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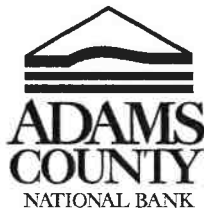
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## IN THIS ISSUE

TARBOX VS. PETERSON

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In times like these,  
you and your clients need  
the experience and expertise  
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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-618 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of January, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

**TRACT NO. 1:** BEGINNING at a railroad spike set in the center line of Township Route T-532 (Schoolhouse Road) at corner of land of Thurston W. Bucher and Dorothy M. Bucher; thence in said Township Route T-532, South 50 degrees 53 minutes 50 seconds East, 51.55 feet to a nail in said Township Route; thence through said Township Route and by land of Thurston W. Bucher and Dorothy M. Bucher, South 53 degrees 10 minutes 42 seconds West, 121.48 feet to a steel pin set; thence by same, North 85 degrees 19 minutes 09 seconds West, 616 feet to a steel pin set at land of Sanford Kotzen and Therese Kotzen; thence by said land of Kotzen, North 36 degrees 00 minutes 00 seconds East, 58.53 feet to an existing steel pin in rocks at land of Thurston W. Bucher and Dorothy M. Bucher; thence by said land of Bucher, South 85 degrees 19 minutes 09 seconds East, 566.63 feet to a steel pin set; thence by same, North 53 degrees 10 minutes 42 seconds East, 90 feet to a railroad spike located in the center line of Township Route T-532, the place of BEGINNING. CONTAINING 0.800 acre, more or less.

The above description of Tract No. 1 was taken from a subdivision plan prepared by Boyer Surveys for Thurston W. and Dorothy M. Bucher dated September 24, 1984, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 41 at page 19, the above described lot of ground being labeled as Lot No. 2 thereon.

**TRACT NO. 2:** BEGINNING at a stone for a corner; thence running by land now or formerly of the Houck heirs and George Routsong, North 22 degrees East, 41.1 perches to a stone; thence

running by land now or formerly of Emory Shetters, North 49 degrees East, 50.5 perches to a stone; thence running by land now or formerly of S. G. Bigham, South 45 degrees East, 25.25 perches to a stone at a chestnut stump; thence running by land of the same, North 78 degrees East, 13.5 perches to a stone; thence running by land of the same, South 16-1/4 degrees East 31.8 perches to a stone; thence running by land now or formerly of Emma Bream, South 36 degrees West, 36 perches to a stone; thence running by land of the same, South 31 degrees West 16 perches to a stone; thence running by land now or formerly of Eckenrode and Studebecker, South 74-1/4 degrees West, 50 perches to stones on a rock; thence running by land now or formerly of Eckenrode and John Deardorff, North 36 degrees West, 41 perches to stones, the place of BEGINNING. CONTAINING 31 acres and 30 perches, more or less.

The above description of Tract No. 2 is based on prior deeds in the chain of title, as supplemented by records in the Adams County Mapping Office, Tyrone Township Map G-6.

HAVING THEREON erected a dwelling house known as: 766 School House Road, Aspers, Pennsylvania 17304

BEING THE SAME PREMISES WHICH Ronald E. Harlow and Karen K. Harlow, by Deed dated 10/27/88 and recorded 10/27/88 in Adams County Deed Book 505, Page 233, granted and conveyed unto Margaret Ann Williams.

SEIZED IN EXECUTION AS THE PROPERTY OF MARGARET ANN WILLIAMS UNDER ADAMS COUNTY JUDGMENT NO. 03-S-618

MAP & PARCEL 40-G6-35

SEIZED and taken into execution as the property of **Margaret Ann Williams** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/22, 30 & 1/6

## LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 14th, 2006 to elect directors and to transact any other business properly presented.

Attest

Marilyn Q. Butt

President & Treasurer, Director

12/30, 1/6 & 13

## NOTICE

NOTICE IS HEREBY GIVEN that Jonathan A. Patrono intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 13th day of February, 2006, and that he intends to continue practice with the law firm of Patrono & Associates, LLC, and Apple Leaf Abstracting & Settlement Company, 30 West Middle Street, Gettysburg, PA 17325.

Jonathan Patrono, Esq.  
Patrono & Associates, LLC

12/30, 1/6 & 13

## TARBOX VS. PETERSON

1. A motion for judgment on the pleadings is similar to a demurrer. It may be entered where there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. In determining whether there is a factual dispute, the Court must confine its consideration to the pleadings and relevant documents.

2. Equitable estoppel is a doctrine which prevents one from doing an act differently than the manner in which another was induced by word or deed to expect. An easement may be extinguished by estoppel when:

Action is taken by the owner of the servient tenement inconsistent with the continued existence of the easement, if (a) such action is taken in reasonable reliance upon conduct of the owner of the easement; and (b) the owner of the easement might reasonably have foreseen such reliance and the consequent action; and (c) the restoration of the privilege of use authorized by the easement would cause unreasonable harm to the owner of the servient tenement.

3. Pennsylvania courts have recognized a number of methods by which a party may sufficiently extinguish an easement: (1) a cessation of necessity; (2) a merger of title, possession, and enjoyment of the dominant and servient tenements; (3) adverse possession; (4) an abandonment of the easement; or (5) by express agreement entered with the same formality and finality by which the easement came into existence.

4. A grantee of a deed has a duty to search the chain of title because the grantee takes subject to any restriction or servitude which appears in the line of title regardless of actual knowledge.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 04-S-668, FLORENCE C. TARBOX VS. ROBERT N. PETERSON AND VIRGINIA D. PETERSON.

Wendy Weikal-Beauchat, Esq., for Plaintiff

Barbara Jo Entwistle, Esq., for Defendants

George, J., May 9, 2005

### OPINION

This matter comes before the Court on the Defendants', Robert N. Peterson and Virginia D. Peterson ("Peterson"), Motion for Judgment on the Pleadings. A review of the undisputed facts in this matter is necessary for a meaningful discussion of the issues raised by Peterson.

Charles and Florence Tarbox were owners of two neighboring tracts of property located between Emmitsburg Road and Ridge Road in Cumberland Township, Adams County. The western tract consisted of approximately 25 acres and contained a building used as a commercial bed and breakfast (this tract shall hereafter be referred to as "bed and breakfast tract"). The remaining tract consisted of

approximately 23.5 acres and contained a Victorian-style home which Charles and Florence Tarbox used as a residence (this tract shall hereafter be referred to as “Victorian tract”). Neither tract had direct road frontage, although Emmitsburg Road is located due west of the tracts and Ridge Road is located due east of the tracts. The pleadings reveal that the deeds in the chain of title for these tracts contain a number of express right-of-ways providing each tract with access to either or both of the above-referenced public roads.

On June 6, 2002, Charles Tarbox and Florence Tarbox divorced by Order of the Adams County Court of Common Pleas. Pursuant to a marriage settlement agreement, Florence Tarbox received title to the bed and breakfast tract. Additionally, the Victorian tract was subdivided into two smaller tracts, Victorian tract #1 consisting of 15 acres and Victorian tract #2 consisting of approximately 8.5 acres. Victorian tract #2 was subsequently conveyed to Florence Tarbox and, pursuant to the subdivision plan, merged with the bed and breakfast tract which was adjacent to the west side of the property. Victorian tract #1 remained the property of Charles Tarbox. By deed dated May 28, 2003, Charles Tarbox conveyed Victorian tract #1 to Peterson. Florence Tarbox has subsequently filed an Equity Complaint against Peterson alleging that Peterson has interfered with an express easement granting her access across the Peterson property to Ridge Road. Accordingly, she seeks an injunction prohibiting Peterson’s interference with her use of the easement.

In her Complaint, Florence Tarbox cites that an express easement was granted by deed in the chain of title dated July 27, 1972. She claims that this easement grants a 20-foot right-of-way from the original Victorian tract to Ridge Road. She points out that subsequent deeds in the chain of title, including the deed from Charles Tarbox to Florence Tarbox conveying his interest in Victorian tract #2, reference this right-of-way.<sup>1</sup> On the other hand, Peterson points out that the subdivision plan for the Victorian tract carries a notation “ex. 20’ R/W to Ridge Road (recorded deed: 301-791) for ‘lot #1

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<sup>1</sup> The Tarboxes’ marriage settlement agreement, which is attached to the Complaint as an exhibit, provides that Victorian tract #2 “shall continue to be subject to any and all easements and appurtenances which currently exist in favor of the Victorian property, and the deed from husband to wife shall so note.” Plaintiff’s Complaint, Exhibit H, paragraph 11.1.3(d).

only.” It is this notation which is the cornerstone of Peterson’s Motion for Judgment on the Pleadings.

Peterson advances two theories for judgment on the pleadings. Initially, Peterson argues that the notation in the recorded subdivision terminates the easement enjoyed by the former Victorian lot as it relates to rights previously enjoyed by Victorian tract #2. Alternatively, Peterson argues that Florence Tarbox’s actions in obtaining and recording a subdivision plan, which appears to limit the right-of-way to Victorian Tract #1, estops her from claiming any rights to the express right-of-way for Victorian Tract #2.

In addressing these arguments, I note that the granting of judgment on the pleadings is proper only where the pleadings establish that there are no material facts in dispute thereby making a trial unnecessary. *Pennsylvania Financial Responsibility Assigned Claims Plan v. English*, 664 A.2d 84, 86 (Pa. 1995). A motion for judgment on the pleadings is similar to a demurrer. It may be entered where there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. *Kelaco v. Davis & McKean Gen. P’ship*, 743 A.2d 525, 528 (Pa.Super. 1999). In determining whether there is a factual dispute, the Court must confine its consideration to the pleadings and relevant documents. *Id.*

Peterson argues that Florence Tarbox is estopped from exercising rights acquired under the easement due to her participation in the subdivision plan which purports to limit the right-of-way. Equitable estoppel is a doctrine which prevents one from doing an act differently than the manner in which another was induced by word or deed to expect. *Novelty Knitting Mills, Inc. v. Siskind*, 457 A.2d 502, 503 (Pa. 1983). An easement may be extinguished by estoppel when:

[A]ction is taken by the owner of the servient tenement inconsistent with the continued existence of the easement, if (a) such action is taken in reasonable reliance upon conduct of the owner of the easement; and (b) the owner of the easement might reasonably have foreseen such reliance and the consequent action; and (c) the restoration of the privilege of use authorized by the easement would cause unreasonable harm to the owner of the servient tenement.

*Baptist Church in Great Valley v. Urquhart*, 178 A.2d 583, 587 (Pa. 1962), citing Restatement (First) of Property § 505 (1944). The lack of undisputed factual issues precludes the entry of judgment on the pleadings under this theory.

As mentioned, Peterson argues that Florence Tarbox's participation in the subdivision process, which resulted in the notation on the subdivision plan, encouraged Peterson to purchase the subject property.<sup>2</sup> Florence Tarbox, however, not only denies any involvement in creating the subdivision, she claims to have no knowledge of any representations concerning the extinguishment of the right-of-way. If the trier of fact accepts her version, Peterson's theory of equitable estoppel based upon Florence Tarbox's alleged actions must fail. Thus, a substantial issue of fact exists.<sup>3</sup>

Similarly, the record is void of any factual basis addressing whether the restoration of the easement would cause unreasonable harm to the owner of the servient tenement. Since our appellate courts have indicated that this is an essential element of establishing

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<sup>2</sup>Although it might be suggested that Florence Tarbox had an equitable interest in the property at the time of subdivision, *Wood v. Evanitzsky*, 85 A.2d 24, 27 (Pa. 1951), it is clear from the pleadings that Charles Tarbox was the legal owner of the property at the time it was subdivided. Since extinguishment by estoppel requires an affirmative action by the owner of the property, one must question whether Peterson's theory is even applicable to Florence Tarbox.

<sup>3</sup>Peterson argues that a provision in a marriage settlement agreement, requiring Florence Tarbox to prepare the subdivision plan, and minutes from the Cumberland Township Planning Commission meeting of September 12, 2002, remove any factual dispute in this matter. Both documents are attached to the pleadings. While these documents might ultimately be persuasive to the finder of fact, they are not conclusive to the extent that they remove the existence of a factual issue. For instance, although the marriage settlement agreement may include certain obligations on behalf of Florence Tarbox, it is not unusual for parties, on occasion, to modify or deviate from those terms. Similarly, in light of Florence Tarbox's denial of any involvement in the subdivision process, the authenticity and accuracy of the Planning Commission Minutes are at issue. Peterson argues, however, that Florence Tarbox is bound by the representations in the contract since it is attached as an exhibit to her Complaint. In support of this argument, Peterson cites Standard Pa. Prac. 2d, Volume 3, Section 16-28 for the proposition that where there is an inconsistency between pleadings and documents attached as exhibits, the latter prevails as a matter of law. Although Peterson is correct in regard to the existence of this particular rule of law, application of the rule is misplaced. Florence Tarbox's pleadings do not contradict the exhibit. She indicates only that it is the marriage settlement agreement entered between her husband and herself. There is no reference as to whether all parties performed in complete compliance with the agreement.

the extinguishment of an easement by estoppel, see *Baptist Church*, cited above, Peterson must factually develop this element before a finder of fact. Under these circumstances, judgment on the pleadings is inappropriate.

The other theory enunciated by Peterson in support of the Motion for Judgment on the Pleadings is that, as a matter of law, the notation on the subdivision plan extinguishes Florence Tarbox's express easement. Pennsylvania courts have recognized a number of methods by which a party may sufficiently extinguish an easement: (1) a cessation of necessity, *Citizens Electric Co. v. Davis*, 44 Pa.Super. 138, 140 (1910); (2) a merger of title, possession, and enjoyment of the dominant and servient tenements, see generally *Schwoyer v. Smith*, 131 A.2d 385 (Pa. 1957); (3) adverse possession, see generally *Etojak v. Mazsa*, 562 A.2d 271 (Pa. 1988); (4) an abandonment of the easement, *Buffalo Twp. v. Jones*, 813 A.2d 659 (Pa. 2002); or (5) by express agreement entered with the same formality and finality by which the easement came into existence, *Penn's Woods Girl Scouts Council, Inc. v. Klinetob*, 51 Pa.D.&C.2d 672, 678 (C.P. Columbia 1971) (citing *Simplex Precast Industries, Inc., v. Biehl*, 149 A.2d 121 (Pa. 1959)). Instantly, Peterson's claim does not squarely fit into any of these recognized means of extinguishing an easement. Rather, Peterson cites the Florida case of *Johnston v. TPE Hotels, Inc.*, 719 So.2d 22 (Fl. Ct. App. 5th Dist. 1998), for the proposition that the notation on the subdivision plan is sufficient to effectively extinguish the easement.

In *Johnston*, the Florida Court of Appeals for the 5th District found that where "both the owners of [a] servient and dominant tenements [join] in the dedication of [a] plat and the plat failed to disclose the easement, they should be held, as against subsequent purchasers pursuant to the plat **without notice**, to the representation of the subdivision, as shown on the recorded [plan]." *Id.* at 28 (emphasis added). In reaching this decision, the Florida Court relied upon Florida precedent that a landowner who records a plat showing streets and lots "evidences the intent to dedicate the streets to public use" and, thus, subsequent purchasers of the lot acquire the right to a private easement in these streets shown on the plat. *Id.* at 27. Following this same line of reasoning, Peterson cites *Assalita v. Chestnut Ridge Homeowners Ass'n*, 866 A.2d 1214 (Pa.Cmwltlth.

2005), as authority for a similar rule of law in Pennsylvania. Thereafter, Peterson asks this Court to extend the Pennsylvania principle similar to the extension opined by the Florida 5th Circuit Court of Appeals. In resolving this Motion, it is not necessary for me to create such a legal extrapolation. Rather, the current facts preclude Peterson's Motion.

Even if I were to assume, for the sake of argument, that the recodation of the subdivision plan can be interpreted to extinguish the easement rights of Victorian tract #2, judgment in favor of Peterson is not appropriate. Charles Tarbox, as owner of both Victorian tracts #1 and #2, deeded Victorian tract #2 to Florence Tarbox on October 3, 2002. The deed, which was transferred subsequent to the creation of the subdivision plan, contains a clause expressly granting the right-of-ways which are at issue. Thus, even if we presume that the subdivision plan terminated the right-of-way, it was expressly re-granted from Charles Tarbox to Florence Tarbox by deed. When Peterson purchased Victorian tract #1 from Charles Tarbox on May 28, 2003, Peterson was on notice of the existence of the right-of-way since the properties flowed from the same chain of title and Florence Tarbox was granted the right-of-way on a prior deed. See *Southhall v. Humbert*, 685 A.2d 574, 578 (Pa.Super. 1996) (noting that a grantee of a deed has a duty to search the chain of title because the grantee takes subject to any restriction or servitude which appears in the line of title regardless of actual knowledge). The reasoning in *Johnston*, cited above, is, therefore, inapplicable. Additionally, Peterson's Motion for Judgment on the Pleadings must fail.<sup>4</sup>

Finally, in the Motion for Judgment on the Pleadings, Peterson requests, as an alternative, that the Court enter partial judgment on the pleadings limiting the use of the easement to Victorian tract #2. This argument suggests that the merger of Victorian tract #2 with the

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<sup>4</sup>It would appear that the October 3, 2002, deed from Charles Tarbox to Florence Tarbox also spells doom for Peterson's theory of equitable estoppel. As mentioned, Peterson is deemed with the knowledge of the restriction since it appears in the chain of title. "If ... the [truth] be known to both parties, or if they have equal means of knowledge, there can be no estoppel." *Hill v. Epley*, 31 Pa. 331, 334 (Pa. 1928). It is essential to a claim of estoppel "that the party who asserts it has been misled, and he cannot be misled by a statement, the falsity of which he knows." *Ormsby v. Ihmsen*, 34 Pa. 462, 472 (Pa. 1859). However, since Peterson's Motion for Judgment on the Pleadings is the only motion before me, I need not reach a decision on that issue.



bed and breakfast tract does not allow the larger tract to piggyback upon the rights of the smaller tract. Peterson cites *Markley v. Lopresti*, 421 A.2d 825 (Pa.Super. 1980), which appears to generally support the proposition that the possessor of an easement is not entitled to use the easement for property other than the dominant estate. Currently, however, the metes and bounds description of the former bed and breakfast tract and Victorian tract #2 has merged into a single description. Thus, the dominant estate remains a single tract of land, albeit somewhat larger. Counsel has been unable to cite any authority on point in this matter and, after an exhaustive search, I have also been unsuccessful in finding direct guidance. In light of this clear lack of appellate authority in the matter, I will give both parties the opportunity to develop a factual record before rendering a decision. Accordingly, Peterson's Motion for Judgment on the Pleadings on this basis is denied.<sup>5</sup>

For the foregoing reasons, the attached Order is entered.

#### ORDER OF COURT

AND NOW, this 9th day of May, 2005, the Defendant's Motion for Judgment on the Pleadings is denied.

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<sup>5</sup>The record is absent concerning the chain of title for the bed and breakfast tract. Florence Tarbox's Complaint states only that the express easement to Ridge Road for the merged tract is found in Deed Book 301, Page 791, as recorded in the office of the Adams County Recorder of Deeds. I am, therefore, unable to determine whether the former bed and breakfast tract has rights as an independent easement appurtenant since that issue is presently not before me.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1040 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of January, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two (2) tracts of land situated in Oxford Township, Adams County, Pennsylvania, more particularly bounded and described as follows, to wit:

TRACT NO. 1:

BEGINNING at a point in the center of Legislative Route A-6810, thence along lands now or formerly of Edward and Anna Kuhn and through a stake offset back 25 feet from the center of aforementioned Route A-6810, South 45 degrees East 150 feet to a stake, thence along lands of same South, 45 degrees West 110 feet to a stake, thence along lands of same North 45 degrees West, 150 feet to a point in the center of Route A-6810, thence along center of said road North 45 degrees East 110 feet to a point, the place of BEGINNING.

IT BEING the same tract of land which Donald F. Kuhn and Eva Mae Kuhn, aka Eva M. Kuhn, husband and wife, by deed dated December 18, 2002, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 2966, page 83, granted and conveyed unto The Donald F. Kuhn and Eva M. Kuhn Revocable Living Trust, Grantor herein.

TRACT NO. 2:

BEGINNING at a point in the center of said Legislative Route at other lands of Donald F. Kuhn and Eva Mae Kuhn; thence in and along the centerline of said Legislative Route 06810, North 45 degrees East 25 feet to a point in the center of said Legislative Route at lands of Edward H. Kuhn and Anna G. Kuhn; thence by lands of same, South 45 degrees East, 150 feet to a point at lands of Sheets Bros., Inc.; thence by lands now or formerly of Sheets Bros., Inc. South 45 degrees West, 25 feet to a point at other lands of Donald F. Kuhn and Eva Mae Kuhn; thence by lands of same, North 45 degrees West, 150 feet to a point in the center of said Legislative Route, the place of BEGINNING.

IT BEING the same tract of land which Donald F. Kuhn and Eva Mae Kuhn, aka Eva M. Kuhn, husband and wife, by deed dated December 18, 2002, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 2966, page 86, granted and conveyed unto The Donald F. Kuhn and Eva M. Kuhn Revocable Living Trust, Grantor herein.

TITLE TO SAID PREMISES IS VESTED IN Daniel J. Keller by Deed from The Donald F. Kuhn and Eva M. Kuhn, Revocable Living Trust dated 4-13-04, recorded 4-15-05 in Deed Book 3529, page 102.

Premises being: 1675 Irishtown Road, New Oxford, PA 17350

Tax Parcel No. 35-K12-0033-000

SEIZED and taken into execution as the property of **Daniel J. Keller** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/22, 30 & 1/6

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on or about October 24, 2005, with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is, SOUTH PENN TRIM CORP. The registered office of the corporation is PO Box 666, Biglerville, PA 17307.

This notice is given pursuant to Section 1307 of the Business Corporation Law of 1988.

John C. Zepp, III  
Attorney At Law  
PO Box 204  
York Springs, PA 17372

1/6

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, January 9, 2006, at 9:00 a.m.

**BAKER**—Orphans' Court Action Number OC-61-05. The First and Final Account of Ruth A. Harman, Administrator of the Estate of Margaret A. Baker, deceased, late of Straban Township, Adams County, Pennsylvania.

**HARNISCH**—Orphans' Court Action Number OC-127-05. The First and Final Account of Denis Meany, Executor of the Last Will and Testament of Robert F. Harnisch, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**GURRY**—Orphans' Court Action Number OC-79-05. The First and Final Account of James M. Thomas, Administrator c.t.a. of the Estate of James L. Gurry, Jr., deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

**RUBY**—Orphans' Court Action Number OC-108-99. The First and Final Account of Carol Ruby Demiray and Gail A. McLain, Accountants and Co-Executrices of the Estate of Helen M. Ruby, deceased, late of Latimore Township, Adams County, Pennsylvania.

**RUBY**—Orphans' Court Action Number OC-154-05. The First and Final Account of Carol Ruby Demiray and Gail A. McLain, Accountants and Co-Executors of the Estate of Alvin H. Ruby, deceased, late of Latimore Township, Adams County, Pennsylvania.

Kelly Lawver  
Clerk of Courts

12/30 & 1/6

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1050 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of January, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN townhouse lot, parcel or tract of land situate on the east side of South High Street in Arendtsville Borough, Adams County, Pennsylvania and known as Township Lot No. 4, as improved, and being more specifically described as follows:

BEGINNING at a steel pin in said South High Street at the northwest corner of Lot No. 5, lands now or formerly of John B. Horner and Mary Horner, said steel pin being established on the subdivision plan hereinafter referred to; thence in said South High Street North Twelve (12) degrees Fifty-five (55) minutes Twenty-Five (25) seconds West Twenty (20) feet to a steel pin at Lot No. 3, lands now or formerly of Clair F. Ditzler; thence leaving said South High Street and along Lot No. 3, lands now or formerly of Clair F. Ditzler and through the center of a partition wall between Townhouse Lots 3 and 4 North Seventy-Seven (77) degrees Six (6) minutes Ten (10) seconds East Two Hundred Twenty-Three and Eighty-Nine Hundredths (223.89) feet to a steel pin at lands now or formerly of Elson C. Grim; thence by lands now or formerly of Elson C. Grim South Thirteen (13) degrees Thirty-Eight (38) minutes Twenty (20) seconds West Twenty-Two and Thirty-Five Hundredths (22.35) feet to a steel pin; thence by Lot No. 5, lands intended to be conveyed to John B. Horner and Mary Horner and through the center of a party wall between Townhouse Lots 4 and 5 South Seventy-Seven (77) degrees Six (6) minutes Ten (10) seconds West Two Hundred Thirteen and Eighty-Nine Hundredths (213.89) feet to a steel pin in South High Street, the point and place of BEGINNING. CONTAINING 4,377 square feet.

BEING described in accordance with a draft of survey prepared by Boyer Surveys, Richard W. Boyer, Professionals Land Surveyor, dated April 16, 1987, as approved by the various municipal subdivisions and commissions of Adams County and duly recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 49, Page 5, said lot being identified as Lot No. 4 thereon.

BEING THE SAME PREMISES WHICH Robert F. Sumbury and Karen J.

Sumbury by Deed dated August 31, 1998 and recorded September 2, 1998 in Record Book 1654, Page 70 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, granted and conveyed unto Christy M. Shreve, Grantor herein.

TITLE TO SAID PREMISES IS VESTED IN Timothy R. Orner, single man and Kirsten M. Hess, single woman, by Deed from Christy M. Shreve, single woman, dated 10-17-02, recorded 10-18-02 in Deed Book 2840, page 288.

Premises being: 18 South High Street, Arendtsville, PA 17303

Tax Parcel #: 02-006-0122-000

SEIZED and taken into execution as the property of **Timothy R. Orner** and **Kirsten M. Hess** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 17, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

12/22, 30 & 1/6

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN, in compliance with Section 1971 of the Business Corporation Law of Pennsylvania, as amended, that AX CONVERTING, INC., a Pennsylvania corporation having its registered office at 331 Maple Avenue, Hanover, PA 17331, has filed Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania that its affairs are being wound up and its corporate existence will be terminated upon the issuance of a Certificate of Dissolution by the Department of State of the Commonwealth of Pennsylvania.

Guthrie, Nonemaker, Yingst & Hart  
Solicitor

1/6

IN THE COURT OF  
COMMON PLEAS OF  
LANCASTER COUNTY,  
PENNSYLVANIA

ORPHANS' COURT DIVISION  
NO. 335 1/2 - 2005

IN RE: Adoption of Brenna Lynn Kump,  
Female Minor Child

NOTICE OF ADOPTION HEARING

TO: Michael Hickman

A Petition has been filed asking the Court to put an end to all rights you have to your child, BRENNALYNN KUMP. The Court has set a hearing to consider ending your rights to your child. That hearing will be held on the 9th day of February, 2006 at 9:10 o'clock a.m. in Courtroom No. 6 of the Lancaster County Courthouse, 50 North Duke Street, Lancaster, Pennsylvania. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you, and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go or telephone the office set forth below to find out where you can get legal help.

Court Administrator  
Court Administrator's Office  
Lancaster County Courthouse  
50 North Duke Street  
Lancaster, PA 17602  
Telephone number: (717) 299-8041

Young & Young  
44 South Main Street  
Manheim, PA 17545

1/6 & 13

## 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 MILDRED M. HECKENLUBER-LEWIS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Marti Heckenluber Painter, c/o Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

ESTATE OF OSCAR COY HOLLAR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF ROBERT H. RICHARDS, JR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Jane R. Ross, 203 Honeysuckle Ct., Hanover, PA 17331

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

## SECOND PUBLICATION

ESTATE OF SUSAN M. ACKERMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Regina M. Smith, c/o Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF CORNELIA A. HAYDEN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Michael B. Hayden, 394 Barlow-Greenmount Rd., Gettysburg, PA 17325

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

ESTATE OF EDWARD C. KLUNK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Jessie E. Klunk, 910A Hanover Street, New Oxford, PA 17350

Attorney: John James Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF JAMES L. O'CONNOR, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: Barbara D. O'Conner, 675 Bon-Ox Road, Gettysburg, PA 17325

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

## THIRD PUBLICATION

ESTATE OF ANNA M. McVEAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Barbara Talluto, 327 Benning Avenue, Gettysburg, PA 17325

Attorney: Wendy Weikal-Beauchat, 63 West High Street, Gettysburg, PA 17325

VACANCY ANNOUNCEMENT (05-02)

United States District Court -  
Middle District of Pennsylvania  
**PRO SE/DEATH PENALTY LAW  
CLERK (Harrisburg, PA)**  
Full-Time Temporary Position  
With Benefits

The United States District Court for the Middle District of Pennsylvania is seeking a qualified candidate for the position of full-time temporary combined Pro Se/Death Penalty Law Clerk (40 hours/week). The combined position will require that the Law Clerk undertake a comprehensive review of all applications for federal post-conviction relief filed in this Court by or on behalf of death-sentenced prisoners challenging their conviction and/or sentence; conduct legal research and analysis of the pertinent legal and factual issues; and prepare bench memoranda and draft orders and opinions. It is anticipated that the Death Penalty cases will require about 50% of the Law Clerk's time. The Law Clerk will also be assigned the responsibilities of a pro se law clerk. General responsibilities of a pro se law clerk involve substantive screening of all prisoner and inmate petitions and motions, including state and federal habeas corpus petitions, and civil rights complaints. The incumbent conducts legal research and drafts appropriate opinions and orders for the Court's approval. The law clerk will keep abreast of changes in the law in the death penalty and pro se areas, and will review the docket of the cases assigned to the incumbent to assure the proper progress of such cases, tracking motions, briefs, and other filings. Compiling statistics and preparing periodic reports which reflect the status and flow of cases is also required.

The successful candidate must be a law school graduate and possess superior legal research and writing skills, excellent interpersonal skills, and a positive attitude. Experience, by education or practice, in substantive and procedural law concerning federal post-conviction relief and/or prisoner law is preferred. Experience with automated legal research systems and word processing software such as WordPerfect, is required. Full-time salary is JSP 11-01 (\$50,541) to JSP 14-10 (\$110,662). Salary is based on experience and bar membership. Benefits are provided. The successful candidate is hired provisionally, pending the results of a federal background investigation. The position is funded by the federal judiciary on a year-to-year basis according to national staffing formulas. No assurance of continued funding can be provided. In addition, the incumbent must satisfactorily complete a six (6) month probationary period.

The Court provides reasonable accommodations to applicants with disabilities. If you require a reasonable accommodation for any part of the application process, please notify the District Court's Human Resource Office. The decision on granting reasonable accommodation will be made on a case by case basis.

Applicants must submit a cover letter, resume (including salary history and references), and a short writing sample to:

United States District Court  
P.O. Box 1148  
Scranton, PA 18501-1148  
ATTN: Personnel Office

Closing date for applications is January 24, 2006.

Court employees are "at will" and the Federal Government Civil Service classification or regulations do not apply. The U.S. District Court is an equal opportunity employer.

1/6, 13 & 20

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL—LAW  
CASE NO. 05-S-1359  
Quiet Title Action

ANTHONY W. SMITH and MAXINE M. SMITH, P.O. Box 30, 260 Old Route 30, McKnightstown, PA 17343, Plaintiffs

vs.

ALBERT VANDYKE, his heirs and assigns, Address unknown,

JOHN HARTMAN, his heirs and assigns, Address unknown,

HEZEKIAH LATSHAW, his heirs and assigns, Address unknown, and

JOHN DOE, his heirs and assigns, Address unknown,

Defendants

NOTICE—ACTION TO QUIET TITLE

NOTICE TO: The above-named Defendants, their heirs, assigns and all persons claiming any right, title, claim or interest to that property located in McKnightstown, Franklin Township, Pennsylvania, and further identified as the 10-foot alley running between the tracts of land comprising 260 Old Route 30, McKnightstown, PA 17343.

Take Notice that Anthony Smith and Maxine Smith have filed an Action to Quiet Title in the aforesaid Court, averring that they have acquired title to the property by virtue of purchasing said property. Plaintiffs have requested an order declaring Plaintiffs to be the legal and equitable owner of the property and ordering the Recorder of Deeds to record an Order awarding fee simple title to the Plaintiff. You are hereby notified to file an

Answer and any claims of ownership within twenty (20) days following the date of this publication. If you fail to do so, final judgment may be entered against you.

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

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

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

/s/Wendy Weikal-Beauchat, Esq.  
Beauchat & Beauchat  
63 W. High Street  
Gettysburg, PA 17325  
(717) 334-4515  
ID #71930  
Attorney for Plaintiffs

1/6 & 13

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN THAT an application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a charter of a Non-Profit Corporation which was organized under the provisions of the Pennsylvania Non-Profit Corporation Law of the Commonwealth of Pennsylvania. The name of the corporation is HANOVER FELLOWSHIP CHURCH. The Articles of Incorporation have been filed on 12/20/2005. The purposes for which it was organized are as follows: establish and oversee places of worship, conduct the work of evangelism, create departments necessary to support missionary activities and to license and oversee ministers of the gospel.

1/6

# *Adams County* Legal Journal

Vol. 47

January 13, 2006

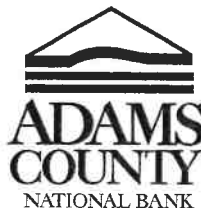
No. 34, pp. 198-200

## IN THIS ISSUE

COMMONWEALTH VS. NAS

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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

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IN THE COURT OF  
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ADAMS COUNTY, PENNSYLVANIA

CIVIL—LAW  
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JOHN DOE, his heirs and assigns, Address unknown,

Defendants

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Take Notice that Anthony Smith and Maxine Smith have filed an Action to Quiet Title in the aforesaid Court, averring that they have acquired title to the property by virtue of purchasing said property. Plaintiffs have requested an order declaring Plaintiffs to be the legal and equitable owner of the property and ordering the Recorder of Deeds to record an Order awarding fee simple title to the Plaintiff. You are hereby notified to file an Answer and any claims of ownership within twenty (20) days following the date of this publication. If you fail to do so, final judgment may be entered against you.

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Adams County Court Administrator  
117 Baltimore Street  
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/s/Wendy Weikal-Beauchat, Esq.  
Beauchat & Beauchat  
63 W. High Street  
Gettysburg, PA 17325  
(717) 334-4515  
ID #71930  
Attorney for Plaintiffs

1/6 & 13

NOTICE

NOTICE IS HEREBY GIVEN that Jonathan A. Patrono intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 13th day of February, 2006, and that he intends to continue practice with the law firm of Patrono & Associates, LLC, and Apple Leaf Abstracting & Settlement Company, 30 West Middle Street, Gettysburg, PA 17325.

Jonathan Patrono, Esq.  
Patrono & Associates, LLC

12/30, 1/6 & 13

LEGAL NOTICE

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 14th, 2006 to elect directors and to transact any other business properly presented.

Attest  
Marilyn Q. Butt  
President & Treasurer; Director

12/30, 1/6 & 13

IN THE COURT OF  
COMMON PLEAS OF  
LANCASTER COUNTY,  
PENNSYLVANIA

ORPHANS' COURT DIVISION  
NO. 335 ½ - 2005

IN RE: Adoption of Brenna Lynn Kump,  
Female Minor Child

NOTICE OF ADOPTION HEARING

TO: Michael Hickman

A Petition has been filed asking the Court to put an end to all rights you have to your child, BRENNA LYNN KUMP. The Court has set a hearing to consider ending your rights to your child. That hearing will be held on the 9th day of February, 2006 at 9:10 o'clock a.m. in Courtroom No. 6 of the Lancaster County Courthouse, 50 North Duke Street, Lancaster, Pennsylvania. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you, and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go or telephone the office set forth below to find out where you can get legal help.

Court Administrator  
Court Administrator's Office  
Lancaster County Courthouse  
50 North Duke Street  
Lancaster, PA 17602

Telephone number: (717) 299-8041

Young & Young  
44 South Main Street  
Manheim, PA 17545

1/6 & 13

## COMMONWEALTH VS. NAS

1. When specific penalties are outlined in a plea agreement, a party waives the right to appeal the discretionary aspects of a sentence entered pursuant to the terms of that agreement.

2. The decision to place an offender in the custody of the state board of corrections for placement in a state facility rather than a county facility is within the sound discretion of the trial court.

3. Although a convicted individual has no constitutional right to demand that he may be confined in any particular facility, a court should consider the difference between the state facility and the county prison facility in choosing to sentence an individual to a state rather than county facility.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CP-01-308-2003 through and including CP-01-CR-321-2003, COMMONWEALTH OF PENNSYLVANIA VS. CORY STEVEN NAS.

Brian R. Sinnett, Esq., Assistant District Attorney, for Commonwealth  
Kristin L. Rice, Esq., Assistant Public Defender, for Defendant  
George, J., May 17, 2005

### OPINION PURSUANT TO PA.R.A.P. 1925

On July 29, 2003, the Defendant, Cory Steven Nas, appeared with counsel and entered guilty pleas to fourteen (14) different counts of bad check in violation of Section 4105(a)(1) of the Pennsylvania Crimes Code as misdemeanors of the first degree. Pursuant to a plea agreement, the Defendant was sentenced to twenty-four (24) months in the Intermediate Punishment Program, all of which would initially be served on Phases III through V (probationary phases). The plea agreement stipulated that the Court reserved the right to re-sentence the Defendant to the maximum sentence prescribed by law, including consecutive sentences, in the event that he was revoked from the Intermediate Punishment Program.

On May 28, 2004, the Defendant appeared before the Court with counsel and acknowledged that he violated the conditions of his intermediate punishment by using illegal substances while on supervision. After a pre-sentence investigation on July 12, 2004, the Defendant was re-sentenced on each count to the Intermediate Punishment Program for a period of twenty-four (24) months with sixty-eight (68) days in Phase I (partial confinement) and the remaining time spent on probationary Phases III through V. All sentences were ordered to run concurrently. As a condition of each sentence,



the Defendant was directed to undergo a drug and alcohol evaluation and comply with treatment recommendations.

On January 11, 2005, the Defendant appeared, once again, before the Court and acknowledged that he violated the conditions of his intermediate punishment. As before, the Defendant's violations were substance abuse related. In an effort to address the Defendant's drug and alcohol issues, the Defendant was re-sentenced to intermediate punishment. He was directed to serve (4) four months on Phase II (house confinement) and thirty-two (32) months on probationary Phases III through V. The restrictive portion of his sentence was structured so that the Defendant could attend an in-patient drug and alcohol facility and be credited against the restrictive portion of his sentence. Although the sentences on each of the fourteen (14) charges against the Defendant were ordered to run concurrent to each other, they were effective consecutive to a parole revocation which the Defendant was serving on another matter.

Following his re-sentencing, the Defendant tested positive for drugs while participating in the work release program at the Adams County Adult Correctional Complex and while serving the parole revocation. Additionally, the Defendant refused to be placed in an in-patient facility pursuant to the treatment recommendations of the Adams County Prison and the Adams County Probation and Parole Department. As a result, the Defendant was brought before the Court on March 18, 2005, where he acknowledged that he violated the conditions of his intermediate punishment sentences. This was the Defendant's third revocation on his original sentences.

The Defendant entered his acknowledgements pursuant to an agreement which called for the Defendant to be re-sentenced and to serve no less than one (1) year and no more than three (3) years. The agreement left the place of service to the Court's discretion. The Court accepted the agreement and sentenced the Defendant pursuant to its terms; however, directed that the sentence be served in a state facility. Following sentencing, the Defendant appealed to the Pennsylvania Superior Court claiming that the Court abused its discretion by failing to sentence the Defendant to the Adams County Adult Correctional Complex.

The Defendant's claim is clearly meritless. When specific penalties are outlined in a plea agreement, a party waives the right to appeal the discretionary aspects of a sentence entered pursuant to the

terms of that agreement. *Commonwealth v. Reichle*, 589 A.2d 1140, 1141 (Pa.Super. 1991).

Instantly, the Defendant does not challenge the length of the sentence, but only the place of service. Title 42, Section 9762 of the Pennsylvania Consolidated Statutes Annotated provides that “[a]ll persons sentenced to total or partial confinement for . . . maximum terms of two years or more but less than five years may be committed to either the Bureau of Corrections for confinement or may be committed to a county prison within the jurisdiction of the court.” 42 Pa. C.S.A. § 9762 “The decision to place [an offender] in the custody of the [state board of corrections] for placement in a state facility rather than a county facility [is] within the sound discretion of the trial court.” *Commonwealth v. Stalaker*, 545 A.2d 886, 888 (Pa.Super. 1998). Although a convicted individual has no constitutional right to demand that he may be confined in any particular facility, *Commonwealth ex rel. Radziewicz v. Burke*, 82 A.2d 252, 254 (Pa.Super. 1951), a court should consider the difference between the state facility and the county prison facility in choosing to sentence an individual to a state rather than county facility. *Stalaker*, 545 A.2d at 889.

Instantly, the Court was familiar with the Defendant’s rehabilitative needs. At the time of his first re-sentencing on July 12, 2004, a pre-sentence investigation was completed which revealed that the Defendant was twenty-six (26) years old with convictions, in addition to the underlying offenses, for burglary, theft by unlawful taking and driving under the influence of alcohol. By the time the current sentences were imposed, the Defendant had been revoked from intermediate punishment on three separate occasions. The Court’s sensitivity to the Defendant’s drug addiction is evident through the repeated opportunities the Defendant was given to address his substance abuse issues through treatment. However, local efforts to address the Defendant’s issues were unsuccessful. In fact, while incarcerated as an inmate at the Adams County facility, the Defendant used controlled substances while participating in a work release program. The history of failure in this regard is evidence, in and of itself, of the inability of County services to appropriately treat the Defendant. If this Court is found to have abused its discretion, it is hard for this Court to imagine how anyone would qualify for a state sentence in light of the Defendant’s prior criminal record, his conviction of fifteen (15) misdemeanor one offenses, and the inability of local services to rehabilitate him.

VACANCY ANNOUNCEMENT (05-02)

United States District Court - Middle District of Pennsylvania

PRO SE/DEATH PENALTY LAW CLERK (Harrisburg, PA)

Full-Time Temporary Position With Benefits

The United States District Court for the Middle District of Pennsylvania is seeking a qualified candidate for the position of full-time temporary combined Pro Se/Death Penalty Law Clerk (40 hours/week). The combined position will require that the Law Clerk undertake a comprehensive review of all applications for federal post-conviction relief filed in this Court by or on behalf of death-sentenced prisoners challenging their conviction and/or sentence; conduct legal research and analysis of the pertinent legal and factual issues; and prepare bench memoranda and draft orders and opinions. It is anticipated that the Death Penalty cases will require about 50% of the Law Clerk's time. The Law Clerk will also be assigned the responsibilities of a pro se law clerk. General responsibilities of a pro se law clerk involve substantive screening of all prisoner and inmate petitions and motions, including state and federal habeas corpus petitions, and civil rights complaints. The incumbent conducts legal research and drafts appropriate opinions and orders for the Court's approval. The law clerk will keep abreast of changes in the law in the death penalty and pro se areas, and will review the docket of the cases assigned to the incumbent to assure the proper progress of such cases, tracking motions, briefs, and other filings. Compiling statistics and preparing periodic reports which reflect the status and flow of cases is also required.

The successful candidate must be a law school graduate and possess superior legal research and writing skills, excellent interpersonal skills, and a positive attitude. Experience, by education or practice, in substantive and procedural law concerning federal post-conviction relief and/or prisoner law is preferred. Experience with automated legal research systems and word processing software such as WordPerfect, is required. Full-time salary is JSP 11-01 (\$50,541) to JSP 14-10 (\$110,662). Salary is based on experience and bar membership. Benefits are provided. The successful candidate is hired provisionally, pending the results of a federal background investigation. The position is funded by the federal judiciary on a year-to-year basis according to national staffing formulas. No assurance of continued funding can be provided. In addition, the incumbent must satisfactorily complete a six (6) month probationary period.

The Court provides reasonable accommodations to applicants with disabilities. If you require a reasonable accommodation for any part of the application process, please notify the District Court's Human Resource Office. The decision on granting reasonable accommodation will be made on a case by case basis.

Applicants must submit a cover letter, resume (including salary history and references), and a short writing sample to:

United States District Court P.O. Box 1148 Scranton, PA 18501-1148 ATTN: Personnel Office

Closing date for applications is January 24, 2006.

Court employees are "at will" and the Federal Government Civil Service classification or regulations do not apply. The U.S. District Court is an equal opportunity employer.

1/6, 13 & 20

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-889 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a spike in the center of State highway leading from Aspers to Bendersville said spike being South 65 degrees East 300 feet from the Southeast corner of land sold this same date to Robert Eugene Taylor, et ux.; thence by other land of grantors through an iron pin set back along the line North 28 degrees 5 minutes East 200 feet to an iron pin; thence by the same South 65 degrees East 200 feet to an iron pin; thence by the same South 28 degrees 5 minutes West 200 feet through an iron pin set back along the line to a spike in the corner of said State Highway; thence in the center of said State Highway North 65 degrees West 200 feet to a spike in the center of said Highway, the place of BEGINNING. CONTAINING 146 Perches.

BEING the same premises which Kevin Allan Hamilton and Deborah Jean Hamilton, by Deed dated August 11, 2003 and recorded in the Recorder of Deeds of Adams County on August 21, 2003, in Deed Book 3260, Page 185, granted and conveyed unto Deborah Jean Hamilton.

Parcel #(29) F05-77 Premises Being: 528 Aspers-Bendersville Road, Aspers, PA 17304

SEIZED and taken into execution as the property of Kevin Allan Hamilton & Deborah Jean Hamilton and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN, that an Application for Certificate of Authority to do business within the Commonwealth of Pennsylvania was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on January 4, 2006, under the provisions of the Business Corporation Law of 1988 as amended.

The name of the corporation is NATURE PAK INC. The corporation is incorporated under the laws of Wisconsin. The address of its principal office under the laws of Wisconsin is c/o Craig Franzen, 5300 State Highway 42N, Sheboygan, Wisconsin 53083.

The address of the corporation's proposed registered office in this Commonwealth is c/o Spectra-Kote, 4th & Water Streets, Gettysburg, Pennsylvania 17325.

Robert E. Campbell Campbell & White, P.C. 112 Baltimore Street Gettysburg, PA 17325 Solicitor

1/13

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1144 Issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin on the Westerly edge of a 33-foot private drive at Lot No. 15; thence by said Lot No. 15 North forty-nine (49) degrees fifty-two (52) minutes twenty (20) seconds East, three hundred thirty and fifty-two hundredths (330.52) feet to a point at lands now or formerly of Grayson P. Showers; thence by said lands South thirty-nine (39) degrees forty-eight (48) minutes twenty (20) seconds East, one hundred eighteen and twenty-five hundredths (118.25) feet to an iron pin in a chestnut stump at lands now or formerly of Joe S. Serenstis; thence by said lands South eight (8) degrees thirty-four (34) minutes forty (40) seconds West, four hundred forty-two and seventy-eight hundredths (442.78) feet to an iron pin at Lot No. 13; thence by said lot and through the cul-de-sac of Twin Oak Road and by Lot No. 16 North thirty-nine (39) degrees fifty-five (55) minutes West, four hundred ten and eighty-four hundredths (410.84) feet to the place of BEGINNING. CONTAINING 2.006 Acres.

The above description was taken from a draft of survey dated November 16, 1970 and revised June 29, 1973 prepared by Gettysburg Engineering Co., Inc. and recorded in Adams County Plat Book 3 at page 31. Being Lot No. 14 thereon.

SUBJECT, to all rights-of-way, restrictions, conditions and easements more fully set forth in Deed Book 318 at page 985 and the above recited subdivision plan.

BEING THE SAME PREMISES which Wilda B. Sheaffer by deed dated April 23, 1998 and recorded July 27, 1998 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1627 at Page 288 conveyed this property unto David A. Sheaffer.

Tax Parcel #: E-5-33F

Premises Being: 3 Orchard View Lane  
ak/a 85 Twin Oak Drive, Aspers, PA

17304

SEIZED and taken into execution as the property of **David A. Sheaffer** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1164 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stainless steel rod located on the South edge of Granite Schoolhouse Lane at corner of lands now or formerly of the Grantors herein, said lands being designated as Tract No. 1 on a final plan for Charles M. Frealing prepared by Adams County Surveyors on the 27th day of October, 1986; thence along the Southern edge of Granite Schoolhouse Lane, South 82 degrees 41 minutes 00 seconds East, 189.30 feet to a stainless steel rod located on the Southern edge of Granite Schoolhouse Lane and at corner of lands now or formerly of Harold Musser; thence along said same lands, South 2 degrees 27 minutes 10 seconds East 181.43 feet to a steel rod at corner of lands now or formerly of Josephine Feimster; thence by said same lands, North 82 degrees 41 minutes 00 seconds West, 189.30 feet to a steel rod located at corner of lands now or formerly of the Grantors herein; thence by said same lands, North 2 degrees 27 minutes 10 seconds West, 181.43 feet to a stainless steel rod locat-

ed on the Southern edge of Granite Schoolhouse Lane, corner of lands now or formerly of the Grantors herein, the place of BEGINNING. CONTAINING 33,846 square feet.

The above referenced description is taken from a draft of survey prepared by Adams County Surveyors on behalf of Charles M. Frealing, dated the 27th day of October, 1986, and is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 45 at page 43, and designated as Lot No. 2.

BEING the same tract of land which Charles M. Frealing and Beatrice A. Frealing, a/k/a Beatrice L. Frealing, husband and wife, by their deed dated March 23, 1987, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 451 at page 1128, sold and conveyed unto Marsha J. Frealing.

Premises Being: 25 Granite Schoolhouse Lane, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Marsha J. Frealing** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

## 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 PAUL G. BROWN, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Calvin D. Brown, 1360 Hoffman Home Road, Littlestown, PA 17340

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

## ESTATE OF RAYMOND MICHAEL DREW, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Jennifer M. Whiteleather, 12803 Buckingham Drive, Bowie, MD 20715

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

## ESTATE OF GERTRUDE M. GABEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Lawrence L. Gamber, II, 218 DeGuy Avenue, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

## ESTATE OF WANDA A. WALKER, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Linda Bergeron, 76 Knox Road, Gettysburg, PA 17325

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

## ESTATE OF RUTH M. WINAND, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrices: Darlene I. Weigle, P.O. Box 98, Biglerville, PA 17307; Allona K. Ditlow, 2466 Berkshire Lane, Dover, PA 17315

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

## SECOND PUBLICATION

## ESTATE OF MILDRED M. HECKENLUBER-LEWIS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Marti Heckenluber Painter, c/o Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsnbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

## ESTATE OF OSCAR COY HOLLAR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

## ESTATE OF ROBERT H. RICHARDS, JR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Jane R. Ross, 203 Honeysuckle Ct., Hanover, PA 17331

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

## THIRD PUBLICATION

## ESTATE OF SUSAN M. ACKERMAN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Regina M. Smith, c/o Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Eric R. Dutcher, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

## ESTATE OF CORNELIA A. HAYDEN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Michael B. Hayden, 394 Barlow-Greenmount Rd., Gettysburg, PA 17325

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

## ESTATE OF EDWARD C. KLUNK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Jessie E. Klunk, 910A Hanover Street, New Oxford, PA 17350

Attorney: John James Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF JAMES L. O'CONNOR, JR., DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator c.t.a.: Barbara D. O'Conner, 675 Bon-Ox Road, Gettysburg, PA 17325

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



# Adams County Legal Journal

Vol. 47

January 20, 2006

No. 35, pp. 201-209

## IN THIS ISSUE

### SLAYBAUGH VS. AMERICAN MEDICAL

#### SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1164 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stainless steel rod located on the South edge of Granite Schoolhouse Lane at corner of lands now or formerly of the Grantors herein, said lands being designated as Tract No. 1 on a final plan for Charles M. Frealing prepared by Adams County Surveyors on the 27th day of October, 1986; thence along the Southern edge of Granite Schoolhouse Lane, South 82 degrees 41 minutes 00 seconds East, 189.30 feet to a stainless steel rod located on the Southern edge of Granite Schoolhouse Lane and at corner of lands now or formerly of Harold Musser; thence along said same lands, South 2 degrees 27 minutes 10 seconds East 181.43 feet to a steel rod at corner of lands now or for-

merly of Josephine Feimster; thence by said same lands, North 82 degrees 41 minutes 00 seconds West, 189.30 feet to a steel rod located at corner of lands now or formerly of the Grantors herein; thence by said same lands, North 2 degrees 27 minutes 10 seconds West, 181.43 feet to a stainless steel rod located on the Southern edge of Granite Schoolhouse Lane, corner of lands now or formerly of the Grantors herein, the place of BEGINNING. CONTAINING 33,846 square feet.

The above referenced description is taken from a draft of survey prepared by Adams County Surveyors on behalf of Charles M. Frealing, dated the 27th day of October, 1986, and is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 45 at page 43, and designated as Lot No. 2.

BEING the same tract of land which Charles M. Frealing and Beatrice A. Frealing, a/k/a Beatrice L. Frealing, husband and wife, by their deed dated March 23, 1987, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 451 at page 1128, sold and conveyed unto Marsha J. Frealing.

Premises Being: 25 Granite Schoolhouse Lane, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Marsha J. Frealing** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

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**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1144 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin on the Westerly edge of a 33-foot private drive at Lot No. 15; thence by said Lot No. 15 North forty-nine (49) degrees fifty-two (52) minutes twenty (20) seconds East, three hundred thirty and fifty-two hundredths (330.52) feet to a point at lands now or formerly of Grayson P. Showers; thence by said lands South thirty-nine (39) degrees forty-eight (48) minutes twenty (20) seconds East, one hundred eighteen and twenty-five hundredths (118.25) feet to an iron pin in a chestnut stump at lands now or formerly of Joe S. Serensits; thence by said lands South eight (8) degrees thirty-four (34) minutes forty (40) seconds West, four hundred forty-two and seventy-eight hundredths (442.78) feet to an iron pin at Lot No. 13; thence by said lot and through the cul-de-sac of Twin Oak Road and by Lot No. 16 North thirty-nine (39) degrees fifty-five (55) minutes West, four hundred ten and eighty-four hundredths (410.84) feet to the place of BEGINNING. CONTAINING 2.006 Acres.

The above description was taken from a draft of survey dated November 16, 1970 and revised June 29, 1973 prepared by Gettysburg Engineering Co., Inc. and recorded in Adams County Plat Book 3 at page 31. Being Lot No. 14 thereon.

SUBJECT, to all rights-of-way, restrictions, conditions and easements more fully set forth in Deed Book 318 at page 985 and the above recited subdivision plan.

BEING THE SAME PREMISES which Wilda B. Sheaffer by deed dated April 23, 1998 and recorded July 27, 1998 in the

Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1627 at Page 288 conveyed this property unto David A. Sheaffer.

Tax Parcel #: E-5-33F

Premises Being: 3 Orchard View Lane a/k/a 85 Twin Oak Drive, Aspers, PA 17304

SEIZED and taken into execution as the property of **David A. Sheaffer** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

**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, on December 5, 2005, for the purpose of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of Pennsylvania Business Law of 1988, P.L. 1444, No. 177, as amended. The name of the corporation is PENNSYLVANIA ELITE ALL-STAR GYM, INC., with a registered office of the corporation being 290 Krug Road, Littlestown, PA 17340.

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

1/20

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-947  
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.  
JUENE McGLAUGHLIN, Plaintiffs

vs.

ADELINE A. MUELLER & MATHILDA R.  
BOWMAN, their respective executors,  
heirs and/or assigns, Defendants

TO: Adeline A. Mueller and Mathilda R.  
Bowman

**IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU, UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Adams County Courthouse  
Gettysburg, PA 17325  
Phone 1-800-337-9846 OR  
(717) 337-9846

/s/John A. Wolfe, Esq.  
Attorneys for Defendants  
47 West High Street  
Gettysburg, PA 17325  
(717) 337-3754

1/20



## SLAYBAUGH VS. AMERICAN MEDICAL

1. Summary judgment is granted whenever the pleadings, depositions, answers to interrogatories, admissions and affidavits and other materials demonstrate that there is no genuine issue of any material fact as to a necessary element of the cause of action or defense and the moving party is entitled to judgment as a matter of law.

2. Summary judgment may not be had where the moving party relies exclusively upon oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact. Where the moving party supports its motion for summary judgment by using the admissions of the opposing party, however, the court may grant the motion without determining the credibility of the testimony, for it is an "unconditional surrender" by the opposing party, to which he must be held.

3. In order to avoid the insurance policy, the burden is upon the carrier to establish that the statements made by Plaintiffs in their application were (1) false; (2) material to the risk; and (3) Plaintiffs must have known that the statements were false and made them in bad faith.

4. Questions as to whether the answers were false and whether they were given in good faith are questions of fact, and their determination must be left to the jury whenever the evidence concerning them is conflicting.

5. Bad faith does not follow where there has been no deliberate intent to deceive and the known falsity of an answer is not affirmatively shown.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil, No. 03-S-1052, GINA M. SLAYBAUGH AND WAYNE L.  
SLAYBAUGH VS. AMERICAN MEDICAL SECURITY, INC.

Tracy M. Sheffer, Esq., for Plaintiffs

George Pomper, Esq., for Defendant

Kuhn, P.J., May 20, 2005

### OPINION ON DEFENDANT AMERICAN MEDICAL SECURITY, INC.'S MOTION FOR SUMMARY JUDGMENT

Before this Court is American Medical Security, Inc.'s Motion For Summary Judgment. Based upon the reasoning set forth below, said motion is denied.

The case involves a dispute regarding American Medical Security, Inc.'s refusal to pay Plaintiffs' medical claim and rescission of coverage for Gina M. Slaybaugh because of an alleged nondisclosure of her medical history. The factual background is gathered from the pleadings, exhibits, and transcript of Gina M. Slaybaugh's deposition filed with this Court.

### FACTUAL AND PROCEDURAL BACKGROUNDS

The record before the Court reveals the following background: On December 19, 2002, Plaintiffs, Gina M. Slaybaugh ("Mrs.

Slaybaugh”) and Wayne L. Slaybaugh, completed and signed an application for Group Insurance with Defendant, American Medical Security Inc. (“AMS”). As part of the Medical History portion of the application, Plaintiffs were asked, “In the past 24 months, have you or any person to be insured received treatment, received therapy, taken medication, or consulted a health care provider for symptoms? If yes, explain.” (Question B). Mrs. Slaybaugh checked the box for “Yes” and indicated, “Gina—Cold—2000.” Also, when asked, “In the past 24 months, have you or any person to be insured been advised to have a test or treatment, been advised to obtain equipment or service or been advised of a condition that may require attention or treatment?” (Question C). Plaintiffs responded, “No”. Furthermore, they were asked, “Within the past five years, has any person to be insured ever had any symptoms, conditions, diagnosis, consultation, treatment, therapy, been prescribed any medication, been monitored, or received counseling for any of following?...” (Question F). Plaintiffs checked “No” to all categories (including “36. Menstrual Disorder” and “46. Reproductive Organs”) except “52. Thyroid or Goiter.”

Plaintiffs claim that on December 26, 2002, seven days after signing the insurance application, Mrs. Slaybaugh had a routine doctor’s appointment with her physician, Dr. Bettina Ellsworth. At that time, Dr. Ellsworth suggested to Mrs. Slaybaugh that she have a laparoscopy performed. Plaintiffs allege that on January 13, 2003, they were notified that coverage with AMS would begin on February 1, 2003. Dr. Ellsworth performed the laparoscopy on February 24, 2003, during which she detected endometriosis and subsequently recommended a hysterectomy. Dr. Ellsworth allegedly received approval for the procedure from AMS on March 24, 2003 and the hysterectomy (and appendectomy) was later performed on April 7, 2003.

Plaintiffs allege that on May 17, 2003 they received a letter from Gettysburg Hospital indicating that AMS would not pay the claim for the hysterectomy and appendectomy and that the claim was under investigation. They later received a letter from AMS, dated June 4, 2003, notifying them that AMS was rescinding coverage for Mrs. Slaybaugh because information pertaining to her medical history was not properly disclosed during the application process. Plaintiffs allege that Mrs. Slaybaugh was not aware of any pre-existing medical condition prior to her application for insurance with AMS. As such, they aver that AMS acted in bad faith when denying them

coverage. As a result of AMS' alleged breach of its insurance agreement with Plaintiffs, they request damages totaling \$17,536.50 plus costs, punitive damages and interest.

In AMS' Answer and New Matter, filed December 18, 2003, it contends that Plaintiffs failed to disclose Mrs. Slaybaugh's pre-existing medical condition on the application, namely that she experienced ongoing, chronic pelvic area pain and pressure for several years. Consequently, in reliance on the information disclosed in the application, AMS issued a Certificate of Group Insurance, effective February 1, 2003. It further avers that Plaintiffs' failure to disclose Mrs. Slaybaugh's pre-existing conditions is a direct and material misrepresentation under the terms and conditions of the insurance application and policy.

AMS also claims that on December 26, 2002, Mrs. Slaybaugh visited Dr. Ellsworth to, among other things, seek treatment for her pre-existing conditions. It avers that on January 9, 2003 its representative telephoned Mr. Slaybaugh to verify that the insurance application was accurately completed and to obtain any updated medical information. However, during this call Wayne L. Slaybaugh failed to disclose Mrs. Slaybaugh's recent doctor's visit or any of her pre-existing medical conditions.

After Mrs. Slaybaugh underwent her surgical procedures, AMS performed a medical history review and ascertained prior history which was not revealed in the application. AMS alleges that this failure to disclose is an additional direct and material misrepresentation under the terms and conditions of the insurance application and policy. As a result, on June 4, 2003, AMS amended the policy by excluding coverage for Mrs. Slaybaugh. Because Plaintiffs did not sign an Exclusion Rider tendered at that time, AMS rescinded the policy retroactive to January 31, 2003. AMS alleges that had it known of Mrs. Slaybaugh's pre-existing medical conditions, coverage would have been issued as applied except for coverage for Mrs. Slaybaugh.

In its Motion For Summary Judgment and brief in support thereof, AMS argues that Mrs. Slaybaugh's nondisclosure of her pre-existing medical condition during the insurance application process voids her insurance coverage as a matter of law. It further contends that no material fact is in dispute. Plaintiffs counter that because Mrs.

Slaybaugh did not know of her medical condition at the time she completed the insurance application, a genuine issue of material fact exists.

### DISCUSSION

Summary judgment is granted whenever the pleadings, depositions, answers to interrogatories, admissions and affidavits and other materials demonstrate that there is no genuine issue of any material fact as to a necessary element of the cause of action or defense and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. 1035.2; *Blumenstock v. Gibson, et al.*, 811 A.2d 1029, 1033 (Pa.Super. 2002). This Court must resolve all doubts against Defendant, as the moving party, and examine the record in a light most favorable to Plaintiff, as the non-moving party. See *Ertel v. Patriot News Company*, 674 A.2d 1038, 1041 (Pa. 1996).

The general rule flowing from *Nanty-Glo v. American Surety Co.*, 163 A. 523 (Pa. 1932), is that summary judgment may not be had where the moving party relies exclusively upon oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact. Where the moving party supports its motion for summary judgment by using the admissions of the opposing party, however, even though they are testimonial, *Nanty-Glo* does not forbid the entry of summary judgment. In such a situation, the court may grant the motion without determining the credibility of the testimony, for it is an “unconditional surrender” by the opposing party, to which he must be held.

*Bowe v. Allied Signal Inc.*, 806 A.2d 435, 440 (Pa.Super. 2002) (citations omitted).

In order to avoid the insurance policy at issue, the burden is upon AMS to establish that the statements made by Plaintiffs in their application were (1) false; (2) material to the risk; and (3) Plaintiffs must have known that the statements were false and made them in bad faith. See *Piccinini v. Teachers Protective Mutual Life Insurance Company*, 463 A.2d 1017, 1023 (Pa.Super. 1983); *Shafer v. John Hancock Mutual Life Insurance Company*, 189 A.2d 234 (Pa. 1963). AMS also must establish that it relied on the misstatements in issuing the policy. See *Piccinini*, 463 A.2d at 1023 (citations omitted).

Questions as to whether the answers were false and whether they were given in good faith are questions of fact, and their determination must be left to the jury whenever the evidence concerning them is conflicting. *DeBellis v. United Benefit Life Insurance Company*, 93 A.2d 429, 430 (Pa. 1953). Bad faith, in this context, is present when an insured intentionally conceals the truth from the insurer. Thus, bad faith does not follow where there has been no deliberate intent to deceive and the known falsity of an answer is not affirmatively shown. *Piccinini*, 463 A.2d at 1024. However,

where it is established by uncontradicted evidence that the insured has consulted physicians so frequently, or undergone medical or surgical treatment so recently, or of such a serious nature, that a person of ordinary intelligence could not have forgotten these incidents in answering a direct and pointed question in an application for insurance, bad faith may be inferred as a matter of law if the insured denies in his answer that any physician has been consulted, or any medical or surgical treatment has been received during the period of inquiry. (emphasis added).

*Id.* at 1024, quoting *Freedman v. Mutual Life Insurance Company of New York*, 21 A.2d 81, 84 (Pa. 1941).

Here, there are two points in time which must be examined in determining whether AMS has established its burden. The first involves a review of the answers given on the application itself on December 19, 2002. The second point involves what occurred after December 26, 2002 and up to the effective date of the policy on February 1, 2003 and whether Plaintiffs intentionally failed to disclose the results of the consultation with Dr. Ellsworth.

First, AMS argues that Mrs. Slaybaugh's answers to Questions B and F of the Medical History portion of her insurance application were false because she did not indicate that she had a pelvic ultrasound performed in February 2000 or that she consulted a health care provider for her "symptoms" of chronic pelvic pain as well as pain during menstruation (Dysmenorrhea) and sexual intercourse (Dyspareunia). It contends that Mrs. Slaybaugh's deposition testimony and medical records reveal her awareness that she was experiencing symptoms associated with a menstrual disorder or problems

with her reproductive organs. Because a person of ordinary intelligence would have known that her answers were not accurate responses to the questions posed, AMS argues that Mrs. Slaybaugh's bad faith is inferred as a matter of law. I disagree.

A question of fact exists as to whether Plaintiffs' statements on their insurance application were false and made in bad faith. Although Mrs. Slaybaugh testified that she does not contest the Radiology Consultation Report, dated February 28, 2000, indicating that she had a pelvic ultrasound performed at Gettysburg Hospital, she reported not listing the ultrasound on her insurance application because she did not recall having the procedure performed. Dep. P. 26-28; Dep. Ex. 5.

Clearly, the answer to Question F of the Medical History portion of Plaintiffs' application is false because it does not list Mrs. Slaybaugh's pelvic ultrasound. However, AMS has not established Plaintiff's bad faith in failing to disclose this information. The ultrasound occurred nearly three years prior to completion of the application. Because of that time frame, the type of procedure and the negative results, Mrs. Slaybaugh's bad faith in forgetting to disclose it on her application cannot be inferred as a matter of law.

With regard to Mrs. Slaybaugh's alleged "symptoms" in connection with Questions B and F on the application, she testified that during her doctor's visit with Dr. Ellsworth in 1998, she reported that she was experiencing cramping and "pain during sexual intercourse." Dep. P. 18, 20. She claims that the reason provided to her was that her uterus may have tilted and she thought that "that is just the way [she] was." Dep. P. 18, 19, 20. Mrs. Slaybaugh further testified that she told Dr. Ellsworth that she sporadically experienced some small blood clots during menstruation but that Dr. Ellsworth told her that there was nothing to worry about unless the clots were big. Dep. P. 21, 23. She claimed that she did not call Dr. Ellsworth to report the pain and never made an appointment between her yearly appointments to address the issue. Dep. P. 42.

Mrs. Slaybaugh further testified that she did not report the pain on the application because to her it was "just normal cramping" and she was "never told any different." Dep. P. 25. She added that she did not think her pain from cramping during menstruation was a symptom of anything; rather, she thought she was no different from any other woman. Dep. P. 28.

Mrs. Slaybaugh admits that she reported pelvic pain, pain during intercourse and the clotting to Dr. Ellsworth at her yearly appointment on December 26, 2002, and in response Dr. Ellsworth advised her to have a laparoscopy to “make sure everything is okay.” Dep. P. 29, 42; Dep. Ex. 6. However, she disagrees with the Gettysburg Hospital History and Physical report, dated February 24, 2003, indicating that she has “pain and pressure in lower abdomen,” “aching pain with intercourse,” “dysmenorrheal,” which has been “ongoing for several years but worse recently,” and she “miss[ed] work with this discomfort.” Dep. Ex. 7. She testified that the report is inaccurate because she only missed one day of work and no one told her the pain was abnormal. Dep. P. 36. Mrs. Slaybaugh also considers the Operative Report, dated the same day, which indicates that she experiences chronic pelvic pain, dysmenorrheal and dyspareunia, to be inaccurate because she found her pain to be only sporadic. Dep. P. 38, Dep. Ex. 8.

A question of fact clearly exists as to whether the statements made on the application, regarding “symptoms,” are false and whether Mrs. Slaybaugh was aware that her experiences of pain, cramping and blood clots were “symptoms” of a menstrual disorder or problems with her reproductive organs. Reviewing this case in the light most favorable to the Plaintiffs, there is contradictory evidence as to whether Mrs. Slaybaugh was aware that her answers to Questions B and F (Medical History) were false when she completed the application and whether there was intent to conceal information from AMS.

Also, AMS argues that Plaintiffs’ failure to disclose the “symptoms” reported during Mrs. Slaybaugh’s December 26, 2002 doctor’s visit as well as the advised laparoscopy during the verification phone call in January 2003 is a direct and material misrepresentation under the terms and conditions of the insurance application and policy. With respect to AMS’ argument regarding Mrs. Slaybaugh’s nondisclosed “symptoms,” the above argument again applies. A question of fact exists as to whether Plaintiffs were aware that Mrs. Slaybaugh’s pain, cramping and blood clots were a “symptom” of a menstrual disorder or problems with her reproductive organs.

Specifically with regard to Mrs. Slaybaugh’s advised laparoscopy, AMS argues that her failure to disclose this new information during the verification call was in direct contradiction to the application

question asking if she had been advised to have a “test or treatment” within the past 24 months.

Mrs. Slaybaugh testified that she received a telephone call from a female AMS representative in early January 2003. “The purpose of the call was to go back over the application..., just go over the questions that were asked on the application.” Dep. P. 38. However, she claims not to remember the specifics of the conversation, including whether the representative went over the entire application, whether she was asked if there was anything to add to the application, or if the application was true and accurate. Dep. P. 38-39. Not that it would be relevant to this stage of the proceeding, but I am not privy to what AMS’s representative would state about the questions and answers verbalized during this telephone interview. Although one might assume that standard procedure required specific inquiry into updates or changes in the application, the record is not developed to that level.

Although Mrs. Slaybaugh’s answer to Question C is clearly false at the time of AMS’ telephone call in early January 2003, it is not so clear whether Plaintiffs’ failure to disclose this updated information was done in bad faith. I recognize that “If, while the [insurer] deliberates, [the applicant] discovers facts which make portions of his application no longer true, the most elementary spirit of fair dealing would seem to require him to make a full disclosure. If he fails to do so the [insurer] may, despite its acceptance of the application, decline to issue a policy.” *De Roy v. New York Life Ins. Co.*, 52 F.2d 894, 896 (W.D. Pa. 1931), *aff’d*, 61 F.2d 317 (3d Cir. Pa. 1932), quoting *Stipcich v. Metropolitan Life Insurance Co.*, 227 U.S. 311 (1927); see *Watson v. Metropolitan Life Insurance Co.*, 21 A.2d 503, 510 (Pa.Super. 1941) (regarding life insurance policies). However, this duty does not dispose of AMS’ burden to establish Plaintiffs’ bad faith for failing to disclose Mrs. Slaybaugh’s advised laparoscopy by uncontradictory evidence at this procedural posture.

Interestingly, the application itself does not expressly advise the applicant of any duty to update answers before the policy is issued. As noted, we do not know precisely what Mrs. Slaybaugh was asked during the January 2003 telephone interview. Here, although Mrs. Slaybaugh acknowledged that the AMS representative called her to review the application, she cannot recall the substance of the conversation or if the entire application was reviewed. There is also no



uncontradicted evidence that Mrs. Slaybaugh intended to deceive AMS by failing to disclose the newly acquired information about her advised laparoscopy. As previously stated, bad faith is not shown when there has been no deliberate intent to deceive. *Piccinini*, 463 A.2d at 1024. Again, in reviewing this matter in the light most favorable to Plaintiffs, a question of fact exists as to whether Plaintiffs' action in not disclosing Mrs. Slaybaugh's laparoscopy was done in bad faith. Therefore, summary judgment is not appropriate.<sup>1</sup>

Accordingly, the attached Order is entered.

#### ORDER

AND NOW, this 20th day of May, 2005, Defendant's Motion For Summary Judgment, filed February 22, 2005, is denied.

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<sup>1</sup>Materiality does not appear to be an issue. "An application is an integral part of a policy, and the questions and answers contained therein are material to the risks which both the insurer and insured assume." *Dauphin Deposit Trust Co. v. World Mutual Health & Accident Ins. Co. of Pennsylvania*, 213 A.2d 116, 118 (Pa.Super. 1965); see *Piccinini*, 463 A.2d at 1024 (statements relating to medical treatment are material to the risk incurred by an insurer). Disclosure of the recommended laparoscopy would likely have triggered further inquiry by AMS and, in turn, policy exclusion.

## VACANCY ANNOUNCEMENT (05-02)

United States District Court -  
Middle District of Pennsylvania  
**PRO SE/DEATH PENALTY LAW  
CLERK (Harrisburg, PA)**  
Full-Time Temporary Position  
With Benefits

The United States District Court for the Middle District of Pennsylvania is seeking a qualified candidate for the position of full-time temporary combined Pro Se/Death Penalty Law Clerk (40 hours/week). The combined position will require that the Law Clerk undertake a comprehensive review of all applications for federal post-conviction relief filed in this Court by or on behalf of death-sentenced prisoners challenging their conviction and/or sentence; conduct legal research and analysis of the pertinent legal and factual issues; and prepare bench memoranda and draft orders and opinions. It is anticipated that the Death Penalty cases will require about 50% of the Law Clerk's time. The Law Clerk will also be assigned the responsibilities of a pro se law clerk. General responsibilities of a pro se law clerk involve substantive screening of all prisoner and inmate petitions and motions, including state and federal habeas corpus petitions, and civil rights complaints. The incumbent conducts legal research and drafts appropriate opinions and orders for the Court's approval. The law clerk will keep abreast of changes in the law in the death penalty and pro se areas, and will review the docket of the cases assigned to the incumbent to assure the proper progress of such cases, tracking motions, briefs, and other filings. Compiling statistics and preparing periodic reports which reflect the status and flow of cases is also required.

The successful candidate must be a law school graduate and possess superior legal research and writing skills, excellent interpersonal skills, and a positive attitude. Experience, by education or practice, in substantive and procedural law concerning federal post-conviction relief and/or prisoner law is preferred. Experience with automated legal research systems and word processing software such as WordPerfect, is required. Full-time salary is JSP 11-01 (\$50,541) to JSP 14-10 (\$110,662). Salary is based on experience and bar membership. Benefits are provided. The successful candidate is hired provisionally, pending the results of a federal background investigation. The position is funded by the federal judiciary on a year-to-year basis according to national staffing formulas. No assurance of continued funding can be provided. In addition, the incumbent must satisfactorily complete a six (6) month probationary period.

The Court provides reasonable accommodations to applicants with disabilities. If you require a reasonable accommodation for any part of the application process, please notify the District Court's Human Resource Office. The decision on granting reasonable accommodation will be made on a case by case basis.

Applicants must submit a cover letter, resume (including salary history and references), and a short writing sample to:

United States District Court  
P.O. Box 1148  
Scranton, PA 18501-1148  
ATTN: Personnel Office

Closing date for applications is January 24, 2006.

Court employees are "at will" and the Federal Government Civil Service classification or regulations do not apply. The U.S. District Court is an equal opportunity employer.

1/6, 13 & 20

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-889 Issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a spike in the center of State highway leading from Aspers to Bendersville said spike being South 65 degrees East 300 feet from the Southeast corner of land sold this same date to Robert Eugene Taylor, et ux.; thence by other land of grantors through an iron pin set back along the line North 28 degrees 5 minutes East 200 feet to an iron pin; thence by the same South 65 degrees East 200 feet to an iron pin; thence by the same South 28 degrees 5 minutes West 200 feet through an iron pin set back along the line to a spike in the corner of said State Highway; thence in the center of said State Highway North 65 degrees West 200 feet to a spike in the center of said Highway, the place of BEGINNING. CONTAINING 146 Perches.

BEING the same premises which Kevin Allan Hamilton and Deborah Jean Hamilton, by Deed dated August 11, 2003 and recorded in the Recorder of Deeds of Adams County on August 21, 2003, in Deed Book 3260, Page 185, granted and conveyed unto Deborah Jean Hamilton.

Parcel #(29) F05-77

Premises Being: 528 Aspers-Bendersville Road, Aspers, PA 17304

SEIZED and taken into execution as the property of Kevin Allan Hamilton & Deborah Jean Hamilton and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 - 295 (54 Pa. C.S. 311), the undersigned entity (ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately December 8, 2005, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of COMMUNITY BENEFITS REAL ESTATE, with its principal place of business at 62 Chambersburg Street, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Christine H. Kellett, residing at 72 Gordon Road, Fairfield, PA 17320. The character or nature of the business is Real Estate sales and services.

1/20

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-945  
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.  
JUENE McGLAUGHLIN, Plaintiffs

vs,

STANLEY O. ADAMS & MARGARITA G.  
ADAMS, their respective executors,  
heirs and/or assigns, Defendants

TO: Stanley O. Adams & Margarita G.  
Adams, their respective executors, heirs  
and/or assigns.

**NOTICE**

You are notified that the Plaintiffs have commenced an action to quiet title against you by a complaint filed on August 31, 2005, which action you are required to defend.

You are required to plead to the said Complaint within twenty (20) days after service has been completed by publication, or judgment by default may be entered against you.

This action concerns a tract of land situated in Liberty Township, Adams County, Pennsylvania, being Lot number 229 in Section AA, bounded and described as follows:

BEGINNING at a point in the center of Goetz Trail at Lot No. 230; thence by said lot South 14 degrees 10 minutes 42 seconds West, 203.25 feet to Lot No. 209; thence by said lot and by Lot No. 208 North 74 degrees 33 minutes 20 seconds West, 118.03 feet to Lot No. 228; thence by said lot North 14 degrees 10 minutes 32 seconds East, 200.61 feet to a point in the center of said Goetz Trail; thence in said Goetz Trail South 75 degrees 49 minutes 18 seconds East, 118 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section AA, Charnita" dated October 21, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 59.

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

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO**

NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator  
Adams County Courthouse  
Gettysburg, PA 17325  
Phone (717) 337-9846 or  
1-888-337-9846

1/20

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-953  
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.  
JUENE McGLAUGHLIN, Plaintiffs

vs.

JAMES F. HERBERT & MARY D. HERBERT, their respective executors, heirs and/or assigns, Defendants

TO: James F. Herbert & Mary D. Herbert, their respective executors, heirs and/or assigns.

**NOTICE**

You are notified that the Plaintiffs have commenced an action to quiet title against you by a complaint filed on August 31, 2005, which action you are required to defend.

You are required to plead to the said Complaint within twenty (20) days after service has been completed by publication, or judgment by default may be entered against you.

This action concerns a tract of land situated in Liberty Township, Adams County, Pennsylvania, being Lot number 140 in Section AA, bounded and described as follows:

BEGINNING at a point in the center of Rist Trail at Lot No. 139; thence by said lot North 25 degrees 30 minutes 6 seconds West, 174.97 feet to Lot No. 138; thence by said lot North 64 degrees 29 minutes 54 seconds East, 138.40 feet to a point in the center of Kelly Trail; thence in said Kelly Trail South 53 degrees 23 minutes 56 seconds East, 56.85 feet to a point; thence continuing in said Kelly Trail South 25 degrees 30 minutes 6 seconds East, 124.73 feet to a point in the

intersection of Kelly Trail and Rist Trail; thence in said Rist Trail South 64 degrees 29 minutes 54 seconds West, 165 feet to the place of BEGINNING.

The above description was taken from a plan of lots labeled "Section AA, Charnita" dated October 21, 1969, prepared by Evans, Hagan & Holdefer, and recorded in Adams County Plat Book No. 1 at page 59.

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

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Adams County Courthouse  
Gettysburg, PA 17325  
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1-888-337-9846

1/20

**FICTITIOUS NAME NOTICE**

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on January 10, 2006, with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name ADVANTAGE HOME INSPECTION SERVICES, with its principal office or place of business at 2080 Upper Bermudian Road, Gardners, PA 17324. The names and addresses of all persons owning or interested in said business are: Daniel E. Witter and Ben P. Witter, 2080 Upper Bermudian Road, Gardners, PA 17324, operating as Advantage Home Inspection Services, LLC.

John J. Murphy III, Esq.  
Patrono & Associates, LLC

1/20

## 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 GENE McCRAE ALBRIGHT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: Clark L. Fetters, 55 Gettysburg Street, P.O. Box 92, Arendtsville, PA 17303

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

## ESTATE OF DONALD F. ALDRICH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sarah E. Aldrich, c/o 135 South Duke Street, York, PA 17403

Attorney: Richard H. Mylin, III, Esq., 135 South Duke Street, York, PA 17403

## ESTATE OF ELLA NAOMI PASCOE, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Judy Wickline, 405 Crouse Road, Littlestown, PA 17340

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

## ESTATE OF CLIFFORD W. TAYLOR, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Arlene V. Briggs, 510 Brysonia Rd., Biglerville, PA 17307

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

## SECOND PUBLICATION

## ESTATE OF PAUL G. BROWN, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Calvin D. Brown, 1360 Hoffman Home Road, Littlestown, PA 17340

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

## ESTATE OF RAYMOND MICHAEL DREW, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Jennifer M. Whiteleather, 12803 Buckingham Drive, Bowie, MD 20715

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

## ESTATE OF GERTRUDE M. GABEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Lawrence L. Gamber, II, 218 DeGuy Avenue, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

## ESTATE OF WANDA A. WALKER, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Linda Bergeron, 76 Knox Road, Gettysburg, PA 17325

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

## ESTATE OF RUTH M. WINAND, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrices: Darlene I. Weigle, P.O. Box 98, Biglerville, PA 17307; Allona K. Diltow, 2466 Berkshire Lane, Dover, PA 17315

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

## THIRD PUBLICATION

## ESTATE OF MILDRED M. HECKENLUBER-LEWIS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Marti Heckenluber Painter, c/o Schrack & Linsenbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsenbach Law Offices, 124 West Harrisburg Street, Post Office Box 310, Dillsburg, PA 17019-0310

## ESTATE OF OSCAR COY HOLLAR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., 209 Broadway, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

## ESTATE OF ROBERT H. RICHARDS, JR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Jane R. Ross, 203 Honeysuckle Ct., Hanover, PA 17331

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

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-954  
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.  
JUENE McGLAUGHLIN, Plaintiffs

vs.

LEONARD CRANE RENNIE, JR., his  
respective executors, heirs and/or  
assigns, Defendants

TO: Leonard Crane Rennie, Jr., his  
respective executors, heirs and/or  
assigns.

**NOTICE**

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commenced an action to quiet title  
against you by a complaint filed on  
August 31, 2005, which action you are  
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You are required to plead to the said  
Complaint within twenty (20) days after  
service has been completed by publica-  
tion, or judgment by default may be  
entered against you.

This action concerns a tract of land situ-  
ated in Liberty Township, Adams  
County, Pennsylvania, being Lot number  
140 in Section AA, bounded and  
described as follows:

BEGINNING at a point in the center  
of Rist Trail at Lot No. 139;  
thence by said lot North 25  
degrees 30 minutes 6 seconds  
West, 174.97 feet to Lot No. 138;  
thence by said lot North 64  
degrees 29 minutes 54 seconds  
East, 138.40 feet to a point in the  
center of Kelly Trail; thence in said  
Kelly Trail South 53 degrees 23  
minutes 56 seconds East, 56.85  
feet to a point; thence continuing  
in said Kelly Trail South 25  
degrees 30 minutes 6 seconds  
East, 124.73 feet to a point in the  
intersection of Kelly Trail and Rist  
Trail; thence in said Rist Trail  
South 64 degrees 29 minutes 54  
seconds West, 165 feet to the  
place of BEGINNING.

The above description was taken  
from a plan of lots labeled  
"Section AA, Charnita" dated  
October 21, 1969, prepared by  
Evans, Hagan & Holdefer, and  
recorded in Adams County Plat  
Book No. 1 at page 59.

If you wish to defend, you must take  
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personally or by attorney and file your  
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requested by Plaintiffs. You may lose  
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BLE PERSONS AT A REDUCED FEE  
OR NO FEE.

Court Administrator  
Adams County Courthouse  
Gettysburg, PA 17325  
Phone (717) 337-9846 or  
1-888-337-9846

1/20

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
CASE NO. 05-S-948  
Action to Quiet Title

LAWRENCE E. McGLAUGHLIN & D.  
JUENE McGLAUGHLIN, Plaintiffs

vs.

WILLIAM T. HAINES & CAROL HAINES,  
their respective executors, heirs and/or  
assigns, Defendants

TO: William T. Haines & Carol Haines,  
their respective executors, heirs and/or  
assigns.

**NOTICE**

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You are required to plead to the said  
Complaint within twenty (20) days after  
service has been completed by publica-  
tion, or judgment by default may be  
entered against you.

This action concerns a tract of land situ-  
ated in Liberty Township, Adams  
County, Pennsylvania, being Lot number  
99 in Section AA, bounded and  
described as follows:

BEGINNING at a point in the center  
of Strausbaugh Trail at Lot No.  
100; thence by said lot South 44  
degrees 42 minutes 15 seconds  
West, 198.89 feet to Lot No. 72;  
thence by said lot North 57  
degrees 58 minutes 17 seconds  
West, 112.32 feet to Lot No. 98;  
thence by said lot North 36  
degrees 36 minutes 4 seconds

East, 205.92 feet to a point in the  
center of said Strausbaugh Trail;  
thence in said Strausbaugh Trail  
South 53 degrees 23 minutes 56  
seconds East, 140 feet to the  
place of BEGINNING.

The above description was taken  
from a plan of lots labeled  
"Section AA, Charnita" dated  
October 21, 1969, prepared by  
Evans, Hagan & Holdefer, and  
recorded in Adams County Plat  
Book No. 1 at page 59.

If you wish to defend, you must take  
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IF YOU CANNOT AFFORD TO HIRE  
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OR NO FEE.

Court Administrator  
Adams County Courthouse  
Gettysburg, PA 17325  
Phone (717) 337-9846 or  
1-888-337-9846

1/20

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that  
Articles of Incorporation-Nonprofit were  
filed with the Pennsylvania Department  
of State of the Commonwealth of  
Pennsylvania at Harrisburg, Pennsylvania,  
on or about November 30, 2005, for the  
purpose of obtaining a Certificate of  
Incorporation of a corporation organized  
under the provisions of the Pennsylvania  
Business Corporation Law of 1988,  
approved December 21, 1988, P.L.  
1444, No. 177, as amended. The name  
of the corporation is HEALTHY ADAMS  
BICYCLE/PEDESTRIAN ACTION COALI-  
TION, INC.

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

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# *Adams County* Legal Journal

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Vol. 47

January 27, 2006

No. 36, pp. 210-215

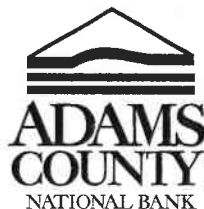
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## IN THIS ISSUE

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 04-S-1144 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an iron pin on the Westerly edge of a 33-foot private drive at Lot No. 15; thence by said Lot No. 15 North forty-nine (49) degrees fifty-two (52) minutes twenty (20) seconds East, three hundred thirty and fifty-two hundredths (330.52) feet to a point at lands now or formerly of Grayson P. Showers; thence by said lands South thirty-nine (39) degrees forty-eight (48) minutes twenty (20) seconds East, one hundred eighteen and twenty-five hundredths (118.25) feet to an iron pin in a chestnut stump at lands now or formerly of Joe S. Serensits; thence by said lands South eight (8) degrees thirty-four (34) minutes forty (40) seconds West, four hundred forty-two and seventy-eight hundredths (442.78) feet to an iron pin at Lot No. 13; thence by said lot and through the cul-de-sac of Twin Oak Road and by Lot No. 16 North thirty-nine (39) degrees fifty-five (55) minutes West, four hundred ten and eighty-four hundredths (410.84) feet to the place of BEGINNING. CONTAINING 2.006 Acres.

The above description was taken from a draft of survey dated November 16, 1970 and revised June 29, 1973 prepared by Gettysburg Engineering Co., Inc. and recorded in Adams County Plat Book 3 at page 31, Being Lot No. 14 thereon.

SUBJECT, to all rights-of-way, restrictions, conditions and easements more fully set forth in Deed Book 318 at page 985 and the above recited subdivision plan.

BEING THE SAME PREMISES which Wilda B. Sheaffer by deed dated April 23, 1998 and recorded July 27, 1998 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 1627 at Page 288 conveyed this property unto David A. Sheaffer.

Tax Parcel #: E-5-33F

Premises Being: 3 Orchard View Lane a/k/a 85 Twin Oak Drive, Aspers, PA 17304

SEIZED and taken into execution as the property of David A. Sheaffer and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about December 20, 2005, for the incorporation of REID'S ORCHARD, INC. under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 2135 Buchanan Valley Road, Orrtanna, PA 17353.

Gary E. Hartman, Esq.  
Hartman & Yannetti  
Solicitors

1/27

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION  
NO. RT-20-04

Adoption of: Antonio Robert Angstadt

DECREE

AND NOW, this 9th day of January, 2006, all rights of the putative father of Antonio Robert Angstadt, date of birth February 17, 2004 are hereby terminated.

Custody pending adoption is hereby awarded to Petitioners, Robert L. Slothour and Idella L. Slothour.

The said putative father shall not be entitled to receive further notice of the adoption proceedings nor to object to those proceedings.

Service of this Decree shall be made by Petitioners by publication and proof of service shall be filed of record.

Said putative father is hereby notified that he has a right to appeal this decision to the Superior Court of Pennsylvania by filing a Notice of Appeal with the Clerk of Courts within 30 days of the date of this Decree, otherwise any right to appeal may be waived.

The Clerk of Courts is advised that there is no duty to forward the notices required by 23 Pa.C.S.A. Section 2503(e), 2504(d), 2511(c), and 2905(d).

By the Court,  
/s/Robert G. Bigham, Judge

Thomas E. Miller, Esq.  
Kelly M. Dilts, Esq.

1/27

LATIMORE TWP.-YORK SPRINGS REGIONAL POLICE  
COMM. VS. EMC INS. ET AL

1. Credibility determinations by the fact-finder should not be disturbed absent an abuse of discretion.

2. A finder of fact is not bound to accept an expert's opinion merely because a witness is qualified as an expert. As with any other witness, the finder of fact may accept or reject the testimony.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 04-S-15, LATIMORE TOWNSHIP-YORK SPRINGS REGIONAL POLICE COMMISSION VS. EMC INSURANCE COMPANIES A/K/A EMPLOYERS MUTUAL CASUALTY COMPANY.

James G. Gault, Esq., for Plaintiff

Anthony R. Sherr, Esq., for Defendants

George, J., June 8, 2005

OPINION

This matter comes before the court on the Defendant's, EMC Insurance Companies ("EMC"), Post-trial Motion. EMC challenges a verdict entered in a non-jury trial in favor of Latimore Township/York Springs Regional Police Commission ("York Springs") and against EMC in the amount of \$31,137.00 plus costs. I find that a number of the issues raised in EMC's Post-trial Motion were adequately addressed by this Court's Opinion dated December 22, 2004, and, therefore, those issues will not be further discussed.<sup>1</sup> The remaining issues raised by EMC are as follows:

1. The trial court erroneously accepted testimony from Dr. Martin as credible;
2. The trial court erroneously failed to credit the testimony of Dr. Lehman;
3. This court erred in assuming that this claim falls under the Heart and Lung Act; and

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<sup>1</sup> These issues include the issues raised in paragraphs 1, 2, and 6 of EMC's Post-trial Motion. EMC also challenges the lack of a text following footnote 6 which appeared on page 7 in the body of this court's Opinion. The insertion of "6" in the body of the Opinion is a typographical error and, therefore, no analysis of substance was omitted in the Opinion. Accordingly, this objection will also not be further addressed.



4. The court erred in concluding that EMC asserted that it would never have to cover benefits under Subsection 637(b) of the Heart and Lung Act.

I will address each of these issues separately.

EMC's initial two challenges relate to a credibility finding by the court. In considering this challenge, I note that credibility determinations by the fact-finder should not be disturbed absent an abuse of discretion. *Bupp v. Bupp*, 718 A.2d 1278, 1281 (Pa.Super. 1998) (the credibility of witnesses and the weight to be given to their testimony can best be determined by the judge before whom they appear; the appellate court should only interfere with the decisions of the hearing judge if there was a gross abuse of discretion). EMC suggests that an abuse of discretion occurred when the Court accepted Dr. Martin's testimony that George Bowers, the former York Springs/Latimore Township Chief of Police ("Chief Bowers"), suffered heart disease as a result of his occupation.

In reviewing his testimony, I note that Dr. Martin's opinion is not out of sync with the remainder of the medical community. EMC's own witness, Dr. Lehman, testified that there is a division of opinion in the medical community on this issue, and sufficient literature exists in support of Dr. Martin's opinion. Moreover, Dr. Martin has over twenty years of experience in treating patients with heart disease, cardiac injuries, high blood pressure, diabetes, and cholesterol issues. While EMC, and its expert, may disagree with Dr. Martin's opinion, their disagreement is not a basis for a finding of abuse of discretion.

Similarly, EMC claims that the trial court failed to credit or comment on the testimony of their expert, Dr. Lehman. Contrary to this claim, however, paragraphs twelve and thirteen of the Court's Opinion are directly traceable to the testimony of Dr. Lehman. It is, therefore, clear that the Court did not fail to consider Dr. Lehman's testimony, but, rather, chose not to accept certain aspects of it.

The Court's failure to accept Dr. Lehman's opinion, that stress was not a factor in Chief Bowers' illness, appears to be the real challenge behind EMC's claim. Unfortunately for EMC, a finder of fact is not bound to accept an expert's opinion merely because a witness is qualified as an expert. As with any other witness, the finder of fact may accept or reject the testimony. *Green v. Schuylkill County Bd.*

*Of Assessment Appeals*, 772 A.2d 419, 424 (Pa. 2001) (the fact-finder is not constrained to accept the ultimate opinion of an expert merely because the witness is un rebutted and has provided some credible testimony).

In his opinion, Dr. Lehman recognized that Chief Bowers suffered from a number of ailments characterized by the American Heart Association and the American College of Cardiology as common risk factors. The substance of Dr. Lehman's opinion was that Chief Bowers developed coronary artery disease at a much younger age than he would have, had he not had the outlined risk factors. He further suggested that, in his opinion, job stress was not a factor in Chief Bowers' illness. He based his opinion on expert studies that indicate that stress was not among the indicated risk factors; he believed these studies were more persuasive than studies which indicated to the contrary. While he mentions two specific conferences, the reasons for his acceptance of one train of thought over the other were not convincing.

Additionally, it is also important to note the context in which Dr. Lehman's testimony was presented to the court. Dr. Lehman's testimony was not testimony presented at the initial hearing before the Township Board of Supervisors concerning whether payment of benefits under the Heart and Lung Act was appropriate. Rather, it was presented to the court by EMC at a hearing on the declaratory judgment action. Although a transcript of Dr. Lehman's testimony was presented to the court through stipulation, the relevance of this testimony is questionable. Since I have found, as a matter of law, that EMC, as insurance carrier for the Township, is subject to the same liabilities as Latimore Township arising from Chief Bowers' claim, see *Kohut v. W.C.A.B.*, 621 A.2d 1101, 1104 (Pa.Cmwlt. 1993), the finding of the Township Supervisors, that Chief Bowers is entitled to recover benefits, makes Dr. Lehman's testimony in the declaratory action matter irrelevant. After conducting a hearing on the merits of Chief Bowers' benefits claim, the Township determined that benefits were appropriate. This factual determination was not appealed. Accordingly, EMC is not entitled to a de novo hearing on the factual issues. The sole issue before the court on the declaratory judgment action was whether the Township's policy with EMC covered the benefits paid to Chief Bowers. Accordingly, EMC will not be granted relief with respect to issues raised concerning the testimony of Doctors Martin and Lehman.

Next, EMC challenges the Court's finding that Chief Bowers' claim was a claim under the Heart and Lung Act. One need not look any further than the transcript of the testimony taken on November 24, 2004, to discover the frivolous nature of this claim. Immediately prior to the receipt of testimony in this matter, the following exchange occurred:

Mr. Shear:<sup>2</sup> We stipulate to the amount of benefits. We stipulate to what the applicable insurance policy is. We stipulate that he received those **heart and lung benefits**. I guess that's about it.

Mr. Gault: And that the municipality awarded them pursuant to the public hearing.

Mr. Shear: Yes.

Transcript of testimony of November 24, 2004, page 3 (emphasis added). This stipulation reflected conversations at a pre-trial conference held on September 30, 2004. See September 30, 2004, Order of Court. In fact, EMC, in its Brief in Support of the Proposed Trial Motions, notes that "Latimore paid [Chief] Bowers \$31,137.00 pursuant to his claim for heart and lung benefits." Therefore, this claim is meritless.

Finally, EMC claims that the trial court erred in concluding that EMC argued that the policy did not provide coverage for claims under 53 P.S. § 637(b). This claim is equally frivolous. In its trial memorandum, EMC goes to great lengths to explain that the policy at issue only provides coverage for certain expenditures under 53 P.S. § 637(a). In conclusion, EMC argues that "[a]ny duty to identify Latimore for expenditures under the presumptions of 53 P.S. § 637(b) is beyond the scope of the insurance contract." EMC's Trial Memorandum, page 7. On December 22, 2004, EMC attempted to buttress this argument by submitting Suggested Conclusions of Law stating that "any obligation incurred by Latimore to provide benefits to [Chief] Bowers, under...the Heart and Lung Act, arose out of 53 P.S. § 637(b)." EMC's proposed Conclusions further suggest that the municipal liability insurance policy at issue "provides no coverage for any obligation incurred by Latimore to provide benefits to [Chief] Bowers, under the Heart and Lung Act [arising] out of 53 P.S.

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<sup>2</sup>Mr. Shear is counsel for EMC.

§ 637(b).” See EMC’s Suggested Findings of Fact filed December 22, 2004. Importantly, this Court did not conclude that EMC argued that it would never have to cover benefits under 53 P.S. § 637(b). Rather, it rejected EMC’s argument that the policy only provided coverage under 53 P.S. § 637(a). EMC’s current efforts to suggest an alternative argument for relief is both alarming and meritless.

EMC suggests that the policy language is clear and requires the Township to establish not only that the Township is legally obligated to pay benefits under the Heart and Lung Act, but also that payments made pursuant to the Act were for “injuries or illnesses suffered by” the claimant “in the performance of their duties.” EMC suggests that the policy unambiguously requires a two-layered test before benefits may be paid. When I initially ruled on this matter, I briefly summarized the principles of contract interpretation in Pennsylvania. Relying upon those principles, I found the terms of the contract to be ambiguous and, as a result, interpreted the insurance contract in favor of the insured. One need look no further than EMC’s Trial Memorandum to see that the policy language is reasonably susceptible to different interpretations and capable of being understood in more than one sense. See *Neuhard v. Travelers Insurance Co.*, 831 A.2d 602, 605 (Pa.Super. 2003). EMC’s Trial Memorandum suggests at least two interpretations of the policy language:

- (1) The policy requires that the claimant meet the two distinct criteria of a legal obligation under the Heart and Lung Act plus establish that the injuries or illnesses were suffered in the performance of their duties; and
- (2) The policy covers payments pursuant to the Heart and Lung Act only under Section 637(a) of the Act but not Section 637(b).

Although EMC may suggest that these interpretations are the same, the interpretations are contradictory with regard to at least one class of claimant, i.e., a claimant who suffered an illness in the performance of duties and filed a claim, which the Township may be legally obligated to pay, under Section 637(b) of the Heart and Lung Act. The ambiguity of the policy is magnified when considering the third alternative suggested by the Township which is that the policy provides coverage to the Township for any benefits which it is legally obligated to pay pursuant to the Heart and Lung Act.

For the reasons set forth in the Trial Opinion, I found that the policy was ambiguous and, therefore, must be interpreted in favor of the insured.

ORDER OF COURT

AND NOW, this 8th day of June, 2005, it is hereby Ordered that the Defendant's Post-trial Motions are denied. The Prothonotary is directed to enter judgment in this matter pursuant to the Order of Court dated December 22, 2004.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1164 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a stainless steel rod located on the South edge of Granite Schoolhouse Lane at corner of lands now or formerly of the Grantors herein, said lands being designated as Tract No. 1 on a final plan for Charles M. Frealing prepared by Adams County Surveyors on the 27th day of October, 1986, thence along the Southern edge of Granite Schoolhouse Lane, South 82 degrees 41 minutes 00 seconds East, 189.30 feet to a stainless steel rod located on the Southern edge of Granite Schoolhouse Lane and at corner of lands now or formerly of Harold Musser, thence along said same lands, South 2 degrees 27 minutes 10 seconds East 181.43 feet to a steel rod at corner of lands now or formerly of Josephine Feimster; thence by said same lands, North 82 degrees 41 minutes 00 seconds West, 189.30 feet to a steel rod located at corner of lands now or formerly of the Grantors herein; thence by said same lands, North 2 degrees 27 minutes 10 seconds West, 181.43 feet to a stainless steel rod located on the Southern edge of Granite Schoolhouse Lane, corner of lands now or formerly of the Grantors herein, the place of BEGINNING. CONTAINING 33,846 square feet.

The above referenced description is taken from a draft of survey prepared by Adams County Surveyors on behalf of Charles M. Frealing, dated the 27th day of October, 1986, and is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 45 at page 43, and designated as Lot No. 2.

BEING the same tract of land which Charles M. Frealing and Beatrice A. Frealing, a/k/a Beatrice L. Frealing, husband and wife, by their deed dated March 23, 1987, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 451 at page 1128, sold and conveyed unto Marsha J. Frealing.

Premises Being: 25 Granite Schoolhouse Lane, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Marsha J. Frealing** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-889 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a spike in the center of State highway leading from Aspers to Bendersville said spike being South 65 degrees East 300 feet from the Southeast corner of land sold this same date to Robert Eugene Taylor, et ux.; thence by other land of grantors through an iron pin set back along the line North 28 degrees 5 minutes East 200 feet to an iron pin; thence by the same South 65 degrees East 200 feet to an iron pin; thence by the same South 28 degrees 5 minutes West 200 feet through an iron pin set back along the line to a spike in the corner of said State Highway; thence in the center of said State Highway North 65 degrees West 200 feet to a spike in the center of said Highway, the place of BEGINNING. CONTAINING 146 Perches.

BEING the same premises which Kevin Allan Hamilton and Deborah Jean Hamilton, by Deed dated August 11, 2003 and recorded in the Recorder of Deeds of Adams County on August 21, 2003, in Deed Book 3260, Page 185, granted and conveyed unto Deborah Jean Hamilton.

Parcel #(29) F05-77

Premises Being: 528 Aspers-Bendersville Road, Aspers, PA 17304

SEIZED and taken into execution as the property of **Kevin Allan Hamilton & Deborah Jean Hamilton** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 27, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/13, 20 & 27

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 05-S-1034 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of February, 2006, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center line of Latimore Valley Road at corner of land now or formerly Daris M. Ditmer; thence in said Latimore Valley Road, South 05 degrees 00 minutes 00 seconds East, 151.71 feet to a point at corner of Lot No. 3 on the hereinafter referred to plan of lots; thence by said Lot No. 3 and by Lot No. 6 passing through a steel pin set back 25.57 feet from the last mentioned point, and also passing through a concrete monument set back 249.43 feet from the next mentioned point (as concrete monument marking the boundary line between Lot No. 3 and Lot No. 6), South 72 degrees 53 minutes 30 seconds West, 975.00 feet to a point at a corner of said Lot No. 6; thence continuing by said Lot No. 6, North 29 degrees 13 minutes 10 seconds West, 100.21 feet to a point; thence by same, South 72 degrees 53 minutes 30 seconds West, 325.00 feet to a point on line of land now or formerly of William J. Jurell; thence by said land now or late of William J. Jurell, North 12 degrees 16 minutes 46 seconds West, 529.20 feet to a steel pin in concrete monument on line of land now or formerly of Daris M. Ditmer; thence by said land now or late of Daris M. Ditmer, North 74 degrees 01 minutes 44 seconds East, 1,149.91 feet to a pipe found in edge of tree; thence continuing by said land now or formerly of Daris M. Ditmer, South 25 degrees 22 minutes 10 seconds East 464.89 feet to a corner post found; thence by same, and passing through a steel pin set back 25.98 feet from the next mentioned point, North 69 degrees 12 minutes 06 seconds East, 92.01 feet to a point in the centerline of Latimore Valley Road, the point and place of BEGINNING.

Being Known As: 1503 Latimore Valley Road, (Latimore Township) York Springs, PA 17372

Property ID No.: 23-J4-37

TITLE TO SAID PREMISES IS VESTED IN Roland D. Blevins and Michele L. Blevins, husband and wife by deed from Roland Blevins, also known as Roland D. Blevins and Michele L. Blevins, his wife dated 12/10/03 recorded 8/5/04 in Deed Book 3663 Page 143.

SEIZED and taken into execution as the property of **Ronald D. Blevins a/k/a Roland D. Blevins & Michele L. Blevins** and to be sold by me.

James W. Muller-Sheriff  
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 20, 2006, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

1/27, 2/3 & 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for GETTYSBURG HOTEL MANAGEMENT CORPORATION on January 18, 2006. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

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

1/27

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by G.M.I. RACING, 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, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

Craig A. Diehl, Esq., CPA  
3464 Trindle Road  
Camp Hill, PA 17011

1/27

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an application for registration of a fictitious name was filed on about 1/18/06 with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, for the conducting of a business under the fictitious name TIN SHED, with its principal office or place of business at 55 North Queen St., Littlestown, PA 17340. The names and addresses of all persons owning or interested in said business are: Cynthia and John Hankey, 55 North Queen St., Littlestown, PA 17340, and Marc and Valerie Gladhill, 453 Ewell Dr., Gettysburg, PA 17325, operating as Tin Shed.

1/27

## 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 WANDA L. LEHN, DEC'D**  
Late of Straban Township, Adams County, Pennsylvania  
Co-Executors: Ronald C. Lehn, 25 Easy Street, Littlestown, PA 17340; Cathy J. Carnac, 2225 Bear Den Road, Frederick, MD 21701  
Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF CARL VERNON OWINGS, JR., DEC'D**  
Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Stacy L. Owings, 118 Flickinger Road, Gettysburg, PA 17325  
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325
- ESTATE OF CHESTER H. REAM, DEC'D**  
Late of Hamilton Township, Adams County, Pennsylvania  
Administrators: Tena L. Wasbers, Troy A. Ream and Stacy L. Myers, c/o Morris & Vedder, 32 N. Duke St., P.O. Box 544, York, PA 17405  
Attorney: Rand A. Feder, Esq., Morris & Vedder, 32 N. Duke St., P.O. Box 544, York, PA 17405
- ESTATE OF CHRISTOPHER T. VAN-SCYOC, DEC'D**  
Late of Reading Township, Adams County, Pennsylvania  
Dellia Joan VanScyoc, c/o Miller & Shultis, P.C., Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331  
Attorney: Timothy J. Shultis, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331
- ESTATE OF G. RODGER WILDASIN a/k/a GEORGE RODGER WILDASIN, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executor: G. Michael Wildasin, c/o William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331  
Attorney: William W. Hafer, Esq., 215 Baltimore Street, Hanover, PA 17331

## SECOND PUBLICATION

- ESTATE OF GENE McCRAE ALBRIGHT, DEC'D**  
Late of the Borough of Arendtsville, Adams County, Pennsylvania  
Executor: Clark L. Fetters, 55 Gettysburg Street, P.O. Box 92, Arendtsville, PA 17303  
Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325
- ESTATE OF DONALD F. ALDRICH, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executrix: Sarah E. Aldrich, c/o 135 South Duke Street, York, PA 17403  
Attorney: Richard H. Mylin, III, Esq., 135 South Duke Street, York, PA 17403
- ESTATE OF ELLA NAOMI PASCOE, DEC'D**  
Late of the Borough of McSherrystown, Adams County, Pennsylvania  
Executrix: Judy Wickline, 405 Crouse Road, Littlestown, PA 17340  
Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325
- ESTATE OF CLIFFORD W. TAYLOR, DEC'D**  
Late of Menallen Township, Adams County, Pennsylvania  
Executrix: Arlene V. Briggs, 510 Brysonia Rd., Biglerville, PA 17307  
Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

- ESTATE OF PAUL G. BROWN, DEC'D**  
Late of Mt. Joy Township, Adams County, Pennsylvania  
Executor: Calvin D. Brown, 1360 Hoffman Home Road, Littlestown, PA 17340  
Attorney: John R. White, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325
- ESTATE OF RAYMOND MICHAEL DREW, DEC'D**  
Late of the Borough of Gettysburg, Adams County, Pennsylvania  
Executrix: Jennifer M. Whiteleather, 12803 Buckingham Drive, Bowie, MD 20715  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325
- ESTATE OF GERTRUDE M. GABEL, DEC'D**  
Late of Oxford Township, Adams County, Pennsylvania  
Executor: Lawrence L. Gamber, II, 218 DeGuy Avenue, Hanover, PA 17331  
Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331
- ESTATE OF WANDA A. WALKER, DEC'D**  
Late of Highland Township, Adams County, Pennsylvania  
Executrix: Linda Bergeron, 76 Knox Road, Gettysburg, PA 17325  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325
- ESTATE OF RUTH M. WINAND, DEC'D**  
Late of Menallen Township, Adams County, Pennsylvania  
Executrices: Darlene I. Weigle, P.O. Box 98, Biglerville, PA 17307; Allona K. Diltow, 2466 Berkshire Lane, Dover, PA 17315  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325



