

Adams County Legal Journal

Vol. 37

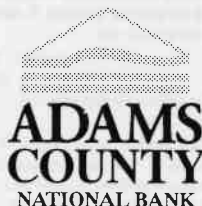
September 1, 1995

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SEILS VS. GETTYSBURG AREA
INDUSTRIAL DEVELOPMENT AUTHORITY, ET AL.
(Conclusion)

Strong.
Rooted Upon Traditional Values.
Dedicated to Quality.
Customer Service.
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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-SU-01062-08 issuing out of the Court of Common Pleas of York County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the North side of North Street in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a stake at North Street aforesaid at lands now or formerly of Charles and Sue Ackerman; thence by said lands in a Northerly direction for a distance of one hundred forty-three (143) feet, more or less, to a stake at a public alley; thence by said alley in an Easterly direction for a distance of thirty (30) feet to a stake at lands now or formerly of Marie Sneeringer; thence by the same in a Southerly direction for a distance of one hundred forty-three (143) feet, more or less, to a stake at North Street aforesaid; thence by the same in a Westerly direction for a distance of thirty (30) feet to a stake, the place of BEGINNING.

IT BEING the same premises which Robert F. Staub and Thelma K. Staub, his wife by their deed dated July 1, 1988, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 493, page 1054, granted and conveyed unto Thomas J. Hufnagle, Jr. and Eileen M. Hufnagle, his wife.

Tax Map 1, Parcel 82.

Seized and taken into execution as the property of **Thomas J. Hufnagle and Eileen M. Hufnagle** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 15, 1995.

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 13, 1995, 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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-17 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin in the sidewalk, which iron pin is set back 10 feet from the North curb line of East Water Street and 10 feet from the East curb line of North Stratton Street; thence along said sidewalk, North 4 degrees 30 minutes East, 32.9 feet to a joint in the concrete; thence through the center of a brick house and land now or formerly of Maybelle E. Little, South 85 degrees 30 minutes East, 160 feet to an iron pin in a public alley; thence along said public alley, South 4 degrees 30 minutes West, 16.14 feet to an iron pin; thence along a sidewalk 10 feet wide, South 88 degrees 32 minutes West 160.8 feet to an iron pin, the place of BEGINNING.

BEING the same which Barry M. Breighner and Sandra K. Breighner, husband and wife, by deed dated June 1, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 524 at page 659 conveyed to Thomas M. Gilbert and Yvonne T. Gilbert, now known as Yvonne K. Trostle, the Defendants herein.

IMPROVED WITH a half of a 2½-story, all brick residential dwelling.

SEIZED and taken into execution as the property of **Yvonne K. Trostle, previously known as Yvonne K. Gilbert**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 21, 1995.

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 30, 1995,

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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-990 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of September, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land known and numbered as 110 Pine Court, Abbottstown, Berwick Township, Adams County, PA; also known as Tax Map L-10, Parcel 54; Deed Book: 559, Page 90.

Seized and taken into execution as the property of **Philip A. Sheely and Norma J. Sheely** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 28, 1995.

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 16, 1995, 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.

8/25, 9/1 & 8

Unfortunately, we have no Pennsylvania decision for guidance and no authority, except those cited above, have been identified. However, as this Court perceives the theory of absolute liability for abnormally dangerous activities, the land of another must be harmed. Absent Pennsylvania appellate direction we will not extend liability to subsequent purchasers. Ordinarily, a cause of action in fraud is available to a subsequent purchaser for latent defects. If the interest of a subsequent purchaser is to be protected for policy reasons, it is not the role of this Court to create that policy.

In Count III Plaintiffs allege that Pet's activities which contaminated the land created both a private and public nuisance. Pet argues that a cause of action for nuisance does not protect the interest of a subsequent purchaser.

In *Waschak v. Moffat*, 379 Pa. 441, 109 A.2d 310 (1954) our Supreme Court adopted the predecessor to Section 822 of the Restatement (Second) of Torts as the test for determining the existence of a private nuisance in Pennsylvania. See *Kembel v. Schlegel* 329 Pa. Super. 159, 478 A.2d 11 (1984). That section provides:

§822 General Rule

One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either

(a) intentional and unreasonable or

(b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

The most authoritative Pennsylvania based decision on the right of a subsequent purchaser to pursue a claim for a private nuisance against a predecessor in title for conditions existing on the land prior to transfer is *Philadelphia Electric Co. v. Hercules, Inc.*, 762 F.2d 303 (3rd Cir. 1985). In that case PICCO (Hercules' predecessor) deposited resins in a pond on the subject real estate. Later, Plaintiff bought the site. Subsequently, resins were discovered to be seeping into the Delaware River. Plaintiff was required to clean up the site and sued Hercules to recover the costs. There the court noted that

historically private nuisance claims have been used to resolve conflicts between “neighboring, contemporaneous land uses.” p. 314. Neighbors, unlike purchasers, have no means of protecting themselves through inspection or negotiation. While the concept of caveat emptor entered into the court’s analysis, ultimately the court declined to extend the concept of private nuisance beyond its historical limitations.

Denying a cause of action for liability under a claim for private nuisance against a predecessor in contamination cases has been the general rule. See *Hanlan Group, Inc. v. International Minerals & Chemical Corp.*, 759 F. Supp. 925 (D. Me. 1990); *Wellesley Hills Realty v. Mobil Oil Corp.* supra; *Wilson Auto Enterprises Inc. v. Mobil Oil Corp.*, 778 F. Supp. 101 (D.R.I. 1991); *Mayor and Council of Borough of Rockaway v. Klockner v. Klockner*, 811 F. Supp. 1039 (D.N.J. 1993); *Rose v. Grumman Aerospace Corp.*, 602 N.Y.S. 2d 34 (1993). At least one jurisdiction has adopted a contrary result. *KFC Western, Inc. v. Meghrig*, 28 Cal. Rptr. 676 (1994); *Wilshire Westwood Associates v. Atlantic Richfield Comp. v. Superior Court*, 24 Cal. Rptr. 2d 562 (1993); *Newhall Land and Farming Comp. v. Superior Court*, 23 Cal. Rptr. 2d 377 (1993). However, it appears that private nuisance is a creature of statute under California law and as such has been given a very broad interpretation.

This Court has been given no direction that the Pennsylvania appellate courts would extend the law of private nuisance as Plaintiffs request.

A public nuisance differs from a private nuisance and involves an unreasonable interference with a right common to the general public. See *Philadelphia Electric Co.*, supra., 762 F. Supp. at 315, citing Restatement (Second) Torts §821B(1). The question here is whether Plaintiffs have standing to pursue this claim. For two reasons we conclude that they have no standing. First, to constitute a public nuisance the complained of activity must have affected the public in general and not merely one particular person. *Feeley v. Borough of Ridley Park*, 121 Pa. Comlth. Ct. 564, 567, 551 A.2d

³ Restatement (Second) Torts § 821C(1) provides “In order to recover damages in an individual action for a public nuisance, one must have suffered harm of a kind different from that suffered by other members of the public exercising the right common to the general public that was the subject of the interference.”

373, 375 (1988). There is no averment that the contaminants have extended beyond the subject real estate so there is no allegation that the general public has been affected. Second, if the general public has been affected there is no harm suffered by Plaintiffs which is different than that suffered by the general public.³ See Philadelphia Electric Comp., Id., Hanlain Group, Inc., supra, 759 F. Supp. at 935.

We note that Plaintiffs alleged that Pet's activities constituted a private nuisance, a public nuisance and nuisance per se (Para. 39). Pet has not challenged the latter concept so it has not been addressed.

In Count V Plaintiffs are pursuing a declaratory judgment action for response costs under the Pennsylvania Hazardous Sites Cleanup Act (HSCA), 35 P.S. §6020.101 et seq. They allege that Pet is a "responsible person" under the Act and is therefore liable for "response costs" because Pet both generated hazardous substances which were released into the environment (Para. 49) and because it was an owner of the site when the substances were released (Para. 48). Pet first argues that HSCA does not provide a private right of action against Pet for response costs.

There is a genuine split of authority on the issue of the existence of a private right of action under HSCA with *Lutz v. Chromatex, Inc.*, 730 F. Supp. 1328 (M.D. PA. 1990) and *Vogel Disposal Service, Inc. v. NAPCO, Inc.*, A.D. No. 89-796 (C.P. Butler 1990) finding no such right and *General Electric Environmental Services, Inc. v. Envirotech Corp.*, 763 F. Supp. 113 (M.D. PA. 1991); *Toole v. Gould, Inc.*, 764 F. Supp. 985 (M.D. PA. 1991); *Fly v. Leech Tool and Die Works, Inc.*, 22 Crawford Co. L.J. 167 (1991); *Manella v. Thompson*, No. 89-1069-09-2 (Bucks County C.P. September 5, 1991); and *D.L. Martin Machine Comp. v. Loewengart and Company, Inc.*, 11 Franklin Co. L.J. 199 (1992) ruling otherwise. To date, no Pennsylvania appellate authority has spoken on this issue.

Chief Judge Conaboy offered an excellent discussion of the divergent views in *Toole v. Gould, Inc.*, supra. While ruling that HSCA allows a right of private action, the court in *Toole* acknowledged that although the contrary view

is academically sound and provides a "degree of analytic neatness", the result does not achieve the greater good that we believe the General Assembly intended. 764 F. Supp. at 1000.

The problem arises because HSCA does not specifically provide for a right of private action and because its legislature history shows that a proposed section granting that right was deleted. Those courts supporting the cause of action base their decisions on lack of specific prohibition of such a right, inferred legislative intent, a comparison of HSCA with its federal counterpart which has been interpreted to grant such a right, and support for such a right, from the Pennsylvania Department of Environmental Resources (DER) which is the administrative agency generally authorized to enforce the legislation.

Certainly, as noted in Toole at p. 1002, the dilemma caused by these divergent views could be eliminated by legislative amendment that clarifies which view was intended. However, no such remedy has been effectuated so we are left with the Act as it currently exists.

At this stage of the proceeding we are inclined to adopt the view taken by those courts granting a private cause of action. We do this reluctantly and without any sense of confidence that this view will ultimately be adopted in Pennsylvania. We respect the logic of each viewpoint but find one slightly more compelling than the other.

Pet also argues that even if a private cause of action exists under HSCA no action may be commenced prior to 60 days after the plaintiff has given notice to DER, Butler and Menallen Townships and Pet. 35 P.S. §6020.1115(b). Plaintiff contends that such notice was provided by a letter dated February 21, 1994, or 119 days before suit was filed. A copy of this notice was presented at Argument Court. Pet does not seriously contend that this letter was not sent or received.

This requirement has been satisfied. *Frey v. Leech Tool and Die Works, Inc.*, supra.

Pet next argues that under 35 P.S. §6020.1115(a) Plaintiffs cannot recover for HSCA violations which occurred years ago. Under §1115(a) and “person who has experienced or is threatened with personal injury or property damage as a result of a release of a hazardous substance may file a civil action against any person to prevent or abate a violation of this act...” Pet contends that Plaintiffs seek recovery of response costs whereas §1115(a) speaks only to the prevention or abatement of a violation. In this case, the

alleged violation, the dumping of hazardous substances, ended years ago, therefore, argues Pet, there is nothing to prevent or abate.

The problem with Pet's argument is that Plaintiffs are pursuing their claim under 35 P.S. §6020.1101 and 6020.702(a)(3) and not 6020.1115(a). If the latter section was involved, there could be a maze of logic that would have to be maneuvered. Instead, having already determined that a right of private action exists exclusive of §1115(a), we need not address any limitations under that section. Section 1101 provides that a release of a hazardous substance constitutes a public nuisance for which the violator shall be liable for response costs. Response costs include the costs for interim response, costs for remedial response incurred by governmental agencies, and costs of response incurred by any other person. 35 P.S. §6020.702(a). There does not appear to be any limitations under these sections that would narrow the scope of liability to exclude alleged violators simply because they are no longer engaged in action which constitutes a violation.

In addition, Pet contends that a declaratory judgment action is not the proper vehicle to pursue a violation of HSCA because the Act itself is the exclusive means through which to pursue remedies for alleged violations. Plaintiffs' response is confusing. First, we note that Plaintiffs styled Count V, Declaration Judgment Action Against All Defendants For Response Costs Under HSCA. Plaintiffs then cite Pa. R.C.P. 1602 as supporting a prayer for declaratory relief in any action at law or in equity. That Rule, however, authorizes declaratory relief as ancillary to other relief authorized and being sought in an action at law or in equity. The right to pursue an action for a declaratory judgment is authorized by the Declaratory Judgments Act, 42 Pa. C.S.A. §7531 et seq. and where one only seeks that relief Pa. R.C.P. 1601 governs procedure. Second, Plaintiffs cite 35 P.S. 6020.1115(b) as authorizing the granting of equitable relief yet Count V, as noted above, does not seem to be premised on §1115.

Nevertheless, in Count V Plaintiffs appear to be seeking a statutory remedy. Declaratory relief is specifically available where one is seeking a statutory remedy. 42 Pa. C.S.A. §7541(b).

In Count VI Plaintiffs are pursuing an action in equity requesting that the court order Pet to take steps to assess and clean up the site. Pet seeks dismissal of Plaintiffs' request for a mandatory injunction

because they have an adequate remedy at law. At this point we decline to make disposition of this issue. It is black letter law that injunctions issue when a party has no adequate legal remedy and irreparable harm will occur if the injunction is not granted. An injury is irreparable if it cannot be adequately compensated by an award of damages. *Cosner v. United Penn Bank*, 358 Pa. Super. 484, 492, 517 A.2d 1337, 1341 (1986). Plaintiffs may not be able to ultimately succeed in meeting these elements. At this point, however, we see no purpose in rushing to dismiss this court.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 25th day of April, 1995, in consideration of Preliminary Objections filed by Defendant, Pet, Inc., to Plaintiffs' Amended Complaint, the Court does hereby:

1. Sustain the Motion To Strike Paragraph 23;
2. Sustain the demurrer to Count I;
3. Sustain the demurrer to Count II;
4. Sustain the demurrer to allegations of private and public nuisance under Count III;
5. Deny the demurrer to Count V;
6. Deny the demurrer to Count VI.

Plaintiffs are granted twenty (20) days from the date of mailing of this Order to file an amendment to the Amended Complaint and upon failure to do so, Defendant, Pet, Inc., shall have twenty (20) additional days to file a responsive pleading.

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 I. ALTMANN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania
 Executor: Rev. George E. Altmann, Jr., 32 Carroll's Tract Road, Fairfield, PA 17320
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF NAOMIE. ORNER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
 Executors: George K. Orner, 23 Spring Garden Estates, Carlisle, PA 17013; Janet L. Whistler, 86 Betty Nelson Ct., Lot 105, Carlisle, PA 17013
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF ALSTON L. PETERS, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania
 Executrix: Delores A. Peters, 136 S. Main Street, P.O. Box 115, Bendersville, PA 17306
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF IDA H. STEVENS, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executors: William H. Sperry, 9 Fox Green Court, Homosassa, FL 34446; Dauphin Deposit Bank and Trust Company, P.O. Box 2961, Harrisburg, PA 17105-9968
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF GLADYS R. WEAVER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executors: Vera E. Slagle; Donna E. Vanderbosch; Brian F. Weaver
 Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF ELMER F. KING, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Administratrix: d.b.n.c.t.a. Lenora King Holland, 10823-D Amherst Avenue, Wheaton, MD 20902
 Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GEORGE J. REBERT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
 Executor: John A. Rebert, 2124 Twin Brooks Drive, York, PA 17404
 Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

ESTATE OF FAY H. REEDER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
 Executrix: Linda Ranaldi, 24 Christian Drive, Avon, CT 06001
 Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ROGER W. SMITH, JR., DEC'D

Late of Huntington Township, Adams County, Pennsylvania
 Administratrix: Melissa A. Smith, 1228 Gun Club Road, York Springs, PA 17372
 Attorney: John C. Zepp, III, Esquire, P.O. Box 204, York Springs, PA 17372

THIRD PUBLICATION

ESTATE OF ANNA G. DEARDORFF, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executors: William K. Grove, P.O. Box 324, Boiling Springs, PA 17007; Dale E. Deardorff, 216 East Lincoln Avenue, Gettysburg, PA 17325
 Attorney: Teeter, Teeter, & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF GERVAISE H. ECK, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
 Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
 Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF JULIUS W. MALINOSKY, DEC'D

Late of Straban Township, Adams County, Pennsylvania
 Executor: Keith A. Malinosky, 704 Sandbank Road, Mount Holly Springs, PA 17065
 Attorney: David K. James, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WILLIAM S. MYERS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Executrix: Mary Grace Dennis, 3628 Carlisle Road, Aspers, PA 17324
 Attorney: Walton V. Davis, Esquire, 31 S. Washington Street, Gettysburg, PA 17325

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 C & J POWER WASH, INC.

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

9/1

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania, under the Domestic Business Corporation Law, on August 15, 1995 for DRIFTWOOD ENTERPRISES, INC., and the registered office is located at 1235 Hanover Pike, Littlestown, Adams County, Pennsylvania.

9/1

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by PALLET OUTLET COMPANY, INC. with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988.

Countess Gilbert Andrews
 Gary M. Gilbert, Esq.
 Solicitors
 29 North Duke Street
 York, PA 17401

9/1

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 92-S-762 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land, with the buildings and improvements thereon erected, SITUATE in the Borough of Carroll Valley, County of Adams, Commonwealth of Pennsylvania, and being described in accordance with a Survey made by Boyer Surveys, dated December 29, 1980, as follows, to wit:

BEGINNING at a pk nail at the intersection of the centerline of Pennsylvania Route #116 with the centerline of Stine Trail; THENCE extending from said point of beginning and along the said centerline of PA Route #116, South 11 degrees 33 minutes East, the distance of 139.96 feet to a pk nail, at a corner of lands now or late of Arthur D. Detwiler; thence extending along the last mentioned lands of Detwiler, the two (2) following courses and distances, (1) South 78 degrees 27 minutes West, the distance of 158.10 feet to a bar set, and (2) South 86 degrees 38 minutes 20 seconds West, the distance of 199.19 feet to a railroad spike in the center of Swallow Trail; thence extending along the said Swallow Trail, North 03 degrees 21 minutes 40 seconds West, the distance of 201.08 feet to a railroad spike at the intersection with the centerline of Stine Trail; thence extending along the said centerline of Stine Trail, South 86 degrees 33 minutes 40 seconds East, the distance of 338.12 feet to the first mentioned point and place of BEGINNING.

BEING Known and Numbered as Lot No. 2C on Plan of Charnita, Section B, recorded in Plan Book Misc. Book 5 Page 370.

HAVING ERECTED THEREON A DWELLING KNOWN AS 9 SWALLOW TRAIL, FAIRFIELD, PA.

BEING THE SAME PREMISES WHICH PENELOPE LEAKE by deed dated June 17, 1988 and recorded in Adams County Deed Book 492, Page 1081 granted and conveyed her interest in the within premises unto James Leake.

Seized and taken into execution as the property of James W. Leake and Penelope Leake, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 16, 1995.

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 30, 1995, 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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-427 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in the Borough of Bendersville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located along the Eastern side of North Main Street and along the Southern side of a 10 foot public alley; thence along said Southern side of the public alley, North 66 degrees 45 minutes East, 139 feet to an iron pin located along the Western side of a 20 foot public alley; thence along said Western side of the last mentioned public alley, South 22 degrees 43 minutes East, 24 feet to a chisel mark in concrete; thence by land of now or formerly of Agnes Kennedy, South 66 degrees 45 minutes West, 24.87 feet to an iron pin; thence by same, South 15 degrees 44 minutes East, 11.95 feet to an iron pin; thence by same, South 66 degrees 58 minutes 5 seconds West, 112.67 feet to a chisel mark in concrete curb along the Eastern side of North Main Street; thence along said Eastern side of North Main Street, North 22 degrees 43 minutes West, 35.42 feet to an iron pin, the place of BEGINNING. CONTAINING 4,645 square feet.

SEIZED and taken into execution as the property of Robert T. Gross, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 16, 1995.

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 30, 1995, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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9/1, 8, 15

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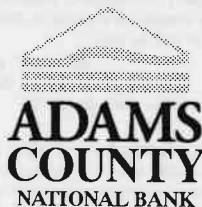
September 8, 1995

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IN THIS ISSUE

IN RE: CONDEMNATION BY THE BOROUGH OF
CARROLL VALLEY FOR STREET WIDENING PURPOSES
COMMONWEALTH VS. OTT

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-SU-01062-08 issuing out of the Court of Common Pleas of York County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the North side of North Street in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a stake at North Street aforesaid at lands now or formerly of Charles and Sue Ackerman; thence by said lands in a Northerly direction for a distance of one hundred forty-three (143) feet, more or less, to a stake at a public alley; thence by said alley in an Easterly direction for a distance of thirty (30) feet to a stake at lands now or formerly of Marie Sneeringer; thence by the same in a Southerly direction for a distance of one hundred forty-three (143) feet, more or less, to a stake at North Street aforesaid; thence by the same in a Westerly direction for a distance of thirty (30) feet to a stake, the place of BEGINNING.

IT BEING the same premises which Robert F. Staub and Thelma K. Staub, his wife by their deed dated July 1, 1988, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 493, page 1054, granted and conveyed unto Thomas J. Hufnagle, Jr. and Eileen M. Hufnagle, his wife.

Tax Map 1, Parcel 82.

Seized and taken into execution as the property of **Thomas J. Hufnagle and Eileen M. Hufnagle** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 15, 1995.

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 13, 1995, 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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-17 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin in the sidewalk, which iron pin is set back 10 feet from the North curb line of East Water Street and 10 feet from the East curb line of North Stratton Street; thence along said sidewalk, North 4 degrees 30 minutes East, 32.9 feet to a joint in the concrete; thence through the center of a brick house and land now or formerly of Maybelle E. Little, South 85 degrees 30 minutes East, 160 feet to an iron pin in a public alley; thence along said public alley, South 4 degrees 30 minutes West, 16.14 feet to an iron pin; thence along a sidewalk 10 feet wide, South 88 degrees 32 minutes West 160.8 feet to an iron pin, the place of BEGINNING.

BEING the same which Barry M. Breighner and Sandra K. Breighner, husband and wife, by deed dated June 1, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 524 at page 659 conveyed to Thomas M. Gilbert and Yvonne T. Gilbert, now known as Yvonne K. Trostle, the Defendants herein.

IMPROVED WITH a half of a 2 $\frac{1}{2}$ -story, all brick residential dwelling.

SEIZED and taken into execution as the property of **Yvonne K. Trostle, previously known as Yvonne K. Gilbert**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 21, 1995.

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 30, 1995,

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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 93-S-990 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 22nd day of September, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County PA, the following Real Estate, viz.:

ALL that certain tract of land known and numbered as 110 Pine Court, Abbottstown, Berwick Township, Adams County, PA; also known as Tax Map L-10, Parcel 54; Deed Book: 559, Page 90.

Seized and taken into execution as the property of **Philip A. Sheely and Norma J. Sheely** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 28, 1995.

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 16, 1995, 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.

8/25, 9/1 & 8

IN RE: CONDEMNATION BY THE BOROUGH OF
CARROLL VALLEY FOR STREET WIDENING
PURPOSES

1. In reviewing Condemnor's decision and the extent of the taking, the Court is limited to determining whether the municipality is guilty of fraud, bad faith, or abuse of discretion, and, in that regard, there is a strong presumption that the municipality acted properly.

2. Where an issue of fact is raised, preliminary objections may not be dismissed without first conducting an evidentiary hearing to resolve those issues of fact.

3. Whether a taking is excessive speaks to the issue of abuse of discretion by the municipality and in that regard, there is a strong presumption that the Condemnor acted properly and in good faith.

4. A borough roadway can be burdened with facilities for utilities without additional compensation being owed to the abutting property owner.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-1087, IN RE: CONDEMNATION BY THE BOROUGH OF CARROLL VALLEY FOR STREET WIDENING PURPOSES OF PORTION OF LOT B-2C IN THE BOROUGH OF CARROLL VALLEY, ADAMS COUNTY, PENNSYLVANIA.

Samuel E. Teeter, Esq., for Condemnor
James W. Leake, pro se

OPINION

Kuhn, J., April 18, 1995.

On December 12, 1994, the Borough of Carroll Valley, Adams County, Pennsylvania, Condemnor, adopted Resolution No. 11-94 authorizing the commencement of eminent domain proceedings for the purpose of securing an unlimited surface easement for use of a public street upon a 310 square foot triangular portion at the northwest corner of Lot No. B-2C owned by James W. Leake, Condemnee, and also known as 9 Swallow Trail. Condemnor filed a Declaration of Taking on December 16, 1994, which was served upon Condemnee on December 22, 1994.

On January 13, 1995, Condemnee, acting pro se, filed preliminary objections to the declaration of taking. Therein he set forth a litany dating to 1984. Basically he objects to the need for the

taking and contends that the survey outlining the parcel being taken is in error.

On February 14, 1995, Condemnor filed a Petition For Writ of Possession and a Rule was issued upon Condemnee to show cause why possession of the subject parcel should not be granted to Condemnor upon payment of proposed just compensation. Condemnee filed a petition requesting that the possession be denied.

Argument on Condemnee's Preliminary Objections was set for March 14, 1995, and is now before the Court for disposition.

Initially we note that Condemnor is exercising its right to widen a street under the power of eminent domain pursuant to §1501 of the Borough Code, Act of February 1, 1966, P.L. (1965), No. 581, 53 PS §46501, and the Eminent Domain Code of 1964, 26 P.S. §1-101 et seq. We further note that upon the filing of the declaration of taking title passes to the condemnor, 26 P.S. §1-402(a), who is entitled to possession in accordance with 26 P.S. §1-407.

Preliminary objections are limited to challenges to (1) the power or right of the condemnor to appropriate the condemned property, 2) the sufficiency of the security, 3) any other procedure followed by the condemnor, or 4) the declaration of taking. 26 P.S. §1-406(a). In reviewing Condemnor's decision and the extent of the taking this Court is limited to determining whether the municipality is guilty of fraud, bad faith, or abuse of discretion, and, in that regard, there is a strong presumption that the municipality acted properly. This places a heavy burden on Condemnee to show an abuse of discretion. Appeal of Heim, 151 Pa. Cmlth. Ct. 438, 442, 617A.2d 74, 76 (1992), Alloc. den. 629A.2d 1385 (1993).

The adequacy of the description of the property being taken is irrelevant and will not be considered. The description is sufficient to identify the parcel to Condemnee. The Declaration of Taking includes a survey which adequately describes the area as a triangle with the sides facing Swallow and Stone Trail as 25 feet each and the base being 33.11 feet for a total area of 310 square feet. Whatever parcel Condemnor has described will be the

parcel reviewed for compensation purposes.

The issue of adequate compensation shall be addressed later in this proceeding if the parties cannot effectuate an agreement on that issue.

The issue of whether there is a necessity for the taking will require an evidentiary hearing. The law is clear that where an issue of fact is raised preliminary objections may not be dismissed without first conducting an evidentiary hearing to resolve those issues of fact. *City of Philadelphia v. Martorano*, 38 Pa. Comlth. Ct. 573, 394 A.2d 674 (1978). Here, Condemnee alleges that Condemnor has adequate area within its existing right-of-way to effectuate the roadway expansion without effectuating a taking. An issue of whether a taking is excessive or that other suitable land was available is one that must be determined. *Appeal of McKonly*, 152 Pa. Comlth. Ct. 211, 618 A.2d 1169 (1992).

Essentially, whether a taking is excessive speaks to the issue of abuse of discretion by the municipality. Certainly the widening of a public street constitutes a proper purpose and is a statutorially authorized right available to a borough. In that regard, there is a strong presumption that Condemnor acted properly and in good faith. Condemnee bears a heavy burden of proving otherwise. *Swartz v. Pittsburgh Public Parking Authority*, 63 Pa. Comlth. Ct. 434, 439, 439 A.2d 1254, 1256 (1981). Ultimately, this Court will not substitute its discretion or judgment for that of a municipality. It is unclear, however, at this point, whether there are valid engineering, design, or public safety concerns which require that this subject land be taken or whether, in fact, Condemnor already has sufficient area to address the problem. Without suggesting that bad faith can be established in this case, we certainly agree that government cannot use its power of condemnation to spite or harrass a citizen.¹

Condemnee also challenges that portion of the taking of the

¹ The Court wants to make clear to Condemnee that alleged damages for loss of business due to denial of a building permit or permit to conduct a commercial enterprise on his property is not relevant to this case and will not be considered.

surface easement which includes the right to erect and maintain such facilities as are required for utilities including, but not limited to, poles, lines, cables, and storm and sanitary sewage systems. Authority exists that a borough roadway can be burdened with these utilities without additional compensation being owed to the abutting property owner. *Pittsburgh National Bank v. Equitable Gas Company*, 421 Pa. 468, 220 A.2d 12 (1966), cert. den. 385 U.S. 988, 17 L.Ed. 2d 449 (1966). We believe Condemnee has no basis to object to this inclusion in the taking. However, the Court will resolve this issue when a final order is entered on the preliminary objections. Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 18th day of April, 1995, upon consideration of Preliminary Objections filed by Condemnee, James W. Leake, it is directed that an evidentiary hearing be set on the issue of whether the taking is excessive and, therefore, unnecessary.

COMMONWEALTH VS. OTT

1. Traffic stops are permissible only when the police have reason to believe Defendant is committing a vehicle offense for which a citation may be issued.
2. Although a traffic stop may be justified and the police may obtain a driver's license and registration and, if appropriate, verify it and they may issue a citation, they must then send the person on his way since questioning may be pursued only if there is a reasonable suspicion to believe Defendant may be engaged in criminal activity.

In the Court of Common Pleas, Adams County, Pennsylvania,
Criminal No. CC-188-95, COMMONWEALTH OF PENNSYLVANIA VS. DAVID JEREMIAH OTT.

Roy Keefer, Esq., District Attorney
Kevin Robinson, Esq., for Defendant

MEMORANDUM OPINION

Spicer, P.J., April 20, 1995.

Defendant moves to suppress evidence obtained after his car was stopped by the police in Carroll Valley. Two officers were

investigating reports of an underage drinking party in a rural section of the borough in the early morning hours of October 29, 1994. Officer Kiel stopped defendant after the vehicle crested a steep hill on Dove Trail.

After a hearing, the undersigned rejected an explanation that defendant was stopped because he drove in the center of Dove Trail. The view from the officer's vantage point was quite limited, there was no centerline in the street and defendant's operation was normal for that area. After obtaining defendant's driver's license, Officer Kiel turned it over to Officer Hileman, without explanation. The obvious purpose was for interrogation and not to issue a citation. None was issued.

Traffic stops, as the phrase is generally understood, are permissible only when the police have reason to believe defendant is committing a vehicle offense for which a citation may be issued. *Commonwealth v. Sedgwick*, 434 Pa.Super. 448, 644 A.2d 167 (1994) (cannot stop a vehicle when only observable violation is failure to wear seat belt).

We opined, at the hearing, that the initial stop might be justified under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968), despite the lack of reasonable suspicion that defendant was engaged in criminal activity. We think the police have the right to know the identity of a person driving through a crime scene, on a local highway, late at night, and in a sparsely settled area. In fact, it was our conclusion that the real purpose of the stop was to ascertain identity and destination.

Thus, although Officer Kiel's initial action may have been justified, his subsequent action was not. The police, in situations such as the one presented, have very limited rights. They may obtain a driver's license and registration and, if appropriate, verify it. They may issue a citation. Then, they must send the person on his way. Questioning may be pursued only if there is reasonable suspicion to believe defendant may be engaged in criminal activity. *Commonwealth v. Lopez*, 415 Pa.Super. 252, 609 A.2d 177 (1992).

It is obvious Kiel handed defendant over to Hileman for questioning. The second officer's question, which he said was

prompted by defendant's extreme nervousness, related to neither identity nor destination.

This case, aside from obvious factual differences, is virtually indistinguishable from Lopez, supra. There, as here, evidence was obtained consensually. Superior Court held that the police were not justified in detaining defendant after he produced requested documents. Officer Kiel was required to send defendant on his way, after defendant complied with the request to produce his driver's license. The attached order is entered.

ORDER OF COURT

AND NOW, this 20th day of April, 1995, defendant's motion to suppress is granted.

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 ANNIE C. FISSEL A/K/A ANNA C. FISSEL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Marie F. Showers, 1362 Granite Station Rd., Gettysburg, PA 17325; Frank H. Fissel, Jr., 100 Ewell Ave., Gettysburg, PA 17325; George S. Fissel, 27 Rutgers Dr., Exton, PA 19341

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF HENRIETTA M. PALMER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Carol Lee Baker, 110 Ruth Avenue, Hanover, PA; Thomas P. Baker, 110 Ruth Avenue, Hanover, PA

Attorney: Rudisill, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

SECOND PUBLICATION

ESTATE OF ISABEL I. ALTMANN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Rev. George E. Altmann, Jr., 32 Carroll's Tract Road, Fairfield, PA 17320

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

ESTATE OF NAOMIE ORNER, DEC'D
Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: George K. Orner, 23 Spring Garden Estates, Carlisle, PA 17013; Janet L. Whistler, 86 Betty Nelson Ct., Lot 105, Carlisle, PA 17013

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF ALSTON L. PETERS, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania

Executrix: Delores A. Peters, 136 S. Main Street, P.O. Box 115, Bendersville, PA 17306

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

ESTATE OF IDA H. STEVENS, DEC'D
Late of Straban Township, Adams County, Pennsylvania

Executors: William H. Sperry, 9 Fox Green Court, Homosassa, FL 34446; Dauphin Deposit Bank and Trust Company, P.O. Box 2961, Harrisburg, PA 17105-9968

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

ESTATE OF GLADYS R. WEAVER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Vera E. Slagle; Donna E. Vanderbosch; Brian F. Weaver
Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF ELMER F. KING, DEC'D
Late of Conewago Township, Adams County, Pennsylvania

Administratrix: d.b.n.c.t.a. Lenora King Holland, 10823-D Amherst Avenue, Wheaton, MD 20902

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

ESTATE OF GEORGE J. REBERT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: John A. Rebert, 2124 Twin Brooks Drive, York, PA 17404

Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

ESTATE OF FAY H. REEDER, DEC'D
Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executrix: Linda Ranaldi, 24 Christian Drive, Avon, CT 06001

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

ESTATE OF ROGER W. SMITH, JR., DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Administratrix: Melissa A. Smith, 1228 Gun Club Road, York Springs, PA 17372

Attorney: John C. Zepp, III, Esquire, P.O. Box 204, York Springs, PA 17372

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, September 18, 1995, at 9:00 a.m.

ORNER—Orphans' Court Action Number OC-100-95. The First and Final Account of Clyde P. Orner, Sr., Executor of the Last Will and Testament of Geraldine W. Orner, deceased, late of Butler Township, Adams County, Pennsylvania.

WALTER—Orphans' Court Action Number OC-104-95. The First and Final Account of Corinne L. Snyder, a/k/a Corinne W. Snyder, and Robert H. Walter, Executors of the Estate of Laura W. Walter, deceased, late of Franklin Township, Adams County, Pennsylvania.

BEGLIN—Orphans' Court Action Number OC-106-95. The First and Final Account of Gordon David Beglin, Executor, of the Last Will and Testament of John A. Beglin, Sr., deceased, late of Borough of Gettysburg, Adams County, Pennsylvania.

KOONS—Orphans' Court Action Number OC-107-95. The First and Final Account of Charles R. Koons and Carole C. Williams, a/k/a Carol C. Williams, Executors of the Last Will and Testament of Alice H. Koons, deceased, late of Latimore Township, Adams County, Pennsylvania.

ROSENSTEEL—Orphans' Court Action Number OC-108-95. The First and Final Account of Charles R. Rosensteel and Dorothy J. O'Dell, Executors of the Last Will and Testament of Helen G. Rosensteel, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

SHANK—Orphans' Court Action Number OC-109-95. The First and Final Account of Adams County National Bank, Executor of the Estate of Neva B. Shank, deceased, late of Oxford Township, Adams County, Pennsylvania.

FLOHR—Orphans' Court Action Number OC-110-95. The First and Final Account of PNC Bank, N.A., successor to The Gettysburg National Bank, Executor of the Last Will and Testament of Louise M. Flohr, deceased, late of Liberty Township, Adams County, Pennsylvania.

HOLIBAUGH—Orphans' Court Action Number OC-111-95. The First and Final Account of Susan Redding, Executrix of the Estate of Hazel J. Holibaugh, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 92-S-762 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land, with the buildings and improvements thereon erected, SITUATE in the Borough of Carroll Valley, County of Adams, Commonwealth of Pennsylvania, and being described in accordance with a Survey made by Boyer Surveys, dated December 29, 1980, as follows, to wit:

BEGINNING at a pk nail at the intersection of the centerline of Pennsylvania Route #116 with the centerline of Stine Trail; THENCE extending from said point of beginning and along the said centerline of PA Route #116, South 11 degrees 33 minutes East, the distance of 139.96 feet to a pk nail, at a corner of lands now or late of Arthur D. Detwiler; thence extending along the last mentioned lands of Detwiler, the two (2) following courses and distances, (1) South 78 degrees 27 minutes West, the distance of 158.10 feet to a bar set, and (2) South 86 degrees 38 minutes 20 seconds West, the distance of 199.19 feet to a railroad spike in the center of Swallow Trail; thence extending along the said Swallow Trail, North 03 degrees 21 minutes 40 seconds West, the distance of 201.08 feet to a railroad spike at the intersection with the centerline of Stine Trail; thence extending along the said centerline of Stine Trail, South 86 degrees 33 minutes 40 seconds East, the distance of 338.12 feet to the first mentioned point and place of BEGINNING.

BEING Known and Numbered as Lot No. 2C on Plan of Charnita, Section B, recorded in Plan Book Misc. Book 5 Page 370.

HAVING ERECTED THEREON A DWELLING KNOWN AS 9 SWALLOW TRAIL, FAIRFIELD, PA.

BEING THE SAME PREMISES WHICH PENELOPE LEAKE by deed dated June 17, 1988 and recorded in Adams County Deed Book 492, Page 1081 granted and conveyed her interest in the within premises unto James Leake.

Seized and taken into execution as the property of **James W. Leake and Penelope Leake**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 16, 1995.

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 30, 1995, 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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-427 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in the Borough of Bendersville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located along the **Eastern side of North Main Street** and **along the Southern side of a 10 foot public alley**; thence along said Southern side of the public alley, North 66 degrees 45 minutes East, 139 feet to an iron pin located along the Western side of a 20 foot public alley; thence along said Western side of the last mentioned public alley, South 22 degrees 43 minutes East, 24 feet to a chisel mark in concrete; thence by land of now or formerly of Agnes Kennedy, South 66 degrees 45 minutes West, 24.87 feet to an iron pin; thence by same, South 15 degrees 44 minutes East, 11.95 feet to an iron pin; thence by same, South 66 degrees 58 minutes 5 seconds West, 112.67 feet to a chisel mark in concrete curb along the Eastern side of North Main Street; thence along said Eastern side of North Main Street, North 22 degrees 43 minutes West, 35.42 feet to an iron pin, the place of BEGINNING. CONTAINING 4,645 square feet.

SEIZED and taken into execution as the property of **Robert T. Gross**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 16, 1995.

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 30, 1995, 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.

9/1, 8, 15

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, on August 2, 1995, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation under the Pennsylvania Business Corporation Law of 1985. The name of the corporation is LKH, INC.

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

9/8

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the Fictitious Names Act, Act 1982-295, as amended, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, on August 23, 1995 of an application to conduct a business in Adams County, Pennsylvania under the registered fictitious name of PENNSYLVANIA'S CHILD. The address of the principal office or place of such business to be carried on under or through such fictitious name is 1150 Fox Run Terrace, Hanover, PA 17331. The name of the person interested in such business who is party to such registration is Leslie E. Abendschoen of the same address.

Teeter, Teeter & Teeter,
Solicitors

9/8

Adams County Legal Journal

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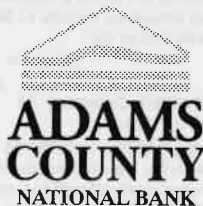
September 15, 1995

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COMMONWEALTH VS. MUMMERT

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 94-SU-01062-08 issuing out of the Court of Common Pleas of York County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the North side of North Street in the Borough of McSherrystown, Adams County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a stake at North Street aforesaid at lands now or formerly of Charles and Sue Ackerman; thence by said lands in a Northerly direction for a distance of one hundred forty-three (143) feet, more or less, to a stake at a public alley; thence by said alley in an Easterly direction for a distance of thirty (30) feet to a stake at lands now or formerly of Marie Sneeringer; thence by the same in a Southerly direction for a distance of one hundred forty-three (143) feet, more or less, to a stake at North Street aforesaid; thence by the same in a Westerly direction for a distance of thirty (30) feet to a stake, the place of BEGINNING.

IT BEING the same premises which Robert F. Staub and Thelma K. Staub, his wife by their deed dated July 1, 1988, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 493, page 1054, granted and conveyed unto Thomas J. Hufnagle, Jr. and Eileen M. Hufnagle, his wife.

Tax Map 1, Parcel 82.

Seized and taken into execution as the property of **Thomas J. Hufnagle and Eileen M. Hufnagle** and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 15, 1995.

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 13, 1995, 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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-17 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin in the sidewalk, which iron pin is set back 10 feet from the North curb line of East Water Street and 10 feet from the East curb line of North Stratton Street; thence along said sidewalk, North 4 degrees 30 minutes East, 32.9 feet to a joint in the concrete; thence through the center of a brick house and land now or formerly of Maybelle E. Little, South 85 degrees 30 minutes East, 160 feet to an iron pin in a public alley; thence along said public alley, South 4 degrees 30 minutes West, 16.14 feet to an iron pin; thence along a sidewalk 10 feet wide, South 88 degrees 32 minutes West 160.8 feet to an iron pin, the place of BEGINNING.

BEING the same which Barry M. Breighner and Sandra K. Breighner, husband and wife, by deed dated June 1, 1989, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 524 at page 659 conveyed to Thomas M. Gilbert and Yvonne T. Gilbert, now known as Yvonne K. Trostle, the Defendants herein.

IMPROVED WITH a half of a 2 1/2-story, all brick residential dwelling.

SEIZED and taken into execution as the property of **Yvonne K. Trostle, previously known as Yvonne K. Gilbert**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 21, 1995.

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 30, 1995,

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.

9/1, 8, 15

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, on or about September 5, 1995, pursuant to the Fictitious Names Act, Act No. 1982-295, setting forth that Greenholt Enterprises, Incorporated of 326 East King Street, Littlestown, Adams County, Pennsylvania 17340 is the only entity engaged or interested in a business, the character of which is for the purpose of designing, producing, marketing and selling useful home and industrial products to the general public, and that the name, style and designation under which said business is and will be conducted is GFE ENTERPRISES, and the principal office or place of business of GFE Enterprises is 326 East King Street, Littlestown, Adams County, Pennsylvania 17340.

Thomas E. Miller, Esquire
Miller & Shultis Solicitor

9/15

COMMONWEALTH VS. MUMMERT

1. On a charge of driving during suspension, the Commonwealth retains the burden of proving that Defendant had actual notice that his license had been suspended.
2. On a charge of driving during suspension, proof that notice was mailed, standing alone, is not sufficient to establish notice beyond a reasonable doubt.
3. Factors other than the mailing of notice of suspension of his operating privileges have been considered by the Courts in determining whether a Defendant had actual notice.

In the Court of Common Pleas, Adams County, Pennsylvania,
Criminal No. CC-307-95, COMMONWEALTH VS. DAVID
ALLEN MUMMERT.

Bernard A. Yannetti, Jr., Esq., for the Commonwealth
Anthony Miley, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., April 20, 1995.

Defendant appealed his conviction for violation of 75 Pa. C.S.A. § 1543(b). At hearing on April 7, 1995, the following facts were developed.

In the Fall of 1993, Defendant moved from 650 Rife Road, East Berlin, Pennsylvania to Stoney Point Road, 28-B, New Oxford, Pennsylvania. He notified PennDOT of this move, however, his driver's license continued to reflect the East Berlin address.

On March 7, 1994, Defendant was stopped for a suspected DUI charge. At that time, although being advised by the Pennsylvania State Police Trooper that he would lose his driving privileges for one year if he refused a chemical test of his blood, Defendant refused to submit to the requested testing.

According to Defendant, sometime in March or April, 1994, he moved from Stoney Point Road to his current address at 415 Ardmore Lane, Abbottstown, Pennsylvania but failed to notify PennDOT of this change. On March 29, 1994, PennDOT sent Defendant official notice that his driving privileges would be suspended for one year effective May 3, 1994, for refusing the chemical testing on March 7, 1994.

On June 16, 1994, Defendant was stopped by Officer Steven Eisenhart of the Eastern Adams Regional Police Department. After the stop the officer was advised that Defendant's driving privileges were suspended. Defendant produced his license but when asked about the suspension he denied being arrested for DUI and said there is another David Mummert who looks like him and drives a similar vehicle. Defendant did not admit knowing he was under suspension. At hearing Defendant denied receiving notice of the suspension.

The issue before the Court is whether Commonwealth proved beyond a reasonable doubt that Defendant received actual notice of the suspension of his driving privileges as required by Commonwealth v. Kane, 460 Pa. 582, 333 A.2d 925 (1975). We believe Defendant is estopped from raising the defense of lack of notice for two reasons. First, it is unclear exactly when Defendant moved from the Stoney Point Road address used by DOT, however, if he had not moved by the time notice was sent on March 29, 1994, it was sent to the proper address. Second, if Defendant had already moved by March 29, 1994, he admits to not notifying PennDOT of this change and is, therefore, precluded from relying on the defense of insufficient notice. Commonwealth v. McDonough, 533 Pa. 283, 621 A.2d 569 (1993).

The issue is not resolved merely because Defendant is precluded from raising lack of sufficient notice. Commonwealth still retains the burden of proving that Defendant had actual notice that his license had been suspended. Proof that notice was mailed, standing alone, is not sufficient to establish notice beyond a reasonable doubt, Kane, supra., however here, unlike in Kane it is possible that notice was sent to Defendant's correct residence at the time. Other factors have been considered by the courts in determining whether a defendant had actual notice

including, but not limited to, evidence that the defendant was verbally or in writing apprised of the license suspension during the trial or a plea, statements by the accused indicating knowledge that he or

she was driving during the period in which his or her license had been suspended, evidence that PennDOT sent by mail the notice of the suspension to appellant's current address, evidence that PennDOT's notice of suspension was not returned as undeliverable, attempts by the accused to avoid detection or a citation, and any other conduct demonstrating circumstantially or directly appellant's knowledge of the suspension or awareness of guilt. *Commonwealth v. Zimmick*, __ Pa. __, __, 653 A.2d 1217, 1221 (1995).

In addition, failure to produce a current license at the time of the traffic stop is presumptive knowledge of suspension. *Commonwealth v. Dietz*, 423 Pa. Super. 366, 371, 621 A.2d 160, 162-3 (1993), *Alloc. den.* 631 A.2d 1007 (1993).

In the instant case, the Commonwealth has only proven that notice was sent to an address which may or may not have been Defendant's residence, that he denied being arrested on March 7, 1994, for DUI, and that he was advised by the trooper that refusal to submit to chemical testing would result in a one year suspension of his driving privileges. On the other hand there is no evidence that Defendant was advised by a court that his driving privileges would be suspended, or that he made statements acknowledging the suspension, or that the notice was not returned to PennDOT as undeliverable, or that he failed to produce an unexpired driver's license, or that he attempted to avoid being detected as the driver on June 16, 1994. Under the circumstances the undersigned concludes that the evidence was insufficient to establish actual notice beyond a reasonable doubt.

In passing, we note the observation made by Superior Court in *Commonwealth v. Taylor*, 390 Pa. Super. 571, 568 A.2d 1320 (1990) urging PennDOT to consider sending notices by certified or registered mail. To this the undersigned would urge mailing by both ordinary and registered mail. This Court has experienced many occasions where DUS acquittals have resulted from Commonwealth's inability to prove actual notice. An unneces-

sary time and resource burden is placed on police, prosecutors, defendants and the courts which could easily be remedied by a more effective notice procedure.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 20th day of April, 1995, the Court finds Defendant not guilty of Driving Under Suspension, 75 Pa. C.S.A. § 1543(b), as charged in Citation #0182927.

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 JACK R. BEARD a/k/a JACK ROBERT BEARD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Ven Ralf Patterson, 110 Rohrbaugh Road, Fairfield, PA 17320

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

ESTATE OF HELEN L. ROSENBERGER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: James Donald Rosenberger, Sr., 7220 Auburn St., Annandale, VA 22003; Theodore Earl Rosenberger, 1541 Brysonia-Wenksville Rd., Biglerville, PA 17307

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF GERTRUDE A. SLAGLE a/k/a GERTRUDE M. SLAGLE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Thomas J. Slagle, R.D.#4, Box 4016, Lake Road, Spring Grove, PA 17362

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

SECOND PUBLICATION

ESTATE OF ANNIE C. FISSEL A/K/A ANNA C. FISSEL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Marie F. Showers, 1362 Granite Station Rd., Gettysburg, PA 17325; Frank H. Fissel, Jr., 100 Ewell Ave., Gettysburg, PA 17325; George S. Fissel, 27 Rutgers Dr., Exton, PA 19341

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF HENRIETTA M. PALMER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Carole Lee Baker, 110 Ruth Avenue, Hanover, PA; Thomas P. Baker, 110 Ruth Avenue, Hanover, PA

Attorney: Rudisill, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

THIRD PUBLICATION

ESTATE OF ISABEL I. ALTMANN, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Rev. George E. Altmann, Jr., 32 Carroll's Tract Road, Fairfield, PA 17320

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

ESTATE OF NAOMI E. ORNER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: George K. Orner, 23 Spring Garden Estates, Carlisle, PA 17013; Janet L. Whistler, 86 Betty Nelson Ct., Lot 105, Carlisle, PA 17013

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF ALSTON L. PETERS, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania

Executrix: Dolores A. Peters, 136 S. Main Street, P.O. Box 115, Bendersville, PA 17306

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

ESTATE OF IDA H. STEVENS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: William H. Sperry, 9 Fox Green Court, Homosassa, FL 34446; Dauphin Deposit Bank and Trust Company, P.O. Box 2961, Harrisburg, PA 17105-9968

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

ESTATE OF GLADYS R. WEAVER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Vera E. Slagle; Donna E. Vanderbosch; Brian F. Weaver
Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, September 18, 1995, at 9:00 a.m.

ORNER—Orphans' Court Action Number OC-100-95. The First and Final Account of Clyde P. Orner, Sr., Executor of the Last Will and Testament of Geraldine W. Orner, deceased, late of Butler Township, Adams County, Pennsylvania.

WALTER—Orphans' Court Action Number OC-104-95. The First and Final Account of Corinne L. Snyder, a/k/a Corinne W. Snyder, and Robert H. Walter, Executors of the Estate of Laura W. Walter, deceased, late of Franklin Township, Adams County, Pennsylvania.

BEGLIN—Orphans' Court Action Number OC-106-95. The First and Final Account of Gordon David Beglin, Executor, of the Last Will and Testament of John A. Beglin, Sr., deceased, late of Borough of Gettysburg, Adams County, Pennsylvania.

KOONS—Orphans' Court Action Number OC-107-95. The First and Final Account of Charles R. Koons and Carole C. Williams, a/k/a Carol C. Williams, Executors of the Last Will and Testament of Alice H. Koons, deceased, late of Latimore Township, Adams County, Pennsylvania.

ROSENSTEEL—Orphans' Court Action Number OC-108-95. The First and Final Account of Charles R. Rosensteel and Dorothy J. O'Dell, Executors of the Last Will and Testament of Helen G. Rosensteel, deceased, late of the Borough of Gettysburg, Adams County, Pennsylvania.

SHANK—Orphans' Court Action Number OC-109-95. The First and Final Account of Adams County National Bank, Executor of the Estate of Neva B. Shank, deceased, late of Oxford Township, Adams County, Pennsylvania.

FLOHR—Orphans' Court Action Number OC-110-95. The First and Final Account of PNC Bank, N.A., successor to The Gettysburg National Bank, Executor of the Last Will and Testament of Louise M. Flohr, deceased, late of Liberty Township, Adams County, Pennsylvania.

HOLIBAUGH—Orphans' Court Action Number OC-111-95. The First and Final Account of Susan Redding, Executrix of the Estate of Hazel J. Holibaugh, deceased, late of Straban Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 92-S-762 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract or parcel of land, with the buildings and improvements thereon erected, SITUATE in the Borough of Carroll Valley, County of Adams, Commonwealth of Pennsylvania, and being described in accordance with a Survey made by Boyer Surveys, dated December 29, 1980, as follows, to wit:

BEGINNING at a pk nail at the intersection of the centerline of Pennsylvania Route #116 with the centerline of Stine Trail; THENCE extending from said point of beginning and along the said centerline of PA Route #116, South 11 degrees 33 minutes East, the distance of 139.96 feet to a pk nail, at a corner of lands now or late of Arthur D. Detwiler; thence extending along the last mentioned lands of Detwiler, the two (2) following courses and distances, (1) South 78 degrees 27 minutes West, the distance of 158.10 feet to a bar set, and (2) South 86 degrees 38 minutes 20 seconds West, the distance of 199.19 feet to a railroad spike in the center of Swallow Trail; thence extending along the said Swallow Trail, North 03 degrees 21 minutes 40 seconds West, the distance of 201.08 feet to a railroad spike at the intersection with the centerline of Stine Trail; thence extending along the said centerline of Stine Trail, South 86 degrees 33 minutes 40 seconds East, the distance of 338.12 feet to the first mentioned point and place of BEGINNING.

BEING Known and Numbered as Lot No. 2C on Plan of Charnita, Section B, recorded in Plan Book Misc. Book 5 Page 370.

HAVING ERECTED THEREON A DWELLING KNOWN AS 9 SWALLOW TRAIL, FAIRFIELD, PA.

BEING THE SAME PREMISES WHICH PENELOPE LEAKE by deed dated June 17, 1988 and recorded in Adams County Deed Book 492, Page 1081 granted and conveyed her interest in the within premises unto James Leake.

Seized and taken into execution as the property of **James W. Leake and Penelope Leake**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 16, 1995.

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 30, 1995, 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.

9/1, 8, 15

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-427 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 6th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract of land situate in the Borough of Bendersville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located along the Eastern side of North Main Street and along the Southern side of a 10 foot public alley; thence along said Southern side of the public alley, North 66 degrees 45 minutes East, 139 feet to an iron pin located along the Western side of a 20 foot public alley; thence along said Western side of the last mentioned public alley, South 22 degrees 43 minutes East, 24 feet to a chisel mark in concrete; thence by land of now or formerly of Agnes Kennedy, South 66 degrees 45 minutes West, 24.87 feet to an iron pin; thence by same, South 15 degrees 44 minutes East, 11.95 feet to an iron pin; thence by same, South 66 degrees 58 minutes 5 seconds West, 112.67 feet to a chisel mark in concrete curb along the Eastern side of North Main Street; thence along said Eastern side of North Main Street, North 22 degrees 43 minutes West, 35.42 feet to an iron pin, the place of BEGINNING. CONTAINING 4,645 square feet.

SEIZED and taken into execution as the property of **Robert T. Gross**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 16, 1995.

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 30, 1995, 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.

9/1, 8, 15

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that a certificate will be filed pursuant to the Fictitious Name Act, §311 of Act No. 1982-295, in the Office of the Secretary of the Commonwealth, setting forth that **Anthony Sartori, of 864 Sherman Drive, Gettysburg, PA 17325 and Rick Marshall of 13 Deep Powder Trail, Fairfield, F. 17320**, are the only individuals owning or interested in a business, the character of which is the sale of masonry and construction services to the general public, and that the name, style and designation under which said business is and will be conducted is MASON CRAFTERS, and the location where said business is and will be located is 864 Sherman Drive, Gettysburg, Pennsylvania.

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

9/15

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Pennsylvania "Fictitious Names Act," 54 Pa C.S.A. Section 301 et seq. of the filing of an Application of Registration for Fictitious Name under the said Act. The fictitious name is MASON DIXON ENVIRONMENTAL OF GETTYSBURG. The address of the principal office or place of business to be carried on under or through the fictitious name is P.O. Box 3711, 2115 Taneytown Road, Gettysburg, Adams County, Pennsylvania 17325. The name and address of the individual interested in the business is George B. Krichten, 2115 Taneytown Road, Gettysburg, Adams County, Pennsylvania 17325. An Application for Registration of the said Fictitious Name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on August 16, 1995.

9/15

Adams County Legal Journal

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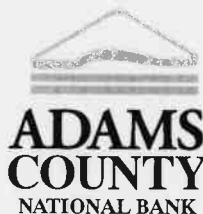
September 22, 1995

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IN THIS ISSUE

TAYLOR VS. KEMPER NATIONAL INSURANCE
COMPANY, INC., ET AL.

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-93 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a post on the East side of a public road corner of this tract and on line of lands now or formerly of J.A. Tawney and this and other lands now or formerly of Frank M. Lott; thence by lands now or formerly of J.A. Tawney, North thirty-four and one-half (34½) degrees East, eighty-six and five-tenths (86.5) feet to a stake; thence by other lands now or formerly of Frank M. Lott, of which this tract was a part; North fifty-five and one-half (55½) degrees West, thirty-five (35.00) feet to a stake; thence by same, South fifty-seven (57) degrees West, sixty-five and eight-tenths (65.8) feet to a stake at said public road; thence along the East side of said public road, South thirty-three (33) degrees East, sixty-five (65.00) feet to the place of BEGINNING. CONTAINING 13.4 square perches of land.

SEIZED and taken into execution as the property of **Anthony R. Baker, Leroy F. Baker and Jackie Baker**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 24, 1995.

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 13, 1995, 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.

9/22, 29 & 10/6

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State at Harrisburg, Pennsylvania on August 31, 1995, incorporating FAIR LOGGING, INC. as a business corporation under the provisions of the Business Corporation Law of 1988.

Frederick S. Wolfson, Esquire
Reilly, Wolfson, Sheffey, Schrum
and Lundberg
1601 Cornwall Road
Lebanon, PA 17042

9/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on January 24, 1995, with the Department of State of the Commonwealth of Pennsylvania for a business organized under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444. The name of the corporation is MOO, INC.

Albright, Crumbacker, Harrell & Moul
135 North George Street
York, PA 17401

9/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on September 13, 1995. The name of the corporation is INSINC, INC. The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Bigham & Raffensperger
Attorneys at Law
16 Lincoln Square
Gettysburg, PA 17325
Attorneys for the Corporation

9/22

TAYLOR VS. KEMPER NATIONAL INSURANCE
COMPANY, INC., ET AL.

1. Generally, the interpretation of an insurance policy is a matter of law for the courts.
2. When interpreting an insurance policy, the policy is to be assessed as a whole, and not in discrete units, to determine if language is ambiguous.
3. Language is ambiguous if reasonable minds could differ as to its meaning.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 92-S-1024, HENRY L. TAYLOR, D/B/A HENRY TAYLOR TRUCKING AND STORAGE SERVICES VS. KEMPER NATIONAL INSURANCE COMPANY, INC., WILLIAM M. THERIT, JR. T/D/B/A WILLIAM M. THERIT, JR. INSURANCE AGENCY and EASTERN SHORE CORP.

Matthew R. Battersby, Esq., for Plaintiff

Bruce McLaughlin, Esq., for Plaintiff

David L. Rohde, Esq., for Defendant William Therit, et al.

G. Thomas Miller, Esq., for Defendant Eastern Shore Corp.

Roann L. Pope, Esq., for Lumbermens Mut. Cas. Co. (incorrectly designated Kemper National Ins. Co.)

OPINION ON MOTION FOR SUMMARY JUDGMENT

Spicer, P.J., April 25, 1995.

Plaintiff is a person who engaged in the business of transporting goods, including commercial grade potato starch, in the fall and early winter of 1990. In connection with this activity, it was sometimes necessary to store the starch at plaintiff's place of business.

Starch was packaged in large bags, each containing 2,200 pounds. Some, but perhaps not all, bags exhibited instructions to "Keep Dry."

Plaintiff stored a number of bags outside from October through December 1990. He covered some with empty bags, others with tarpaulins. However, he did not have enough tarpaulins to cover all of the bags. He said, during his deposition, that the coverings were secured by bungee cords and that he visually inspected them on a periodic basis.

After bags were received by plaintiff's customer, it was determined that a quantity of starch had become moist, moldy and clumpy. The customer rejected the goods as unfit for paper manufacture. Plaintiff reimbursed his customer, sold the starch at a less favorable price to mitigate damages, and then sought to recover his out of pocket

expenses from Lumbermens Mutual Casualty Company (Defendant). When defendant denied the claim, this suit resulted.

Defendant now moves for summary judgment, arguing that it is entitled to judgment as a matter of law.

The court's role, at this point, is not to resolve factual disputes, but to determine if genuine issues of fact exist. We examine the entire record in a light most favorable to plaintiff and determine if the case is so clear and free from doubt as to entitle defendant to judgment, *Aetna Casualty and Surety Co. v. Roe*, __ Pa.Super. __, 650 A.2d 94 (1994).

The policy contains the following language:

Terminal Coverage

We will pay for "loss" to Covered Property loaded in or on vehicles or unloaded and at your risk at terminal locations specified in the Declarations, except as limited in the Property Not Covered section.

B. EXCLUSIONS

2. We will not pay for a "loss" caused by or resulting from any of the following:

a. Shifting of load, improper packing, rough handling, breakage, contact with oil or grease, marring or scratching, wetness or dampness, leakage of liquids, or as a result of being spotted, discolored, molded, rusted, frosted or frozen, rotted, soured, steamed or heated, or changed in flavor.

But we will pay for such "loss" caused directly by fire, lightening, windstorm, hail, smoke, explosion, collision, overturning of vehicles, aircraft, vandalism or malicious mischief or burglary or attempted theft.

Generally, the interpretation of an insurance policy is a matter of law for the courts. The primary objective of contract interpretation is to ascertain and effectuate the intent of the parties as reasonably manifested by policy language. Unambiguous terms are construed in accordance with their plain and ordinary meaning. The policy is to be assessed as a whole, and not in discrete units, to determine if language is ambiguous. It is ambiguous if reasonable minds could differ as to its meaning. *O'Brien Energy v. American Employers'*, 427 Pa.Super. 456, 629 A.2d 957 (1993); *Aetna Casualty and Surety Co. v. Roe*, supra.

Although plaintiff testified, during depositions, that it was his opinion that the damage was caused by a windstorm, he could identify no particular storm. Evidently, he bases this conclusion on the fact that water was found underneath tarpaulins, but not on top of them. It was also based on meteorological data that precipitation was heavier than usual during the fall of 1990 and there were several periods of heavy winds. His theory was that wind blew rain, hail and sleet under protective coverings.

However, in a letter written by plaintiff on January 18, 1991, he said: "our policy does not cover wetness damage, and monies are coming out of our pockets." Plaintiff went on to say he would file an insurance claim "just in case."

Neither party argues that the policy is ambiguous. Each side contends that policy language clearly supports his or its side because of the factual situation.

The issue becomes whether plaintiff may recover for damage resulting from wetness or dampness, which in turn is caused by rain, hail, snow or sleet blown under protective tarpaulins or coverings by the wind.

Neither side has furnished the court with Pennsylvania authority on point. Defendant cites *Yunker v. Republic-Franklin Insurance Co.*, 2 Ohio App. 3d 339, 442 N.E. 2d 108 (1982); *Williams v. Liberty Mutual Fire Insurance Co.*, 333 Mass 499, 135 N.E. 2d 910 (1956); and *Lydick v. INA*, 187 Neb 97, 187 N.W. 2d 602 (1971) to support its argument that policy language prevents recovery. These cases involve factual situations where wind was a factor, but not the sole cause of damage.¹

For guidance, we turn to the general law in this area. Distinctions are made between policy language which permits recovery for windstorm, defined as wind of sufficient violence to be capable of damaging the insured property either by its own unaided action or by projecting some object against it, and language limiting liability to direct loss or damage caused by wind or windstorm. 43 AmJur 2d Insurance § 468, 469.

In the former category, it is said that "the loss for which recovery is sought...seldom results from a single isolated cause, but rather from a

¹In *Williams*, wind blew off a shutter in an attic. Extreme cold weather then caused pipes to freeze several days later. *Lydick* involved winds that caused cattle to take refuge on a pond. Ice broke and the animals drowned. The court, in *Yunker*, held that damages must result immediately from winds. AmJur 2d, *infra*, interestingly contains discussion about how some courts have interpreted "windstorm," by the presence or absence of precipitation. This is not a consideration in the case before us.

combination of causes, such as wind and water, or wind and snow, and the like.” § 468, p. 536. Generally, recovery is permitted.

On the other hand, policies with “direct loss or damage” exclude coverage. “[I]f a windstorm combines with a hazard expressly excluded from the policy coverage to produce the loss, the insured may not recover. Thus, a policy excepting damage caused by snow or hail, relieves the insurer from liability for damage by snow or hail, although accompanied by a high wind.” § 469, p. 538.

Thus, the general law supports the holdings in cases propounded by defendant.

In the case at bar, the policy permits recovery for damage directly caused by hail. However, it is clear the starch was damaged, if by hail, only after it melted. Policy language clearly prohibits recovery.

Defendant also argues that facts clearly show the damage was caused by plaintiff’s neglect. We cannot determine, as a matter of law, that this is true. Were this the only basis for defendant’s motion, we would rule that a jury must determine the issue.

On the basis of clear policy language and plaintiff’s own testimony, however, we hold that defendant is entitled to judgment.

Accordingly, the attached order is entered.

ORDER OF COURT

AND NOW, this 25th day of April, 1995, summary judgment is entered in favor of defendant Lumbermens Mutual Casualty Company and against plaintiff.

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 S. ALMA W. ECK, a/k/a S. ALMA ECK, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
Administratrix d.b.n.c.t.a.: Eva Cooley, 1026 Arendtsville Rd., Biglerville, PA 17307

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF JOHN HENRY LYNN, DEC'D

Late of Roanoke, Virginia
Administratrix: Diana L. Dillman, 509 Grant Street, Gettysburg, PA 17325
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JULIA ANN MILLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania
Administratrix: Suzanne L. White, 856 Orttanna Road, Orttanna, PA 17353
Attorney: Mark David Frankel, Esquire, 14 West King Street, P.O. Box 1389, York, PA 17405-1389

ESTATE OF GENEVIEVE MILLER A/K/A I. GENEVIEVE MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executrix: Geneva Miller, 17 Jacqueline Drive, New Oxford, Pennsylvania 17350
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF ROSELLA F. SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executor: Theodore P. Smith, Jr., 100 Linden Avenue, Hanover, PA 17331
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF JACK R. BEARD a/k/a JACK ROBERT BEARD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
Executor: Ven Ralf Patterson, 110 Rohrbaugh Road, Fairfield, PA 17320

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

ESTATE OF HELEN L. ROSENBERGER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
Executors: James Donald Rosenberger, Sr., 7220 Auburn St., Annandale, VA 22003; Theodore Earl Rosenberger, 1541 Brysonia-Wenksville Rd., Biglerville, PA 17307

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF GERTRUDE A. SLAGLE a/k/a GERTRUDE M. SLAGLE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Thomas J. Slagle, R.D.#4, Box 4016, Lake Road, Spring Grove, PA 17362

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

THIRD PUBLICATION

ESTATE OF ANNIE C. FISSEL A/K/A ANNA C. FISSEL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executors: Marie F. Showers, 1362 Granite Station Rd., Gettysburg, PA 17325; Frank H. Fissel, Jr., 100 Ewell Ave., Gettysburg, PA 17325; George S. Fissel, 27 Rutgers Dr., Exton, PA 19341

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF HENRIETTA M. PALMER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executors: Carole Lee Baker, 110 Ruth Avenue, Hanover, PA; Thomas P. Baker, 110 Ruth Avenue, Hanover, PA

Attorney: Rudisill, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331-3192

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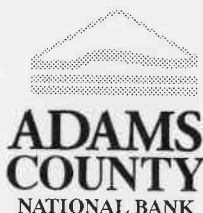
IN THIS ISSUE

COMMONWEALTH VS. RIEBLING

and

BYERS VS. EMIG

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-93 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 20th day of October, 1995, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a post on the East side of a public road corner of this tract and on line of lands now or formerly of J.A. Tawney and this and other lands now or formerly of Frank M. Lott; thence by lands now or formerly of J.A. Tawney, North thirty-four and one-half (34½) degrees East, eighty-six and five-tenths (86.5) feet to a stake; thence by other lands now or formerly of Frank M. Lott, of which this tract was a part; North fifty-five and one-half (55½) degrees West, thirty-five (35.00) feet to a stake; thence by same, South fifty-seven (57) degrees West, sixty-five and eight-tenths (65.8) feet to a stake at said public road; thence along the East side of said public road, South thirty-three (33) degrees East, sixty-five (65.00) feet to the place of BEGINNING, CONTAINING 13.4 square perches of land.

SEIZED and taken into execution as the property of **Anthony R. Baker, Leroy F. Baker and Jackie Baker**, and to be sold by me.

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
August 24, 1995.

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 13, 1995, 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.

9/22, 29 & 10/6

LEGAL NOTICE

Attention Albert Cseh, Jr.

YOU HAVE BEEN SUED in the Adams County Pennsylvania Court Common of Pleas for a divorce in a case docketed to number 95-S-511. Josephine M. Costa has alleged that you and she have been separated for a period in excess of two years. A divorce may be able to be obtained by Mrs. Costa without your consent. If the divorce is granted, you may lose any right you might otherwise have to request equitable distribution of property, alimony pendente lite, alimony, or other relief. If you fail to contact the court administrator of Adams County on or before October 13, 1995, a final divorce decree may be entered without further action. Should you have any questions or desire to assert rights on your behalf, you should contact the Adams County Court Administrator at (717)334-6781 ext. 213.

9/29

LEGAL NOTICE

Attention Rhonda K. Gilbert

YOU HAVE BEEN SUED in the Adams County Pennsylvania Court Common of Pleas for a divorce in a case docketed to number 91-S-281. Garret W. Gilbert has alleged that you and he have been separated for a period in excess of two years. A divorce may be able to be obtained by Mr. Gilbert without your consent. If the divorce is granted, you may lose any right you might otherwise have to request equitable distribution of property, alimony pendente lite, alimony, or other relief. If you fail to contact the court administrator of Adams County on or before October 1, 1995, a final divorce decree may be entered without further action. Should you have any questions or desire to assert rights on your behalf, you should contact the Adams County Court Administrator at (717)334-6781 ext. 213.

9/29

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on August 16, 1995, by NEWOX, INC., a foreign corporation formed under the laws of the State of Maryland, where its principal office is located at 6325 Erdman Avenue, Baltimore, Maryland 21205, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Adams County.

9/29

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on August 23, 1995, by OCR-RA ACQUISITION CORP., a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 2800 Chemed Center, 255 E. Fifth St., Cincinnati, Ohio 45202-4728, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Adams County.

9/29

COMMONWEALTH VS. RIEBLING

When one moves to withdraw a plea after sentencing, he must show prejudice on the order of manifest injustice by demonstrating that the plea was involuntary or entered without knowledge of the charge.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-1-94, COMMONWEALTH VS. CARROLL EUGENE RIEBLING.

Roy A. Keefer, Esq., District Attorney
Anthony Miley, Esq., for Defendant

OPINION ON DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

Kuhn, J., April 24, 1995.

On February 16, 1992, a criminal complaint was filed against Defendant charging him with two counts of D.U.I., 75 Pa. C.S.A. §3731(a)(1) and (4), Careless Driving, 75 Pa. C.S.A. §3714, and Driving Vehicle at Safe Speed, 75 Pa. C.S.A. §3361. A Motion To Dismiss pursuant to Pa. R.Crim.P. 1100 was filed on September 28, 1994, and after two hearings denied per Opinion and Order dated February 3, 1995.

On March 6, 1995, Defendant appeared before the undersigned, agreed to amend the Information to add Count V, Disorderly Conduct, 18 Pa. C.S.A. §5503(a)(4), and then entered a plea of nolo contendere to that count. Pursuant to a plea agreement Defendant was placed on probation for 12 months and ordered to pay a fine of \$100.00, the costs, restitution of \$1150.00 and various other standard fees. The statutory supervision fee (\$300.00) was waived.

On April 4, 1995, Defendant moved to withdraw his plea. At hearing on the Motion he advanced three reasons to support his request. First, he did not want to participate in drug counseling, however, this condition of probation was not ordered. Second, he claims he believed he would owe approximately \$1,200.00 but received a statement that he owed a total of \$1,699.46. Frankly, this basis lacks credibility. Defendant's fine and restitution alone totalled \$1,250.00. In addition, he owed fees and costs. Third, Defendant maintains his innocence. Commonwealth opposes the Motion and claims prejudice arising from the unknown whereabouts of a primary witness who was the only other occupant of the vehicle allegedly driven by Defendant. Although that witness may not have been present when the plea was tendered Defendant stated that he knew the witness left Pennsylvania at the time he entered his plea.

When one moves to withdraw a plea after sentencing, he must show prejudice on the order of manifest injustice by demonstrating that the plea

was involuntary or entered without knowledge of the charge. Commonwealth v. Muntz, 428 Pa. Super. 99, 630 A.2d 51 (1993). Defendant cannot satisfy either of these requirements. Furthermore, disappointed expectations as to the sentence do not vitiate the plea. Commonwealth v. Edwards, 417 Pa. Super. 555, 559, 612 A.2d 1077, 1079 (1992), Alloc. den. 625 A.2d 1191 (1993). Defendant simply miscalculated the amount of his costs and fees. These sums could have been determined before the plea was tendered.

Prejudice to the Commonwealth, or lack thereof, is irrelevant at this point as Defendant is unable to meet the manifest injustice standard.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 24th day of April, 1995, Defendant's Motion To Withdraw Plea filed April 4, 1995, is denied.

BYERS VS. EMIG

1. The Court must balance the rights of the debtor and creditor and a stay of execution should not be granted unless immediate execution would result in unnecessary hardship to the debtor.

2. The Court may not stay an execution sale if it will deprive the judgment holder of substantive rights, impair the collateral security, impair the contractual rights, or impose upon the creditor duties and obligations it did not contract to assume.

3. Substantial equity in property subject to execution is deserving of protection if that can be done without impairing the substantive rights which had accrued to the secured creditor.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-961, CAROL J. BYERS VS. WILLIAM EMIG.

Sheryl Jackson, Esq., for Plaintiff

Barbara Entwistle, Esq., for Defendant

MEMORANDUM OPINION

Kuhn, J., April 28, 1995.

Pursuant to a marriage settlement agreement dated March 7, 1994, and amended March 15, 1994, Plaintiff conveyed her interest in the marital real estate at 817 East Berlin Road, York Springs, Pennsylvania to Defendant for the sum of \$ 15,000. Plaintiff took a note and mortgage from Defendant to secure the obligation. Payment was due on or before September 15, 1994, after which interest would accrue at the rate of 6% per annum. Foreclosure was authorized after September 15, 1994, if satisfaction was not made.

On October 31, 1994, Plaintiff initiated a mortgage foreclosure action. To date Defendant has not satisfied the debt. Sheriff's sale is scheduled for April 28, 1995. On March 27, 1995, Defendant filed a Petition For Rule to have the sale stayed primarily because he had a contract for sale at \$59,000 but with contingencies. Hearing was set on the Rule on April 26, 1995. The Court was advised that the pending contract of sale was withdrawn. Defendant requested additional time to protect his equity. The Court gave the parties an additional 24 hours to effectuate a settlement but none was forthcoming.

There does appear to be significant equity in the property. Fair market value is somewhere between \$35,000-\$50,000. Besides the mortgage there is a support lien against the real estate for approximately \$1150. Defendant has not paid real estate taxes since 1994. He has also failed to keep the premises insured since December, 1994 at significant risk to the interest of both parties.

Defendant has attempted to refinance the obligation to Plaintiff without success. The real estate has been listed for sale with Danners, Inc. since August 30, 1994. No contract is currently pending.

Neither party is wealthy and the primary asset for each is his/her interest in the real estate.

Pursuant to Pa. R.C.P. 3183(d)(3) the Court may stay an execution sale for any legal or equitable reason. No legal reason appears. Instead, Defendant asks the court to exercise its equitable powers and stay the sale.

Generally, the court has the power to stay an execution proceeding where necessary to protect the rights of the parties. This power cannot be exercised capriciously. The equities must be plain and free from doubt or difficulty. *Morgan v. Guaranty Trust Co. v. Staats*, 428 Pa. Super. 479, 486, 631 A.2d 631, 634-5 (1993). The court must balance the rights of the debtor and creditor and a stay should not be granted unless immediate execution would result in unnecessary hardship to the debtor. *Kronz v. Kronz*, 393 Pa. Super. 227, 233, 574 A.2d 91, 94 (1990). The creditor has a protectable property interest, *Morgan*, supra., 428 Pa. Super. at 489-90, 631 A.2d at 636, and the court may not deprive the judgment holder of substantive rights, impair the collateral security, impair the contractual rights, or impose upon the creditor duties and obligations it did not contract to assume, *Kronz*, supra., 393 Pa. Super. at 234, 574 A.2d at 95.

In *Kronz* the court noted that substantial equity in property subject to execution was deserving of protection if that could be done without impairing the substantive rights which had accrued to the secured creditor. *Id.* Although the Superior Court vacated the stay of execution granted by

the trial court, it did so because of a lack of restrictions and time limits in the order directing the stay.

On the basis of the discussion in *Kronz* the undersigned was amenable to directing a stay in this case subject to enumerated restrictions¹ for a period of 120 days. The Court has been advised that Defendant rejects these conditions. Therefore, based on the history of this matter and the equities, Defendant's request for a stay of the execution sale will be denied.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 28th day of April, 1995, Defendant's Petition to stay the execution scheduled for April 28, 1995, is denied.

¹ A specific downpayment toward costs and fees; an existing homeowner's insurance policy; Defendant's payment of real estate taxes in accordance with a plan arranged with the Tax Claim Bureau; maintenance of the real estate; authorization to incur costs to reschedule the sale after 80 days at Defendant's expense; a minimum sale price through a real estate broker; and a monthly rental, paid in advance, with the first month's payment due before the sale is stayed.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF MARVIN E. HEINDEL, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executrices: Barbara Price, 2328 Golf View Lane, Hampstead, MD 21074; Violet Myers, 116 Linden Avenue, Hanover, PA 17331; Judy DeVore, 665 Annette Drive, York, PA 17403; Janet M. Heindel, 135 Carnival Drive, Taneytown, MD 21787

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

ESTATE OF MARY K. OVERBAUGH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

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

SECOND PUBLICATION

ESTATE OF S. ALMA W. ECK, a/k/a S. ALMA ECK, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Administratrix d.b.n.c.t.a.: Eva Cooley, 1026 Arendtsville Rd., Biglerville, PA 17307

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF JOHN HENRY LYNN, DEC'D

Late of Roanoke, Virginia

Administratrix: Diana L. Dillman, 509 Grant Street, Gettysburg, PA 17325

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

ESTATE OF JULIA ANN MILLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administratrix: Suzanne L. White, 856 Orrtanna Road, Orrtanna, PA 17353

Attorney: Mark David Frankel, Esquire, 14 West King Street, P.O. Box 1389, York, PA 17405-1389

ESTATE OF GENEVIEVE MILLER A/K/A I. GENEVIEVE MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Geneva Miller, 17 Jacqueline Drive, New Oxford, Pennsylvania 17350

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

ESTATE OF ROSELLA F. SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Theodore P. Smith, Jr., 100 Linden Avenue, Hanover, PA 17331

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

THIRD PUBLICATION

ESTATE OF JACK R. BEARD a/k/a JACK ROBERT BEARD, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Ven Ralf Patterson, 110 Rohrbaugh Road, Fairfield, PA 17320

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

ESTATE OF HELEN L. ROSENBERGER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executors: James Donald Rosenberger, Sr., 7220 Auburn St., Annandale, VA 22003; Theodore Earl Rosenberger, 1541 Brysonia-Wenksville Rd., Biglerville, PA 17307

Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF GERTRUDE A. SLAGLE a/k/a GERTRUDE M. SLAGLE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Thomas J. Slagle, R.D.#4, Box 4016, Lake Road, Spring Grove, PA 17362

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

MEMORANDUM

TO: [Illegible]

FROM: [Illegible]

SUBJECT: [Illegible]

[Illegible text follows]

[Illegible text follows]

[Illegible text follows]

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