion for summary judgment is dependent upon Mr. Altschuler's testimony. Mr. Altschuler's credibility and demeanor are relevant and must be judged by the trier of fact.

Plaintiff also prepared a "Statement of Undisputed Material Facts" as further support for its summary judgment motion. In fact, General Accident specifically denied many of these alleged "undisputed material facts" in its Answer to Plaintiff's Complaint and in its Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment. Plaintiff argues that none of the statements that General Accident objects to in its Memorandum of Law are material. Plaintiff further argues that because General Accident did not specifically deny the other allegations contained in the Statement of Undisputed Material Facts, such allegations are deemed "absolutely true and uncontested." For example, Plaintiff alleges there is no dispute with regard to the fact that:

Trevdan's customers, D.E. Mica, Inc. ("Mica") and Ernest Bock & Sons, Inc. ("Bock"), requested Trevdan to furnish building materials to them for a bonded job that they were performing for St. Joseph Village Corporation on a project known as the St. Joseph's Village Home ("Project").

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<sup>4</sup>Bock argues that testimony is needed from the individual who delivered the materials to the project and from the individual who signed for those materials. We will address this issue more completely later in the Opinion; however, at this point, it is sufficient to state that Plaintiff's business records have been contested.

In their Answer to Plaintiff's Complaint, Bock and General Accident specifically deny that Bock requested Plaintiff to furnish materials for the construction project. Rather, they state that Bock's subcontractor, Mica, ordered the material from Plaintiff, and that Bock has paid Mica for the materials Mica ordered. General Accident restates this argument in its Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment. Furthermore, General Accident states that Plaintiff has been paid for all labor and material it supplied to the project.

Plaintiff also alleges that General Accident has not contested the allegation that Bock and Mica entered into a Joint Check Agreement as a condition of Plaintiff supplying materials to the project. In their Answer to Plaintiff's Complaint, Bock and General Accident deny that the Joint Check Agreement set forth any terms or conditions of sale of the goods or materials by Plaintiff to Bock. Furthermore, Bock and General Accident maintain that Plaintiff unilaterally altered the Joint Check Agreement, and that such alteration voided the Agreement because there was no meeting of the minds. General Accident restated this contention in an argument before this Court with regard to Plaintiff's motion for summary judgment.

The allegations and denials set forth above certainly constitute genuine issues of material fact which must be addressed through further discovery. Therefore, Plaintiff's Statement of Undisputed Material Facts cannot serve as a basis for granting summary judgment.<sup>5</sup> We also note that Plaintiff argues General Accident's "mere allegations or denials" are insufficient to avoid the entry of summary judgment." Pa.R.C.P. 1035.3(a)(1) states:

The adverse party may not rest upon the mere allegations or denials of the pleadings, but must file a response within thirty days after service of the motion identifying one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion...

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<sup>5</sup>In addition, several of Plaintiff's alleged "undisputed material facts" are dependent upon Mr. Altschuler's affidavit which, as previously stated, also cannot serve as a basis for granting summary judgment.

General Accident filed its Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment within thirty days after the filing of Plaintiff's Motion. General Accident contested several of Plaintiff's statements of fact, as well as Plaintiff's reliance on Mr. Altschuler's affidavit. Furthermore, Bock and General Accident provide copies of Purchase Orders directed to Mica in support of their argument that Bock contracted only with Mica, and that Mica then contracted with Plaintiff. General Accident also provides a copy of a letter, dated January 14, 1999, from Plaintiff to General Accident which allegedly notified General Accident of Plaintiff's claim; however, General Accident states that the letter was sent to an incorrect address, with no proof of service attached. General Accident has therefore complied with Pa.R.C.P. 1035.3.

Plaintiff alleges in its Statement of Undisputed Material Facts, that it provided notice of the claim to Bock, General Accident, and St. Joseph's by certified mail on November 17, 1998. As previously noted, however, General Accident argues that it did not receive notice of the claim prior to the time the complaint was filed. The issue of notice is irrelevant with regard to Count VI of Plaintiff's Amended Complaint in which Plaintiff alleges that General Accident "willfully and in bad faith, failed and refused to investigate and respond to Trevdan's claim as required by Pennsylvania law." This Court ruled in its Order of November 9, 2000 that Plaintiff can not maintain a cause of action for bad faith against General Accident. The issue of notice was not raised elsewhere in Plaintiff's Amended Complaint. Furthermore, General Accident does not raise the issue of notice except to state that, because Plaintiff did not provide adequate notice to General Accident, Plaintiff cannot maintain an action against General Accident for bad faith in handling its claim. Therefore, it does not appear that notice is relevant in regard to Plaintiff's summary judgment motion. In fact, Plaintiff specifically states that it is seeking summary judgment on its payment bond claim; not on its bad faith claim against General Accident.

General Accident can not raise notice as a defense to payment under the bond claim if it is proven that Plaintiff is owed such payment, because notice was not a condition precedent to recovery. Numerous courts have concluded that a breach of a condition precedent in a payment bond given by a surety for profit should not relieve the surety of liability for any loss unless the surety is prejudiced by

the breach. *Edgemont Stone and Supply Company v. Contractor's Construction Corporation and Aetna Insurance Company*, 15 Phila.Co.Rptr. 476, 481 (1987). If the surety does not make notice to it a condition precedent to recovery, it has, in essence, admitted that lack of notice is not prejudicial. *Id.*, at 483, citing *Conesco Industries v. Conforti & Eisele, Inc.*, 627 F.2d 312 (D.C. Cir. 1980). The facts of *Conesco* are similar to those of this case. In *Conesco*, the supplier was able to give notice of default to the general contractor; however, because of difficulty in determining the identity of the surety, the supplier was unable to give timely notice to the surety. The court noted, however, that the payment bond did not make notice to the surety a condition precedent to recovery, and therefore, the surety was not prejudiced by late notice. *Conesco Industries v. Conforti*, 627 F.2d at 315. General Accident did not make notice to it a condition precedent to recovery under the payment bond, therefore, in accordance with the Court's ruling in *Edgemont*, General Accident has, in essence, admitted that lack of notice is not prejudicial.

As this Court noted in its Opinion dated November 9, 2000, General Accident may, however, assert any defense available to its principal, Bock. The Pennsylvania Superior Court has held:

A suretyship is evidenced by a contract and represents a three-party association where a creditor is entitled to performance of a contractual duty by the principal debtor or alternatively, if the debtor defaults, by the debtor's surety... A surety may usually assert any defense of which his principal could take advantage. *General Equipment Manufacturers v. Westfield Insurance Company*, 635 A.2d 173, 180 (1993).

General Accident makes this argument in opposition to Plaintiff's summary judgment motion, stating that such defenses have been asserted and have not been resolved.

This Court further stated in its Opinion of November 9, 2000, "Bock asserts that it made payment for all debt owed to Plaintiff therefore, [General Accident] may raise that same defense." As previously stated, Bock maintains that it did not have a contract with Plaintiff, and that it does not owe Plaintiff for any labor and material because Mica, not Bock, ordered the labor and material. Plaintiff has not provided sufficient evidence to show an absence of a genuine



dispute as to these defenses, and Plaintiff cannot rely exclusively on Mr. Altschuler's affidavit to discount these defenses.

The invoices themselves are not sufficient evidence of a valid bond claim because they do not prove that the materials were in fact delivered and received by someone at the project. As General Accident argues, these facts must be established through the testimony of fact witnesses, namely, the individuals who delivered the materials, and the individuals who received or signed for the materials. Plaintiff states that material suppliers may recover under a payment bond when delivery is made in good faith and under the reasonable expectation that the goods were intended for ultimate use under the contract. Plaintiff further states that incorporation or consumption of the materials in the work is immaterial to a supplier's right of recovery.

The Pennsylvania Supreme Court has held that the proper test to be applied is:

whether or not in a particular case and bonded project there is a reasonable and good faith expectation by the supplier at the time of delivery that the materials under all the circumstances would be substantially used up in the project under way. If so, the surety is liable. *Walters Tire Service, Inc. v. National Union Fire Insurance Company*, 252 A.2d 593, 595 (Pa. 1969), citing *McDermott, Inc. v. Woods, Const. Co.*, 224 F.Supp. 406, 409 (N.D. OK 1963). See also *Roman Mosaic and Tile Company v. Thomas P. Carney, Inc.*, 729 A.2d 73, 79 (Pa.Super. 1999).

The Supreme Court went on to state in *Walters* that there are two reasons for applying the above test rather than requiring the supplier to prove that the materials were actually incorporated into the project:

First, if this burden is placed on the supplier, he would be faced with an almost insurmountable task of tracing each and every item he sold even after the items had clearly left his control. Second, one of the purposes of surety bonds is to enhance the contractor's ability to secure credit for needed materials... the supplier would be reluctant to extend credit if the surety's liability will not

attach until such time as the goods have actually been consumed. *Walters v. National Union*, 252 A.2d. at 595.

It appears from the Court's holding in *Walters*, that the supplier may be required to prove that its materials were actually delivered and received at the project; however, as Plaintiff argues, the supplier does not have to prove that its materials were thereafter incorporated into the project, provided that the supplier can demonstrate its good faith belief that the materials would be incorporated into the project. Before the issue of Plaintiff's good faith belief can be addressed, it must be proven that the materials Plaintiff supplied were in fact delivered and received at the project. As Bock and General Accident argue, Plaintiff's invoices do not prove such delivery and receipt. Furthermore, Mr. Altschuler's affidavit alone can not provide the proof that would be necessary for this Court to grant Plaintiff's summary judgment motion with regard to this issue.

Finally, General Accident maintains that summary judgment should not be entered against it on a claim which its principal denies is due. As General Accident argues, "equity generally implies a right to indemnification in favor of a surety only when the surety pays off a debt for which his principal is liable." *Fidelity and Deposit Co. of Maryland v. Bristol Steel & Iron Works, Inc.*, 722 F.2d 1160, 1163 (4th Cir. 1983) (applying Pennsylvania law), citing *Com'l Ins. Co. of Newark v. Pacific-Peru Const.*, 558 F.2d 948, 953 (9th Cir. 1977). As discussed above, there are certainly material facts in dispute with regard to Bock's liability. Therefore, it would be premature to require General Accident to make payments under the surety bond at this time.

Accordingly, the attached Order is entered.

#### ORDER

AND NOW, this 30th day of August, 2002, in consideration of Plaintiff's Motion for Summary Judgment against Defendant, General Accident Insurance Company of America, and in accordance with the attached Opinion, said Motion is denied.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-638 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin on the Northwestern edge of Winter Drive at Lot No. 80; thence by said lot North 81 degrees 45 minutes 26 seconds West, 111.75 feet to an iron pin at Lot No. 83; thence by said lot North 62 degrees 15 minutes 8 seconds West, 60 feet to an iron pin at Lot 82; thence by said lot 27 degrees 44 minutes 52 seconds East, 170 feet to an iron pin on the Northwestern edge of said Winter Drive; thence along the Northwestern edge of said Winter Drive South 62 degrees 15 minutes 8 seconds East, 30 feet to a concrete monument; thence continuing along the Northwestern edge of said Winter Drive by a curve to the right, the radius of which is 125 feet, for an arc distance of 153.80 feet, and having a chord bearing and distance of South 27 degrees 00 minutes 17 seconds East, 144.28 feet to a concrete monument; thence continuing along the Northwestern edge of said Winter Drive South 8 degrees 14 minutes 34 seconds West, 52.43 feet to the place of BEGINNING.

CONTAINING 21,594 square feet.

THE above description was taken from a plan of lots labeled "Springfield Estates", dated June 22, 1977, prepared by Gettysburg Engineering Co., Inc., recorded in Adams County, in Plat Book 20 at Page 29, designating the above as Lot No. 81.

BEING the same property known as 2 Winter Drive, Springfield Estates, Borough of Bonneauville, Adams County, Pennsylvania.

TITLE TO SAID PREMISES IS VESTED IN Charles M. Riemer and Candee Riemer, husband and wife by Deed from Steven P. Spalding, married man, joined herein by his wife Kellie M. Spalding dated 9/8/2000 and recorded 9/29/2000, in Record Book 2136 Page 19.

Premises being: 2 Winter Drive, Gettysburg, PA 17325

Tax Parcel No. 8-58

SEIZED and taken into execution as the property of **Charles M. Riemer a/k/a Mike C. Riemer a/k/a Charles Riemer & Candee Riemer a/k/a Candee Tomak** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1316 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin at the corner of lot now or formerly of Charles F. McCaffery at North Queen Street, which pin is five and eighty-five hundredths (5.85) feet from the curb line of said street and eighty (80) feet Northwestwardly from a public alley; thence by said lot now or formerly of Charles F. McCaffery, South sixty-four and one-half (64-1/2) degrees West, two hundred eighty (280) feet to an iron pin in an alley, which said iron pin is twelve and six-tenths (12.6) feet from an iron pin in a stream, thence in and along said alley, South thirty-three (33) degrees East, forty-one and five-tenths (41.5) feet to a stake in said alley at corner of lands now or formerly of Mrs. Annie Eline; thence by said lands now or formerly of Mrs. Annie Eline, North sixty-four (64) degrees East, one hundred twelve and five-tenths (112.5) feet to a stake at corner of shed on the lands hereby conveyed; thence by same, North fifty-four (54) degrees East,

six (6) feet to a stake; thence by same, North sixty-four and one-half (64-1/2) degrees East, one hundred sixty-one and five-tenths (161.5) feet to a mark on the sidewalk on North Queen Street; thence North thirty-three (33) degrees West, forty (40) feet to an iron pin, the place of BEGINNING.

BEING No. 32 North Queen Street.

TITLE TO SAID PREMISES IS VESTED IN Jennifer Glass and Darlene Martofel and John A. Goulet, as joint tenants with right of survivorship by Deed from Dorothy E. Miller, single woman dated 6/21/1999 and recorded 6/24/1999 in Record Book 1860 Page 38.

Premises being: 32 North Queen Street, Littlestown, PA 17340

Tax Parcel No. 84 Map 8

SEIZED and taken into execution as the property of **Jennifer Glass, Darlene Martofel & John A. Goulet** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-528 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of ground, situate on the Westerly right of way line of Abbotts Drive, lying and being in the Borough of Abbottstown, Adams County, Pennsylvania, known and numbered as Lot No. 49 on a Plan of Lots for Abbotts Manor, Phase III, recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Subdivision Plan Book 76, Page 99, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the Westerly right of way line of Abbotts Drive, at a corner of Lot No. 50 on said Plan; thence extending along the said right of way line of Abbotts Drive South forty-seven (47) degrees sixteen (16) minutes thirty-four (34) seconds East eighty-five (85) feet to a point, at a corner of Lot No. 48 on said Plan; thence extending along the said Lot No. 48 South forty-two (42) degrees forty-three (43) minutes twenty-six (26) seconds West three hundred three and nineteen one-hundredths (303.19) feet to a point; thence North thirty (30) degrees fourteen (14) minutes zero (00) seconds West eighty-five and seven one-hundredths (85.07) feet to a point, at a corner of Lot No. 50 on said Plan; thence extending along the said Lot No. 50 North forty-one (41) degrees fifty-eight (58) minutes ten (10) seconds East two hundred seventy-eight and twenty-eight one-hundredths (278.28) feet to a point and place of BEGINNING.

CONTAINING 24,156 square feet.

UNDER AND SUBJECT to a portion of a storm water management pond and wetland area easement as shown on said plan.

Tax Parcel #5-41

SEIZED and taken into execution as the property of **Joseph I. Andruscavage & Lucinda S. Cooper** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-636 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Reading, County of Adams and Commonwealth of Pennsylvania, to wit:

BEING more particularly bounded and described as Lot No. 1011 on a plan of lots of the Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County in Plat Book 1, Page 6.

UNDER AND SUBJECT, nevertheless, to all legal highways, easements, right of way and restrictions of record.

Vested by deed, dated 09/12/97, given by Matthew M. Urbanek and Beth A. Urbanek, husband and wife to Matthew M. Urbanek and Beth A. Urbanek, husband and wife, as tenants by the entireties and recorded 09/25/97 in Book 1445 Page 148

Premises being: 18 Sedgwick Drive, East Berlin, PA 17316

Tax Parcel No. 37-013

SEIZED and taken into execution as the property of **Matthew M. Urbanek & Beth A. Urbanek a/k/a Beth A. Keefeaver** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-651 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

BEGINNING at a rebar and cap set in Pecher Road (T-312) on line of land now or formerly of Richard B. Nevius; thence along said Nevius land, South 85 degrees 31 minutes 27 seconds East, 1,194.27 feet to a stone found on line of land now or formerly of William R. Ruppert; thence along said Ruppert land, South 04 degrees 32 minutes 48 seconds West, 588.63 feet to a rebar and cap set; thence along land of Fred Harry Crum, North 80 degrees 39 minutes 50 seconds West, 337.90 feet to a rebar and cap set; thence along the same, North 39 degrees 35 minutes 16 seconds West, 435.54 feet to a cap and rebar set; thence continuing along the same, North 85 degrees 31 minutes 27 seconds West, 561.94 feet to a rebar and cap set in Pecher Road; thence in Pecher Road, North 06 degrees 19 minutes 30 seconds East, 247.16 feet to the above-described place of BEGINNING, CONTAINING 10.4139 Acres.

Vested by: Deed dated 3/26/98, given by Fred Harry Crum and Judith Marie Crum, husband and wife, to Michael E. Crum and Stacey L. Crum, husband and wife, as tenants of an estate by the entireties, recorded 3/26/98 in Book 1546 Page 195

Premises being: 720 Pecher Road, Fairfield, PA 17320

Tax Parcel No. 25-C17-30

SEIZED and taken into execution as the property of **Michael E. Crum & Stacy L. Crum a/k/a Stacey L. Crum** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

## 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 CARMELO FAZZOLARI, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administratrix: Gioconda Fazzolari, 24 Autumn Drive, Gettysburg, PA 17325

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

## ESTATE OF ANNE MARIE MYERS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Heidi Myers, 1906 Long Corner Road, Mt. Airy, MD 21771

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

## ESTATE OF MICHAEL R. REDDING, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Administratrix: Michelle J. Redding, 721 Rock Creek Ford Road, Gettysburg, PA 17325

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

## ESTATE OF CHARLOTTE W. WEIKERT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Gary M. Weikert, P.O. Box 118, Arendtsville, PA 17303

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

## SECOND PUBLICATION

## ESTATE OF EMMA SCOTT FINK a/k/a EMMA R. FINK, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executor: Adams County National Bank, Attn: Trust Department, P.O. Box 3129, Gettysburg, PA 17325

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

## ESTATE OF MARGUERITE A. HOFFMAN, DEC'D

Late of the Borough of McSherrystown, York County, Pennsylvania

Executors: Hugh F. Hoffman and William J. Hoffman

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

## ESTATE OF ROBERT E. MCKENRICK, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: Joann M. Karchner, 2990D York Road, Gettysburg, PA 17325; Michael L. McKenrick, 794 Gabler Road, Gardners, PA 17324

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

## ESTATE OF VICTOR ANTHONY OLSWFSKI, SR., DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Executor: Henrietta C. O'Shea, 1940 Bull Frog Road, Fairfield, PA 17320

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF MELVIN ANDREW TROSTLE a/k/a MELVIN A. TROSTLE, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Wayne Trostle, 3100 Lake Meade Road, East Berlin, PA 17316; Ruthanna T. Miller, 3290 Lake Meade Road, East Berlin, PA 17316

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

## ESTATE OF RUTH E. ZINN, DEC'D

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

Administrator: Sharon L. Swaby, c/o 29 North Duke St., York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, Countess Gilbert Andrews, PC, 29 North Duke Street, York, PA 17401

## THIRD PUBLICATION

## ESTATE OF KARELENE ANN ALT-LAND, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Robin Ann Huff, P.O. Box 1254, Hanover, PA 17331

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

## ESTATE OF MILDRED C. CODDINGTON, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: E. Joy Flinn, 1660 Fairfield Road, Gettysburg, PA 17325; Robert C. Coddington, 417 Union Street, Hollidaysburg, PA 16648

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

## ESTATE OF VESTA R. DAY, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Sandra K. M. Hockley, now Sandra K. Martin, 436 Goodyear Rd., Gardners, PA 17324

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

## ESTATE OF ROBERT W. REDDING a/k/a ROBERT W. REDDING, SR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Coretta E. Redding, c/o Craig A. Diehl, Esq., 3464 Trindle Rd., Camp Hill, PA 17011-4436

Attorney: Craig A. Diehl, Esq., 3464 Trindle Rd., Camp Hill, PA 17011-4436

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-867 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate lying and being in the Borough of Carroll Valley, (formerly Hamiltonban Township), Adams County, Pennsylvania being Lot No. 38 in Section H, bounded and described as follows:

BEGINNING at a point in the center of High Ridge Drive at Lot No. 37; thence by said lot, North 49 degrees, 6 minutes West, 200 feet to lands now or formerly of Charnita, Inc.; thence by said lands, North 40 degrees, 54 minutes East, 100 feet to Lot No. 39; thence by said lot, South 40 degrees, 54 minutes West, 100 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled "Section H, Charnita, Inc." dated August 7, 1965 prepared by Gordon L. Brown, R.S. recorded in Adams County Plat Book 1 at page 15.

TITLE TO SAID PREMISES IS VESTED IN Ricky L. Miller and Patricia A. Miller, his wife by Deed from Donald M. Sites and Lisa M. Sites dated 12/29/92 and recorded 12/30/92, in Record Book 672, Page 253.

Premises being: 41 Ridgetrail, Fairfield, PA 17320

Tax Parcel No. 8-9

SEIZED and taken into execution as the property of **Ricky L. Miller & Patricia A. Miller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-562 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin or corner of land formerly of Guiden, now John R. Smith, Jr.; thence along Opossum Creek, now lands of Clair R. Showers, North 23-1/2 degrees West 0.0 perches to a stone; thence along the original line of lands formerly of Clyde Vines, now the Possum Valley Sewer Authority and John R. Smith, Jr., North 70-3/4 degrees East, 19.8-1/2 perches to a stone on line of land formerly of H. J. Guiden & Son, now John R. Smith, Jr.; thence continuing by lands of John R. Smith, Jr., South 22-1/2 degrees East, 60 feet to a stone; thence along lands formerly of Guiden, now John R. Smith, Jr., South 56-1/2 degrees West, 19.9-1/2 perches to the place of BEGINNING. CONTAINING 120 Perches, neat measure.

BEING KNOWN AS 1465 Center Mills Road, Aspers, PA 17304.

SUBJECT TO all recorded and/or visible easements and restrictions, if any

TOGETHER WITH AND SUBJECT TO a Mutual Right of Way between John R. Smith, Jr., *wa/d/b/a* Keystone Country Furniture, and James A. Entwistle and Barbara Jo Entwistle, dated May 11, 1999 and recorded in Adams County Record Book 1049 at page 253.

BEING the same property James A. Entwistle and Barbara Jo Entwistle, husband and wife, granted and conveyed to Christopher Wolfe a/k/a Christopher D. Wolfe and Robyn Wolfe, by Deed dated August 27, 1999 and recorded September 1, 1999, in the Recorder of Deeds Office, Adams County, Pennsylvania in Deed Book Volume 1907, Page 195.

DBV 1907

Page 195

Tax Parcel No. 29-2-5

SEIZED and taken into execution as the property of **Christopher Wolfe a/k/a Christopher D. Wolfe & Robyn Wolfe** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

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 Wednesday, September 10, 2003, at 9:00 a.m.

**LIVELSBERGER—Orphans'** Court Action Number OC-54-02. The First and Final Account of Michael R. Livelsberger, Jr. and Debra Ann Eline, Co-Executors of the Estate of Donna M. Livelsberger, deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

**TISHLER—Orphans'** Court Action Number OC-151-01. The First and Final Account of Allan C. Stam III and Cynthia L. Stam, Executors of the Last Will and Testament of Patricia B. Tishler, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

**HANER—Orphans'** Court Action Number OC-86-03. The First and Final Account of James B. Newman, Executor of the Estate of Mary D. Haner, deceased, late of Franklin Township, Adams County, Pennsylvania.

**SHILD—Orphans'** Court Action Number OC-87-03. The First and Final Account of PNC Bank, National Association and Ronald J. Hagaman, Co-Executors of the Estate of Jane R. Shildt, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

Clerk of Courts

8/29 & 9/5

# Adams County Legal Journal

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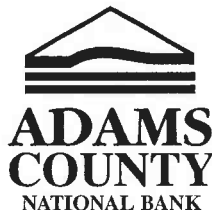
## IN THIS ISSUE

WEST VS. LYNCH

*This opinion continues to next issue (9/19/2003)*

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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-638 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin on the Northwestern edge of Winter Drive at Lot No. 80; thence by said lot North 81 degrees 45 minutes 26 seconds West, 111.75 feet to an iron pin at Lot No. 83; thence by said lot North 62 degrees 15 minutes 8 seconds West, 60 feet to an iron pin at Lot 82; thence by said lot 27 degrees 44 minutes 52 seconds East, 170 feet to an iron pin on the Northwestern edge of said Winter Drive; thence along the Northwestern edge of said Winter Drive South 62 degrees 15 minutes 8 seconds East, 30 feet to a concrete monument; thence continuing along the Northwestern edge of said Winter Drive by a curve to the right, the radius of which is 125 feet, for an arc distance of 153.80 feet, and having a chord bearing and distance of South 27 degrees 00 minutes 17 seconds East, 144.28 feet to a concrete monument; thence continuing along the Northwestern edge of said Winter Drive South 8 degrees 14 minutes 34 seconds West, 52.43 feet to the place of BEGINNING.

CONTAINING 21,594 square feet.

THE above description was taken from a plan of lots labeled "Springfield Estates", dated June 22, 1977, prepared by Gettysburg Engineering Co., Inc., recorded in Adams County, in Plat Book 20 at Page 29, designating the above as Lot No. 81.

BEING the same property known as 2 Winter Drive, Springfield Estates, Borough of Bonneauville, Adams County, Pennsylvania.

TITLE TO SAID PREMISES IS VESTED IN Charles M. Riemer and Candee

Riemer, husband and wife by Deed from Steven P. Spalding, married man, joined herein by his wife Kellie M. Spalding dated 9/8/2000 and recorded 9/29/2000, in Record Book 2136 Page 19.

Premises being: 2 Winter Drive, Gettysburg, PA 17325

Tax Parcel No. 8-58

SEIZED and taken into execution as the property of **Charles M. Riemer a/k/a Mike C. Riemer a/k/a Charles Riemer & Candee Riemer a/k/a Candee Tomak** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-867 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate lying and being in the Borough of Carroll Valley, (formerly Hamiltonban Township), Adams County, Pennsylvania being Lot No. 38 in Section H, bounded and described as follows:

BEGINNING at a point in the center of High Ridge Drive at Lot No. 37; thence by said lot, North 49 degrees, 6 minutes West, 200 feet to lands now or formerly of Charnita, Inc.; thence by said lands, North 40 degrees, 54 minutes East, 100

feet to Lot No. 39; thence by said lot, South 40 degrees, 54 minutes West, 100 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled "Section H, Charnita, Inc." dated August 7, 1965 prepared by Gordon L. Brown, R.S. recorded in Adams County Plat Book 1 at page 15.

TITLE TO SAID PREMISES IS VESTED IN Ricky L. Miller and Patricia A. Miller, his wife by Deed from Donald M. Sites and Lisa M. Sites dated 12/29/92 and recorded 12/30/92, in Record Book 672, Page 253.

Premises being: 41 Ridgetrail, Fairfield, PA 17320

Tax Parcel No. 8-9

SEIZED and taken into execution as the property of **Ricky L. Miller & Patricia A. Miller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19



## WEST VS. LYNCH

1. A debtor's cause of action, whether for personal injury or otherwise, that accrues prior to the filing of the bankruptcy petition, constitutes a property interest in the estate.

2. The Bankruptcy Code imposes upon bankruptcy debtors an express, affirmative duty to disclose contingent and unliquidated claims.

3. Unscheduled assets become property of the bankruptcy estate even if the debtor does not report them as required by Section 521 (of the Bankruptcy Code).

4. After a claim becomes part of the bankruptcy estate, only the bankruptcy trustee, as representative of the estate, has the authority to prosecute or settle the cause of action.

5. Actual knowledge of the asset by the trustee is irrelevant if the asset is not scheduled before the close of the case.

6. The debtor does not regain the authority to prosecute the personal injury claim following discharge of the bankruptcy because the claim remains property of the bankruptcy estate. The trustee therefore continues to be the real party in interest with regard to debtor's personal injury claim.

7. The prosecution of any action in the name of the real party in interest shall not affect any defense, counterclaim or setoff which might otherwise be asserted against the claim or demand thus prosecuted.

8. Since debtor was not the real party in interest at the time he filed the personal injury claim, .... the trustee is not a successor of one who was qualified to prosecute the action against Defendant. Substitution of the trustee will bring upon the record for the first time a person entitled to prosecute the action against Defendant. Consequently, Defendant is entitled to raise the defense that the attempt to substitute the trustee as debtor is time barred.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil, No. 98-S-1015, MARK D. WEST VS. ROGER S. LYNCH  
AND JANICE S. LYNCH.

Lynn G. Peterson, Esq., for Plaintiff

David Mills, Esq., for Defendant

Kuhn, P.J., August 30, 2002

### OPINION PURSUANT TO PLAINTIFF'S PETITION TO SUBSTITUTE BANKRUPTCY TRUSTEE AS PLAINTIFF

Before this Court is Plaintiff's Petition to Substitute Bankruptcy Trustee as Plaintiff. For the reasons set forth below, said Petition is denied.

### FACTUAL BACKGROUND

On September 26, 1996, Defendants, Roger S. and Janice C. Lynch, hired Plaintiff, Mark D. West, doing business as MW Contractors, to do remodeling work on Defendants' house located at

1279 Old Waynesboro Pike, Fairfield, Adams County, Pennsylvania (hereinafter “Defendants’ property”). Specifically, Plaintiff was to, among other things, construct an addition to the dwelling on Defendants’ property. The work required Plaintiff to use ladders and climb above the ground for the purpose of taking down a brick wall.

Plaintiff alleges that on October 24, 1996, he was standing or walking on the top portion of the existing wall when a portion of it gave way and crumbled under his feet, causing him to fall. As a result of the fall, Plaintiff alleges that he sustained injuries to his lower extremities and nervous system.

Plaintiff contends that he has experienced and will continue to experience physical and mental pain and suffering due to the injuries. Plaintiff also contends that he has paid for medicine, medical treatment, medical care, physical therapy, physicians and hospitals as a result of his injuries, and that future payments will be necessary. Furthermore, Plaintiff maintains that he has been and will be unable to perform his work duties to his full capacity, and that he has lost and will continue to lose income and earning capacity. Plaintiff also states that he has and will in the future be unable to enjoy life and attend to his usual daily duties.

Plaintiff argues that Defendants were the owners of the property and house located at 1279 Old Waynesboro Pike and were in exclusive possession, management and control of this property at the time of Plaintiff’s injury. Plaintiff further argues that Defendants had a duty to maintain their property in a reasonably safe condition for business invitees. Specifically, Plaintiff contends that Defendants had a duty not to create or allow to exist a dangerous condition on their property, or if such a condition existed, to give notice or warning to business invitees.

## PROCEDURAL BACKGROUND

Plaintiff’s injury on Defendants’ property occurred on October 24, 1996. On July 14, 1997, Plaintiff filed for bankruptcy relief. The bankruptcy was listed as a Chapter 7 “No Asset” Bankruptcy. Plaintiff’s bankruptcy was discharged on October 29, 1997. On October 15, 1998, Plaintiff brought suit against Defendants for the injuries he sustained on their property.

Defendant, Roger S. Lynch, filed a Motion for Summary Judgment on September 18, 2000, wherein he contended that Plaintiff had no standing to file the action. On November 20, 2000, this Court entered an Order granting Plaintiff and Bankruptcy Trustee 20 days to file a joint motion to substitute the trustee as the plaintiff in this action. Defendant would then be permitted to raise the timeliness of the joinder. On December 8, 2000, Plaintiff filed a Petition to Substitute Bankruptcy Trustee as Plaintiff, and Defendant responded. Briefs were filed after which the Court posed a series of questions to the parties in aid of disposition. Defendant has responded but neither the Plaintiff nor the Bankruptcy trustee have done so.

### ISSUE

Can Plaintiff substitute the bankruptcy trustee as the plaintiff in this action where the cause of action accrued before the filing of the bankruptcy petition, the trustee did not pursue the claim, the bankrupt debtor was discharged, and the instant action was filed nearly one year after that discharge?

### DISCUSSION

Defendant initially contends that Plaintiff's cause of action arose prior to the filing of the bankruptcy petition, and that it was therefore an asset of the bankruptcy estate. He argues that the bankruptcy trustee has the sole discretion to pursue the cause of action, and that failure to do so prior to the discharge did not grant Plaintiff the right to pursue the claim on his own behalf thereafter. Basically, Defendant concludes that because Plaintiff had no right to pursue the action, the trustee's attempt to advance the cause subsequent to the expiration of the statute of limitations is prohibited.

Plaintiff however takes the position that he was entitled to certain exemptions, the extent to which he is entitled to pursue. Therefore, substituting the trustee as the plaintiff would not prejudice Defendant.

The first issue to be addressed is whether Plaintiff's personal injury cause of action should have been considered an asset or property of the bankruptcy estate. The answer to this question will determine whether the trustee in bankruptcy even has standing to prosecute the personal injury suit against Defendant.

Section 541 of the Bankruptcy Code of 1978, 11 U.S.C. § 541(a)(1) provides that the property of a bankrupt which is included in his bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” Congressional intent was for § 541(a)(1) to include “causes of action.”<sup>1</sup> Courts have followed suit and held that a debtor’s cause of action, whether for personal injury or otherwise, that accrues prior to the filing of the bankruptcy petition, constitutes a property interest included in the estate. *Feist v. Consolidated Freightways Corp.*, 100 F.Supp.2d 273, 274 (E.D.Pa. 1999); *Cain v. Hyatt*, 10 B.R. 440, 441-2 (E.D.Pa. 1989); *Berlin v. Provident National Bank*, 2 D. & C.4th 560 (Phila. 1989). Plaintiff filed for bankruptcy after the events giving rise to his personal injury claim had occurred; therefore, that claim became property of the bankruptcy estate.

Section 521(1) of the Bankruptcy Code further requires the debtor to:

file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of debtor’s financial affairs...

The Bankruptcy Code therefore imposes upon bankruptcy debtors an express, affirmative duty to disclose contingent and unliquidated claims. *Browning Manufacturing v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 207-208 (5th Cir. 1999), citing 11 U.S.C. § 521(1).

The debtor need not know all the facts or even the legal basis for the cause of action; rather, if the debtor has enough information... prior to confirmation to suggest that it may have a possible cause of action, then that is a “known” cause of action such that it must be disclosed... Any claim with potential must be disclosed, even if it is “contingent, dependent, or conditional.”... *Id.* at 208 (citations omitted).

Plaintiff failed to list his personal injury claim on his schedule of assets. Nevertheless, the cause of action became property of the bankruptcy estate at the time the bankruptcy petition was filed.

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<sup>1</sup>See House Report No. 95-595, 95th Cong., 1st Sess. (1977), p. 367.

Unscheduled assets become property of the bankruptcy estate even if the debtor does not report them as required by Section 521. *Edwards v. Franchini*, 965 P.2d 318, 320 (Ct.App. N.M. 1998).

Plaintiff argues that he has a property interest in the personal injury claim because he is entitled to an exemption under Sections 522(d)(11)(D) and (E) of the Bankruptcy Code. 11 U.S.C. § 522(d)(11)(D) states that an individual debtor may exempt from property of the estate,

[t]he debtor's right to receive, or property that is traceable to – a payment not to exceed \$17,425, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent...<sup>2</sup>

11 U.S.C. § 522(d)(11)(E) further states that the debtor may exempt: a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

While Plaintiff may have been entitled to exempt a portion of any award from his personal injury claim, Plaintiff failed to list that claim as an exemption. 11 U.S.C. § 522(l) requires the debtor to file a list of property that the debtor claims as exempt. Section 522(l) further states, “[u]nless a party in interest objects, the property claimed as exempt on such list is exempt.” As Defendant correctly argues, the trustee did not have an opportunity to litigate the claim on behalf of the estate or object to an exemption because Plaintiff did not list the claim on his bankruptcy petition.

USCS Bankruptcy R. 1009(a) allows the debtor to amend a voluntary petition, list, schedule, or statement “at any time before the case is closed.” Plaintiff’s bankruptcy case was closed on November 4, 1997. Neither Plaintiff nor the bankruptcy trustee has sought to

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<sup>2</sup> At the time Plaintiff filed his bankruptcy petition, 11 U.S.C. § 522(d)(11)(D) stated that a debtor could exempt “a payment not to exceed \$15,000.” The rule was amended, effective April 1, 2001, to state, “a payment, not to exceed \$17,425.” 11 U.S.C. § 104 provides that any such adjustment of dollar amounts “shall not apply with respect to cases commenced before the date of such adjustments.” Consequently, if Plaintiff would be entitled to an exemption under 11 U.S.C. § 522(d)(11)(D), such exemption could be no greater than \$15,000.

re-open the bankruptcy case. The United States Bankruptcy Court for Eastern District of Pennsylvania has held:

Before the closing of the case the debtor may amend the exemption schedule to include property that had been omitted or improperly scheduled. The permissive approach to amendments has been construed to give courts no discretion to reject amendments unless the debtor acted in bad faith or concealed property, or the amendment would prejudice creditors... The interpretation just quoted – that the debtor has the right to amend her schedules absent a showing of bad faith or prejudice – has been adopted by every court of appeals to have considered the issue. *In re Cudeyro*, 213 B.R. 910, 916 (B.C. E.D. Pa. 1997).

This Court need not address the issues of bad faith or prejudice to creditors because Plaintiff did not attempt to amend his schedules to include the exemption prior to the close of the bankruptcy case. Plaintiff is unable to amend his schedules at this time, and therefore does not have a property interest in the personal injury claim in the nature of an exemption under 11 U.S.C. §§ 522(d)(11)(D) or (E).

Pa.R.C.P. 2002 states that “all actions shall be prosecuted by and in the name of the real party in interest.”

While Rule 2002 does not define “real party in interest,” the generally accepted definition of this term is that the real party in interest is the person who has the power to discharge the claim upon which suit is brought and to control the prosecution of the action brought to enforce rights arising under the claims... To be a real party in interest, then, one must not merely have an interest in the result of the action, but must be in such command of the action as to be legally entitled to give a complete acquittal or discharge to the other party upon performance. *Clark v. Cambria County Bd. of Assessment Appeals*, 747 A.2d 1242, 1246 (Pa.Cmwlth. 2000) (citations omitted).

After a claim becomes part of the bankruptcy estate, only the bankruptcy trustee, as representative of the estate, has the authority to prosecute or settle the cause of action. *Chrysler Credit Corp. v. B.J.M., Jr., Inc.*, 834 F.Supp. 813, 839 (E.D. Pa. 1993); *Cain v. Hyatt*,

101 B.R. at 442. Therefore, Plaintiff no longer had standing to pursue his personal injury claim following the appointment of the trustee. Only the trustee had the authority to bring the claim prior to discharge of Plaintiff's bankruptcy.

*Continued to next issue (9/19/2003)*

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-528 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of ground, situate on the Westerly right of way line of Abbots Drive, lying and being in the Borough of Abbottstown, Adams County, Pennsylvania, known and numbered as Lot No. 49 on a Plan of Lots for Abbots Manor, Phase III, recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Subdivision Plan Book 76, Page 99, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the Westerly right of way line of Abbots Drive, at a corner of Lot No. 50 on said Plan; thence extending along the said right of way line of Abbots Drive South forty-seven (47) degrees sixteen (16) minutes thirty-four (34) seconds East eighty-five (85) feet to a point, at a corner of Lot No. 48 on said Plan; thence extending along the said Lot No. 48 South forty-two (42) degrees forty-three (43) minutes twenty-six (26) seconds West three hundred three and nineteen one-hundredths (303.19) feet to a point; thence North thirty (30) degrees fourteen (14) minutes zero (00) seconds West eighty-five and seven one-hundredths (85.07) feet to a point, at a corner of Lot No. 50 on said Plan; thence extending along the said Lot No. 50 North forty-one (41) degrees fifty-eight (58) minutes ten (10) seconds East two hundred seventy-eight and twenty-eight one-hundredths (278.28) feet to a point and place of BEGINNING.

CONTAINING 24,156 square feet.

UNDER AND SUBJECT to a portion of a storm water management pond and wetland area easement as shown on said plan.

Tax Parcel #5-41

SEIZED and taken into execution as the property of **Joseph I. Andruscavage & Lucinda S. Cooper** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-636 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Reading, County of Adams and Commonwealth of Pennsylvania, to wit:

BEING more particularly bounded and described as Lot No. 1011 on a plan of lots of the Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County in Plat Book 1, Page 6.

UNDER AND SUBJECT, nevertheless, to all legal highways, easements, right of way and restrictions of record.

Vested by deed, dated 09/12/97, given by Matthew M. Urbanek and Beth A. Urbanek, husband and wife to Matthew M. Urbanek and Beth A. Urbanek, husband and wife, as tenants by the entireties and recorded 09/25/97 in Book 1445 Page 148

Premises being: 18 Sedgwick Drive, East Berlin, PA 17316

Tax Parcel No. 37-013

SEIZED and taken into execution as the property of **Matthew M. Urbanek & Beth A. Urbanek a/k/a Beth A. Keefauver** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-651 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

BEGINNING at a rebar and cap set in Pecher Road (T-312) on line of land now or formerly of Richard B. Nevius; thence along said Nevius land, South 85 degrees 31 minutes 27 seconds East, 1,194.27 feet to a stone found on line of land now or formerly of William R. Ruppert; thence along said Ruppert land, South 04 degrees 32 minutes 48 seconds West, 588.63 feet to a rebar and cap set; thence along land of Fred Harry Crum, North 80 degrees 39 minutes 50 seconds West, 337.90 feet to a rebar and cap set; thence along the same, North 39 degrees 35 minutes 16 seconds West, 435.54 feet to a cap and rebar set; thence continuing along the same, North 85 degrees 31 minutes 27 seconds West, 561.94 feet to a rebar and cap set in Pecher Road; thence in Pecher Road, North 06 degrees 19 minutes 30 seconds East, 247.16 feet to the above-described place of BEGINNING, CONTAINING 10.4139 Acres.

Vested by: Deed dated 3/26/98, given by Fred Harry Crum and Judith Marie Crum, husband and wife, to Michael E. Crum and Stacey L. Crum, husband and wife, as tenants of an estate by the entireties, recorded 3/26/98 in Book 1546 Page 195

Premises being: 720 Pecher Road, Fairfield, PA 17320

Tax Parcel No. 25-C17-30

SEIZED and taken into execution as the property of **Michael E. Crum & Stacy L. Crum a/k/a Stacey L. Crum** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12



## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-562 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin or corner of land formerly of Guiden, now John R. Smith, Jr.; thence along Opossum Creek, now lands of Clair R. Showers, North 23-1/2 degrees West 0.0 perches to a stone; thence along the original line of lands formerly of Clyde Vines, now the Possum Valley Sewer Authority and John R. Smith, Jr., North 70-3/4 degrees East, 19.8-1/2 perches to a stone on line of land formerly of H. J. Guiden & Son, now John R. Smith, Jr.; thence continuing by lands of John R. Smith, Jr., South 22-1/2 degrees East, 60 feet to a stone; thence along lands formerly of Guiden, now John R. Smith, Jr., South 56-1/2 degrees West, 19.9-1/2 perches to the place of BEGINNING. CONTAINING 120 Perches, neat measure.

BEING KNOWN AS 1465 Center Mills Road, Aspers, PA 17304.

SUBJECT TO all recorded and/or visible easements and restrictions, if any

TOGETHER WITH AND SUBJECT TO a Mutual Right of Way between John R. Smith, Jr., v/a/d/b/a Keystone Country Furniture, and James A. Entwistle and Barbara Jo Entwistle, dated May 11, 1999 and recorded in Adams County Record Book 1049 at page 253.

BEING the same property James A. Entwistle and Barbara Jo Entwistle, husband and wife, granted and conveyed to Christopher Wolfe a/k/a Christopher D. Wolfe and Robyn Wolfe, by Deed dated August 27, 1999 and recorded September 1, 1999, in the Recorder of Deeds Office, Adams County, Pennsylvania in Deed Book Volume 1907, Page 195.

DBV 1907

Page 195

Tax Parcel No. 29-2-5

SEIZED and taken into execution as the property of **Christopher Wolfe a/k/a Christopher D. Wolfe & Robyn Wolfe** and to be sold by me.

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

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

Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-1316 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin at the corner of lot now or formerly of Charles F. McCaffery at North Queen Street, which pin is five and eighty-five hundredths (5.85) feet from the curb line of said street and eighty (80) feet Northwestwardly from a public alley; thence by said lot now or formerly of Charles F. McCaffery, South sixty-four and one-half (64-1/2) degrees West, two hundred eighty (280) feet to an iron pin in an alley, which said iron pin is twelve and six-tenths (12.6) feet from an iron pin in a stream; thence in and along said alley, South thirty-three (33) degrees East, forty-one and five-tenths (41.5) feet to a stake in said alley at corner of lands now or formerly of Mrs. Annie Eline; thence by said lands now or formerly of Mrs. Annie Eline, North sixty-four (64) degrees East, one hundred twelve and five-tenths (112.5) feet to a stake at corner of shed on the lands hereby conveyed; thence by same, North fifty-four (54) degrees East, six (6) feet to a stake; thence by same, North sixty-four and one-half (64-1/2) degrees East, one hundred sixty-one and five-tenths (161.5) feet to a mark on the sidewalk on North Queen Street; thence North thirty-three (33) degrees West, forty (40) feet to an iron pin, the place of BEGINNING.

BEING No. 32 North Queen Street.

TITLE TO SAID PREMISES IS VESTED IN Jennifer Glass and Darlene Martofel and John A. Goulet, as joint tenants with right of survivorship by Deed

from Dorothy E. Miller, single woman dated 6/21/1999 and recorded 6/24/1999 in Record Book 1860 Page 38.

Premises being: 32 North Queen Street, Littlestown, PA 17340

Tax Parcel No. 84 Map 8

SEIZED and taken into execution as the property of **Jennifer Glass, Darlene Martofel & John A. Goulet** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 27, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

8/29, 9/5 & 12

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-993 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, known as part of Lot No. 47 on a general plan or plat of a series of lots laid out by W. P. Stoner, which said plat is intended to be recorded, bounded and described as follows:

BEGINNING for a corner at Lot No. 48 and Big Conewago Creek; thence in a Westerly direction along said Lot No. 48 150 feet, more or less, to a 20 feet wide open alley; thence in a Northerly direction along said alley 25 feet, more or less, to a stake for a corner at property of George Wise which was formerly a part of this tract; thence in a Southeasterly direction along said Wise's land 150 feet, more or less, to the Big Conewago Creek aforesaid; thence in a Southerly direction along said creek 71 feet, more or less, to a stake for a corner, the place of BEGINNING.

BEING known as 1306 Browns Dam Drive, New Oxford, PA 17350

PROPERTY ID NO: K8-57

TITLE TO SAID PREMISES IS VESTED IN Dennis Ness and Anna Marie Ness, husband and wife as tenants by the entireties by Deed from Charlie Cockey Precision, a Maryland corporation, dated 5/27/1999, recorded 6/4/1999, in Deed Book 1845, Page 316.

SEIZED and taken into execution as the property of **Dennis Ness & Anna M. Ness a/k/a Anna Marie Ness** and to be sold by me.

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

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

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

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

9/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-542 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of the Pennsylvania State Highway which leads from Littlestown to the Gettysburg-Hanover State Highway, which point is south six (06) degrees thirty (30) minutes East, five (05) feet from the corner of Lot No. 2 from the plan of lots of Clayton E. and Annie E. Runk; thence along said Highway South six (06) degrees thirty (30) minutes East, one hundred fifteen (115) feet to a stake at corner of Lot No. 5; thence along Lot No. 5, South eighty-three (83) degrees thirty (30) minutes West, one hundred fifty (150) feet to lands now or formerly of Clayton E. Runk and Annie E. Runk; thence along same North six (06) degrees thirty (30) minutes West, one hundred fifteen (115) feet to a point which is South six (06) degrees thirty (30) minutes East, five (05) feet from the Southwest corner of Lot No. 2, aforesaid; thence North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty (150) feet to a point along the Pennsylvania State Highway which leads from Littlestown to Gettysburg-Hanover State Highway, the place of BEGINNING. Being known and numbered as 660 Littlestown Road.

BEING KNOWN as 660 Littlestown Road, Littlestown, PA 17340

PROPERTY ID NO: J15-37

TITLE TO SAID PREMISES IS VESTED IN Marilyn R. Barrick by Deed from Steven D. Barrick and Marilyn R. Barrick, persons who are or have been married, dated 2/23/1995, recorded 2/28/1995, in Deed Book 1000, Page 39.

SEIZED and taken into execution as the property of **Marilyn R. Barrick** and to be sold by me.

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

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

must settle for property on or before filing date.

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

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

9/12, 19 & 26

## INCORPORATION NOTICE

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

The name of the corporation is ADAMS COUNTY AUTO CARE, INC.

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

Adams County Auto Care, Inc.  
10 Janet Trail  
Fairfield, PA 17320

9/12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-619 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the property line of Spruce Lane, a fifty (50) foot street, at corner of Lot No. 521 on the hereinafter referred plan of lots; thence by said lot, North three (03) degrees forty-seven (47) minutes thirteen (13) seconds West, one hundred ten (110.00) feet to a steel pin at Lot No. 517, thence by said lot and by Lot No. 516, North eighty-six (86) degrees twelve (12) minutes forty-seven (47) seconds East, one hundred (100.00) feet to a steel pin at Lot No. 523; thence by said lot, South seven (07) degrees fifty-three (53) minutes twenty-three (23) seconds West, one hundred sixteen and thirty-four hundredths (116.34) feet to a steel pin on the property line of Spruce Lane; thence by said street by a curve to the left whose radius is one hundred ninety (190) feet, an arc distance of thirty-eight and seventy-two hundredths (38.72) feet, the long chord of which is North eighty-seven (87) degrees fifty-six (56) minutes fifty-five (55) seconds West, thirty-eight and sixty-five hundredths (38.65) feet to a point; thence continuing along the same, South eighty-six (86) degrees twelve (12) minutes forty-seven (47) seconds West, thirty-eight (38.00) feet to the point and place of BEGINNING. (CONTAINING 8,801 square feet and being known as Lot No. 522 on a plan of lots of Oxford Estates, Tract II-Phase Three, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 53, page 66.)

HAVING erected thereon a dwelling known as 13 Spruce Lane, New Oxford, PA 17350.

PARCEL NO. 35-008-0179

BEING the same premises which George T. Lamb and Ann Marie Marlette Lamb, by their Deed dated 7/8/2002 and recorded on 7/10/2002 in the Adams County, Pennsylvania, in the Office of the Recorder of Deeds in Deed Book Volume 2725, page 283, granted and conveyed unto George T. Lamb.

SEIZED and taken into execution as the property of **George T. Lamb & Ann Marie Marlette-Lamb** and to be sold by me.

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

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

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

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

9/12, 19 & 26

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about August 18, 2003 for the purposes of obtaining a Certificate of Incorporation of a proposed corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is J E P ENTERPRISES, INC.

9/12

INCORPORATION NOTICE

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

The name of the corporation is REAVER ENTERPRISES, INC.

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

Reaver Enterprises, Inc.  
54 Wheatland Drive  
Gettysburg, PA 17325

9/12

NOTICE OF MOTION FOR CONFIRMATION OF ACCOUNT

NOTICE IS HEREBY GIVEN THAT PNC Bank, National Association, formerly Cumberland County National Bank and Trust Company, Trustee, as Trustee under the Trust created by Deed of Trust dated August 27, 1969, has filed herein the verified account of the administration of said Trust and a Motion praying that said Account be confirmed and allowed, and that said Motion and Account have been set for hearing before the Court at the Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, PA 17325, on the 21st day of October, 2003, at 9 o'clock A.M., and that all persons interested in said Trust are hereby notified to appear at said time and place to show cause, if any they have, why said Account should not be settled and allowed as prayed. Reference is hereby made to said Account and Motion for further particulars, copies of which may be reviewed by contacting counsel for the Movant.

John A. Feichtel, Esq.  
Keefe Wood Allen & Rahal, LLP  
210 Walnut Street  
P.O. Box 11963  
Harrisburg, PA 17108-1963

Date: August 25, 2003

9/12

## 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 ISABEL P. BAUGHER a/k/a EMMA I. BAUGHER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard C. Powell, 211 Lakeside Drive, Lewes, DE 19958

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

ESTATE OF BARBARA A. BENNETT, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Alicia Hoff, 66 Dubs Church Road, Hanover, PA 17331

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

ESTATE OF EMMA G. FORRY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representatives: Jeanne L. Nunamaker & Autry T. Nunamaker, c/o Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, P.C., 239-B East Main St., Waynesboro, PA 17268-1681

ESTATE OF JANE E. GEBHART, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executors: Richard J. Gebhart, 2414 Somerset Drive, Jeffersononton, VA 22724; Jeffrey L. Gebhart, 5791 Old Harrisburg Road, York Springs, PA 17372

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

ESTATE OF JAMES H. ROWE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Gertrude D. Shoemaker, 365 Blacksmith Shop Road, Gettysburg, PA 17325; Patricia Joanne Mickle, 501 Clubside Court, Stoney Creek, NC 27377; James H. Rowe, II, 129 Sherry Drive, McSherrystown, PA 17344

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

ESTATE OF HAROLD L. SLAYBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Wachovia Bank, N.A., P.O. Box 3959, PA 6907, 100 N. Queen Street, Lancaster, PA 17604

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

ESTATE OF MARY E. STALLSMITH, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executors: Barbara K. and James M. Plank, 1470 Mt. Carmel Road, Orrtanna, PA 17353; Cynthia Sue and Steven A. Moritz, 110 Moritz Road, Orrtanna, PA 17353

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

ESTATE OF PETER YASOVSKY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Eugene McDannell, 875 New Road, Orrtanna, PA 17353

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

## SECOND PUBLICATION

ESTATE OF CARMELO FAZZOLARI, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administratrix: Gioconda Fazzolari, 24 Autumn Drive, Gettysburg, PA 17325

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

ESTATE OF ANNE MARIE MYERS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Heidi Myers, 1906 Long Corner Road, Mt. Airy, MD 21771

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

ESTATE OF MICHAEL R. REDDING, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Administratrix: Michelle J. Redding, 721 Rock Creek Ford Road, Gettysburg, PA 17325

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

ESTATE OF CHARLOTTE W. WEIKERT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Gary M. Weikert, P.O. Box 118, Arendtsville, PA 17303

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

## THIRD PUBLICATION

ESTATE OF EMMA SCOTT FINK a/k/a EMMA R. FINK, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executor: Adams County National Bank, Attn: Trust Department, P.O. Box 3129, Gettysburg, PA 17325

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

ESTATE OF MARGUERITE A. HOFFMAN, DEC'D

Late of the Borough of McSherrystown, York County, Pennsylvania

Executors: Hugh F. Hoffman and William J. Hoffman

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

ESTATE OF ROBERT E. MCKENRICK, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: Joann M. Karchner, 2990D York Road, Gettysburg, PA 17325; Michael L. McKenrick, 794 Gabler Road, Gardners, PA 17324

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

(continued on page 8)

**THIRD PUBLICATION (continued)**

ESTATE OF VICTOR ANTHONY  
OLSWFSKI, SR., DEC'D

Late of Freedom Township, Adams  
County, Pennsylvania

Executor: Henrietta C. O'Shea, 1940  
Bull Frog Road, Fairfield, PA 17320

Attorney: Clayton R. Wilcox, Esq., 234  
Baltimore St., Gettysburg, PA 17325

ESTATE OF MELVIN ANDREW TROS-  
TLE a/k/a MELVIN A. TROSTLE, DEC'D

Late of Latimore Township, Adams  
County, Pennsylvania

Co-Executors: Wayne Trostle, 3100  
Lake Meade Road, East Berlin, PA  
17316; Ruthanna T. Miller, 3290  
Lake Meade Road, East Berlin, PA  
17316

Attorney: Clayton R. Wilcox, Esq., 234  
Baltimore St., Gettysburg, PA 17325

ESTATE OF RUTH E. ZINN, DEC'D

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

Administrator: Sharon L. Swaby, c/o  
29 North Duke St., York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA  
Law Firm, Countess Gilbert Andrews,  
PC, 29 North Duke Street, York, PA  
17401

# *Adams County* Legal Journal

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Vol. 45

September 19, 2003

No. 17, pp. 105–109

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WEST VS. LYNCH

*This opinion continued from last issue (9/12/2003)*

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



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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. 02-S-867 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate lying and being in the Borough of Carroll Valley, (formerly Hamiltonban Township), Adams County, Pennsylvania being Lot No. 38 in Section H, bounded and described as follows:

BEGINNING at a point in the center of High Ridge Drive at Lot No. 37; thence by said lot, North 49 degrees, 6 minutes West, 200 feet to lands now or formerly of Chamita, Inc.; thence by said lands, North 40 degrees, 54 minutes East, 100 feet to Lot No. 39; thence by said lot, South 40 degrees, 54 minutes West, 100 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled "Section H, Chamita, Inc." dated August 7, 1965 prepared by Gordon L. Brown, R.S. recorded in Adams County Plat Book 1 at page 15.

TITLE TO SAID PREMISES IS VESTED IN Ricky L. Miller and Patricia A. Miller, his wife by Deed from Donald M. Sites and Lisa M. Sites dated 12/29/92 and recorded 12/30/92, in Record Book 672, Page 253.

Premises being: 41 Ridgetrail, Fairfield, PA 17320

Tax Parcel No. 8-9

SEIZED and taken into execution as the property of **Ricky L. Miller & Patricia A. Miller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-562 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin or corner of land formerly of Guiden, now John R. Smith, Jr.; thence along Opossum Creek, now lands of Clair R. Showers, North 23-1/2 degrees West 0.0 perches to a stone; thence along the original line of lands formerly of Clyde Vines, now the Possum Valley Sewer Authority and John R. Smith, Jr., North 70-3/4 degrees East, 19.8-1/2 perches to a stone on line of land formerly of H. J. Guiden & Son, now John R. Smith, Jr.; thence continuing by lands of John R. Smith, Jr., South 22-1/2 degrees East, 60 feet to a stone; thence along lands formerly of Guiden, now John R. Smith, Jr., South 56-1/2 degrees West, 19.9-1/2 perches to the place of BEGINNING. CONTAINING 120 Perches, neat measure.

BEING KNOWN AS 1465 Center Mills Road, Aspers, PA 17304.

SUBJECT TO all recorded and/or visible easements and restrictions, if any

TOGETHER WITH AND SUBJECT TO a Mutual Right of Way between John R. Smith, Jr., 1/a/d/b/a Keystone Country Furniture, and James A. Entwistle and Barbara Jo Entwistle, dated May 11, 1999 and recorded in Adams County Record Book 1049 at page 253.

BEING the same property James A. Entwistle and Barbara Jo Entwistle, husband and wife, granted and conveyed to Christopher Wolfe a/k/a Christopher D. Wolfe and Robyn Wolfe, by Deed dated

August 27, 1999 and recorded September 1, 1999, in the Recorder of Deeds Office, Adams County, Pennsylvania in Deed Book Volume 1907, Page 195.

DBV 1907

Page 195

Tax Parcel No. 29-2-5

SEIZED and taken into execution as the property of **Christopher Wolfe a/k/a Christopher D. Wolfe & Robyn Wolfe** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

## INCORPORATION NOTICE

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

The name of the corporation is AAIM  
CONTROLS, INC.

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

9/19

## WEST VS. LYNCH

*Continued from last issue (9/12/2003)*

In order to determine whether the trustee remained the real party in interest following discharge of Plaintiff's bankruptcy, we must determine whether the trustee abandoned Plaintiff's personal injury claim. Section 554 of the Bankruptcy Code sets out three methods for effectuating abandonment of estate property. First, the trustee may, after notice and a hearing, abandon property of the estate that is "burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Second, a court may, on request of a party in interest and after notice and hearing, order the trustee to abandon property of the estate for the reasons set forth above. 11 U.S.C. § 554(b). Third, property that was properly scheduled by the debtor under section 521(1) of the Bankruptcy Code will be deemed abandoned if it has not been properly administered by the trustee before discharge. 11 U.S.C. § 554(c). Section 554(d) of the Bankruptcy Code further provides:

Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

Plaintiff's personal injury claim was not formally abandoned by the trustee under Section 554(a); nor was it abandoned by court order under Section 554(b). Furthermore, the claim was not scheduled, as required by Section 521(1), and therefore could not have been abandoned by operation of law under Section 554(c). With regard to Section 554(c), courts have held that actual knowledge of the asset by the trustee is irrelevant if the asset is not scheduled before the close of the case. See *Capozzi and Gibraltar Development, Inc., v. Tolz (In re John V. Capozzi)*, 229 B.R. 250, 251 (S.D. Fl 1999); *Stanley v. The Sherwin-Williams Company*, 156 B.R. 25, 27 (W.D. Va 1993) ("It is not enough that the trustee learns of the property through other means; the property must be scheduled pursuant to section 521(1)."); and *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir. 1991) (unscheduled property, even though not concealed from the trustee, is not abandoned by operation of Section 554(c)). Consequently, as unscheduled property, Plaintiff's personal injury claim was not abandoned by the trustee, and it therefore remains property of the bankruptcy estate in accordance with Section 554(d). See *Edwards v. Franchini*, 965 P.2d at 320; and *Hester v. Farmers Home Administration*, 49 B.R. 593, 599 (E.D.Mo. 1985). It is irrelevant whether the trustee had knowledge of the cause of action prior to discharge.



Plaintiff lost his status as real party in interest at the time the trustee was appointed. Plaintiff did not regain the authority to prosecute the personal injury claim following discharge of the bankruptcy because the claim remains property of the bankruptcy estate. The trustee therefore continues to be the real party in interest with regard to Plaintiff's personal injury claim; however, we must determine whether it is appropriate to substitute the trustee as the plaintiff at this time.

Plaintiff sustained the injuries giving rise to his personal injury claim on October 24, 1996. In accordance with 42 Pa.C.S.A. § 5524(2), Plaintiff would typically have two years from the date of injury in which to file a claim.<sup>3</sup> When Plaintiff filed his bankruptcy petition prior to the expiration of this two-year period, his personal injury claim became property of the bankruptcy estate, and the trustee became entitled to an extension of the two-year period in which to file the claim on Plaintiff's behalf. Section 108 of the bankruptcy code provides for an extension of time for a bankruptcy trustee to commence a civil action on behalf of a bankrupt estate. *Rousseau v. Diemer*, 24 F.Supp.2d 137, 142 (U.S.Dist.Ct. E.D. Ma 1998). Section 108 provides:

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

11 U.S.C. § 108.

The original two-year period set forth in 42 Pa.C.S.A. § 5524(2) would have expired on October 24, 1998. 11 U.S.C. § 108 allowed the trustee to file Plaintiff's personal injury claim within that time period, or within two years after discharge of Plaintiff's bankruptcy.

---

<sup>3</sup>"The following actions and proceedings must be commenced within two years... (2) An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another." 42 Pa.C.S.A. § 5524(2).

Plaintiff's bankruptcy was discharged on October 29, 1997. Therefore, the statutory limitation of time was tolled by 11 U.S.C. § 108(a)(2) until October 29, 1999. Plaintiff filed his personal injury claim on October 15, 1998; however he did not file his Petition to Substitute Bankruptcy Trustee as Plaintiff until December 8, 2000, more than a year after the expiration of the two-year extension period.<sup>4</sup> Although Plaintiff had filed the personal injury claim within the two-year extension period, the debtor's filing of an action during the two year extension period provided by Section 108 does not toll the statute of limitations. *Rousseau v. Diemer*, 24 F.Supp. at 143.

Federal courts have held that the substitution of the bankruptcy trustee as the plaintiff relates back to the date on which the original complaint was filed. See *Nagle, et al. v. Commercial Credit Business Loans, Inc.*, 102 F.R.D. 27 (U.S.Dist.Ct. E.D. Pa. 1983). These courts have relied on Fed.R.Civ.P. 17(a) which states, "joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." In *Nagle*, the Court held that the "relation-back" provision of Rule 17(a) allowed the trustee to substitute for the plaintiff even though the applicable statute of limitations for the action would have expired before his attempted intervention. *Nagle*, 102 F.R.D. at 32.

As Defendant correctly points out, no such corollary to the relation-back provision of Fed.R.Civ.P. 17(a) exists in the Pennsylvania Rules of Civil Procedure. Pa.R.C.P. 2004 provides:

If a plaintiff has commenced an action in his or her own name and thereafter transfers the interest therein, in whole or in part, the action may continue in the name of the original plaintiff, or upon petition of the original plaintiff or of the transferee or of any other party in interest in the action, the court may direct the transferee to be substituted as plaintiff or joined with the original plaintiff.

Pa.R.C.P. 2003 further provides however:

The prosecution of any action in the name of the real party in interest shall not affect any defense, counterclaim

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<sup>4</sup>Plaintiff first requested leave of Court to substitute the Trustee as the Plaintiff on November 20, 2000, during oral argument on Defendant's Motion for Summary Judgement. Nevertheless, this request was also made after the two-year extension period had expired.

or setoff which might otherwise be asserted against the claim or demand thus prosecuted.

Defendant is therefore entitled to raise a statute of limitations defense to Plaintiff's Petition to Substitute the Bankruptcy Trustee as Plaintiff.

The Pennsylvania Superior Court has held:

the transfer of a claim for which an action has been timely filed does not permit the defendant to raise against the transferee the defense of a statute of limitations which expired after commencement of the action and prior to transfer. *Birdsboro Corporation v. Weng*, 626 A.2d 1216, 1217 (Pa.Super. 1993).

The Court also noted, however, that the defendant is prohibited from using the statute of limitations defense only "when the action is properly begun by a real party in interest." *Id.* The Court stated:

When the action is properly begun by a real party in interest who thereafter assigns all or part of his interest, the addition or substitution of the assignee pursuant to Rule 2004 does not bring upon the record for the first time a person entitled to prosecute the action against the defendant nor does it change the cause of action in suit. It merely brings upon the record the successor or partial successor of one who was qualified to prosecute the action against the defendant and who had already done so within the statutory period. It is therefore immaterial whether the transferee of an interest in an action is brought upon the record before or after the expiration of the period of the applicable statute of limitations.

Here, Plaintiff was not the real party in interest at the time he filed the personal injury claim. Therefore, the trustee is not a successor of one who was qualified to prosecute the action against Defendant. Substitution of the trustee will bring upon the record for the first time a person entitled to prosecute the action against Defendant. Consequently, Defendant is entitled to raise the defense that the attempt to substitute the trustee as Plaintiff is time barred.

Unlike the Federal Rules of Civil Procedure, the Pennsylvania Rules of Civil Procedure do not allow for judicial discretion to avoid the statutory time bar. Fed.R.Civ.P. 17(a) states:

No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest.

Federal Courts have held:

As long as defendant is fully apprized of a claim arising from specified conduct and has prepared to defend the action against him, his ability to protect himself will not be prejudicially affected if a new plaintiff is added, and he should not be permitted to invoke a limitations defense. *Rousseau v. Diemer*, 24 F.Supp.2d at 144.

The Court stated in *Rousseau* that the defendants had the opportunity to file responsive pleadings. The Court further stated that nothing would change as a result of substituting the trustee as the plaintiff in the action, except that the action would be maintained for the benefit of the plaintiff's creditors rather than for the plaintiff himself. *Id.* Consequently, the Court utilized the judicial discretion afforded by Fed.R.Civ.P. 17(a) to allow the trustee's motion to substitute. This Court recognizes that Defendant has had the opportunity to file responsive pleadings, and that substitution of the trustee as the Plaintiff will merely result in the cause of action being maintained for the benefit of Plaintiff's creditors, rather than for Plaintiff himself. This Court also recognizes, as did the *Rousseau* Court, that denial of Plaintiff's motion to substitute leaves Plaintiff's creditors without a remedy.<sup>5</sup> Nevertheless, Plaintiff's Petition is time barred, and the Pennsylvania Rules of Civil Procedure do not offer the same judicial discretion found in Fed.R.Civ.P. 17(a).

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 30th day of August, 2002, in consideration of Plaintiff's Petition to Substitute Bankruptcy Trustee as Plaintiff, and in accordance with the attached Opinion, said Petition is denied.

This case is dismissed. Costs to be paid by Plaintiff.

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<sup>5</sup> See *Rousseau v. Diemer*, 24 F.Supp.2d at 144.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-542 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of the Pennsylvania State Highway which leads from Littlestown to the Gettysburg-Hanover State Highway, which point is south six (06) degrees thirty (30) minutes East, five (05) feet from the corner of Lot No. 2 from the plan of lots of Clayton E. and Annie E. Runk; thence along said Highway South six (06) degrees thirty (30) minutes East, one hundred fifteen (115) feet to a stake at corner of Lot No. 5; thence along Lot No. 5, South eighty-three (83) degrees thirty (30) minutes West, one hundred fifty (150) feet to lands now or formerly of Clayton E. Runk and Annie E. Runk; thence along same North six (06) degrees thirty (30) minutes West, one hundred fifteen (115) feet to a point which is South six (06) degrees thirty (30) minutes East, five (05) feet from the Southwest corner of Lot No. 2, aforesaid; thence North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty (150) feet to a point along the Pennsylvania State Highway which leads from Littlestown to Gettysburg-Hanover State Highway, the place of BEGINNING. Being known and numbered as 660 Littlestown Road.

BEING KNOWN as 660 Littlestown Road, Littlestown, PA 17340

PROPERTY ID NO: J15-37

TITLE TO SAID PREMISES IS VESTED IN Marilyn R. Barrick by Deed from Steven D. Barrick and Marilyn R. Barrick, persons who are or have been married, dated 2/23/1995, recorded 2/28/1995, in Deed Book 1000, Page 39.

SEIZED and taken into execution as the property of **Marilyn R. Barrick** and to be sold by me.

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

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

must settle for property on or before filing date.

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

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

9/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-619 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the property line of Spruce Lane, a fifty (50) foot street, at corner of Lot No. 521 on the hereinafter referred plan of lots; thence by said lot, North three (03) degrees forty-seven (47) minutes thirteen (13) seconds West, one hundred ten (110.00) feet to a steel pin at Lot No. 517; thence by said lot and by Lot No. 516, North eighty-six (86) degrees twelve (12) minutes forty-seven (47) seconds East, one hundred (100.00) feet to a steel pin at Lot No. 523; thence by said lot, South seven (07) degrees fifty-three (53) minutes twenty-three (23) seconds West, one hundred sixteen and thirty-four hundredths (116.34) feet to a steel pin on the property line of Spruce Lane; thence by said street by a curve to the left whose radius is one hundred ninety (190) feet, an arc distance of thirty-eight and seventy-two hundredths (38.72) feet, the long chord of which is North eighty-seven (87) degrees fifty-six (56) minutes fifty-five (55) seconds West, thirty-eight and sixty-five hundredths (38.65) feet to a point; thence continuing along the same, South eighty-six (86) degrees twelve (12) minutes forty-seven (47) seconds West, thirty-eight (38.00) feet to the point and place of BEGINNING. (CONTAINING 8,801 square feet and being known as Lot No. 522 on a plan of lots of Oxford Estates, Tract II-Phase Three, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 53, page 66.)

HAVING erected thereon a dwelling known as 13 Spruce Lane, New Oxford, PA 17350.

PARCEL NO. 35-008-0179

BEING the same premises which George T. Lamb and Ann Marie Marlette-Lamb, by their Deed dated 7/8/2002 and recorded on 7/10/2002 in the Adams County, Pennsylvania, in the Office of the Recorder of Deeds in Deed Book Volume 2725, page 283, granted and conveyed unto George T. Lamb.

SEIZED and taken into execution as the property of **George T. Lamb & Ann Marie Marlette-Lamb** and to be sold by me.

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

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

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

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

9/12, 19 & 26

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about August 18, 2003 for the purposes of obtaining a Certificate of Incorporation of a proposed corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is THE ROSE GARDEN NATURAL FOODS CO.

9/19

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-993 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, known as part of Lot No. 47 on a general plan or plat of a series of lots laid out by W. P. Stoner, which said plat is intended to be recorded, bounded and described as follows:

BEGINNING for a corner at Lot No. 48 and Big Conewago Creek; thence in a Westerly direction along said Lot No. 48 150 feet, more or less, to a 20 feet wide open alley; thence in a Northerly direction along said alley 25 feet, more or less, to a stake for a corner at property of George Wise which was formerly a part of this tract; thence in a Southeasterly direction along said Wise's land 150 feet, more or less, to the Big Conewago Creek aforesaid; thence in a Southerly direction along said creek 71 feet, more or less, to a stake for a corner, the place of BEGINNING.

BEING known as 1306 Browns Dam Drive, New Oxford, PA 17350

PROPERTY ID NO: K8-57

TITLE TO SAID PREMISES IS VESTED IN Dennis Ness and Anna Marie Ness, husband and wife as tenants by the entireties by Deed from Charlie Cockey Precision, a Maryland corporation, dated 5/27/1999, recorded 6/4/1999, in Deed Book 1845, Page 316.

SEIZED and taken into execution as the property of **Dennis Ness & Anna M. Ness a/k/a Anna Marie Ness** and to be sold by me.

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

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

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

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

9/12, 19 & 26

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-636 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 10th day of October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Reading, County of Adams and Commonwealth of Pennsylvania, to wit:

BEING more particularly bounded and described as Lot No. 1011 on a plan of lots of the Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds in and for Adams County in Plat Book 1, Page 6.

UNDER AND SUBJECT, nevertheless, to all legal highways, easements, right of way and restrictions of record.

Vested by deed, dated 09/12/97, given by Matthew M. Urbanek and Beth A. Urbanek, husband and wife to Matthew M. Urbanek and Beth A. Urbanek, husband and wife, as tenants by the entireties and recorded 09/25/97 in Book 1445 Page 148

Premises being: 18 Sedgwick Drive, East Berlin, PA 17316

Tax Parcel No. 37-013

SEIZED and taken into execution as the property of **Matthew M. Urbanek & Beth A. Urbanek a/k/a Beth A. Keefauver** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 3, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/5, 12 & 19

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN, to all creditors and claimants of **MeRob, Inc.**, a business corporation, that the shareholders have approved a proposal that the corporation dissolve voluntarily 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.

William A. Duncan, Esq.  
Duncan, Hartman & Douglas, P.C.  
ID # 22080  
1 Irvine Row  
Carlisle, PA 17013

9/19, 26 & 10/3

## ESTATE NOTICES

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

## FIRST PUBLICATION

## ESTATE OF MADALENE ELIZABETH DAY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Administrators: Larry A. Day and Phyllis E. Pierson, c/o Menges, Gent & McLaughlin, 1157 Eichelberger St., Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Menges, Gent & McLaughlin, 1157 Eichelberger St., Hanover, PA 17331

## ESTATE OF EDWIN M. FLICKINGER, SR., a/k/a EDWIN M. FLICKINGER, DEC'D

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

Executor: Sterling Financial Trust Company, 6 Lincoln Square, Gettysburg, PA 17325

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

## ESTATE OF ROBERT H. KENNEDY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Lesa L. Milne a/k/a Lesa F. Milne, 2390 Belair Road, Dover, PA 17315

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

## ESTATE OF VIRGINIA F. MASINO, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Frank N. Masino, Jr., 70 Sonora Way, Corte Madera, CA 94925

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

## ESTATE OF JAMES D. MUNSHOUR, JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Administrators: Mr. James A. Munshour, 1885 Highland Ave. Road, Gettysburg, PA 17325; Mrs. Carol A. Hess, 118 Rodes Avenue, Gettysburg, PA 17325; Mrs. Susan L. Hartzell, 55 Belmont Road, Gettysburg, PA 17325

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

## ESTATE OF HAZEL V. SNYDER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: John Craig Lowe, 1324 Mark Drive, West Chester, PA 19380

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

## ESTATE OF HELEN MARIE TEMPLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Elise Jones Huddleston, 6090 Second Street, King George, VA 22486

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

## ESTATE OF WILLIAM H. YOHE, JR., DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Gloria E. Yohe, 205 Ewell Avenue, Gettysburg, PA 17325

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

## SECOND PUBLICATION

## ESTATE OF ISABEL P BAUGHER a/k/a EMMA I. BAUGHER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard C. Powell, 211 Lakeside Drive, Lewes, DE 19958

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

## ESTATE OF BARBARA A. BENNETT, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Alicia Hoff, 66 Dubs Church Road, Hanover, PA 17331

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

## ESTATE OF EMMA G. FORRY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representatives: Jeanne L. Nunamaker & Alutry T. Nunamaker, c/o Patterson & Kiersz, PC, 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, P.C., 239-B East Main St., Waynesboro, PA 17268-1681

## ESTATE OF JANE E. GEBHART, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executors: Richard J. Gebhart, 2414 Somerset Drive, Jeffersonton, VA 22724; Jeffrey L. Gebhart, 5791 Old Harrisburg Road, York Springs, PA 17372

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

## ESTATE OF JAMES H. ROWE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Gertrude D. Shoemaker, 365 Blacksmith Shop Road, Gettysburg, PA 17325; Patricia Joanne Mickle, 501 Clubside Court, Stoney Creek, NC 27377; James H. Rowe, II, 129 Sherry Drive, McSherrystown, PA 17344

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

## ESTATE OF HAROLD L. SLAYBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Wachovia Bank, N.A., P.O. Box 3959, PA 6907, 100 N. Queen Street, Lancaster, PA 17604

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

## ESTATE OF MARY E. STALLSMITH, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executors: Barbara K. and James M. Plank, 1470 Mt. Carmel Road, Orttanna, PA 17353; Cynthia Sue and Steven A. Moritz, 110 Moritz Road, Orttanna, PA 17353

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

(continued on page 6)

**SECOND PUBLICATION (continued)**

**ESTATE OF PETER YASOVSKY, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Eugene McDannell, 875 New Road, Orttanna, PA 17353

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

**THIRD PUBLICATION**

**ESTATE OF CARMELO FAZZOLARI, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administratrix: Gioconda Fazzolari, 24 Autumn Drive, Gettysburg, PA 17325

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

**ESTATE OF ANNE MARIE MYERS, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Heidi Myers, 1906 Long Corner Road, Mt. Airy, MD 21771

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

**ESTATE OF MICHAEL R. REDDING, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Administratrix: Michelle J. Redding, 721 Rock Creek Ford Road, Gettysburg, PA 17325

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

**ESTATE OF CHARLOTTE W. WEIKERT, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Gary M. Weikert, P.O. Box 118, Arendtsville, PA 17303

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



# *Adams County* Legal Journal

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No. 18, pp. 110-112

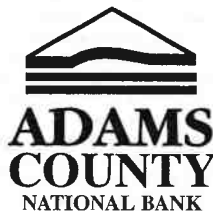
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## IN THIS ISSUE

COMMONWEALTH VS. McCURRY

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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-660 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of ground situate on the Southwest side of Linden Avenue in Conewago Township, Adams County, Pennsylvania, more particularly as follows:

BEGINNING at an iron pipe on the Southwest side of Linden Avenue at lands of Ethel Small; thence by lands of Ethel Small South 44 degrees 27 minutes 14 seconds West, 100.83 feet to an iron pipe at lands of Laverne K. Lawrence and Helen K. Lawrence; thence by same North 44 degrees 46 minutes 51 seconds West, 15.69 feet to an iron pipe; thence continuing by same South 45 degrees 24 minutes 4 seconds West, 19.85 feet to an iron pipe; thence continuing by same North 43 degrees 54 minutes 39 seconds West, 44 feet to an iron pipe at lands of John F. Klunk; thence by lands of John F. Klunk North 44 degrees 27 minutes 14 seconds East, 119.41 feet to an iron pipe at Linden Avenue aforesaid; thence along Linden Avenue South 45 degrees 22 minutes East, 60 feet to an iron pipe, the point and place of BEGINNING.

CONTAINING 6,893 square feet

THE foregoing description was taken from a draft of survey prepared for Laverne K. Lawrence by LaRue Surveys, Inc., dated June 4, 1974.

SUBJECT however, to the following restriction: That no building of any kind whatsoever shall ever be erected on said lot or piece of ground within 15 feet of the inside line of said Linden Avenue.

BEING the same premises conveyed by Laverne K. Lawrence and Helen K. Lawrence, to Donald Lee Wildasin and Patricia Ann Wildasin, husband and wife, by Deed dated June 14, 1974, and recorded in Adams County Deed Book 313, page 1101.

IMPROVEMENTS THEREON CONSIST OF 1 1/2 story detached bungalow.

SEIZED and taken into execution as the property of **Donald Lee Wildasin a/k/a Donald L. Wildasin & Patricia Ann Wildasin a/k/a Patricia A. Wildasin** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 1, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26, 10/3 & 10

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 02-S-993 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Reading Township, Adams County, Pennsylvania, known as part of Lot No. 47 on a general plan or plat of a series of lots laid out by W. P. Stoner, which said plat is intended to be recorded, bounded and described as follows:

BEGINNING for a corner at Lot No. 48 and Big Conewago Creek; thence in a Westerly direction along said Lot No. 48 150 feet, more or less, to a 20 feet wide open alley; thence in a Northerly direction along said alley 25 feet, more or less, to a stake for a corner at property of George Wise which was formerly a part of this tract; thence in a Southeasterly direction along said Wise's land 150 feet, more or less, to the Big Conewago Creek aforesaid; thence in a Southerly direction along said creek 71 feet, more or less, to a stake for a corner, the place of BEGINNING.

BEING known as 1306 Browns Dam Drive, New Oxford, PA 17350

PROPERTY ID NO: K8-57

TITLE TO SAID PREMISES IS VESTED IN Dennis Ness and Anna Marie Ness, husband and wife as tenants by the entireties by Deed from Charlie Cockey Precision, a Maryland corporation, dated 5/27/1999, recorded 6/4/1999, in Deed Book 1845, Page 316.

SEIZED and taken into execution as the property of **Dennis Ness & Anna M. Ness a/k/a Anna Marie Ness** and to be sold by me.

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

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

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

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

9/12, 19 & 26

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for NAUGHTY NUNNY'S, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on August 4, 2003, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker, Yingst & Hart  
Solicitor

9/26

## COMMONWEALTH VS. McCURRY

1. Where evidence is legally obtained in the foreign jurisdiction, it will be admissible, so long as otherwise relevant, in a Pennsylvania proceeding, even though the same evidence would not have been legal in Pennsylvania.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CC-304-02, COMMONWEALTH VS. CLARENCE BENJAMIN McCURRY.

Paul Dean, Esq., District Attorney, for Commonwealth  
Thomas W. Gregory, Jr., Esq., for Defendant  
Kuhn, P.J., September 6, 2002

### MEMORANDUM OPINION ON DEFENDANT'S OMNIBUS PRE-TRIAL MOTION

At issue before the Court is the admissibility of a videotape. For reasons set forth below, the Court concludes that the video is admissible.

On December 17, 2001, a Criminal Complaint was filed against Defendant. The Affidavit of Probable Cause alleges that on April 1, 1998, Defendant, Jimmie Wright and Sara Gulden obtained a power of attorney on behalf of their mother, Ruth Gunnett. In June, 1998, Gunnett transferred a residence and farm located in Butler Township to Defendant. However, Gunnett denies transferring the contents of the residence to Defendant. On July 2, 1998, Defendant allegedly removed two loads of Gunnett's personal property from the residence and placed one load in a storage unit. The property removed from the residence is purportedly worth over \$37,000.

Defendant resides in Jefferson, Kentucky. Allegedly, on November 28, 1998, he rented a storage unit in Louisville, Kentucky. In a civil suit, Defendant testified that the property taken was junk and that some of it was in Louisville in a landfill.

On December 13, 1998, at Defendant's home in Kentucky, his sister, Texas Bailo, secretly videotaped a conversation between the two of them in which Defendant purportedly stated Ms. Gunnett's property was being stored in Delaware.

Defendant is charged with Theft by Failure to Make Required Disposition in violation of 18 Pa. C.S.A. §3927(a).

The issues for disposition are whether Defendant's conversation

was videotaped in violation of Kentucky law and, if so, is it admissible at trial in Pennsylvania.

Defendant contends that the recording of his conversation would be unlawful under the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. C.S.A. §570, et seq. and, therefore, even though the recording occurred in Kentucky, admitting it as evidence in a Pennsylvania court proceeding would be contrary to public policy espoused in the state's wiretapping statute. However, Pennsylvania clearly holds to the contrary.

In *Commonwealth v. Bennett*, 369 A.2d 493 (Pa. Super. 1976), our Superior Court held that evidence obtained legally in New Jersey under that state's wiretapping statute could be used to support a search warrant in Pennsylvania even though the same evidence could not have been legally obtained in Pennsylvania under this state's wiretapping statute. Subsequently, in *Commonwealth v. Sanchez*, 716 A.2d 1221 (Pa. 1998), our Supreme Court held that evidence obtained legally in California pursuant to a canine sniff is admissible to provide probable cause to support a search warrant in Pennsylvania even if the canine sniff would not have been legal in Pennsylvania.

The policy set forth in these cases is that each state must decide for itself whether evidence is legally obtained within its boundaries. Pennsylvania has no power to dictate whether evidence is legally obtained in another jurisdiction. Where evidence is legally obtained in the foreign jurisdiction, it will be admissible, so long as otherwise relevant, in a Pennsylvania proceeding.

The Court has been provided with a copy of the applicable Kentucky statute, which provides:

§526.010. Definition

“Eavesdrop” means to overhear, record, amplify or transmit any part of a wire or oral communication of others without the consent of at least one (1) party thereto by means of any electronic, mechanical or other device.

§526.020 Eavesdropping

(1) A person is guilty of eavesdropping when he intentionally uses any device to eavesdrop, whether or not he is present at the time.

It is clear that under Kentucky law, if one party to the conversation consents to its recording, the use of the tape does not violate the non-consenting party's state constitutional rights. *Carrier v. Commonwealth*, 607 S.W.2d 115 (Ky. App. 1980).

Here, Ms. Bailo obviously consented to the recording of the conversation in Kentucky. In accordance with the above-cited authority, its use at trial in Pennsylvania is clearly authorized.

Accordingly, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 6th day of September, 2002, Defendant's Motion seeking suppression of evidence, filed April 24, 2002, is denied. The conversation of Defendant recorded in Kentucky on December 13, 1998, is admissible at trial, if relevant.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-542 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the Western edge of the Pennsylvania State Highway which leads from Littlestown to the Gettysburg-Hanover State Highway, which point is south six (06) degrees thirty (30) minutes East, five (05) feet from the corner of Lot No. 2 from the plan of lots of Clayton E. and Annie E. Runk; thence along said Highway South six (06) degrees thirty (30) minutes East, one hundred fifteen (115) feet to a stake at corner of Lot No. 5; thence along Lot No. 5, South eighty-three (83) degrees thirty (30) minutes West, one hundred fifty (150) feet to lands now or formerly of Clayton E. Runk and Annie E. Runk; thence along same North six (06) degrees thirty (30) minutes West, one hundred fifteen (115) feet to a point which is South six (06) degrees thirty (30) minutes East, five (05) feet from the Southwest corner of Lot No. 2, aforesaid; thence North eighty-three (83) degrees thirty (30) minutes East, one hundred fifty (150) feet to a point along the Pennsylvania State Highway which leads from Littlestown to Gettysburg-Hanover State Highway, the place of BEGINNING. Being known and numbered as 660 Littlestown Road.

BEING KNOWN as 660 Littlestown Road, Littlestown, PA 17340

PROPERTY ID NO: J15-37

TITLE TO SAID PREMISES IS VESTED IN Marilyn R. Barrick by Deed from Steven D. Barrick and Marilyn R. Barrick, persons who are or have been married, dated 2/23/1995, recorded 2/28/1995, in Deed Book 1000, Page 39.

SEIZED and taken into execution as the property of **Marilyn R. Barrick** and to be sold by me.

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

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

must settle for property on or before filing date.

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

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

9/12, 19 & 26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-619 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 October, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point on the property line of Spruce Lane, a fifty (50) foot street, at corner of Lot No. 521 on the hereinafter referred plan of lots; thence by said lot, North three (03) degrees forty-seven (47) minutes thirteen (13) seconds West, one hundred ten (110.00) feet to a steel pin at Lot No. 517; thence by said lot and by Lot No. 516, North eighty-six (86) degrees twelve (12) minutes forty-seven (47) seconds East, one hundred (100.00) feet to a steel pin at Lot No. 523; thence by said lot, South seven (07) degrees fifty-three (53) minutes twenty-three (23) seconds West, one hundred sixteen and thirty-four hundredths (116.34) feet to a steel pin on the property line of Spruce Lane; thence by said street by a curve to the left whose radius is one hundred ninety (190) feet, an arc distance of thirty-eight and seventy-two hundredths (38.72) feet, the long chord of which is North eighty-seven (87) degrees fifty-six (56) minutes fifty-five (55) seconds West, thirty-eight and sixty-five hundredths (38.65) feet to a point; thence continuing along the same, South eighty-six (86) degrees twelve (12) minutes forty-seven (47) seconds West, thirty-eight (38.00) feet to the point and place of BEGINNING (CONTAINING 8,801 square feet and being known as Lot No. 522 on a plan of lots of Oxford Estates, Tract II-Phase Three, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plan Book 53, page 66.)

HAVING erected thereon a dwelling known as 13 Spruce Lane, New Oxford, PA 17350.

PARCEL NO. 35-008-0179

BEING the same premises which George T. Lamb and Ann Marie Marlette-Lamb, by their Deed dated 7/8/2002 and recorded on 7/10/2002 in the Adams County, Pennsylvania, in the Office of the Recorder of Deeds in Deed Book Volume 2725, page 283, granted and conveyed unto George T. Lamb.

SEIZED and taken into execution as the property of **George T. Lamb & Ann Marie Marlette-Lamb** and to be sold by me.

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

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

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

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

9/12, 19 & 26

## DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN, to all creditors and claimants of **MeRob, Inc.**, a business corporation, that the shareholders have approved a proposal that the corporation dissolve voluntarily 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.

William A. Duncan, Esq.  
Duncan, Hartman & Douglas, P.C.  
ID # 22080  
1 Irvine Row  
Carlisle, PA 17013

9/19, 26 & 10/3

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State at Harrisburg, Pennsylvania, on July 16, 2003, incorporating **MEADOWBROOK GOLF COURSE, INC.**, under the provisions of the Business Corporation Law of 1988.

Roger R. Weaver  
President

9/26

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-518 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain lot of land situate in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 29 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County in Misc. Deed Book 1, Page 1, and subject to all legal highways, easements, rights-of-way and restrictions of record.

TOGETHER with the right in common with other owners of lots in said subdivision to use for all usual purposes the streets, ways, beaches, recreation area, and other public areas, as shown on the said plot, and the right in common with the other owners of lots in the said subdivision to use the lake and beaches for swimming, fishing and boating in accordance with the rules and regulations of Lake Meade Property Owners Association, its successors or assigns.

UNDER AND SUBJECT, nevertheless, to certain covenants, conditions, restrictions, easements and other provisions as set forth in the aforesaid deed recorded in Deed Book 267, Page 1071, Adams County Records.

BEING KNOWN AS 4 Hooker Cove, East Berlin, PA 17316

PROPERTY ID NO: 8-16

TITLE TO SAID PREMISES IS VESTED IN Barry E. Miller and Donna J. Miller, his wife by deed from Clyde C. Bachert, Jr., single person, dated 8/4/2000, recorded 8/28/2000, in Deed Book 2115, Page 29.

SEIZED and taken into execution as the property of **Barry E. Miller & Donna J. Miller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 1, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost,

whichever may be the higher, shall be paid forthwith to the Sheriff.

9/26, 10/3 & 10

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-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 7th day of November, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point at the corner of Springs Avenue and Reynolds Street; thence along Springs Avenue in a Westerly direction 50 feet to a point at corner of Lot No. 36 now or formerly of Clarence M. Sadler; thence along said Lot No. 36 in a Northerly direction 166 feet to a public alley; thence along said alley in an Easterly direction 50 feet to Reynolds Street; thence along Reynolds Street in a Southerly direction 166 feet to the place of BEGINNING.

BEING KNOWN AS 101 Springs Avenue, Gettysburg, PA 17325

PROPERTY ID NO: 006-0087

TITLE TO SAID PREMISES IS VESTED IN Gregory P. Christianson and Suzanne H. Christianson, husband and wife, as tenants by the entirety by deed from Suzanne H. Christianson now joined by Gregory P. Christianson, her husband, dated 7/30/2002, recorded 7/30/2002, in Deed Book 2748, Page 44.

SEIZED and taken into execution as the property of **Suzanne H. Christianson & Gregory P. Christianson** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 1, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26, 10/3 & 10

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 01-S-1191 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 2003, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, Adams County, Pennsylvania, being Lot No. 141 in Section "BB", bounded and described as follows:

BEGINNING at a point in the center of Bourbon Trail at corner of Lot No. 140; thence by said lot, South 39 degrees, 35 minutes, 40 seconds East, 225.00 feet to a point in line of Lot No. 138; thence by said lot, South 50 degrees, 24 minutes, 20 seconds West, 100.00 feet to a point at corner of Lot No. 142; thence by said lot, North 39 degrees, 35 minutes, 40 seconds West, 225.00 feet to a point in the center of Bourbon Trail; thence in said Bourbon Trail, North 50 degrees, 24 minutes, 20 seconds East, 100.00 feet to a point, the place of BEGINNING.

THE above description was taken from a plan of lots labeled "section BB of Charnita, Inc.", dated December 6, 1969, prepared by Gordon L. Brown, R.S., and recorded in Plat Book 1 at page 62

Tax Parcel #BB-141

SEIZED and taken into execution as the property of **Mitchell A. Andrew & Lavada M. Andrew** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 1, 2003, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26, 10/3 & 10

**ESTATE NOTICES**

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

**FIRST PUBLICATION****ESTATE OF TRUMAN W. CRAWFORD, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Lucille Crawford, 676 New Road, Orrtanna, PA 17353

Attorney: Jeffery M. Cook, Esq., 234 Baltimore St., Gettysburg, PA 17325

**ESTATE OF GRACE E. GARMAN, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Charles L. Garman, 7 Glendale Street, Hanover, PA 17331

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

**ESTATE OF JOANNE M. KRIVAK a/k/a JOANNE MICHELLE KRIVAK, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administrator: Mack Chilcote, 20 Sunset Drive, Gettysburg, PA 17325

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

**ESTATE OF DENNIS RAY WOLF, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Executor: Randall Charles Wolf, 463 Upper Temple Road, Biglerville, PA 17307

Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF MADALENE ELIZABETH DAY, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Administrators: Larry A. Day and Phyllis E. Pierson, c/o Menges, Gent & McLaughlin, 1157 Eichelberger St., Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Menges, Gent & McLaughlin, 1157 Eichelberger St., Hanover, PA 17331

**ESTATE OF EDWIN M. FLICKINGER, SR., a/k/a EDWIN M. FLICKINGER, DEC'D**

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

Executor: Sterling Financial Trust Company, 6 Lincoln Square, Gettysburg, PA 17325

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

**ESTATE OF ROBERT H. KENNEDY, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Lesa L. Milne a/k/a Lesa F. Milne, 2390 Belair Road, Dover, PA 17315

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

**ESTATE OF VIRGINIA F. MASINO, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Frank N. Masino, Jr., 70 Sonora Way, Corte Madera, CA 94925

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

**ESTATE OF JAMES D. MUNSHOUR, JR., DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Administrators: Mr. James A. Munshour, 1885 Highland Ave. Road, Gettysburg, PA 17325; Mrs. Carol A. Hess, 118 Rodes Avenue, Gettysburg, PA 17325; Mrs. Susan L. Hartzell, 55 Belmont Road, Gettysburg, PA 17325

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

**ESTATE OF HAZEL V. SNYDER, DEC'D**

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: John Craig Lowe, 1324 Mark Drive, West Chester, PA 19380

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

**ESTATE OF HELEN MARIE TEMPLE, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Elise Jones Huddleston, 6090 Second Street, King George, VA 22486

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

**ESTATE OF WILLIAM H. YOHE, JR., DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrix: Gloria E. Yohe, 205 Ewell Avenue, Gettysburg, PA 17325

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

**THIRD PUBLICATION****ESTATE OF ISABEL P. BAUGHER a/k/a EMMA I. BAUGHER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard C. Powell, 211 Lakeside Drive, Lewes, DE 19958

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

**ESTATE OF BARBARA A. BENNETT, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Alicia Hoff, 66 Dubs Church Road, Hanover, PA 17331

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

**ESTATE OF EMMA G. FORRY, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representatives: Jeanne L. Nunamaker & Autry T. Nunamaker, c/o Patterson & Kiersz, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681

Attorney: Patterson & Kiersz, P.C., 239-B East Main St., Waynesboro, PA 17268-1681

**ESTATE OF JANE E. GEBHART, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executors: Richard J. Gebhart, 2414 Somerset Drive, Jeffersonton, VA 22724; Jeffrey L. Gebhart, 5791 Old Harrisburg Road, York Springs, PA 17372

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

**ESTATE OF JAMES H. ROWE, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Gertrude D. Shoemaker, 365 Blacksmith Shop Road, Gettysburg, PA 17325; Patricia Joanne Mickley, 501 Clubside Court, Stoney Creek, NC 27377; James H. Rowe, II, 129 Sherry Drive, McSherrystown, PA 17344

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

(continued on page 6)



**THIRD PUBLICATION (continued)**

ESTATE OF HAROLD L. SLAYBAUGH,  
DEC'D

Late of Oxford Township, Adams  
County, Pennsylvania

Personal Representative: Wachovia  
Bank, N.A., P.O. Box 3959, PA 6907,  
100 N. Queen Street, Lancaster, PA  
17604

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

ESTATE OF MARY E. STALLSMITH,  
DEC'D

Late of Hamiltonban Township, Adams  
County, Pennsylvania

Executors: Barbara K. and James M.  
Plank, 1470 Mt. Carmel Road,  
Orrtanna, PA 17353; Cynthia Sue  
and Steven A. Moritz, 110 Moritz  
Road, Orrtanna, PA 17353

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

ESTATE OF PETER YASOVSKY, DEC'D

Late of Franklin Township, Adams  
County, Pennsylvania

Executor: Eugene McDannell, 875  
New Road, Orrtanna, PA 17353

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