

Adams County Legal Journal

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-769 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 19th day of January, 2007, 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, together with the improvements thereon erected, situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a p.k. nail located in Township of Route T-428 (Bowers Road) at the Southwestern corner of Lot No. 3 on the subdivision plan referred to below; thence by said Lot No. 3, and running through a steel rod located twenty-five (25) feet from the beginning of this line, South seventy-three (73) degrees thirty-one (31) minutes zero (00) seconds East, two hundred thirty-two and nine hundredths (232.09) feet to a steel rod at land of Ray Edwards Reichart; thence by said land of Reichart, South sixteen (16) degrees twenty-nine (29) minutes zero (00) seconds West, two hundred six and forty-five hundredths (206.45) feet to a steel rod at Lot No. 5 on the subdivision plan referred to below; thence by said Lot No. 5, North seventy-three (73) degrees thirty-one (31) minutes zero (00) seconds West, two hundred thirty-two and nine hundredths (232.09) feet to a steel rod at land of Glenn C. Bowers; thence by said

land of Bowers and crossing and running in the aforementioned Township Route T-428, North sixteen (16) degrees twenty-nine (29) minutes zero (00) seconds East, two hundred six and forty-five hundredths (206.45) feet to a p.k. nail, the place of BEGINNING. CONTAINING 1.100 acres and being known as Lot No. 4 on the subdivision plan referred to below.

The above description was taken from a subdivision plan prepared for Ray Edward Reichart by Adams County Surveyors dated February 16, 1988, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 49 at page 95.

BEING the same premises which Ray Edward Reichart and Nancy L. Reichart, husband and wife, by their deed dated May 27, 1988, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 490, page 386, granted and conveyed unto Charles E. Vance and Virginia H. Vance, husband and wife, as tenants of an estate by the entireties.

IT ALSO BEING the same premises which Charles E. Vance and Virginia H. Vance, husband and wife, by their deed dated September 14, 1992, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 648, page 125, granted and conveyed an undivided one-half (1/2) interest unto Charles E. Vance, and an undivided one-half (1/2) interest unto Virginia H. Vance, Grantors herein.

PARCEL IDENTIFICATION NO: H16-51A

Premises: 245 Bowers Road, Littlestown, PA 17340-9670, Mt. Joy Township, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN James E. Nickoles and Carol M. Nickoles, his wife, as Tenants by the Entireties, by Deed from Charles E. Vance, an undivided one-half interest and Virginia H. Vance, an undivided one-half interest, dated 09/18/1998, recorded 09/22/1998, in Deed Book 1666, page 29.

SEIZED and taken into execution as the property of **James E. Nickoles a/k/a James W. Nickoles a/k/a James E. Nickoles, Jr. & Carol M. Nickoles a/k/a Carol M. Luckenbaugh** and to be sold by me.

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

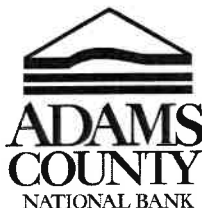
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 9, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

11/17, 22 & 12/1

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IN THE COURT OF
COMMON PLEAS
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION--LAW
NO. 06-SU-1025
Action to Quiet Title
1004 Baltimore Pike
Gettysburg, PA 17325

MIRIAM R. LENGEL and LINDA C.
HOFFMAN, Plaintiffs

vs.

WILLIAM HENRY THOMAS, MARY
THOMAS, GEORGE HEMLER, HELEN
HEMLER, JUNE HEMLER, DAVID
MCCULLOUGH, MARIE MCCULLOUGH,
WOODROW ECHERT, ETHEL
CHRIST, EDWARD CHRIST, ROGER
THOMAS, HATTIE WAGNER, JOSEPH
WAGNER, MIRIAM SANDERS, JOHN
SANDERS, JOSEPH SANDERS,
WILLIAM SANDERS, SIMON SANDERS,
FRANCIS THOMAS, BEULAH THOMAS,
LUCY ORNER, GEORGE ORNER,
FELIX YINGLING and THEODORE
PIUS THOMAS, Their heirs, administrators,
successors and assigns,
Defendants

TO: William Henry Thomas, Mary
Thomas, George Hemler, Helen Hemler,
June Hemler, David McCullough, Marie
McCullough, Woodrow Echert, Ethel
Christ, Edward Christ, Roger Thomas,
Hattie Wagner, Joseph Wagner, Miriam
Sanders, John Sanders, Joseph
Sanders, William Sanders, Simon
Sanders, Francis Thomas, Beulah
Thomas, Lucy Orner, George Orner,
Felix Yingling, Theodore Pius Thomas,
their heirs, administrators, successors
and assigns.

You are notified that an Order has
been entered on November 1, 2006,
directing that within thirty (30) days after
this publication, you shall commence an
Action in Ejectment or other appropriate
action against the Plaintiffs above to
assert any claim you may have in and to
the lands herein described or be forever
barred from asserting any right, lien, title
or interest inconsistent with the interest
or claim set forth in Plaintiffs' Complaint
with respect to the land herein described:

*ALL that tract of land known as 1004
Baltimore Pike, Gettysburg, Pennsylvania,
Cumberland Township, Adams County,
more particularly bounded and described
as follows:*

FRONTING on the Gettysburg and
Petersburg Turnpike, now a state high-
way, and adjoining lands now or former-
ly of James Leister on the North, lands
now or formerly of William M. Bushman
on the East, and lot now or formerly of
Harvey Bushman on the South. CON-
TAINING 3 acres, more or less.

BEING THE SAME WHICH Miriam R.
Lengel and Mark, her husband, by a
Deed dated January 21, 2004, and
recorded in the Office of the Recorder of
Deeds of Adams County, Pennsylvania
in Record Book 3468 at page 86, sold
and conveyed unto Miriam R. Lengel and
Linda C. Hoffman.

ALSO BEING THE SAME WHICH
Jennie Cox, widow, Emma Reaver,
widow, Annie Marsden and Arthur
Marsden, her husband, David Francis
Thomas, all of Gettysburg, Adams
County, Pennsylvania, and William
Henry Thomas and Mary Thomas, his
wife, of Wellsville, New York, Samuel
Thomas and Belva Thomas, his wife, of
Chambersburg, Pennsylvania, children
and heirs of Joseph I. Thomas,
deceased; James Hemler and Mary
Hemler, his wife, of Gettysburg,
Pennsylvania, George Hemler, a single
man, of Alexandria, Virginia, Helen
Hemler, widow of Charles Hemler, of
York, Pennsylvania, June Hemler, widow
of Leo Hemler, of Seattle, Washington,
Dora Riley and James Riley, her hus-
band, of Littlestown, Pennsylvania, chil-
dren and heirs of Mary Hemler,
deceased; Mary Stull and _____ (sic)
Stull, her husband, Rose Ansgruber,
widow, daughters of Henry Edward
Thomas, deceased; Marie McCullough
and David McCullough of Gettysburg,
Pennsylvania, and children of Ella
Dougherty; Woodrow Echert of
Waynesboro, Pennsylvania, Ethel Christ
and Edward Christ, her husband, of
Gettysburg, Pennsylvania, children and
heirs of Ida Echert, deceased; Roger
Thomas and _____ (sic) Thomas, his
wife, son of Paul Thomas, deceased,
Ruth Thomas, widow of Leo Thomas.
Deceased. And Minnie M. Thomas,
widow of Wilbur Thomas, deceased, all
of Gettysburg, Pennsylvania, being the
children and heirs of Henry Edward
Thomas, deceased; Hattie Wagner and
Joseph Wagner, her husband, Charles
Sanders and Miriam Sanders, his wife,
John Sanders, single man, Joseph

Sanders, single man, William Sanders,
single man, Simon Sanders, single man,
all of Gettysburg, Pennsylvania, children
and heirs of Sarah Sanders, deceased;
Francis Thomas and Beulah Thomas, his
wife, of Biglerville, Pennsylvania; Lucy
Orner and George Orner, her husband,
of Brysonia, Pa., children and heirs of
Francis Thomas, deceased; George
Smith and Bessie Smith, his wife, of
Gettysburg, Pennsylvania, son of Lydia
Smith, deceased; and Ann Yingling and
Felix Yingling, her husband, Amanda E.
Fetrow, widow of Arthur Fetrow, and
Theodore Pius Thomas, all of Gettysburg,
Pennsylvania; being the heirs of William
F. Thomas, deceased, late of Gettysburg,
Adams County, Pennsylvania, parties of
the first part, granted and conveyed unto
John A. Thomas and Roger B. Thomas,
of the Borough of Temple, County of
Berks and Commonwealth of
Pennsylvania, as Joint Tenants with
Right of Survivorship, by a deed dated
September 12, 1961, and recorded in the
aforementioned Recorder's Office in
Deed Book 244 at page 855.

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

12/1

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that
Articles of Incorporation were filed with
the Department of State, Commonwealth
of Pennsylvania, on October 5, 2006, for
the purpose of obtaining a Certificate of
Incorporation for a proposed business
corporation pursuant to the provisions of
the Business Corporation Law of the
Commonwealth of Pennsylvania, Act of
December 21, 1988, P.L. 1444, No. 177,
as amended and supplemented.

The name of the corporation is SIX-
GUN MOTORSPORTS, INC., and the
address of the corporation's current reg-
istered office is 3024 Centennial Road,
Hanover, Pennsylvania 17331.

Elinor Albright Robert, Esq.
Solicitor

12/1

WARNER VS. UTERMAHLEN

1. A new trial should be granted only where the verdict is so contrary to the evidence as to shock one's sense of justice; a new trial should not be granted where the evidence is conflicting or where the trial judge would have reached a different conclusion on the same facts.

2. A jury verdict is set aside as inadequate when it appears that the verdict was the product of passion, prejudice, partiality or corruption or where it clearly appears from uncontradicted evidence that the amount of the verdict bears no reasonable relation to the loss suffered by the plaintiff.

3. Pennsylvania appellate courts have instructed that jury verdicts are entitled to great deference and should be reversed on grounds of inadequacy only where the injustice of the verdict stands forth like a beacon.

4. A jury is not required to award a plaintiff any amount of money if it believes that the injury plaintiff suffered was insignificant. "Insignificant" means the jury could have concluded that any injury plaintiff suffered did not result in *compensable* pain and suffering.

5. Not every injury is serious enough to warrant compensation even though there may be some pain attached.

6. Where a defendant concedes liability and his or her expert concedes injury resulting from the accident that would reasonably be expected to cause compensable pain and suffering, the jury's verdict for the defendant is against the weight of the evidence.

7. There are two primary considerations in weighing whether a zero verdict for pain and suffering shocks one's conscience: 1) whether there is a dispute as to a defendant's negligence causing some injury to the plaintiff, and 2) the severity of the injury.

8. As to damages for pain and suffering, no precise measurement exists – the guiding standard entails a determination of fairness and reasonableness.

9. A plaintiff in a civil action has the duty and burden to establish by proper testimony the damages which he claims to have sustained. The amount and items of pecuniary damage cannot be presumed but must be proved by the establishment of facts.

10. There is no legal support for (the defendant's) argument that non-jurors must subsequently be able to calculate the award with mathematical certainty or otherwise the award is speculative. To the contrary, appellate opinions suggest that, where sufficient evidence exists, it is improper to guess as to the manner of a jury's deliberations.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CIVIL ACTION NO. 03-S-1145. JENNIFER
H. WARNER VS. MARY UTERMAHLEN.

Leah B. Graff, Esq., for Plaintiff

Brigid Q. Alford, Esq., for Defendant

George, J., March 2, 2006

OPINION

This matter comes before the Court on both the Plaintiff and Defendant's post-trial motions. The motions challenge the verdict entered by a jury on September 1, 2005, wherein the jury awarded the Plaintiff, Jennifer H. Warner ("Warner"), past lost wages in the

amount of \$800, but failed to award any past non-economic damages (pain and suffering). Warner requests this Court to grant a new trial limited solely to the issue of damages. On the other hand, the Defendant, Mary Utermahlen (“Utermahlen”), requests this Court to enter a directed verdict in her favor striking the jury’s award of \$800 for past lost wages.

The accident that forms the basis for this litigation occurred on September 29, 2002. On that date, Warner approached a parked Jeep Grand Cherokee on North Stratton Street in Gettysburg Borough. She was standing near the left-rear passenger door, which was open, while she attempted to remove furniture from the rear of the vehicle. At the same time, Utermahlen, who was attempting to park her vehicle in an adjacent parking space, inadvertently struck the open passenger door of the Jeep Grand Cherokee. The door of the Jeep Grand Cherokee struck Warner pinning her between the door and the vehicle itself. Following the accident, Warner was transported by ambulance to Gettysburg Hospital where she complained of injury to both legs. She was released from the Hospital that same day.

At trial, Utermahlen did not seriously contest her negligence. Accordingly, the jury properly determined that Utermahlen’s negligence was a factual cause in injuring Warner. However, the total damages that the jury awarded was only in the amount of \$800. As previously indicated, these damages were itemized on the verdict form and consisted of \$800 in past lost earnings and a zero award for non-economic damages. Warner, in her post-trial motion, suggests that she is entitled to a new trial based on a miscarriage of justice claim. Utermahlen counters by claiming that it is within the province of the jury to determine the existence of compensable pain, and the jury has spoken. Utermahlen further claims that there is a paucity of evidence concerning lost wages and, thus, the jury’s award of lost wages is speculative and, therefore, improper.

Warner’s Motion for New Trial Limited to Damages

“The decision to grant a new trial lies within the discretion of the trial court.” *Martin v. Evans*, 711 A.2d 458, 461 (Pa. 1998). “[A] new trial should be granted only where the verdict is so contrary to the evidence as to shock one’s sense of justice[; a] new trial should not be granted where the evidence is conflicting [or] where the trial judge would have reached a different conclusion on the same facts.”

Henery v. Shadle, 661 A.2d 439, 441 (Pa.Super. 1995) allocatur denied, 668 A.2d 1133 (1995). “A jury verdict is set aside as inadequate when it appears [that the verdict] was the product of passion, prejudice, partiality or corruption or where it clearly appears from uncontradicted evidence that the amount of the verdict bears no reasonable relation to the loss suffered by the plaintiff.” *Kiser v. Schulte*, 648 A.2d 1, 4 (Pa. 1994) (citing *Elza v. Chovan*, 152 A.2d 238, 240 (Pa. 1959)). Pennsylvania appellate courts have instructed that jury verdicts are entitled to great deference and should be reversed on grounds of inadequacy only where “the injustice of the verdict ‘stands forth like a beacon.’” *Id.* (quoting *Elza*, cited above). With this in mind, I will address Warner’s claim that the jury committed an injustice by not awarding damages for pain and suffering despite its finding of liability on the part of Utermahlen.

“The existence of compensable pain is ‘an issue of credibility and juries must believe that plaintiffs suffered pain before they compensate for that pain.’” *Lombardo v. DeLeon*, 828 A.2d 372 (Pa.Super. 2003) (quoting *Davis v. Mullen*, 773 A.2d 764, 769 (Pa. 2001)). “[A] jury is not required to award a plaintiff any amount of [money] if it believes that [the] injury plaintiff suffered was insignificant.” *Majczyk v. Oesch*, 789 A.2d 717, 724 (Pa.Super. 2001). “Insignificant” means “the jury could have concluded that any injury plaintiff suffered did not result in *compensable* pain and suffering.” *Lombardo*, 828 A.2d at 375. “While a jury may conclude that a plaintiff has suffered some painful inconvenience for a few days or weeks after the accident, it may also conclude that the discomfort was the sort of ‘transient rub of life for which compensation is not warranted.’” *Id.* at 374 (quoting *Majczyk* 789 A.2d at 724). Thus, *Majczyk* and its progeny teach us that not every injury is serious enough to warrant compensation even though there may be some pain attached.

On the other hand, a line of appellate authority instructs “that there are injuries to which human experience teaches there is accompanying pain.” *Boggavarapu v. Ponist*, 542 A.2d 516, 518 (Pa. 1988); *Neison v. Hines*, 653 A.2d 634 (Pa. 1995). These cases generally stand for the proposition that “where a defendant concedes liability and his or her expert concedes injury resulting from the accident that would reasonably be expected to cause compensable pain and suffering, the jury’s verdict [for the defendant] is against the

weight of the evidence... ." See *Majczyk*, 789 A.2d at 722. Thus, while a jury is entitled to reject any and all evidence, it may only do so "up until the point at which the verdict is so disproportionate to the uncontested evidence as to defy common sense and logic." *Andrews v. Jackson*, 800 A.2d 959, 962 (Pa.Super. 2002) (quoting *Neison*, 653 A.2d at 637).

Based on these cases, there are two primary considerations in weighing whether a zero verdict for pain and suffering shocks one's conscience: 1) whether there is a dispute as to a defendant's negligence causing some injury to the plaintiff,¹ and 2) the severity of the injury.² The key to resolving the first issue is apparent from the face of the record; however, the determination of the second issue should be left to the jury. See *Davis*, 773 A.2d 764, 768-69 (Pa. 2001). "As to damages for pain and suffering, no precise measurement exists—the guiding standard entails a determination of fairness and reasonableness." *K.H. v. J.R.*, 826 A.2d 863, 875 (Pa. 2003). For this reason, awards relating to pain and suffering are "peculiarly within the discretion of the jury." *Id.*

Undoubtedly, there is trial evidence supporting the proposition that Warner suffered injuries which, human experience teaches us, are normally accompanied by pain:³

¹Obviously, where experts agree on injury, there is no dispute and a new trial is warranted. See *Neison*, cited above. It is not necessary, however, for a party to present contrary expert testimony in order to contest the existence of liability or injury. See *Kennedy v. Sell*, 816 A.2d 1153 (Pa.Super. 2003). In *Kennedy*, the Superior Court opined that the defense does not even have to call a defense expert if it can successfully challenge the credibility of the plaintiff and his doctors on cross-examination.

²Compare *Boggavarapu*, cited above, (zero award for pain and suffering from a dog bite upheld on appeal) with *Zeigler v. Detweiler*, 835 A.2d 764 (Pa.Super. 2003) (new trial proper following zero award for pain and suffering where factual background indicated a lengthy course of treatment including back surgery and epidural injections to control pain).

³The Supreme Court has cautioned trial courts to explain why a jury's verdict was unjust before granting a new trial. *Davis v. Mullen*, 773 A.2d 764, 768 (Pa. 2001). "[A] trial judge's impression and analysis of that evidence will be fully articulated, leaving no doubt, at least in his mind, that the evidence and the verdict on that evidence represent an injustice." *Id.* (citing *Boggavarapu v. Ponist*, 542 A.2d 516, 519 (Pa. 1988)). An explanation of the court's decision will aid the appellate court's review; however, it is important that the Appellate court recognize that "[t]he responsibility for controlling the amount of a verdict is vested with the trial court, which is in a better position than an appellate court to assess the facts in the context of the atmosphere surrounding the case and thereby to ensure justice." *K.H. v. J.R.*, 826 A.2d 863, 875 (Pa. 2003).

- 1) Warner testified that she suffered pain during the occurrence of the accident;
- 2) Warner was transported by ambulance to the emergency room;
- 3) Warner, as well as other witnesses, presented testimony concerning the assistance she needed in order to move around her home;
- 4) Warner claimed to have lost work over several weeks;
- 5) Warner, as well as other witnesses, indicated that she was provided crutches by medical professionals to assist her ability to bear weight;
- 6) Warner consulted with medical professionals on approximately thirteen occasions between September 29, 2002, and January 8, 2003, (see Plaintiff's Exhibit 5);
- 7) Warner complained of severe pain for some period of time following the accident and was depressed due to the pain;
- 8) Warner was prescribed pain medication; and
- 9) Photographs introduced at trial and taken approximately one week after the accident reveal bruising to both knees and Warner's right thigh.

On the other hand, the following evidence suggests that a zero verdict was not unreasonable:

- 1) the accident was relatively low impact with the vehicle traveling less than five miles per hour;
- 2) Warner was discharged from the hospital on the same day of the accident, and was not provided crutches by medical personnel at the time of her release;
- 3) Within six days of the accident, Warner completed an application for employment wherein she indicated that she was able to lift up to fifty pounds with or without reasonable accommodations;
- 4) That same application, which was signed by Warner, indicated that she was available full-time, weekends, overtime, everyday open through close;
- 5) Within a month after the accident, Warner completed an acknowledgement form with her new employer that indicated that when lifting materials she will "squat down, grasp the load with my hands, pull the load close to my body and lift with my legs";

- 6) In response to Interrogatories from Utermahlen's counsel, Warner indicated that she has never been advised by a medical professional that she would need future medical treatment as a result of the accident;
- 7) Contrary to her testimony at trial, Warner previously indicated in Answers to Interrogatories that no life pleasures or activities were lost as a result of her alleged injuries;
- 8) Although Warner was prescribed the pain medication Vioxx, she had previously been prescribed and was using Vioxx prior to the accident;
- 9) Warner was advised by her doctor that she may return to work sixteen days after the accident.
- 10) Observations by her treating physician eight days after the accident indicated a slight swelling and the presence of "black and blue" marks; additionally, Warner indicated that she could walk with "minimal discomfort"; and
- 11) Warner's treating physician testified that the bruising had "essentially resolved" within two weeks of the accident, that her left knee was stable, and she did not make any complaints about her right knee.

Although the defense did not contest negligence or present medical experts to challenge Warner's claim, it did not concede that there were compensable injuries from the accident. Defense counsel tactfully challenged both Warner and her expert on cross-examination and effectively discredited Warner's claims. For instance, although Warner claimed that she was "stuck on the couch for two weeks," Trial Transcript, page 25, defense counsel elicited evidence from Warner that six days after the accident she was able to lift fifty pounds and immediately available for work. Defense Exhibit 1. It certainly is within the realm of possibility that the jury considered Warner's testimony to be exaggerated. Warner was further discredited by a cross-examination which implied behavior after the accident consistent with posturing for future litigation, i.e., Warner testified that she photographed her injuries with litigation in mind even before her initial consultation with the treating physician.

Certainly, there is undisputed evidence of injury. The photographs introduced as exhibits clearly depict bruising to Warner's legs. However, as noted above, injury in and of itself does not justify

the grant of a new trial. Rather, the injuries resulting from Utermahlen's negligence must be compensable injury. *Majczyk*, cited above. The jury is not obliged to believe that a plaintiff's injury caused the pain alleged, nor are they required to award damages if the injury suffered was insignificant. *Id.* at 724.

In order to determine whether Warner's injury is the sort of uncompensable injury that is a "transient rub of life", or, on the other hand, an injury "to which human experience teaches there is accompanying pain", I have reviewed, at length, the factual backgrounds of the appellate cases that developed the law in this area. That search revealed *Kennedy v. Sell*, a case remarkably similar to the current factual pattern. *Kennedy v. Sell*, 816 A.2d 1153 (Pa.Super. 2003)

In *Kennedy*, the plaintiff was a passenger in a car operated by the defendant. When the defendant ran a red traffic light, the plaintiff's vehicle was struck allegedly causing injury to the plaintiff. *Id.* at 1154. At trial, the plaintiff called a single medical expert who testified concerning contusions on the plaintiff's leg, buttocks and shoulder. *Id.* at 1155. The doctor further indicated that the plaintiff was unable to elevate his arm and that he had ordered the plaintiff to cease working. *Id.* Approximately two months after the accident, the plaintiff advised his doctor that he no longer had pain and he was permitted to return to work. *Id.* As in this case, the defendant in *Kennedy* did not call a medical expert; however, he called a subsequent employer who indicated that Kennedy never mentioned injuries on his application nor complained of injury or pain at work. Based on this record, the Superior Court found that an award of zero damages was appropriate.

While I do not suggest that the factual background in *Kennedy* is identical to the facts in the present case, the facts in *Kennedy* are important to emphasize that obvious injury consisting of bruising, and accompanied by a brief loss of work, are not sufficient to conclude that the jury's verdict as unconscionable. As in *Kennedy*, the current jury was free to conclude that Warner's only objective injury was bruising. Similarly, the jury was free to believe that Warner's subsequent brief follow-ups with the medical professionals were based upon exaggerated subjective claims. Given that defense counsel effectively pointed out that parts of Warner's testimony were suspect, the jury was certainly within its rights to doubt Warner's claim

of pain. Thus, I am unable to find that the jury's determination in this matter was irrational.

While an award of minimal damages for pain and suffering may have resulted if this Court had been the fact finder in this particular matter, I may not substitute my judgments for that of the fact finder. See generally *Harman ex rel. Harman v. Borah*, 756 A.2d 1116 (Pa. 2000). As is clearly enunciated by our appellate courts, the existence of compensable pain is an issue of credibility for the jury. After hearing the evidence in this trial, the jury has spoken. Based upon my review of the evidence as presented at trial, it does not shock my sense of justice. As summarized by the Superior Court in *Kennedy*: "We have no trouble classifying a bruise as a transient rub of life...[w]e shudder to imagine the state of the trial courts if every bruise given and received became a compensable injury and the subject of a law suit." *Kennedy*, 816 A.2d at 1157. As in *Kennedy*, Warner is not entitled to relief from the jury's verdict.

Utermahlen's Request for a Directed Verdict on the Issue of Past Lost Wages

Utermahlen asks the Court to vacate the jury's award of past lost wages alleging that the award of damages was based upon speculation and conjecture. A request for judgment notwithstanding the verdict challenges the "sufficiency of the plaintiff's evidence and may be entered only in cases where it is clear that the plaintiff has not established the cause of action..." *Shay v. Flight C Helicopter Serv's, Inc.*, 822 A.2d 1, 13 (Pa.Super. 2003) (quoting *Parker v. Freilich*, 803 A.2d 738, 744-45 (Pa.Super. 2002)). In making this determination, the verdict winner "must be given the benefit of all reasonable inferences arising from the evidence." *Id.* The moving party may only be granted relief where the "facts and circumstances compel the conclusion" that the plaintiff has not carried his or her burden of proof. *Id.*

It is beyond dispute that a plaintiff in a civil action "has the duty and burden to establish by proper testimony the damages which he has claims to have sustained." *Gordon v. Trovato*, 338 A.2d 653, 654 (Pa.Super. 1975) (citing *Link v. Highway Express Lines, Inc.*, 282 A.2d 727, 728 (1971)). "The amount and items of pecuniary damage cannot be presumed but must be proved by the establishment of facts." *Id.* "It is the burden of the plaintiff to establish by [sufficient]

evidence such facts as will furnish a [proper] basis for the legal assessment of damages according to some definite and legal rule." *Id.*

At trial, Warner testified that she was employed by the Music and Art Center in Frederick at the time of the accident. Her testimony concerning the hours and rate of pay was limited to the following:

Q. What was your rate of pay there?

A. I think it was about \$9.50 an hour.

Q. Was it a forty-hour week?

A. It was by the time I was there. It was during busy season we had to do eight hours overtime a week mandatory.

Q. That was every week?

A. Yes.

Q. Was that paid time and a half?

A. Yes.

Trial Transcript, page 19. Warner did not testify how many weeks she missed as a result of the injury caused by Utermahlen. Her testimony was supplemented, however, by the testimony of Warner's expert witness, Dr. Raup, wherein he indicated that he allowed her to return to work without restrictions sixteen days after the accident. Raup Deposition, pages 31-32.

Utermahlen argues that there is a lack of critical evidence necessary to support an award of past lost wages. While I agree that evidence in this regard is sparse, I do not reach the conclusion that Utermahlen suggests. Specifically, viewing the evidence in favor of the verdict winner, I find that there is evidence establishing that Warner missed over two weeks of work due to her injury; each week consisted of forty hours regular time and eight hours overtime. Warner's testimony further establishes that her regular hourly rate was \$9.50 and her overtime hourly rate was \$14.25. In *Pratt v. Stein*, the Superior Court found almost identical testimony to be sufficient to support an award of past lost wages. See generally *Pratt v. Stein*, 444 A.2d 674 (Pa.Super. 1982). Given this authority, as well as evidence elicited at trial, I find that sufficient data was available for the jury to have awarded Warner past lost wages.

In her brief, Utermahlen undertakes a mathematical examination of the evidence referenced above to conclude that the jury's verdict in and of itself is evidence of speculation, since the award is based

on 84.21 hours of lost work determined at \$9.50 per hour. Utermahlen's calculation is somewhat misleading in that it fails to take into account the higher overtime wage rate referenced in her testimony. More importantly, Utermahlen's presupposition that lost wages must be calculated to a mathematical certainty has no factual or legal basis.

Undoubtedly, trial testimony is sufficient to support a finding that Warner missed more than 84.31 hours of work due to her injuries (16 days x 8 hours per day = 96 hours). Of course, the jury may have found fewer hours since there is an indication that on at least one of the days during the two-week period that she claimed to have been working, she was conducting other personal business, i.e., completing an application for new employment on October 5, 2002. Thus, the jury very well could have concluded that while some loss of work was legitimately related to her injury, other loss of work may have resulted from what the jury determined to be "exaggerated" claims of injury or the exploration of other employment opportunities. The latter, of course, would not be Utermahlen's responsibility. Neither I, nor the parties, are able to presume what happened in the jury room when the jurors deliberated toward their verdict. I am, however, able to say with certainty that evidence presented by the verdict winner supports an award of lost wages of \$800, if not more.⁴ Obviously, there are innumerable possibilities as to the determination made by the jury. On the other hand, there is no legal support for Utermahlen's argument that non-jurors must subsequently be able to calculate the award with mathematical certainty or otherwise the award is speculative. To the contrary, appellate opinions suggest that, where sufficient evidence exists, it is improper to guess as to the manner of a jury's deliberations. See *Kaufman v. Campos*, 827 A.2d 1209, 1213 (Pa.Super. 2003).

⁴ Warner has not challenged the insufficiency of her lost wages award. It would appear, based upon the trial testimony, that her claim would have the same merit as the claim currently raised by Utermahlen. However, her claim would also suffer from the same defect. Absent a stipulation as to the exact amount of past wage loss, the parties have put the amount of wage loss at issue. They cannot now complain that the amount of lost wages awarded by the jury does not fit into their suggested mathematical formula.

For the foregoing reasons, the attached Order is entered.⁵

ORDER

AND NOW, this 2nd day of March, 2006, the Plaintiff's Post-trial Motion for a New Trial is denied. It is further Ordered that the Defendant's Motion for Directed Verdict is denied. The Adams County Prothonotary's Office is directed to enter judgment in favor of the Plaintiff, Jennifer H. Warner, and against the Defendant, Mary Utermahlen, in the amount of \$800.

⁵ Warner suggests that an award of lost wages necessarily supports a finding of compensable injuries in considering the jury's zero award for pain and suffering. I do not agree. The jury may very well have concluded that Warner's work restrictions were the result of a cautious practice of medicine by her treating physician, but were not supported by actual compensable injury suffered by Warner. Thus, while Utermahlen may be responsible for Warner's loss of work due to restrictions placed on her as a result of the accident, it does not automatically follow that Warner's injury was significant. Courts have reached the same conclusion when considering an identical argument in the context of suggesting compensable pain is necessarily present where there are verified medical bills. See *Davis v. Mullen*, cited above.

Moreover, Utermahlen correctly points out that Warner did not object to this Court's charge to the jury that damages for past lost earnings and past non-economic damages were separate considerations and the award of one does not necessarily lead to the award of the other. Trial Transcript, pages 108-109. In light of the fact that Warner failed to object to this instruction, any claim of inconsistency in the verdict is waived. See *Brown v. Philadelphia Tribune Co.*, 668 A.2d 159, 162 (Pa.Super. 1995).

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 DORA MAE HARTMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Timothy D. Pyles, 16 Pheasant Trail, Orrtanna, PA 17353

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

ESTATE OF AMY K. HERMAN a/k/a AMY KATHRYN HERMAN, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executors: Joan C. Kump, 405 Rupp Road, Gettysburg, PA 17325; Jay A. Herman, 277 Schoolhouse Road, Aspers, PA 17304

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

ESTATE OF JANE D. LOVEJOY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: John H. Koons, 35 Easy Street, Littlestown, PA 17340; Samuel M. Feeser, 2723 Blacks Schoolhouse Road, Taneytown, MD 21787

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

SECOND PUBLICATION

ESTATE OF ERVIN LUTHER BAUM, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Eldon L. Baum, 4930 Baltimore Pike, Littlestown, PA 17340

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

ESTATE OF CLAIR J. LAUGHMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sally J. Harrell, 28 Tracey Road, Hanover, PA 17331

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

ESTATE OF MELVIN L. MILLER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Stephen T. Miller, 3788 Carlisle Road, Gardners, PA 17324; Gregory A. Miller, 24 Victory Church Road, Gardners, PA 17324; Susan E. Stolzhus, Now Susan E. Altice, 1916 Upper Bermudian Road, Gardners, PA 17324

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

ESTATE OF GEORGE E. SCHRADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executor: Lonny P. Schrade, 40 Labor Camp Road, Gardners, PA 17324

Co-Executrix: Bonnie E. Schrade, 17 East Orange Street, Mt. Holly Springs, PA 17065

Attorney: David A. Baric, Esq., O'Brien, Baric & Scherer, 19 West South Street, Carlisle, PA 17013

THIRD PUBLICATION

ESTATE OF DONALD E. BOLLINGER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administratrix: Sheryl L. Jackson, 90 Red Oak Lane, Gettysburg, PA 17325

ESTATE OF MILDRED L. COLLINS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Barbara M. Collins, 85 Kindig Road, Littlestown, PA 17340

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

ESTATE OF MARTHA M. SELLERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Tom Ferrance, 7135 Hershey Road, Spring Grove, PA 17362

Attorney: Nathaniel W. Boyd, IV, Esq., 23 East Princess Street, York, PA 17403

ESTATE OF MERLE D. SHINDLEDECKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Don J. Flax, 37 Wood Duck Drive, Ocean Pines, MD 21811

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

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—DIVORCE
CASE NO. 06-S-1264

BETTIE M. DRIVER, Plaintiff

vs.

ALBERT EDWARD DRIVER, III,
Defendant

NOTICE TO DEFEND AND
CLAIM RIGHTS

TO: Albert Edward Driver, III

You have been sued in the court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the Court. A judgment may also be entered against you for any other claim or relief requested in these papers by the Plaintiff. You may lose money or property or other rights important to you, including custody or visitation of your children.

When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary at Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania 17325.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, MARITAL PROPERTY, COUNSEL FEES OR EXPENSES BEFORE THE FINAL DECREE OF DIVORCE OR ANNULMENT IS ENTERED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

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

County Referral Office
Adams County Courthouse
111 - 117 Baltimore Street
Gettysburg, PA 17325
(717) 334-6781

12/1

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—DIVORCE
CASE NO. 06-S-1264

BETTIE M. DRIVER, Plaintiff

vs.

ALBERT EDWARD DRIVER, III,
Defendant

NOTICE OF INTENTION TO REQUEST
ENTRY OF SECTION 3301(d)
DIVORCE DECREE

TO: Albert Edward Driver, III

You have been sued in an action for divorce. You have failed to answer the complaint or file a counter-affidavit to the §3301(d) affidavit. Therefore, on or after December 15, 2006, the other party can request the court to enter a final decree in divorce.

If you do not file with the prothonotary of the court an answer with your signature notarized or verified or a counter-affidavit by the above date, the court can enter a final decree in divorce. A counter-affidavit which you may file with the Prothonotary of the Court is attached to this Notice.

Unless you have already filed with the court a written claim for economic relief, you must do so by the above date or the court may grant the divorce and you will lose forever the right to ask for economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.

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

County Referral Office
Adams County Courthouse
111 - 117 Baltimore Street
Gettysburg, PA 17325
(717) 334-6781

12/1

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—DIVORCE
CASE NO. 06-S-1264

BETTIE M. DRIVER, Plaintiff

vs.

ALBERT EDWARD DRIVER, III,
Defendant

COUNTER-AFFIDAVIT UNDER
SECTION 3301(d) OF THE
DIVORCE CODE

1. Check either (a) or (b):

- _____ (a) I do not oppose the entry of a divorce decree.
- _____ (b) I oppose the entry of a divorce decree because

(Check (i), (ii), or both):

- _____ (i) The parties to this action have not lived separate and apart for a period of at least two (2) years.
- _____ (ii) The marriage is not irretrievably broken.

2. Check either (a) or (b):

- _____ (a) I do not wish to make any claims for economic relief. I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if I do not claim them before a divorce is granted.

- _____ (b) I wish to claim economic relief which may include alimony, division of property, lawyer's fees or expenses or other important rights.

I understand that in addition to checking (b) above, I must also file all of my economic claims with the Prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the Divorce Decree may be entered without further notice to me, and I shall be unable thereafter to file any economic claims.

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: _____
Albert Edward Driver, III

NOTICE: IF YOU DO NOT WISH TO OPPOSE THE ENTRY OF A DIVORCE DECREE AND YOU DO NOT WISH TO MAKE ANY CLAIM FOR ECONOMIC RELIEF, YOU SHOULD NOT FILE THIS COUNTER-AFFIDAVIT.

12/1

Adams County Legal Journal

Vol. 48

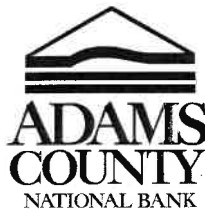
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IN THIS ISSUE

ADAMS CO. HOUSING AUTHORITY VS. THOMAS ET AL

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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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 11/27/06, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of QUIXOTIC INFLUENCE, with its principal place of business at 218 East Chestnut St., Hanover, PA 17331. The names and addresses of the persons owning or interested in said business are Matt Hitz, residing at 1125 Harney Rd., Littlestown, PA 17340. The character or nature of the business is screen printing of t-shirts for sale on and offline (the Internet).

12/8

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW NO. 2006-S-577 Action to Quiet Title

TODD R. REAMER, single, Plaintiff vs.

COMMONWEALTH OF PENNSYLVANIA, WILLIAM PENN and HANNAH PENN, his wife, JOHN DOE, JOHN W. GLADFELTER and MARIAN GLADFELTER, his wife, LUANN DILLE AND JOHN W. ROBINSON, and their respective EXECUTORS, HEIRS and/or ASSIGNS, Defendants

TO: Commonwealth of Pennsylvania, William Penn and Hannah Penn, his wife, John Doe

DATE OF NOTICE:

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 (10) 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 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 CAN NOT 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 111-117 Baltimore Street Gettysburg, PA 17325 (717) 337-9846 or 1-888-337-9846

/s/Matthew R. Battersby, Esq. Attorney for Plaintiff 20 W. Main Street P.O. Box 215 Fairfield, PA 17320 (717) 642-6260

12/8

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application has been filed under the Fictitious Names Act, 54 Pa. C.S.A. §§ 301 et seq., as amended, with the Secretary of the Commonwealth, in Harrisburg, Pennsylvania, on October 25, 2006, for conducting business under the assumed or fictitious name of I3PG. The address of the principal office or place of business to be carried on under or through the fictitious name is: 912 Sunset Ave., P.O. Box 4809, Gettysburg, Pennsylvania 17325. The name and address of the only entity which is a party to the registration is: International Information Infrastructure Protection Group, LLC, 912 Sunset Ave., P.O. Box 4809, Gettysburg, PA 17325.

John W. Phillips, Esq. Attorney

12/8

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that on or about November 22, 2006, a Certificate of Organization for a Domestic Limited Liability Company was filed with the Department of State, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, pursuant to 15 PA C.S. Section 8913. The name of the Limited Liability Company is LEFLER HEATING & COOLING, LLC, and the location of its registered office is 935 Kohler Mill Road, New Oxford, Pennsylvania 17350.

Thomas E. Miller, Esq. Miller & Shultis, P.C. Solicitor

12/8

ADAMS CO. HOUSING AUTHORITY VS. THOMAS ET AL

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.

2. To assert a claim for intentional misrepresentation, a plaintiff must allege and prove the following: (1) a misrepresentation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

3. To assert a claim for negligent misrepresentation, a plaintiff must allege and prove the following: (1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation.

4. Resolving necessary inferences is a function of the fact finder and not the function of a motion for judgment on the pleadings.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CIVIL ACTION NO. 2004-S-1190. ADAMS
COUNTY HOUSING AUTHORITY VS. KIMBERLY THOMAS
AND C. M. NEAL OUSSOREN.

Clayton R. Wilcox, Esq., for Plaintiff

Thomas R. Campbell, Esq., for Defendant Oussoren

Defendant Kimberly Thomas *pro se*

Kuhn, P.J., March 3, 2006

OPINION ON PLAINTIFF'S MOTION FOR JUDGMENT
ON THE PLEADINGS AS TO DEFENDANT
C.M. NEAL OUSSOREN

On January 27, 2005, Adams County Housing Authority (hereinafter "ACHA") filed a Complaint against Kimberly Thomas (hereinafter "Thomas") and C.M. Neal Oussoren (hereinafter "Oussoren") asking for the rescission of its contracts with both defendants and payment of restitution. Before the Court for disposition is ACHA's Motion for Judgment on the Pleadings as to Oussoren only. The relevant pleadings consist of the Complaint, Oussoren's Answer and New Matter¹, and ACHA's Reply to Oussoren's New Matter. For the reasons set forth herein, ACHA's Motion for Judgment on the Pleadings as to Oussoren is denied.

¹New Matter contains Oussoren's Cross-claim against Thomas.

STATEMENT OF FACTS

The undisputed facts gleaned from the pleadings reveal the following circumstances: On March 13, 2002, Thomas filed a pre-application for rental assistance with ACHA seeking Section 8 rental assistance.² Section III of the pre-application requested Thomas to check the assets she or members of her household “own (or partially own).” Thomas checked that she owned bank accounts.³ On September 9, 2002, Thomas entered into a Voucher Housing Choice Voucher Program Agreement (hereinafter “Voucher Agreement”) with the U.S. Department of Housing and Urban Development.⁴

On October 29, 2002, Oussoren entered into a HAP contract with ACHA. The HAP contract applied to property owned by Oussoren at 240 Forrest Drive, Gettysburg, Pennsylvania. In the HAP contract, Oussoren represented that he entered a lease agreement⁵ with Thomas and certified in paragraph of 8(e) of said contract that the Thomas family⁶ “does not own or have any interest in the contract unit.”

Pursuant to the HAP contract, ACHA paid rent subsidies in the amount of \$550.00 per month for the period November 1, 2002 until May 1, 2003 to Oussoren benefiting Thomas. Also, pursuant to the

²Oussoren was not a party to this pre-application and claims he did not review or sign it.

³Thomas’s response was indicated by a checkmark on the line designated for bank accounts. It is important to note that Thomas marked no response on the lines designated for mobile home, real estate, investments, stocks or bonds (government or private), personal property held as an investment (collectables), and life insurance policies (with a cash value).

⁴Under the Voucher Agreement, a family chooses a decent, safe, and sanitary unit to live in. If the owner agrees to lease the unit to the family under the Housing Choice Voucher Program and if the public housing agency (PHA) approves the unit, the PHA enters into a housing assistance payments (HAP) contract with the owner of the unit to make monthly payments to the owner to help families pay their rental. Here, ACHA, the PHA, was authorized to enter into a HAP contract with an owner of a leased unit to help Thomas pay her monthly rental, provided the above requirements were met.

Additionally, page one of the Voucher Agreement explains the Housing Choice Voucher Program and details Thomas’ obligations. Page two of the Voucher Agreement appears to be missing. As a result, Thomas’ further obligations, including ACHA’s contention that under paragraph 4.D.1 of the Voucher Agreement that each family member must not own or have any interest in the rental unit other than exceptions not applicable to this cause of action, cannot be considered.

⁵The initial lease term was to begin on November 1, 2002 and end on October 31, 2003.

⁶Thomas’ family included Thomas and her two minor children.

HAP contract, ACHA paid Thomas \$126.00 per month as a subsidy for her utility expense over the same period.

On March 31, 2003, ACHA became aware that Thomas had an ownership interest in the subject property and later discovered that by virtue of a Deed dated May 12, 1995, Benjamin S. DeVan and Elizabeth H. DeVan conveyed title to the property at 240 Forrest Drive to both defendants.⁷ Subsequently, by virtue of a Deed dated April 9, 2003, Thomas conveyed her 10 percent interest in the subject property to Oussoren, thereby vesting the entire title of said property in him.

LEGAL DISCUSSION

Our Superior Court has set forth the standard for ruling on a motion for judgment on the pleadings as follows:

Entry of judgment on the pleadings is permitted under Pa. R.C.P. 1034 which provides for such judgment after the pleadings are closed, but within such time as not to delay trial. 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 if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents.

Vetter v. Fun Footwear Co., 447 Pa. Super. 84, 87, 668 A.2d 529, 530-1 (1995); alloc. den. 676 A.2d 1199 (citations omitted).

Based upon the aforementioned background, ACHA asserts a count for intentional misrepresentation (count one) and alternatively for negligent misrepresentation (count two). To assert a claim for intentional misrepresentation, a plaintiff must allege and prove the following:

(1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

Bortz v. Noon, 729 A.2d 555, 560 (Pa. Super. 1999).

⁷Defendants held the property as tenants in common with Thomas holding a 10 percent interest and Oussoren and his wife, Linda Oussoren, holding a 90 percent interest as tenants of an estate by entireties.

To assert a claim for negligent misrepresentation, a plaintiff must allege and prove the following:

(1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation.

Bilt-Rite Contrs. v. Architectural Studio, 866 A.2d 870, 877 (Pa. Super. 2005).

ACHA contends that both claims arise from the fact that defendants received federal housing subsidies in violation of the HAP contract while they jointly owned the property at 240 Forrest Drive. Specifically, ACHA argues that both defendants represented to ACHA that Thomas did not own any real estate and, more particularly, that she did not have an ownership interest in 240 Forrest Drive. ACHA contends that this representation was material to the subject transaction because Thomas would not have qualified to receive the rent and utility expense subsidies and Oussoren would not have received the rent subsidies absent such misrepresentation (negligent or intentional).

Next, ACHA maintains both defendants knew their representation that Thomas did not own or have an ownership interest in 240 Forrest Drive was false⁸ and such representation was made with the intent of deceiving ACHA as to the ownership of said property. ACHA also argues that it approved Thomas' application and determined to enter into the HAP contract with Oussoren in reasonable reliance on defendants' misrepresentation. Finally, ACHA contends that as a result of such misrepresentation, ACHA paid rent subsidies to Oussoren on behalf of Thomas in the amounts stated and paid Thomas utility expense subsidies in the amounts stated.⁹

⁸ Alternatively, ACHA argues that both defendants should have known the falsity of the representation that Thomas did not own an interest in the subject property.

⁹ ACHA maintains that both defendants are jointly and severally liable for the stated amounts of rent and utility expense subsidies. Contrary to Oussoren's statement in *New Matter* that only Thomas received a benefit, ACHA contends that Oussoren is the person who ended up with the federal housing funds, the receipt of which acted as a balm for any wound inflicted on Oussoren by Thomas failing to make payments to him.

Oussoren counters that it was the defendants' good faith belief that Thomas had no absolute interest in the property at 240 Forrest Drive because she never made payments to Oussoren toward the possible purchase of an absolute interest in the property in violation of an agreement between them.¹⁰ Oussoren also contends that any representation made to ACHA was not with the intent of deceiving ACHA as to the ownership of the subject property. Specifically, Oussoren maintains that he never concealed Thomas' ownership of the subject property, which could have been discovered if ACHA had made a diligent search of public records to ascertain who owned title to the property.

Next, Oussoren argues that any reliance by ACHA on the pre-application for rental assistance and the HAP contract was not reasonable or justifiable because prior to paying rent or utility expense subsidies, it could have required proof of property ownership or easily searched the Adams County land records to determine that the subject Deeds were of record.¹¹ Additionally, Oussoren contends that all payments exclusively benefited Thomas and that he did not receive any payments for Thomas' utilities and expenses nor did he receive any benefit from payments made to or on behalf of Thomas

¹⁰Oussoren argues that the agreement between Oussoren and Thomas provided that Thomas was to pay Oussoren for a 10 percent interest in the subject property over an extended period of time, in exchange for which Thomas was made a 10 percent owner of the property. Oussoren maintains that Thomas was placed on the May 12, 1995 Deed at the time title was acquired to save later recording and deed preparation fees with the understanding that she would be taken off the Deed if she failed to pay for her ten percent interest. Because Thomas never made a single payment toward any principal or interest in the subject property, Oussoren argues that Thomas breached their agreement and that therefore, the subject property was re-conveyed entirely to him by Deed dated April 9, 2003.

ACHA counters that any agreement between Thomas and Oussoren is of no consequence to the fact that Thomas had a titled ownership interest in the subject property by virtue of the Deed to both defendants dated May 12, 1995. ACHA further notes that both defendants held record title together for eight years and that Thomas conveyed her joint interest to Oussoren by special warranty deed on April 9, 2003, almost six months after Oussoren began to receive payments under the HAP contract.

¹¹Oussoren states that ACHA had the means and opportunity to conduct a simple investigation as to the ownership of the subject property, but failed to do so.

for her utility bills.¹² Finally, Oussoren counters that he should not be liable to ACHA for the total amounts in rent subsidies and utility expense subsidies because ACHA made some of its payments to Oussoren and Thomas *after* it became aware that Thomas had an ownership interest in the subject property.¹³

Here, the contentions of the parties concern whether ACHA has proved certain elements necessary to bring their claims. This Court finds that there are no genuine issues of fact regarding whether Oussoren's representation was false¹⁴ that Thomas did not own or have an ownership interest in the subject property. Oussoren contends that it was the defendants' good faith belief that Thomas had no absolute interest in the subject property because she never made payments to him in violation of an alleged agreement between the two parties. This argument holds no merit because, assuming *arguendo* that there was an agreement between the defendants, Thomas would still be found to have an ownership interest in the subject property at the time she applied for rental assistance and Oussoren entered into the HAP contract by virtue of the Deed dated May 12, 1995 conveying interest to both defendants.¹⁵

¹²Oussoren also argues that it would be unjust for him to be responsible for making reimbursements of rent and especially utility expense subsidies, which served to benefit Thomas exclusively. In the event there is any liability due and owing to ACHA, Oussoren contends that Thomas is exclusively or primarily liable to ACHA or liable over to Oussoren in that amount.

Furthermore, Oussoren states that ACHA's Motion for Judgment on the Pleadings points out that Oussoren pleaded "the only person who has received any benefit from rental and utility payments made by Plaintiffs on Defendant Thomas' behalf was Defendant Thomas." Oussoren contends that because ACHA does not suggest the above statement is erroneous or factually mistaken, it must be deemed admitted by ACHA. As a result, Oussoren argues that ACHA is not able to secure any judgment against him and therefore, its Complaint against him should be stricken.

¹³Oussoren states that ACHA became aware that Thomas had an ownership interest in the subject property on March 31, 2003. Oussoren contends that ACHA continued to pay Oussoren rent subsidies in the months of April and May of 2003 totalling \$1,100.00 and paid Thomas utility expense subsidies for April and May of 2003 totalling \$252.00. Consequently, Oussoren argues that because these subsidies were paid after ACHA became aware that Thomas had an ownership interest in the subject property, ACHA could not have relied on the alleged misrepresentation when making its payments to defendants.

¹⁴Or alternatively, should have been known to be false by both defendants.

¹⁵Thomas filed a pre-application for rental assistance on March 13, 2002 and Oussoren entered into the HAP contract on October 29, 2002. Thomas did not convey her interest in the subject property to Oussoren until April 9, 2003, thereby demonstrating that she held an interest in the subject property when she filed the pre-application for rental assistance and Oussoren entered into the HAP contract.

Moreover, Oussoren's claim that he received the April 9, 2003 Deed because Thomas failed to make any payment toward any principal or interest in the subject property is suspect because both defendants held title to the subject property for nearly eight years before Thomas conveyed the subject property entirely to him by said Deed.¹⁶ Thus, because Thomas possessed an ownership interest in the subject property at the stated times, Oussoren cannot maintain that there is a genuine issue of fact as to whether his representation that Thomas did not own or have an ownership interest in the subject property was false or should have been known to be false.

Whether Oussoren's representation that Thomas did not own or have an ownership interest in the subject property was made with the intent of deceiving ACHA as to the ownership of the subject property is a different matter altogether. Intent to deceive is a state of mind which has not been admitted. Whether defendants had the subjective intent to deceive is unknown. Perhaps Thomas had a mistaken belief that she did not "own" any real estate and perhaps Oussoren mistakenly believed that he solely "owned" the real estate.¹⁷ Plaintiff, of necessity, therefore must argue that intent can be determined circumstantially. However, resolving necessary inferences is a function of the fact finder and not the function of a motion for judgment on the pleadings.

Therefore, at this point, I will not determine whether ACHA had a duty to make a diligent search of public records to ascertain who owned title to the subject property or whether a search of public records would preclude deception as to the ownership of the subject property.

Furthermore, this Court finds that genuine issues of fact exist whether ACHA reasonably and justifiably relied on defendants' statements as to ownership in approving Thomas' application and entering into the HAP contract. Because ACHA continued to pay

¹⁶If the alleged agreement between Oussoren and Thomas provided that Thomas would be taken off the May 12, 1995 Deed if she failed to pay for her ten percent interest, one can only wonder why it took Oussoren nearly eight years to enforce this agreement and have Thomas convey her joint interest in the subject property to Oussoren by the April 9, 2003 Deed when Thomas failed to make a single payment toward any principal or interest in the subject property during this time period.

¹⁷The pleadings fail to divulge the legal sophistication of defendants. The level of understanding can impact perception and intent. It is not uncommon for an unsophisticated mortgagor to believe that "the bank owns my house."

Oussoren rent subsidies and Thomas utility expense subsidies for April and May of 2003 after it became aware that Thomas had an ownership interest in the subject property, there is a genuine issue of fact as to whether ACHA could have relied on the alleged misrepresentation with respect to said subsidy payments. Additionally, I again choose not to delve into an analysis whether ACHA has a duty to search the Adams County records.

The misrepresentation attributable to Oussoren is found on page five of a ten page document consisting of relatively small print. His signature appears on page 2 only and there is no place where he acknowledges reading and understanding the multiple paragraphs let alone the one in question.

Whether ACHA paid rent subsidies to Oussoren benefiting Thomas in the amounts stated and paid Thomas utility expense subsidies in the amounts stated in reliance upon defendants' misrepresentation also involves a genuine issue of fact.¹⁸ Even though Oussoren admitted that ACHA paid rent subsidies to Oussoren benefiting Thomas and utility expense subsidies to Thomas, the amount of actual damages is in dispute. As already stated, ACHA continued to pay Oussoren rent subsidies and Thomas utility expense subsidies for April and May of 2003 after it became aware that Thomas had an ownership interest in the subject property. Consequently, there is a genuine issue of fact as to whether the subsidy payments ACHA made in April and May of 2003 should be calculated in the total amount of actual damages.

Thus, because there are genuine issues of fact that exist concerning ACHA's claims, Plaintiff's Motion for Judgment on the Pleadings as to Defendant C.M. Neal Oussoren is denied.

Accordingly, the attached Order is entered.

ORDER

AND NOW, this 3rd day of March, 2006, for reasons set forth in the attached Opinion, Plaintiff's Motion for Judgment on the Pleadings as to Defendant C.M. Neal Oussoren filed October 4, 2005 is denied.

¹⁸Since this Court has already addressed whether defendants made any misrepresentation to ACHA and whether ACHA should have reasonably relied on that misrepresentation, the present inquiry is limited to the injuries sustained by ACHA.

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 GARMA M. BROWN, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Larry Leroy Brown, 6529 Baltimore Pike, Littlestown, PA 17340; Lois E. McNamara, 701 White Oaks Avenue, Baltimore, MD 21228

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

ESTATE OF JAMES H. CHAMPLAIN a/k/a JAMES H. CHAMPLAIN, SR., DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Kristin C. Champlain, 44 Kinneman Road, Abbottstown, PA 17301

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

ESTATE OF PAULINE R. DEARDORFF, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Richard S. Deardorff, 165J Church Road, Orrianna, PA 17353; Robert J. Deardorff, 678 Lower Georges Valley Road, Spring Mills, PA 16875

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

ESTATE OF JOHN E. HARTLAUB, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executor: Jeffrey L. Hartlaub, 270 Kuhn Road, Littlestown, PA 17340

ESTATE OF MARLYN W. LORY, DEC'D

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

Executor: Randy Lee Lory, P.O. Box 282, York Springs, PA 17372

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

ESTATE OF MARY JANE REINECKER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: David A. Reinecker, 7270 Old Harrisburg Road, York Springs, PA 17372

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

ESTATE OF GEORGE I. RISER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Joan M. Riser, 1306 Irishtown Road, New Oxford, PA 17350

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

ESTATE OF DAVID H. SCHMIDT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Debbie E. Schmidt, 14 Lowbridge Passage, Medford, NJ 08055

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore St., Gettysburg, PA 17325

ESTATE OF CHARLES A. SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Phyllis J. Smith, Cross Keys Village, Apt. 7, P.O. Box 128, 2990 Carlisle Pike, New Oxford, PA 17350

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

ESTATE OF ALBERT C. SOPKO a/k/a ALBERT CHARLES SOPKO, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Anne H. Sopko, 145 Patterson Rd., Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 66 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF DORA MAE HARTMAN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Timothy D. Pyles, 16 Pheasant Trail, Orrianna, PA 17353

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

ESTATE OF AMY K. HERMAN a/k/a AMY KATHRYN HERMAN, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executors: Joan C. Kump, 405 Rupp Road, Gettysburg, PA 17325; Jay A. Herman, 277 Schoolhouse Road, Aspers, PA 17304

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

ESTATE OF JANE D. LOVEJOY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: John H. Koons, 35 Easy Street, Littlestown, PA 17340; Samuel M. Feeser, 2723 Blacks Schoolhouse Road, Taneytown, MD 21178

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

THIRD PUBLICATION

ESTATE OF ERVIN LUTHER BAUM, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Eldon L. Baum, 4930 Baltimore Pike, Littlestown, PA 17340

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

ESTATE OF CLAIR J. LAUGHMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sally J. Harrell, 28 Tracey Road, Hanover, PA 17331

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

ESTATE OF MELVIN L. MILLER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Stephen T. Miller, 3788 Carlisle Road, Gardners, PA 17324; Gregory A. Miller, 24 Victory Church Road, Gardners, PA 17324; Susan E. Stolzfus, Now Susan E. Altice, 1916 Upper Bermudian Road, Gardners, PA 17324

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

ESTATE OF GEORGE E. SCHRADER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executor: Lonny P. Schrade, 40 Labor Camp Road, Gardners, PA 17324

Co-Executrix: Bonnie E. Schrade, 17 East Orange Street, Mt. Holly Springs, PA 17065

Attorney: David A. Baric, Esq., O'Brien, Baric & Scherer, 19 West South Street, Carlisle, PA 17013

IN THE COURT OF
COMMON PLEAS OF
CUMBERLAND COUNTY,
PENNSYLVANIA

CIVIL ACTION—INVOLUNTARY
TRANSFER OF MOTOR
VEHICLE TITLE
06-6539

RIFE ROAD ASSOCIATES, Plaintiff/
Petitioner

vs.

MATHEW W. SPANGLER and ALMA I.
SPANGLER, Husband and Wife,
Defendants/Respondents

TO: Mathew W. Spangler and Alma I.
Spangler, Mountaintop MHP, Lot 34,
East Berlin, PA 17316

NOTICE OF HEARING FOR
INVOLUNTARY TRANSFER OF
MOBILE HOME/VEHICLE TITLE
BY COURT ORDER

You, MATHEW W. SPANGLER and ALMA I. SPANGLER, have been sued in court. Pennsylvania Department of Transportation records indicate that you are the owner of a 1990 Commodore mobile home, title number 42303204901 SP, VIN C019399A. Certified and regular mail directed to your address of record have resulted in the return of all correspondence marked "Not Deliverable/Unclaimed". A civil action docketed to 06-6539 has been filed in the Court of Common Pleas of Cumberland County, Pennsylvania, to obtain a Court Order transferring the 1990 Commodore mobile home, title number 42303204901 SP, VIN C019399A, to Plaintiff. You, MATHEW W. SPANGLER and ALMA I. SPANGLER, are hereby notified that a hearing on Plaintiff's Petition for Involuntary transfer of ownership of mobile home by Court Order has been scheduled for JANUARY 26, 2007, at 9:15 a.m., in Courtroom No. 4 of the Cumberland County Courthouse, Carlisle, Pennsylvania. Failure to attend the hearing could result in an Order of Court declaring that Plaintiff is the owner of the 1990 Commodore mobile home, title number 42303204901 SP, VIN C019399A.

Andrew C. Sheely, Esq.
127 S. Market Street
P.O. Box 95
Mechanicsburg, PA 17055
717-697-7050

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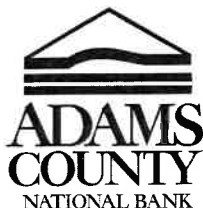
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IN THIS ISSUE

MILLER VS. MILLER

Commitment:

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-N-464 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground with the improvements thereon erected, situate, lying and being in Conewago Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake for a corner at Maple Avenue and Lot No. 12; thence in a Northerly direction along said Lot No. 12, 150 feet to a stake for a corner at a public alley; thence in an Easterly direction along said public alley 60 feet to a stake for a corner at Lot No. 15; thence in a Southerly direction along said Lot No. 15, 150 feet to a stake for a corner at Maple Avenue aforesaid; thence in a Westerly direction along said Maple Avenue 60 feet to the place of BEGINNING. Being known as Lots Nos. 13 and 14 in Block 20 on a plat or general plan of Hanover Improvement Company, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book WW, page 600, as by referenced thereto it will more fully and at large appear.

IT BEING the same tract of land which Josephine J. Wagaman, by deed dated December 7, 1981 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 360, page 622, granted and conveyed unto Josephine J. Wagaman and Johnny F. Jako. The said Josephine J. Wagaman having died, title vesting solely unto Johnny F. Jako, Mortgagee herein.

Premises being: 511 Maple Avenue, Hanover, PA 17331

SEIZED and taken into execution as the property of **John F. Jako** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-966 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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 Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a PK nail located in a private lane at the Northeast corner of land now or formerly of Paul L. Ingles and wife, said point also being the Southwest corner of the tract of land herein described; thence by the latter, and running through a reference iron pin located 25 feet from the beginning of this course, North 34 degrees 16 minutes West, 79.74 feet to an iron pin at land now or formerly of James Sharrah; thence by the latter, North 48 degrees 02 minutes 20 seconds East, 74.37 feet to an iron pin at land now or formerly of Daniel J. Parr; thence by the latter, South 33 degrees 39 minutes 10 seconds East, 99.13 feet to a point on the North side of the said private lane; thence by the latter, South 63 degrees 10 minutes 15 seconds West, 73.25 feet to a PK nail located in said private lane, the place of BEGINNING. CONTAINING 6,545 Square Feet, as per Draft of Survey dated July 23, 1974, prepared by Boyer-Price Surveys, Inc., and revised November 11, 1974. Being numbered and commonly known as 5287 Chambersburg Road.

IT BEING THE SAME TRACT OF LAND which Starboard Ventures Group, LLC, a Pennsylvania limited liability company, by its Deed dated August 29, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3283 at Page 12, sold and conveyed unto Laurie L. Seibel and Kenneth L. Loughry, Jr., the GRANTORS herein.

TOGETHER WITH a perpetual right of way over an existing private lane leading from U.S. Route 30 to the tract hereby conveyed, said private lane being indicated on the above-recited draft of survey.

SUBJECT, HOWEVER, TO restrictions and conditions of record which are made a part hereof as fully as if written out herein.

Parcel Identification No: B9-146

Premises: 5287 Chambersburg Road, Orrtanna, PA 17353-9763, Franklin Township, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Karen L. Dettinger, by Deed from Laurie L. Seibel, now Laurie L. Loughry and Kenneth L. Loughry, Jr., wife and husband, dated 03/31/2005, recorded 04/01/2005, in Deed Book 3916, page 281.

SEIZED and taken into execution as the property of **Karen L. Dettinger a/k/a Karen L. Ogburn a/k/a Karen Oqdm a/k/a Karen Louise Stauffer** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

MILLER VS. MILLER

1. A modification in support becomes effective on the filing date of the petition unless the order specifies otherwise. A support order can be made retroactive to a date preceding the filing date "if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation or another party or other compelling reason" and when no longer precluded, promptly files a petition.

2. Trial courts must find evidence of a disability, misrepresentation, or other compelling reason in order to make a support order effective prior to the filing date.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. DOMESTIC RELATIONS NO. 04-DR-34.
BRENDA L. MILLER VS. RICHARD C. MILLER.

Barbara Jo Entwistle, Esq., for Plaintiff

Jean Arena, Esq., for Defendant

Bigham, J., March 13, 2006

OPINION

STATEMENT OF FACTS

Plaintiff raised two legal issues at a de novo hearing that was held on January 26, 2006. She asks whether she should be entitled to an increase in child support retroactive to the filing date of her Petition to Modify. If so, she requests this Court reduce her obligation to repay alimony pendente lite ("APL") by the amount of child support arrearages. Since these questions are legal in nature and the Court did not need a hearing to determine facts, both parties submitted legal memoranda on these issues. For purposes of outlining the facts contained within the record, we will briefly discuss the pertinent background information.

Plaintiff filed a Petition to Modify child support with the Domestic Relations Office on October 12, 2005. An increase from \$334 to \$565 a month in child support was awarded because the shared physical custody arrangement had changed in February of 2005 to Defendant having no contact or visitation with the minor child. Plaintiff claims she did not file for modification of child support in February of 2005 because she was receiving \$334 a month in child support and \$238 a month in APL, which she thought was appropriate under the circumstances. The catalyst for her filing the Petition to Modify was the Order of Court dated October 7, 2005 which terminated APL.

APL was terminated because the Domestic Relations Office discovered the parties' Property Settlement Agreement, which had been incorporated into their divorce decree on August 19, 2004, extinguished Defendant's obligation to continue paying APL. Defendant had been paying \$238 a month in APL, which amounted to an overpayment of \$2,518.54. Since Plaintiff is responsible for repaying Defendant \$2,518.54 for overpayment of APL, she requests Defendant be responsible for repaying Plaintiff \$1,963.50¹ for underpayment of child support. In effect, she seeks to reduce the amount she owes Defendant by the amount of child support she would have been receiving, assuming the effective date of the support order is February of 2005.

LEGAL DISCUSSION

The governing law is **Pa.R.C.P. 1910.17(a)** which provides that a modification in support becomes effective on the filing date of the petition unless the order specifies otherwise. A support order can be made retroactive to a date preceding the filing date "if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason" and when no longer precluded, promptly files a petition. **Pa.R.C.P. 1910.17(a)**.

Defendant cites to *Holcomb v. Holcomb*, **448 Pa. Super. 154, 670 A.2d 1155 (1996)** and *Kelleher v. Bush*, **2003 Pa. Super. 325, 832 A.2d 483 (2003)** as examples of where our Superior Court refused to make a support order effective prior to the filing date. In *Holcomb*, the support order was effective on the filing date of father's petition to modify even though one of his two children was emancipated twelve months earlier. Father made no claim that he was precluded from filing by reason of a disability, misrepresentation, or other compelling reason. Rather, he argued that if he had not paid child support for the emancipated child then he would be entitled to have the arrears remitted under **23 Pa.C.S.A. § 4352(e)**, thus, the fact that he paid the child support entitled him to a credit for that amount. *Holcomb*, **448 Pa. Super. at 159**. The Superior Court disagreed with

¹This is an estimated figure was calculated by the court during the de novo hearing for purposes of illustration to show what amount of child support arrearages would be owed if the effective date of the order was made retroactive to February of 2005.

father's argument because nothing prevented him from filing a petition for modification on the date his daughter became emancipated. *Id.* at 160. If he was aware that he was entitled to have his support obligation reduced when his oldest child was emancipated, then he should not have waited a full year before petitioning the court for modification. *Id.*

In *Kelleher*, the Superior Court overturned the trial court's decision to make a support order retroactive to the filing date. The trial court mistakenly believed **Pa.R.C.P. 1910.17(a)** permitted judges to determine the effective date for support orders with unlimited discretion as long as they provided reasons for doing so. *Kelleher*, 832 A.2d at 486. Trial courts must find evidence of a disability, misrepresentation, or other compelling reason in order to make a support order effective prior to the filing date. See **Pa.R.C.P. 1910.17(a)**. Here, Plaintiff argues "compelling reasons" existed for her delay in filing, which is outlined as follows:

- A. Wife's minimal income and hardship in allowing a windfall to Husband for non-payment of appropriate child support for a period of approximately eight (8) months while requiring Wife to reimburse Husband \$2,518.00 for APL.
- B. The fact that the APL and child support combined Order was \$5.00 less than the appropriate amount of child support under the current Order.
- C. The interests of economic justice effectuated by Mother's request.
- D. The interest of judicial economy in avoiding a separate action.

Plaintiff's Answer to Defendant's Memorandum of Law, 2.

Plaintiff's list of reasons is based on a theory that she will suffer a financial hardship if required to repay Defendant \$2,518.54 as a result of being overpaid APL. She proposes that her obligation to repay APL be offset by Defendant's child support arrearages, and if the effective date of that order is made retroactive to February of 2005, then she would only be responsible to pay back \$555.04.² In

² As calculated by taking \$2,518.54 for overpayment of APL and subtracting \$1,963.50, which was the amount of arrearages estimated by the Court at the de novo hearing when using February 2005 as the effective date.

support of her request, she cites to **23 Pa.C.S.A. § 3102(a)(6)**³ which states the policy behind the Divorce Code is to “effectuate economic justice between parties”⁴ and **23 Pa.C.S.A. § 4349**⁵ which allows the Court to consolidate the APL matter with this support action. With these principles in mind, we address whether the proffered reasons for her failure to file a Petition to Modify Child Support are compelling.

We found one example where the Superior Court found “compelling reasons” despite the father’s failure to file a Petition to Modify when each child was emancipated. See *Benjamin v. Benjamin*, **596 A.2d 877 (1991)**. In *Benjamin*, a support order was entered in 1971 requiring father to pay \$60 a week for the support of his four children. When a child reached the age of eighteen, based on the advice of his attorney he unilaterally reduced the amount of support he was paying but never notified the Domestic Relations Office (“DRO”). The DRO calculated over \$10,000 in arrearages had accrued. The Court believed compelling reasons existed to pardon all arrearages, as if the child support order had been modified after each child was emancipated. The Court focused (1) on the fact that seventeen years had passed without mother or father filing a

³ Section 3102 is entitled “Legislative findings and intent” and reads as follows: “The family is the basic unit in society and the protection and preservation of the family is of paramount concern. Therefore, it is the policy of the Commonwealth to: ... Effectuate economic justice between the parties who are divorced and separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights.” **23 Pa.C.S.A. § 3102(a)(6)**. Subsection (b) of Section 3102 states that the objectives outlined in subsection (a) shall be considered and regarded as the legislative intent when construing provisions of the Divorce Code.

⁴ Defendant argues this statute is inapplicable to the issue before the Court because **Section 3102(a)(6)** deals with the court’s decision to grant or deny alimony between divorcing parties. In this case, these parties are divorced and the issue of alimony has been settled by their Property Settlement Agreement. We agree with Defendant that **23 Pa.C.S.A. § 3102(a)(6)** is a policy enumerated within the Divorce Code, but we believe the concept of effectuating economic justice applies to support determinations, as well.

⁵ **23 Pa.C.S.A. § 4349** entitled “Consolidation of Proceedings” provides: In order to facilitate frequent and unimpeded contact between children and parents, a judge may consolidate with a support action or proceeding any proceeding commenced for visitation rights, sole or shared custody, temporary or permanent custody or any other matter pertaining to support authorized by law which fairly and expeditiously may be determined and disposed of in the support action or proceeding.

Petition to Modify; (2) father diligently paid his support for his children; (3) father was unable to read any of the notices sent out from the Domestic Relations Office because he was illiterate; and (4) father was following the advice of his attorney.

The present facts are not as compelling as the situation seen in *Benjamin*. Here, we are not dealing with seventeen years worth of back child support. Rather, we have a mother who is arguing over approximately \$1,963.50. At no time has Plaintiff received less than approximately \$565 a month for support. Currently, she is only receiving \$7.00 less than what she had received previously.⁶ When she was receiving APL and child support, she never filed a Petition to Modify even though the custody schedule had changed in February of 2005. When DRO discovered APL should have terminated and she would be required to repay those funds, Plaintiff filed her Petition to Modify. Essentially, she argues it would be unfair to hold her responsible for repaying APL and not holding Defendant responsible for back child support.

We disagree with Plaintiff's fairness argument because it rests on the logic that two wrongs make a right. She never should have received APL after the divorce decree was entered. She agreed to terminate APL and/or alimony in a Property Settlement Agreement that had been incorporated into the divorce decree. Since Defendant overpaid \$2,518.54 in APL after the divorce decree was entered, Plaintiff will be responsible for repaying that amount. We do not believe the fact that she is required to repay funds that she had no entitlement, to justify putting Defendant in arrears for those months that he had paid APL and child support. The general rule laid out in **Pa.R.C.P. 1910.17(a)** directs courts to use the filing date of the petition as the effective date for support orders. Only if there is a "compelling reason" for the person's failure to file can the effective date of the order be earlier than the filing date. The fact that she should not have been given APL is not a compelling reason for why she failed to file her Petition to Modify earlier.

We believe economic justice can be effectuated between these parties by reducing Defendant's monthly child support obligation by

⁶We note that Plaintiff's Answer states that the figure is \$5.00 less, but we have calculated it to be \$7.00 by taking \$572 a month (\$238 from APL and \$334 from child support) and subtracting \$565 a month.

\$200 until the entire amount of \$2,518.54 has been paid off. Plaintiff will still be receiving monthly child support payments of \$365, as opposed to \$565, but will not be required to directly pay Defendant any monies. The entire amount of APL will be repaid by reducing the monthly child support obligation by \$200 for twelve months and a \$118.54 reduction in the thirteenth month. At the end of the thirteenth month, Plaintiff will have paid back \$2,518.54 to the Defendant by means of receiving a lower amount of child support.

Accordingly, the attached Order is entered.

ORDER

AND NOW, this 13th day of March 2006, in consideration of Plaintiff's issues presented at the de novo hearing, IT IS ORDERED THAT: (1) the increase in child support is effective as of the filing date of Plaintiff's Petition to Modify; and (2) Plaintiff's request to reduce her repayment obligation for alimony pendente lite ("APL") by Defendant's child support arrearages is denied. We will reduce her APL obligation by reducing the amount paid by Defendant for future child support. Defendant's monthly child support obligation will be reduced by \$200 for a current charge of \$365 per month for twelve months commencing on April 12, 2006. On April 12, 2007, the Defendant's monthly child support obligation will be reduced by \$118.54 for one month for a current charge of \$446.46 in child support. On May 12, 2007, the Defendant shall pay child support in the sum of \$565 per month and each month thereafter until further Order of this Court. This payment schedule will pay off the Plaintiff's APL overpayment of \$2,518.54 as of May 11, 2007.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-683 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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.:

Deed No. 1:

ALL the following described tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and limited as follows, to wit:

BEGINNING for a corner at a point in the center of Township Route No. 497 at lands of Oscar Stambaugh; thence along said lands of Oscar Stambaugh, through a steel pin set eighteen (18) feet from the beginning of this course, and along lands of Alwine Brick Co., North thirty-six (36) degrees forty-five (45) minutes West five hundred thirty-three and forty-four hundredths (533.44) feet to a steel pin at other lands of the Bi-Wis Corporation, Grantor herein, of which the herein described tract of land was formerly a part; thence along said last mentioned lands North fifty-three (53) degrees fifteen (15) minutes East four hundred fifty-one and fifty-three hundredths (451.53) feet to a steel pin at other lands of the Bi-Wis Corporation, Grantor herein; thence along said last mentioned lands South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East four hundred seventy-seven and eighty-eight hundredths (477.88) feet, through a steel pin set twenty-five (25) feet from the end of this course, to a point in the center of the aforesaid Township Route No. 497; thence in and along said Township Route No. 497 South fifty-six (56) degrees five (5) minutes ten (10) seconds West one hundred ninety-two and seventy-three hundredths (192.73) feet to a point in the center of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South fifty (50) degrees thirty-three (33) minutes West one hundred and eight hundredths (100.08) feet to a point in the center of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South forty-seven (47) degrees ten (10) minutes twelve (12) seconds West one hundred and twelve hundredths (100.12) feet to a steel pin set on the Northern edge of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South sixteen (16) degrees seventeen (17) minutes twenty-six (26) seconds West eighty-two and eighty-seven hundredths (82.87) feet to a point in the center of said Township Route No. 497, the point and place of BEGINNING. CONTAINING 5 Acres of land. Book 316 Page 1157

The above description was taken from a Survey Plan prepared by Donald E. Worley, Registered Surveyor, dated August 16, 1974, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Map Book _____, at page _____.

RESERVING, HOWEVER, unto the Grantor herein, its successors and assigns, a perpetual right-of-way, privilege and easement irrevocable, in, over, upon and under a twenty foot strip of land along the Northeastern property line of the above described tract of land, also being the third course of the above described tract of land (South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East) as a means of ingress and egress by the Grantor herein, its successors and assigns, jointly with the Grantee herein, its successors and assigns.

The perpetual right-of-way, privilege and easement irrevocable hereinabove reserved by the Grantor in favor of the Grantor, its successors and assigns, shall absolutely cease and determine upon the exercise by the Grantee of its right and option this date granted by Grantor to Grantee to purchase three additional acres lying to the Northwest of and contiguous to the tract of land which is the subject of this conveyance. The recording by the Grantee of the deed of conveyance for the aforesaid three acres shall operate, ipso facto, to terminate the right-of-way.

IT BEING the same premises which Bi-Wis Corporation, by deed dated January 15, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 316, page 1157 granted and conveyed unto Trimen Industries, Inc.

Deed No. 2:

ALL the following described tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and limited as follows, to-wit:

BEGINNING for a corner at a steel pin at the Northern corner of other lands of Trimen Industries, Inc., Grantee herein, conveyed by Bi-Wis Corporation, Grantor herein, by Deed dated January 15, 1975, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 316, page 1157, said steel pin being set North thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds West four hundred seventy-seven and eighty-eight hundredths (477.88) feet from the center of Township Route 497; thence from said point of Beginning and binding on the aforesaid lands previously conveyed by Bi-Wis Corporation to Trimen Industries, Inc., Grantee herein, South fifty-three (53) degrees fifteen (15) minutes West four hundred fifty-one and

fifty-three hundredths (451.53) feet to a steel pin at lands now or formerly of Alwine Brick Co.; thence along said last mentioned lands of Alwine Brick Co., North thirty-six (36) degrees forty-five (45) minutes West two hundred eighty-nine and ninety-seven hundredths (289.97) feet to a point; thence along other lands of Bi-Wis Corporation, Grantor herein, of which this was formerly a part, North fifty-three (53) degrees fifteen (15) minutes East four hundred fifty and ninety-three hundredths (450.93) feet to a point at lands now or formerly of Philip Eisenhart; thence along said last mentioned lands South thirty-six (36) degrees thirty-two (32) minutes fifty-four (54) seconds East one hundred ninety-seven and thirty-five hundredths (197.35) feet to a post; thence along lands of Bi-Wis Corporation, Grantor herein, South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East ninety-two and sixty-three hundredths (92.63) feet to a steel pin, the point and place of BEGINNING. CONTAINING 3 Acres.

The above description was taken from a Subdivision Plan prepared by Donald E. Worley, Registered Surveyor, dated August 16, 1974, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 5, page 44, and designated thereon as "Option Area".

IT BEING the same premises which Bi-Wis Corporation, by deed dated January 18, 1978, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 335, page 883, granted and conveyed unto Trimen Industries, Inc.

SEIZED and taken into execution as the property of **Trimen Industries, Inc.** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-961 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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 the following tract of land situate in Reading Township, Adams County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point on Schofield Drive at Lot Nos. 289 and 290 and running South 14 degrees 19 minutes 09 seconds West 150 feet to a point at Lot No. 292 and running thence South 75 degrees 40 minutes 51 seconds East 200 feet to a point at Lot No. 288 and running thence North 14 degrees 19 minutes 09 seconds East 150 feet to a point at Lot No. 289 and running thence North 75 degrees 40 minutes 51 seconds West 200 feet to a point and place of BEGINNING. BEING KNOWN as Lots No. 290 and 291 on a Plan of Lots known as Lake Meade Subdivision as recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Plan of Lots Book No. 1, page 1.

UNDER AND SUBJECT, NEVERTHELESS, to all easements, rights of way, restrictions, covenants and conditions as set forth or referred to in prior recorded Deeds.

TITLE TO SAID PREMISES IS VESTED IN Gerald A. Pennabaker and Sabina L. Pennabaker, husband and wife, by Deed from Wilhelm Mabus and Delores I. Mabus, his wife, dated 05/05/1988, recorded 05/16/1988, in Deed Book 488, page 1137.

AND THE SAID Sabina L. Pennabaker being so seized thereof, departed this life on October 5, 2000, intestate, leaving to survive the following heir(s) at law:

Gerald A. Pennabaker, husband, 121 Schofield Drive, East Berlin, PA 17316

AND Letters of Administration on the Estate of Sabina L. Pennabaker, deceased aforesaid were duly granted unto Gerald A. Pennabaker by the Register of Wills of Adams County, Pennsylvania on July 10, 2001 at Estate Docket # 1-01-257.

Premises being: 121 Schofield Drive, East Berlin, PA 17316

Tax Parcel No. 37-014-0047

SEIZED and taken into execution as the property of **Gerald A. Pennabaker, Sr.** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about October 1, 2006 for the purposes of obtaining a Certificate of Incorporation of a proposed corporation organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the corporation is GLASS ELECTRIC COMPANY, INC.

12/15

TRUST ESTATE NOTICE

Margaret Merrill Leavy died on May 22, 2006, a resident of Cumberland Township, Adams County, Pennsylvania. During her lifetime she created a revocable trust for her benefit. All persons indebted to her or the trust are requested to make payment, and those having claims against her or the trust are requested to present the same, without delay, to:

UNITED BANK AND TRUST,
WASHTENAW, TRUSTEE
ATTN: Daniel E. Cogan, Sr. VP
P.O. Box 1127
Ann Arbor, MI 48106-1127

Or to:

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

12/15, 22 & 29

LEGAL NOTICE-ANNUAL MEETING

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 13th, 2007 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt
President & Treasurer; Director
12/15, 22, 29 & 1/5

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 November 27, 2006, for the purposes of obtaining a Certificate of Incorporation of a Pennsylvania nonprofit corporation to be organized under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the corporation is PLANK'S FIELD PLANNED COMMUNITY, INC. The purpose of the corporation is the administration and management of a planned community.

Puhl, Eastman & Thrasher
Attorneys

12/15

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. §311), there was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on November 27, 2006, an Application for Registration of Fictitious Name of PLANK'S FIELD HOMEOWNERS' ASSOCIATION, the address of the principal place of business being 96 Keller Road, Gettysburg, Pennsylvania 17325. The name and address of the person who is a party to said registration is: Vincent Cimino, 96 Keller Road, Gettysburg, Pennsylvania 17325.

Puhl, Eastman & Thrasher
Attorneys

12/15

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 ERNST P. HALL, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executrix: Barbara A. Hall, 607 Winston Drive, Endwell, NY 13760

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

ESTATE OF PEARL E. LEPPA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: David H. Leppo, 472 Fairview Drive, Hanover, PA 17331; Shirley A. Sager, 492 Pine Grove Road, Hanover, PA 17331; Wayne L. Leppo, 30 Moul Avenue, Hanover, PA 17331

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

ESTATE OF MARGARET D. NELSON, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Mark W. Nelson, 209 Christopher Road, Forest Hill, MD 21050

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF LYNN L. SHEFFER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Nathaniel P. Sheffer, c/o Schrack & Linsnbach Law Offices, 124 West Harrisburg St., P.O. Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsnbach Law Offices, 124 West Harrisburg St., P.O. Box 310, Dillsburg, PA 17019-0310

ESTATE OF HERBERT A. SNYDER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Herbert A. Snyder, Jr., 746 Company Farm Road, York Springs, PA 17372

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

ESTATE OF W. NORTH STERRETT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: William N. Sterrett, Jr., 1332 Ridgeview Circle, Downingtown, PA 19335

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

ESTATE OF EILEEN F. WAGAMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Janice M. Neiderer, 1080 Beck Mill Road, Hanover, PA 17331; Deanna L. Robinson, 233 Providence Drive, McSherrystown, PA 17344

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

ESTATE OF OLGA K. WICKHAM, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Patricia W. Hoffman, 60 Twin Lakes Dr., Gettysburg, PA 17325

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

SECOND PUBLICATION**ESTATE OF GARMA M. BROWN, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Larry Leroy Brown, 6529 Baltimore Pike, Littlestown, PA 17340; Lois E. McNamara, 701 White Oaks Avenue, Baltimore, MD 21228

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

ESTATE OF JAMES H. CHAMPLAIN a/k/a JAMES H. CHAMPLAIN, SR., DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Kristin C. Champlain, 44 Kinnean Road, Abbottstown, PA 17301

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

ESTATE OF PAULINE R. DEARDORFF, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Richard S. Deardorff, 165J Church Road, Orrtanna, PA 17353; Robert J. Deardorff, 678 Lower Georges Valley Road, Spring Mills, PA 16875

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

ESTATE OF JOHN E. HARTLAUB, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executor: Jeffrey L. Hartlaub, 270 Kuhn Road, Littlestown, PA 17340

ESTATE OF MARLYN W. LORY, DEC'D

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

Executor: Randy Lee Lory, P.O. Box 282, York Springs, PA 17372

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

ESTATE OF MARY JANE REINECKER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: David A. Reinecker, 7270 Old Harrisburg Road, York Springs, PA 17372

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

ESTATE OF GEORGE I. RISER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Joan M. Riser, 1306 Irishtown Road, New Oxford, PA 17350

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

ESTATE OF DAVID H. SCHMIDT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Debbie E. Schmidt, 14 Lowbridge Passage, Medford, NJ 08055

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore St., Gettysburg, PA 17325

ESTATE OF CHARLES A. SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Phyllis J. Smith, Cross Keys Village, Apt. 7, P.O. Box 128, 2990 Carlisle Pike, New Oxford, PA 17350

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

ESTATE OF ALBERT C. SOPKO a/k/a ALBERT CHARLES SOPKO, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Anne H. Sopko, 145 Patterson Rd., Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 66 West Middle Street, Gettysburg, PA 17325

(continued on page 6)

THIRD PUBLICATION**ESTATE OF DORA MAE HARTMAN, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Timothy D. Pyles, 16 Pheasant Trail, Orrtanna, PA 17353

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

ESTATE OF AMY K. HERMAN a/k/a AMY KATHRYN HERMAN, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executors: Joan C. Kump, 405 Rupp Road, Gettysburg, PA 17325; Jay A. Herman, 277 Schoolhouse Road, Aspers, PA 17304

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

ESTATE OF JANE D. LOVEJOY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: John H. Koons, 35 Easy Street, Littlestown, PA 17340; Samuel M. Feeser, 2723 Blacks Schoolhouse Rd., Taneytown, MD 21787

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or piece of ground situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point near the centerline of S.R. 0134, the Taneytown Road, at a corner of Lot No. 3 on the hereinafter mentioned draft of survey and subdivision plan; thence in S.R. 0134, the Taneytown Road, South Ten (10) degrees Three (03) minutes Seventeen (17) seconds East, One Hundred Thirty-five and Thirty-nine One-hundredths (135.39) feet to a point near the centerline of said S.R. 0134, the Taneytown Road; thence continuing in S.R. 0134, the Taneytown Road, South Eight (08) degrees Sixteen (16) minutes Twenty-six (26) seconds East 287.82 feet to a point in said S.R. 0134, the Taneytown Road; thence South Eighty-four (84) degrees

Fifty (50) minutes Thirteen (13) seconds West, Twenty-five and Eighty-three One-hundredths (25.83) feet to an existing railroad spike on line of land of the Mt. Joy Evangelical Lutheran Church and along the edge of Benner Road; thence crossing Benner Road, North Five (05) degrees Forty (40) minutes Eighteen (18) seconds West, Twenty-six and Forty One-hundredths (26.40) feet to an existing wooden post; thence along and in said Benner Road, South Eighty (80) degrees Eleven (11) minutes Thirty (30) seconds West, One Hundred Forty-seven and Twenty-five One-hundredths (147.25) feet to an existing cotton gin spindle One (1) foot North of the centerline of said Benner Road; thence in said Benner Road, South Eighty (80) degrees Nine (09) minutes Twenty-five (25) seconds West, One Hundred Fifty-five (155.00) feet to a railroad spike set near the centerline of Benner Road, and at a corner of Lot No. 5; thence by Lot No. 5, North Twenty-six (26) degrees Eight (8) minutes Fifteen (15) seconds West, Two Hundred Seventy and Seventy-one One-hundredths (270.71) feet to a steel pin set on line of Lot No. 5 and at a corner of Lot No. 3; thence by Lot No. 3, and passing through a steel pin set Twenty-five (25) feet from the next mentioned point, North Sixty-one (61) degrees Fifty-six (56) minutes Twenty-five (25) seconds East, Four Hundred Thirty-one and One One-hundredths (431.01) feet to a point near the centerline of S.R. 0134, Taneytown Road, at a corner of Lot No. 3, the place of BEGINNING.

CONTAINING 2.847 Acres, more or less. BEING PARCEL #30-F17-65.

THE ABOVE DESCRIPTION was taken from a draft of survey and subdivision plan entitled "Scheller Subdivision", dated October 27, 1997, and revised January 19, 1998, as prepared by Richard W. Boyer, Professional Land Surveyor No. 17399-E, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 73 at pages 23 and 23A, and designated as Lot No. 4 thereon.

UNDER AND SUBJECT to certain restrictions contained in prior deeds and instruments of record.

BEING the same premises which Vincent Scheller and Marie Scheller, husband and wife, by Deed dated September 2, 1999 and recorded on September 3, 1999 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 1909, Page 141, granted and conveyed unto Joseph M. Regler, IV and April L. Regler, husband and wife, as tenants by the entireties, in fee.

SEIZED AND TAKEN as the property of Joseph M. Regler, IV and April L. Regler under Judgment No. 03-S-359.

Premises Being: 2585 Taneytown Rd., Gettysburg, PA 17325

SEIZED and taken into execution as the property of **April L. Regler & Joseph M. Regler, IV** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about November 21, 2006 for the incorporation of EAST BERLIN DAM WELFARE ASSOCIATION, under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 203 Kuhn Road, East Berlin, PA 17316.

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitors

12/15

Adams County Legal Journal

Vol. 48

December 22, 2006

No. 31, pp. 193-195

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-961 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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 the following tract of land situate in Reading Township, Adams County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point on Schofield Drive at Lot Nos. 289 and 290 and running South 14 degrees 19 minutes 09 seconds West 150 feet to a point at Lot No. 292 and running thence South 75 degrees 40 minutes 51 seconds East 200 feet to a point at Lot No. 288 and running thence North 14 degrees 19 minutes 09 seconds East 150 feet to a point at Lot No. 289 and running thence North 75 degrees 40 minutes 51 seconds West 200 feet to a point and place of BEGINNING. BEING KNOWN as Lots No. 290 and 291 on a Plan of Lots known as Lake

Meade Subdivision as recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Plan of Lots Book No. 1, page 1.

UNDER AND SUBJECT, NEVERTHELESS, to all easements, rights of way, restrictions, covenants and conditions as set forth or referred to in prior recorded Deeds.

TITLE TO SAID PREMISES IS VESTED IN Gerald A. Pennabaker and Sabina L. Pennabaker, husband and wife, by Deed from Wilhelm Mabus and Delores I. Mabus, his wife, dated 05/05/1988, recorded 05/16/1988, in Deed Book 488, page 1137.

AND THE SAID Sabina L. Pennabaker being so seized thereof, departed this life on October 5, 2000, intestate, leaving to survive the following heir(s) at law:

Gerald A. Pennabaker, husband, 121 Schofield Drive, East Berlin, PA 17316

AND Letters of Administration on the Estate of Sabina L. Pennabaker, deceased aforesaid were duly granted unto Gerald A. Pennabaker by the Register of Wills of Adams County, Pennsylvania on July 10, 2001 at Estate Docket # 1-01-257.

Premises being: 121 Schofield Drive, East Berlin, PA 17316

Tax Parcel No. 37-014-0047

SEIZED and taken into execution as the property of **Gerald A. Pennabaker, Sr.** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-N-464 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground with the improvements thereon erected, situate, lying and being in Conewago Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake for a corner at Maple Avenue and Lot No. 12; thence in a Northerly direction along said Lot No. 12, 150 feet to a stake for a corner at a public alley; thence in an Easterly direction along said public alley 60 feet to a stake for a corner at Lot No. 15; thence in a Southerly direction along said Lot No. 15, 150 feet to a stake for a corner at Maple Avenue aforesaid; thence in a Westerly direction along said Maple Avenue 60 feet to the place of BEGINNING. Being known as Lots Nos. 13 and 14 in Block 20 on a plat or general plan of Hanover Improvement Company, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book WW, page 600, as by referenced thereto it will more fully and at large appear.

IT BEING the same tract of land which Josephine J. Wagaman, by deed dated December 7, 1981 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 360, page 622, granted and conveyed unto Josephine J. Wagaman and Johnny F. Jako. The said Josephine J. Wagaman having died, title vesting solely unto Johnny F. Jako, Mortgagee herein.

Premises being: 511 Maple Avenue, Hanover, PA 17331

SEIZED and taken into execution as the property of **John F. Jako** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-966 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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 Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a PK nail located in a private lane at the Northeast corner of land now or formerly of Paul L. Ingles and wife, said point also being the Southwest corner of the tract of land herein described; thence by the latter, and running through a reference iron pin located 25 feet from the beginning of this course, North 34 degrees 16 minutes West, 79.74 feet to an iron pin at land now or formerly of James Sharrah; thence by the latter, North 48 degrees 02 minutes 20 seconds East, 74.37 feet to an iron pin at land now or formerly of Daniel J. Parr; thence by the latter, South 33 degrees 39 minutes 10 seconds East, 99.13 feet to a point on the North side of the said private lane; thence by the latter, South 63 degrees 10 minutes 15 seconds West, 73.25 feet to a PK nail located in said private lane, the place of BEGINNING. CONTAINING 6,545 Square Feet, as per Draft of Survey dated July 23, 1974, prepared by Boyer-Price Surveys, Inc., and revised November 11, 1974. Being numbered and commonly known as 5287 Chambersburg Road.

IT BEING THE SAME TRACT OF LAND which Starboard Ventures Group, LLC, a Pennsylvania limited liability company, by its Deed dated August 29, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3263 at Page 12, sold and conveyed unto Laurie L. Seibel and Kenneth L. Loughry, Jr., the GRANTORS herein.

TOGETHER WITH a perpetual right of way over an existing private lane leading from U.S. Route 30 to the tract hereby conveyed, said private lane being indicated on the above-recited draft of survey.

SUBJECT, HOWEVER, TO restrictions and conditions of record which are made a part hereof as fully as if written out herein.

Parcel Identification No: B9-146

Premises: 5287 Chambersburg Road, Orrtanna, PA 17353-9763, Franklin Township, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Karen L. Dettinger, by Deed from Laurie L. Seibel, now Laurie L. Loughry and Kenneth L. Loughry, Jr., wife and husband, dated 03/31/2005, recorded 04/01/2005, in Deed Book 3916, page 281.

SEIZED and taken into execution as the property of **Karen L. Dettinger a/k/a Karen L. Ogburn a/k/a Karen Ogdum a/k/a Karen Louie Stauffer** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

COMMONWEALTH VS. DUBBS

1. In determining whether or not the Commonwealth exercised due diligence in locating the Defendant, it is important to note that the Commonwealth is not required to exhaust every conceivable method of locating an individual.

2. It is not the function of the Court to second guess the methods used by police.

3. It is unreasonable to require those searching for a fugitive to check the probation department of each jurisdiction where a family member of the fugitive resides in order to satisfy the due diligence standard.

4. The Superior Court focused the controlling inquiry as being whether prosecutors acted with due diligence in locating and apprehending the defendant. Intervening contacts made with the defendant by others, including Commonwealth agents, is not determinative.

5. In considering issues raised under Rule 600, courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well. As long as there has not been misconduct on the part of the Commonwealth in an effort to evade or impugn the rights of an accused, deference must be afforded a police officer's judgment as to which avenues of approach will be fruitful in apprehending a wanted person.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CRIMINAL ACTION NO. CP-01-CR-984-
2005. COMMONWEALTH OF PENNSYLVANIA VS. RUSSELL
ANDREW DUBBS.

Brian R. Sinnett, Assistant District Attorney, for Commonwealth
Jeffery M. Cook, Public Defender, for Defendant.

George, J., March 14, 2006

OPINION

This matter comes before the Court on the Defendant's Motion to Dismiss for a violation of Pennsylvania Rule of Criminal Procedure 600 (related to speedy trial). The Defendant argues that the Commonwealth has not exercised due diligence in bringing him to trial within the time period required by the Rules of Criminal Procedure. Following a hearing, the Court has entered findings of fact which will be incorporated herein; however, will not be substantially repeated. The issue is now ripe for disposition.

In determining whether or not the Commonwealth exercised due diligence in locating the Defendant, it is important to note that the Commonwealth is not required to exhaust every conceivable method of locating an individual. *Commonwealth v. Jones*, 389 A.2d 1167 (Pa.Super. 1978). Although, in hindsight, it may have been prudent for Detective Hartlaub to make contact with the York County

Probation Department, it is not the function of the Court to second guess the methods used by police. *Commonwealth v. Mitchell*, 372 A.2d 826 (Pa. 1977). Although Detective Hartlaub was aware that the Defendant's mother lived in York County, he lacked any other information which would have alerted him to make contact with the York County Probation Department. It is unreasonable to require those searching for a fugitive to check the probation department of each jurisdiction where a family member of the fugitive resides in order to satisfy the due diligence standard.

Instantly, Detective Hartlaub made numerous checks of the Defendant's last-known residence; interviewed members of the general public associated with the Defendant; conducted surveillance on the home of a relative of the Defendant; entered the Defendant in the clean system and checked with the probation department in the jurisdiction of the Defendant's last-known residence. If his contact with the Adams County Probation Department revealed that the Defendant was on supervision in York County, the result reached herein might be different. However, there is no information in the record to support such a conclusion.

The fact that the Defendant was arrested in York County while the Adams County warrant was pending does not mandate a different result. Detective Hartlaub exercised due diligence in entering the Defendant in the law enforcement computer network which, when operating properly, would alert the Detective when the Defendant was taken into custody in neighboring jurisdictions. For reasons unexplained, Detective Hartlaub was not notified following the Defendant's arrest in York County. This error by York County officials does not defeat the due diligence exercised by Detective Hartlaub.

In *Commonwealth v. McDermott*, 421 A.2d 851 (Pa.Super. 1980), the Pennsylvania Superior Court rejected a similar argument in a case having a remarkably similar factual background. In *McDermott*, the prosecuting officer obtained a warrant and placed the defendant in the NCIC computer system. He also contacted McDermott's wife but was informed that she was unaware of her husband's whereabouts. The officer further investigated several of McDermott's known hangouts and checked with his employer, all with negative results. During this same period of time, McDermott

was actually arrested twice by detectives in the same division of the same police department as that to which the prosecuting officer was assigned. On each occasion, McDermott was released from custody. McDermott claimed, therefore, that he was "available" to the Commonwealth at the time of his first arrest following the issuance of the warrant. The Superior Court rejected this claim. In doing so, the Superior Court focused the controlling inquiry as being whether prosecutors acted with due diligence in locating and apprehending the defendant. Intervening contacts made with the defendant by others, including Commonwealth agents, is not determinative. See also *Commonwealth v. Clark*, 374 A.2d 1380 (Pa.Super. 1977) (knowledge by one prosecuting official does not necessarily impute to another when determining due diligence).

Finally, I am mindful of the two equally important functions furthered by Rule 600: (1) the protection of the accused's speedy trial rights and (2) the protection of society. *Commonwealth v. Murray*, 879 A.2d 309 (Pa.Super. 2005). In considering issues raised under Rule 600, the Superior Court has instructed that "courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well." *Id.* A.2d at 313. As long as there has not been misconduct on the part of the Commonwealth in an effort to evade or impugn the rights of an accused, deference must be afforded a police officer's judgment as to which avenues of approach will be fruitful in apprehending a wanted person. *Mitchell*, cited above.

While it may be easy to critique the efforts of those in the front lines of law enforcement, any consideration of due diligence must take into account the complexity of the duties placed on law enforcement in an ever-increasing mobile society. Our law recognizes this reality by rejecting efforts to require perfection in locating fugitives in favor of a good-faith requirement of due diligence. I find that Detective Hartlaub's efforts in locating the Defendant meet the due diligence standard.

ORDER

AND NOW, this 14th day of March, 2006, the Defendant's Motion to Dismiss for a violation of Pennsylvania Rule of Criminal Procedure 600 is denied. The Defendant shall appear as directed by previous Orders of Court.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-683 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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.:

Deed No. 1:

ALL the following described tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and limited as follows, to-wit:

BEGINNING for a corner at a point in the center of Township Route No. 497 at lands of Oscar Stambaugh; thence along said lands of Oscar Stambaugh, through a steel pin set eighteen (18) feet from the beginning of this course, and along lands of Alwine Brick Co., North thirty-six (36) degrees forty-five (45) minutes West five hundred thirty-three and forty-four hundredths (533.44) feet to a steel pin at other lands of the Bi-Wis Corporation, Grantor herein, of which the herein described tract of land was formerly a part; thence along said last mentioned lands North fifty-three (53) degrees fifteen (15) minutes East four hundred fifty-one and fifty-three hundredths (451.53) feet to a steel pin at other lands of the Bi-Wis Corporation, Grantor herein; thence along said last mentioned lands South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East four hundred seventy-seven and eighty-eight hundredths (477.88) feet, through a steel pin set twenty-five (25) feet from the end of this course, to a point in the center of the aforesaid Township Route No. 497; thence in and along said Township Route No. 497 South fifty-six (56) degrees five (5) minutes ten (10) seconds West one hundred ninety-two and seventy-three hundredths (192.73) feet to a point in the center of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South fifty (50) degrees thirty-three (33) minutes West one hundred and eight hundredths (100.08) feet to a point in the center of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South forty-seven (47) degrees ten (10) minutes twelve (12) seconds West one hundred and twelve hundredths (100.12) feet to a steel pin set on the Northern edge of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South sixteen (16) degrees seventeen (17) minutes twenty-six (26) seconds West eighty-two and eighty-seven hundredths (82.87) feet to a point in the center of said Township Route No. 497, the point and place of BEGINNING. CONTAINING 5 Acres of land. Book 316 Page 1157

The above description was taken from a Survey Plan prepared by Donald E. Worley, Registered Surveyor, dated August 16, 1974, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Map Book , at page .

RESERVING, HOWEVER, unto the Grantor herein, its successors and assigns, a perpetual right-of-way, privilege and easement irrevocable, in, over, upon and under a twenty foot strip of land along the Northeastern property line of the above described tract of land, also being the third course of the above described tract of land (South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East) as a means of ingress and egress by the Grantor herein, its successors and assigns, jointly with the Grantee herein, its successors and assigns.

The perpetual right-of-way, privilege and easement irrevocable hereinabove reserved by the Grantor in favor of the Grantor, its successors and assigns, shall absolutely cease and determine upon the exercise by the Grantee of its right and option this date granted by Grantor to Grantee to purchase three additional acres lying to the Northwest of and contiguous to the tract of land which is the subject of this conveyance. The recording by the Grantee of the deed of conveyance for the aforesaid three acres shall operate, ipso facto, to terminate the right-of-way.

IT BEING the same premises which Bi-Wis Corporation, by deed dated January 15, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 316, page 1157 granted and conveyed unto Trimen Industries, Inc.

Deed No. 2:

ALL the following described tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and limited as follows, to-wit:

BEGINNING for a corner at a steel pin at the Northern corner of other lands of Trimen Industries, Inc., Grantee herein, conveyed by Bi-Wis Corporation, Grantor herein, by Deed dated January 15, 1975, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 316, page 1157, said steel pin being set North thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds West four hundred seventy-seven and eighty-eight hundredths (477.88) feet from the center of Township Route 497; thence from said point of Beginning and binding on the aforesaid lands previously conveyed by Bi-Wis Corporation to Trimen Industries, Inc., Grantee herein, South fifty-three (53) degrees fifteen (15) minutes West four hundred fifty-one and

fifty-three hundredths (451.53) feet to a steel pin at lands now or formerly of Alwine Brick Co.; thence along said last mentioned lands of Alwine Brick Co., North thirty-six (36) degrees forty-five (45) minutes West two hundred eighty-nine and ninety-seven hundredths (289.97) feet to a point; thence along other lands of Bi-Wis Corporation, Grantor herein, of which this was formerly a part, North fifty-three (53) degrees fifteen (15) minutes East four hundred fifty and ninety-three hundredths (450.93) feet to a point at lands now or formerly of Philip Eisenhart; thence along said last mentioned lands South thirty-six (36) degrees thirty-two (32) minutes fifty-four (54) seconds East one hundred ninety-seven and thirty-five hundredths (197.35) feet to a post; thence along lands of Bi-Wis Corporation, Grantor herein, South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East ninety-two and sixty-three hundredths (92.63) feet to a steel pin, the point and place of BEGINNING. CONTAINING 3 Acres.

The above description was taken from a Subdivision Plan prepared by Donald E. Worley, Registered Surveyor, dated August 16, 1974, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 5, page 44, and designated thereon as "Option Area".

IT BEING the same premises which Bi-Wis Corporation, by deed dated January 18, 1978, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 335, page 883, granted and conveyed unto Trimen Industries, Inc.

SEIZED and taken into execution as the property of **Trimen Industries, Inc.** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or piece of ground situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point near the centerline of S.R. 0134, the Taneytown Road, at a corner of Lot No. 3 on the hereinafter mentioned draft of survey and subdivision plan; thence in S.R. 0134, the Taneytown Road, South Ten (10) degrees Three (03) minutes Seventeen (17) seconds East, One Hundred Thirty-five and Thirty-nine One-hundredths (135.39) feet to a point near the centerline of said S.R. 0134, the Taneytown Road; thence continuing in S.R. 0134, the Taneytown Road, South Eight (08) degrees Sixteen (16) minutes Twenty-six (26) seconds East 287.82 feet to a point in said S.R. 0134, the Taneytown Road; thence South Eighty-four (84) degrees Fifty (50) minutes Thirteen (13) seconds West, Twenty-five and Eighty-three One-hundredths (25.83) feet to an existing railroad spike on line of land of the Mt. Joy Evangelical Lutheran Church and along the edge of Benner Road; thence crossing Benner Road, North Five (05) degrees Forty (40) minutes Eighteen (18) seconds West, Twenty-six and Forty One-hundredths (26.40) feet to an existing wooden post; thence along and in said Benner Road, South Eighty (80) degrees Eleven (11) minutes Thirty (30) seconds West, One Hundred Forty-seven and Twenty-five One-hundredths (147.25) feet to an existing cotton gin spindle One (1) foot North of the centerline of said Benner Road; thence in said Benner Road, South Eighty (80) degrees Nine (09) minutes Twenty-five (25) seconds West, One Hundred Fifty-five (155.00) feet to a railroad spike set near the centerline of Benner Road, and at a corner of Lot No. 5; thence by Lot No. 5, North Twenty-six (26) degrees Eight (8) minutes Fifteen (15) seconds West, Two Hundred Seventy and Seventy-one One-hundredths (270.71) feet to a steel pin set on line of Lot No. 5 and at a corner of Lot No. 3; thence by Lot No. 3, and passing through a steel pin set Twenty-five (25) feet from the next mentioned point, North Sixty-one (61) degrees Fifty-six (56) minutes Twenty-five (25) seconds East, Four Hundred Thirty-one and One One-hundredths (431.01) feet to a point

near the centerline of S.R. 0134, Taneytown Road, at a corner of Lot No. 3, the place of BEGINNING.

CONTAINING 2.847 Acres, more or less. BEING PARCEL #30-F17-65.

THE ABOVE DESCRIPTION was taken from a draft of survey and subdivision plan entitled "Scheller Subdivision", dated October 27, 1997, and revised January 19, 1998, as prepared by Richard W. Boyer, Professional Land Surveyor No. 17399-E, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 73 at pages 23 and 23A, and designated as Lot No. 4 thereon.

UNDER AND SUBJECT to certain restrictions contained in prior deeds and instruments of record.

BEING the same premises which Vincent Scheller and Marie Scheller, husband and wife, by Deed dated September 2, 1999 and recorded on September 3, 1999 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 1909, Page 141, granted and conveyed unto Joseph M. Regler, IV and April L. Regler, husband and wife, as tenants by the entireties, in fee.

SEIZED AND TAKEN as the property of Joseph M. Regler, IV and April L. Regler under Judgment No. 03-S-359.

Premises Being: 2585 Taneytown Rd., Gettysburg, PA 17325

SEIZED and taken into execution as the property of **April L. Regler & Joseph M. Regler, IV** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
NO. RT-18-06(A-1)

NOTICE

TO: Aubrey C. Williams, Jr.

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for January 8, 2007, at 9:00 a.m., prevailing time, in the Conference Room on the 4th Floor of the Adams County Courthouse, at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: (717) 337-9846
Chester G. Schultz, Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

12/22, 29 & 1/5

LEGAL NOTICE-ANNUAL MEETING

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 13th, 2007 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt
President & Treasurer; Director

12/15, 22, 29 & 1/5

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 WILLIAM L. ANGELL, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executrix: Sandra G. Angell, 1665 Knoxlyn Rd., Gettysburg, PA 17325

Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MARLYN W. BEAM, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Keith E. Beam, 506 Reservoir Road, Gardners, PA 17324

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

ESTATE OF DONALD A. GANTZ, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrators: Jessica Wilkinson, 1330 Herman Myers Road, Hagerstown, MD 21742; Jeremy Gantz, 98 Loomis Street, Burlington, VT 05401; Stacie Gantz, 2816 W. Woodford Ave., Ft. Collins, CO 80521

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

ESTATE OF LAURIE HERTZOG HESS, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Administrator: Dean K. Hess, 1310 Quaker Valley Road, Biglerville, PA 17307

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

ESTATE OF BERNADETTE E. LUCKENBAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executors: Edward F. Luckenbaugh, Jr., 45 Cashtown Rd., P.O. Box 29, Cashtown, PA 17310; Robert M. Luckenbaugh, 60 Maple Ave., Gettysburg, PA 17325

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

ESTATE OF MELVIN C. REYNOLDS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executors: James R. Reynolds, 60 Skyline Drive, Mechanicsburg, PA 17050; Connie R. Taylor, 131 South Main Street, Box 323, Bendersville, PA 17306

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

SECOND PUBLICATION**ESTATE OF ERNST P. HALL, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executrix: Barbara A. Hall, 607 Winston Drive, Endwell, NY 13760

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

ESTATE OF PEARL E. LEPPA, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: David H. Leppa, 472 Fairview Drive, Hanover, PA 17331; Shirley A. Sager, 492 Pine Grove Road, Hanover, PA 17331; Wayne L. Leppa, 30 Moul Avenue, Hanover, PA 17331

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

ESTATE OF MARGARET D. NELSON, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Mark W. Nelson, 209 Christopher Road, Forest Hill, MD 21050

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF LYNN L. SHEFFER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Nathaniel P. Sheffer, c/o Schrack & Linsenbach Law Offices, 124 West Harrisburg St., P.O. Box 310, Dillsburg, PA 17019-0310

Attorney: Schrack & Linsenbach Law Offices, 124 West Harrisburg St., P.O. Box 310, Dillsburg, PA 17019-0310

ESTATE OF HERBERT A. SNYDER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Herbert A. Snyder, Jr., 746 Company Farm Road, York Springs, PA 17372

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

ESTATE OF W. NORTH STERRETT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executor: William N. Sterrett, Jr., 1332 Ridgeview Circle, Downingtown, PA 19335

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

ESTATE OF EILEEN F. WAGAMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Janice M. Neiderer, 1080 Beck Mill Road, Hanover, PA 17331; Deanna L. Robinson, 233 Providence Drive, McSherrytown, PA 17344

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

ESTATE OF OLGA K. WICKHAM, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Patricia W. Hoffman, 60 Twin Lakes Dr., Gettysburg, PA 17325

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

THIRD PUBLICATION**ESTATE OF GARMA M. BROWN, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Larry Leroy Brown, 6529 Baltimore Pike, Littlestown, PA 17340; Lois E. McNamara, 701 White Oaks Avenue, Baltimore, MD 21228

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

ESTATE OF JAMES H. CHAMPLAIN a/k/a JAMES H. CHAMPLAIN, SR., DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Kristin C. Champlain, 44 Kinneman Road, Abbottstown, PA 17301

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

ESTATE OF PAULINE R. DEARDORFF, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Richard S. Deardorff, 165J Church Road, Orttanna, PA 17353; Robert J. Deardorff, 678 Lower Georges Valley Road, Spring Mills, PA 16875

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

(continued on page 6)

THIRD PUBLICATION (continued)

ESTATE OF JOHN E. HARTLAUB, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania
 Executor: Jeffrey L. Hartlaub, 270 Kuhn Road, Littlestown, PA 17340

ESTATE OF MARLYN W. LORY, DEC'D

Late of the Borough of York Springs, Adams County, Pennsylvania
 Executor: Randy Lee Lory, P.O. Box 282, York Springs, PA 17372
 Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF MARY JANE REINECKER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
 Executor: David A. Reinecker, 7270 Old Harrisburg Road, York Springs, PA 17372
 Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF GEORGE I. RISER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Joan M. Riser, 1306 Irishtown Road, New Oxford, PA 17350
 Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DAVID H. SCHMIDT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
 Debbie E. Schmidt, 14 Lowbridge Passage, Medford, NJ 08055
 Attorney: Henry O. Heiser, III, Esq., 104 Baltimore St., Gettysburg, PA 17325

ESTATE OF CHARLES A. SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executrix: Phyllis J. Smith, Cross Keys Village, Apt. 7, P.O. Box 128, 2990 Carlisle Pike, New Oxford, PA 17350
 Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF ALBERT C. SOPKO a/k/a ALBERT CHARLES SOPKO, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
 Executrix: Anne H. Sopko, 145 Patterson Rd., Gettysburg, PA 17325
 Attorney: Barbara Jo Entwistle, Esq., Pyle and Entwistle, 66 West Middle Street, Gettysburg, PA 17325

IN THE COURT OF
 COMMON PLEAS OF
 ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
 NO. RT-18-06(A-2)

NOTICE

TO: Daniel Gary Romberger

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for January 8, 2007, at 9:00 a.m., prevailing time, in the Conference Room on the 4th Floor of the Adams County Courthouse, at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Court Administrator
 Adams County Courthouse
 111-117 Baltimore Street
 Gettysburg, PA 17325
 Telephone number: (717) 337-9846
 Chester G. Schultz, Attorney at Law
 145 Baltimore Street
 Gettysburg, PA 17325

12/22, 29 & 1/5

TRUST ESTATE NOTICE

Margaret Merrill Leavy died on May 22, 2006, a resident of Cumberland Township, Adams County, Pennsylvania. During her lifetime she created a revocable trust for her benefit. All persons indebted to her or the trust are requested to make payment, and those having claims against her or the trust are requested to present the same, without delay, to:

UNITED BANK AND TRUST,
 WASHTENAW, TRUSTEE
 ATTN: Daniel E. Cogan, Sr. VP
 P.O. Box 1127
 Ann Arbor, MI 48106-1127

Or to:

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

12/15, 22 & 29

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on December 1, 2006, for the purpose of obtaining a Certificate of Incorporation of a nonprofit corporation organized under the provisions of the Nonprofit Corporation Law of 1988. The name of the corporation is SGT. MAC FOUNDATION. The purpose for which it has been organized is to provide benevolent services to persons wounded in the service of the United States.

Puhl, Eastman & Thrasher
 Attorneys for the corporation

12/22

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on November 27, 2006 for the purposes of obtaining a Certificate of Incorporation of a proposed nonprofit corporation to be organized under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

The name of the corporation is GETTYSBURG ECONOMIC DEVELOPMENT CORPORATION. The purpose of the corporation to engage in activities in connection with the economic development, the redevelopment, and the economic revitalization of the community of the historic Borough of Gettysburg and its environs and other similar activities as permitted by the Pennsylvania Nonprofit Corporation Law.

Harold A. Eastman, Jr.
 Solicitor
 Puhl, Eastman & Thrasher
 220 Baltimore Street
 Gettysburg, PA 17325

12/22

Adams County Legal Journal

Vol. 48

December 29, 2006

No. 32, pp. 196-204

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ERIE INS. ET AL VS. FORD MOTOR CO.

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



Member FDIC

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-N-464 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground with the improvements thereon erected, situate, lying and being in Conewago Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a stake for a corner at Maple Avenue and Lot No. 12; thence in a Northerly direction along said Lot No. 12, 150 feet to a stake for a corner at a public alley; thence in an Easterly direction along said public alley 60 feet to a stake for a corner at Lot No. 15; thence in a Southerly direction along said Lot No. 15, 150 feet to a stake for a corner at Maple Avenue aforesaid; thence in a Westerly direction along said Maple Avenue 60 feet to the place of BEGINNING. Being known as Lots Nos. 13 and 14 in Block 20 on a plat or general plan of Hanover Improvement Company, which plan is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book WW, page 600, as by referenced thereto it will more fully and at large appear.

IT BEING the same tract of land which Josephine J. Wagaman, by deed dated December 7, 1981 and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 360, page 622, granted and conveyed unto Josephine J. Wagaman and Johnny F. Jako. The said Josephine J. Wagaman having died, title vesting solely unto Johnny F. Jako, Mortgagor herein.

Premises being: 511 Maple Avenue, Hanover, PA 17331

SEIZED and taken into execution as the property of **John F. Jako** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-966 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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 Franklin Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a PK nail located in a private lane at the Northeast corner of land now or formerly of Paul L. Ingles and wife, said point also being the Southwest corner of the tract of land herein described; thence by the latter, and running through a reference iron pin located 25 feet from the beginning of this course, North 34 degrees 16 minutes West, 79.74 feet to an iron pin at land now or formerly of James Sharrah; thence by the latter, North 48 degrees 02 minutes 20 seconds East, 74.37 feet to an iron pin at land now or formerly of Daniel J. Parr; thence by the latter, South 33 degrees 39 minutes 10 seconds East, 99.13 feet to a point on the North side of the said private lane; thence by the latter, South 63 degrees 10 minutes 15 seconds West, 73.25 feet to a PK nail located in said private lane, the place of BEGINNING. CONTAINING 6,545 Square Feet, as per Draft of Survey dated July 23, 1974, prepared by Boyer-Price Surveys, Inc., and revised November 11, 1974. Being numbered and commonly known as 5287 Chambersburg Road.

IT BEING THE SAME TRACT OF LAND which Starboard Ventures Group, LLC, a Pennsylvania limited liability company, by its Deed dated August 29, 2003, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 3283 at Page 12, sold and conveyed unto Laurie L. Seibel and Kenneth L. Loughry, Jr., the GRANTORS herein.

TOGETHER WITH a perpetual right of way over an existing private lane leading from U.S. Route 30 to the tract hereby conveyed, said private lane being indicated on the above-recited draft of survey.

SUBJECT, HOWEVER, TO restrictions and conditions of record which are made a part hereof as fully as if written out herein.

Parcel Identification No: B9-146

Premises: 5287 Chambersburg Road, Orrtanna, PA 17353-9763, Franklin Township, Adams County, Pennsylvania

RECORD OWNER

TITLE TO SAID PREMISES IS VESTED IN Karen L. Dettinger, by Deed from Laurie L. Seibel, now Laurie L. Loughry and Kenneth L. Loughry, Jr., wife and husband, dated 03/31/2005, recorded 04/01/2005, in Deed Book 3916, page 281.

SEIZED and taken into execution as the property of **Karen L. Dettinger a/k/a Karen L. Ogburn a/k/a Karen Oqdm a/k/a Karen Lousie Stauffer** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

ERIE INS. ET AL VS. FORD MOTOR CO.

1. The Complaint must inform the defendant of the specific basis on which recovery is sought, so that the defendant may know without question on what grounds to make their defense. If a defendant needs more information to prepare their defense and the details requested are evidentiary in nature, then these answers can be obtained through discovery.

2. The Court has not found any case law which allows an insurance company to bring a Lemon law claim on behalf of their insured consumer.

3. The lemon law was enacted to protect Pennsylvania consumers who purchase new cars to seek recourse against the manufacturer of a defective vehicle by means of receiving repairs, replacement, or value. Courts should be reluctant to extend the definition of "purchaser" to include parties that do not fall within the wording of the statute.

4. Courts have been narrowly interpreting the definition of "purchaser" as it is used in the Lemon law.

5. If the consumer chooses to forgo their rights to bring a Lemon law claim, and receive payment from their insurance company, then remedies afforded under the Lemon law and UTPCPL are lost.

6. Generally, attorney fees are not recoverable unless a statutory basis exists, the parties agree, or an established exception exists. The law requires a party requesting attorney fees to prove they are entitled by statute agreement or an exception to the law.

7. Treble damages are an award of three times the amount that a court would normally find the injured party entitled to.

8. Averments of damage are scrutinized under the specificity requirements of Pa.R.C.P. 1019(a), and the material facts on which their cause of action is based must be stated.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA. CIVIL ACTION NO. 05-S-668. ERIE INSUR-
ANCE GROUP A/S/O PHILLIP AND AMANDA HARTZELL VS.
FORD MOTOR COMPANY.

Richard J. Boyd, Esq., for Plaintiff

Nancy R. Winschell, Esq. and Stephen J. Taczak, Esq., for Defendant
Bigham, J., March 22, 2006

OPINION

STATEMENT OF FACTS

Phillip and Amanda Hartzell were the owners of a 2002 Ford Explorer Limited. During their first year of ownership, they reported problems of intermittent malfunction of the driver's side power seat to the Ford dealer. On April 25, 2005, a fire erupted at the driver's side seat which spread to and destroyed the entire vehicle. Their insurer, Erie Insurance Group, paid for the value of the vehicle, rental charges and personal property destroyed therein. Thereafter,

the Hartzells transferred title of their vehicle and assigned all of their rights to Erie Insurance Group. Erie Insurance Group filed a complaint against Ford Motor Company to recover damages in excess of \$90,000, costs of suit, delay damages, treble damages and attorney fees. The complaint contains three counts, which include claims for breach of warranties, strict liability, and lemon law violations.

Before this Court are Defendant's preliminary objections to Plaintiff's Second Amended Complaint. Defendant is requesting this Court to strike Paragraph 21, Count III, and all claims for attorney fees and treble damages. Both parties have submitted briefs and oral argument was held on March 8, 2006.

DISCUSSION

Defendant's preliminary objections are based on insufficient specificity in a pleading, legal insufficiency of that pleading, and failure of a pleading to conform to law or rule of court. **Pa.R.C.P. 1028(a)(2)-(4)**.

Pa.R.C.P. 1028(a)(3) allows a party to file a preliminary objection for insufficient specificity of a pleading. **Pa.R.C.P. 1019(a)** requires plaintiffs to plead the material facts that support their claim. The complaint must inform the defendant of the specific basis on which recovery is sought, so that the defendant may know without question on what grounds to make their defense. If a defendant needs more information to prepare their defense and the details requested are evidentiary in nature, then these answers can be obtained through discovery. *Id. citing to Totani v. Lansford-Coalsdale Joint Water Auth.*, **2 Pa. D.&C. 3d 143, 147 (1975)**. *See also, Wiltz v. Pazzalia*, **71 Pa. D.&C. 4th 427, 439 (2004)**.

Pa.R.C.P. 1028(a)(4) allows a party to file a preliminary objection based on legal insufficiency of a pleading, this is also known as a demurrer. A complaint is legally insufficient when it fails to state a cause of action upon which relief can be granted. *Balsbaugh v. Rowland*, **447 Pa. 423, 426, 290 A.2d 85, 87 (1972)**. This objection will only be sustained when the face of the pleadings clearly shows that the law will not permit recovery, and any doubts will be resolved against sustaining a demurrer. *Giordano v. Ridge*, **737 A.2d 350, 352 (Pa. Cmmwlth. 1999)**.

Paragraph 21

Defendant requests Paragraph 21 be stricken from Plaintiff's Second Amended Complaint, or in the alternative, Plaintiff be ordered to set forth allegations that would allow Defendant to prepare a proper defense. Paragraph 21 is within Count II for Strict Liability, it provides:

For these reasons, Ford is strictly liable to Plaintiff for the damages under Section 402A of the Restatement (2d) of Torts, the Restatement (3d) of Torts, and the applicable case law of the Commonwealth of Pennsylvania.

Defendant argues Paragraph 21 violates the specific pleading requirements set forth in **Pa.R.C.P. 1019(a)** and the Supreme Court's holding in *Connor v. Allegheny Gen'l Hosp.*, **461 A.2d 600 (Pa. 1983)**.¹ Factually speaking, Defendant believes Plaintiff should have identified the specific cause of the wiring defect. Legally speaking, Defendant believes that Plaintiff should have alleged what section and/or sections of the Restatement (3d) of Torts and what case law his claim is based on.

As Plaintiff correctly points out, all paragraphs must be read in context with other allegations in the complaint. See *Rachlin v. Edmison*, **813 A.2d 862, 870 (Pa. Super. 2002)**. Thus, Paragraph 21 must be read in context with Paragraph 20, which provides:

The aforementioned defects consisted of:

- (a) design defects in that the wiring under the driver's seat was designated to be improperly and dangerously positioned;
- (b) manufacturing defects in that the wiring under the driver's side seat failed and caused the fire;
- (c) component defects in that the wiring under the driver's side seat failed and caused the fire;
- (d) a failure to warn of the design, manufacturing, and/or compo-

¹The central holding in *Connor* was that if a proposed amendment to the pleadings does not change the cause of action but merely amplifies that which has already been averred, the amendment should be allowed even though the statute of limitations had run out. The reasoning behind the holding in *Connor* was that resulting prejudice would occur if a **new** cause of action was pled, as opposed to merely **amplifying** that which has already been averred. *Connor*, *supra* **461 at 602-603**. Defendant is concerned that the law referenced in Paragraph 20 is so broad that Plaintiff could essentially bring a new cause of action later in litigation and they could not adequately prepare a defense.

nent defects as no warning regarding the above-mentioned defects was provided; and/or;

- (e) a failure to properly instruct as to the appropriate operating and maintenance procedures for safe use of the vehicle and/or its components.

By reading these paragraphs together, it appears Plaintiff's claim for strict liability is based on a defect with the wiring underneath the driver's side seat. The exact problem with the wiring has not yet been identified by either party. Even though there could be multiple causes for the wiring defect, we believe this information can be obtained through discovery. The law referenced in Paragraph 21 is specific enough as well. Plaintiff specifically cites to Section 402A of the Restatement (2d) of Torts. Even though there is no specific cite to a section of the Restatement (3d) of Torts or case names, we believe the parties can conduct legal research to prepare their defense.² Therefore, Paragraph 21 shall not be stricken from Plaintiff's Second Amended Complaint because Defendants have enough factual and legal information to adequately prepare their defense. Any additional information can be obtained through discovery and/or legal research.

Count III

Defendant requests Count III alleging Lemon Law Violations, which includes claims for attorney fees and treble damages be stricken from Plaintiff's Second Amended Complaint because Plaintiff's claim lies within the rights of subrogation as opposed to the rights that would be afforded to a purchaser of a new motor vehicle.

The first issue is whether Plaintiff would be entitled to recover under the Lemon law. Pennsylvania's Lemon law places a duty on the manufacturer of a new motor vehicle to make repairs when need-

²We note that these parties were involved in the case of *Erie Ins. Group v. Ford Motor Co.*, 51 Pa. D.&C. 4th 220, 221 (2001) where Erie Insurance Group raised claims for breach of warranty, negligence and strict liability based on allegations that defective wiring in or around the power window actuator of a 1997 Mercury Mystique caused a fire. Factually, the complaint merely describes the defect as one that caused a fire to originate from faulty wiring in or around the power window actuator motor. Legally, the complaint cites to Sections 402(a), 402(b) and 388 of the Restatement (Second) of Torts as the basis for their strict liability claim. In that matter, there was no preliminary objection raised based on insufficient specificity of the pleading.

ed if a nonconformity occurs within a period of one year following actual delivery of the vehicle, within the first 12,000 miles of use or during the term of the warranty, whichever occurs first. **73 P.S. § 1954(a)**. Any purchaser of a new motor vehicle who suffers any loss due to nonconformity of such vehicle as a result of the manufacturer's failure to comply with the Lemon law has the right to bring a civil action for reasonable attorney fees and court costs. **73 P.S. § 1958**. A purchaser has been defined as:

A person, or his successors or assigns, who has obtained ownership of a new motor vehicle by transfer or purchase or who has entered into an agreement or contract for the purchase of a new motor vehicle which is used or bought for use primarily for personal, family or household purposes. 73 P.S. § 1952.

A new motor vehicle has been defined as:

Any new and unused self-propelled, motorized conveyance driven upon public roads, streets or highways which is designed to transport not more than 15 persons, which was purchased and is registered in the Commonwealth and is used or bought for use primarily personal, family or household purposes, including a vehicle used by a manufacturer or dealer as a demonstrator or dealer car prior to its sale. The term does not include motorcycles, motor homes or off-road vehicles. 73 P.S. § 1952.

Plaintiff argues they meet the statutory definition of a "purchaser of a new motor vehicle" because the Hartzells assigned all of their rights and title over to Plaintiff. Defendant disagrees because the vehicle was titled to the Hartzells before Erie took possession, the Hartzells used the vehicle for three years, and the nonconformity occurred before Plaintiff acquired the vehicle. Defendant points to the recent Superior Court decision of *Meyers v. Volvo Cars of North America, Inc.*, **852 A.2d 1221, 1226 (Pa. Super. 2004)** as being instructive to this case. In *Meyers*, the court held a demonstration or dealer car that had never been titled and is being sold at retail for the first time to the public, which had 9,628 miles on it when it was purchased, constituted a "new motor vehicle" for purposes of bringing a claim under the Lemon law. *Meyers*, **852 A.2d at 1226**. This case

further clarified what the term “new motor vehicle” means for purposes of bringing a Lemon law claim. However, the facts of our case do not clearly fit within the *Meyers* decision because we are not dealing with a demonstration or dealer car.

Here we are dealing with a vehicle that had been purchased and used by the Hartzells for three years. After a fire erupted under the driver’s side seat and destroyed the vehicle, they assigned all of their rights and title over to Plaintiff. They did not file a Lemon law claim but received the value of the vehicle, rental charges, and personal property that had been destroyed therein from their insurance company. Their insurance company now seeks to bring a Lemon law claim and recover more money than what they actually paid out. Neither counsel, nor the court has not found any case law which allows an insurance company to bring a Lemon law claim on behalf of their insured consumer.

The Lemon law was enacted to protect Pennsylvania consumers who purchase new cars to seek recourse against the manufacturer of a defective vehicle by means of receiving repairs, replacement, or value. Courts should be reluctant to extend the definition of “purchaser” to include parties that do not fall within the wording of the statute. See *Mikula v. Ford Motor Co.*, **680 A.2d 907, 909 (Pa. Super. 1996)**. The wording of the statute refers to a purchaser of a new motor vehicle. **73 P.S. § 1958**. Both of the terms, “purchaser” and “new motor vehicle”, have been defined by the statute and clarified by case law. See **73 P.S. § 1952**. Throughout the past twenty years, courts have been narrowly interpreting the definition of “purchaser” as it is used in the Lemon law. See *Reeves v. Morelli-Hoskins Ford, Inc.*, **609 A.2d 828, 830 (Pa. Super. 1992)**(person whose car is repossessed after filing a Lemon law action loses status of “purchaser”); *Ford Motor Credit Co. v. Dunsmore*, **542 A.2d 1033, 1035 (Pa. Super. 1988)**(Lemon law does not permit the purchaser of a defective automobile to discontinue making payments under a financing contract while pursuing available Lemon law remedies); *Industrial Valley Bank & Trust Co. v. Howard*, **533 A.2d 1055, 1059 (Pa. Super. 1988)**(neither lessee nor lessor in a lease situation qualifies as a “purchaser” within the clear meaning of section 1952 of the Lemon law). See *Mikula, supra at 909*. In *Mikula*, the definition of a “new motor vehicle” was understood to have three requirements that must

be met: (1) vehicle must be purchased in Pennsylvania; (2) vehicle must be registered in the Commonwealth; and (3) vehicle used or bought primarily for personal, family, or household purposes. *Id.*

We do not believe Plaintiff meets the definition for a purchaser of a new motor vehicle. Plaintiff did not obtain ownership of a new motor vehicle because the vehicle had been used for three years and partially destroyed by a fire. Plaintiff's argument that they were an "assignee" of a purchaser of a new motor vehicle has not been clearly defined to the court, nor does it appear to fit within the intent and definition of the statute. Plaintiff's Second Amended Complaint states: "Plaintiff was assigned all rights that its insured would otherwise have as against Ford and Plaintiff is now subrogated to the rights of its insured." The Lemon law and its remedies were created to protect the "consumers" of new cars that turned out to be defective. The consumer would be allowed to pursue remedies under the Lemon law and UTPCPL, which could be an amount in excess of the value of the vehicle. If the consumer chooses to forgo their rights to bring a Lemon law claim, and receive payment from their insurance company, then remedies afforded under the Lemon law and UTPCPL are lost. Therefore, Count III alleging Lemon law violations will be stricken from Plaintiff's Second Amended Complaint.

However, the insurance company is not left without a remedy to seek recourse against the manufacturer of the defective vehicle. Defendant correctly argues Plaintiff's claim lies within the realm of subrogation, which is governed by equitable principles and allows recovery only to the extent of actual payment made to the subrogee. *Citing to Shockley v. Harleysville Mutual Ins. Co.*, **553 A.2d 973, 975 (Pa. Super. 1988)**. Plaintiff can only recover what they paid their insured, which as described in their complaint includes the value of the vehicle, rental charges, and personal property that was destroyed therein. Therefore, Plaintiff's request for attorney fees and treble damages under their Lemon law claim will be stricken from Plaintiff's Second Amended Complaint.

Attorney Fees and Treble Damages

The final issue is whether all claims for attorney fees or treble damages should be stricken from Plaintiff's Second Amended Complaint. All three counts request an amount in excess of \$30,000, plus interest, costs of suit, delay damages, treble damages and attor-

ney fees. Count I is a claim for breach of the implied warranty of fitness for a particular purpose and the implied warranty of merchantability. Count II is a claim for strict liability, and Count III is a claim for Lemon law violations, which includes a claim under the UTPCPL. Since we have already determined that Plaintiff cannot bring a claim under the Lemon law, their request for attorney fees and treble damages will be stricken under Count III. We will now address the claim for attorney fees and treble damages under Count I and Count II.

Generally, attorney fees are not recoverable unless a statutory basis exists, the parties agree, or an established exception exists. See *Mrozek v. Eiter*, 805 A.2d 535, 538 (Pa. Super. 2002), citing *Hart v. O'Malley*, 781 A.2d 1211, 1216 (Pa. Super. 2001), *Merlino v. Delaware Cty*, 728 A.2d 949, 951 (Pa. 1999). This is known as the so-called "American Rule". The law requires a party requesting attorney fees to prove they are entitled by statute, agreement or an exception to the law. Plaintiff's failure to plead any of these bases in Count I and Count II leads this Court to conclude that their request fails to conform to the law. Therefore, Plaintiff's request for attorney fees in Count I and Count II of Plaintiff's Second Amended Complaint is stricken.

Treble damages are an award of three times the amount that a court would normally find the injured party entitled to. *Merriam-Webster's Dictionary of Law, 1996*. Plaintiff has the duty to properly plead damages in their complaint. **Standard Pennsylvania Practice 2d, §21:69, citing to *Clark v. Steele*, 255 Pa. 330, 99 A. 1001 (1917)**. Averments of damage are scrutinized under the specificity requirements of **Pa.R.C.P. 1019(a)**, and the material facts on which their cause of action is based must be stated. *Com., Dept. of Transp. v. Shipley Humble Oil Co.*, **29 Pa. Commw. 171, 370 A.2d 438 (1977)**.

Defendant argues Plaintiff's request for treble damages should be stricken from their Second Amended Complaint because they fail to allege conduct of Ford sufficient to allow an award of damages which are punitive in nature, and no common law authority exists for the award of treble damages. In response, Plaintiff points to the Lemon law statute which permits attorney fees, and to the UTPCPL which permits treble damages and attorney fees. Plaintiff's argument

would apply to Count III, only. Here we are addressing Count I and Count II for breach of warranties and strict liability. Since Plaintiff's Second Amended Complaint fails to specifically state a basis for treble damages, we grant Defendant's request to strike it from Count I and Count II.

Accordingly, the attached order is entered.

ORDER

AND NOW, this 22nd day of March 2006, in consideration of Defendant's preliminary objections to Plaintiff's Second Amended Complaint, IT IS ORDERED THAT they are denied in part and granted in part. Paragraph 21 will not be stricken from Plaintiff's Second Amended Complaint. Count III and all claims for attorney fees and treble damages will be stricken from Plaintiff's Second Amended Complaint.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-683 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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.:

Deed No. 1:

ALL the following described tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and limited as follows, to-wit:

BEGINNING for a corner at a point in the center of Township Route No. 497 at lands of Oscar Stambaugh; thence along said lands of Oscar Stambaugh, through a steel pin set eighteen (18) feet from the beginning of this course, and along lands of Alwine Brick Co., North thirty-six (36) degrees forty-five (45) minutes West five hundred thirty-three and forty-four hundredths (533.44) feet to a steel pin at other lands of the Bi-Wis Corporation, Grantor herein, of which the herein described tract of land was formerly a part; thence along said last mentioned lands North fifty-three (53) degrees fifteen (15) minutes East four hundred fifty-one and fifty-three hundredths (451.53) feet to a steel pin at other lands of the Bi-Wis Corporation, Grantor herein; thence along said last mentioned lands South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East four hundred seventy-seven and eighty-eight hundredths (477.88) feet, through a steel pin set twenty-five (25) feet from the end of this course, to a point in the center of the aforesaid Township Route No. 497; thence in and along said Township Route No. 497 South fifty-six (56) degrees five (5) minutes ten (10) seconds West one hundred ninety-two and seventy-three hundredths (192.73) feet to a point in the center of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South fifty (50) degrees thirty-three (33) minutes West one hundred and eight hundredths (100.08) feet to a point in the center of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South forty-seven (47) degrees ten (10) minutes twelve (12) seconds West one hundred and twelve hundredths (100.12) feet to a steel pin set on the Northern edge of said Township Route No. 497; thence continuing in and along said Township Route No. 497 South sixteen (16) degrees seventeen (17) minutes twenty-six (26) seconds West eighty-two and eighty-seven hundredths (82.87) feet to a point in the center of said Township Route No. 497, the point and place of BEGINNING. CONTAINING 5 Acres of land. Book 316 Page 1157

The above description was taken from a Survey Plan prepared by Donald E. Worley, Registered Surveyor, dated August 16, 1974, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Map Book _____, at page _____

RESERVING, HOWEVER, unto the Grantor herein, its successors and assigns, a perpetual right-of-way, privilege and easement irrevocable, in, over, upon and under a twenty foot strip of land along the Northeastern property line of the above described tract of land, also being the third course of the above described tract of land (South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East) as a means of ingress and egress by the Grantor herein, its successors and assigns, jointly with the Grantee herein, its successors and assigns.

The perpetual right-of-way, privilege and easement irrevocable hereinabove reserved by the Grantor in favor of the Grantor, its successors and assigns, shall absolutely cease and determine upon the exercise by the Grantee of its right and option this date granted by Grantor to Grantee to purchase three additional acres lying to the Northwest of and contiguous to the tract of land which is the subject of this conveyance. The recording by the Grantee of the deed of conveyance for the aforesaid three acres shall operate, ipso facto, to terminate the right-of-way.

IT BEING the same premises which Bi-Wis Corporation, by deed dated January 15, 1975, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 316, page 1157 granted and conveyed unto Trimen Industries, Inc.

Deed No. 2:

ALL the following described tract of land situate, lying and being in Oxford Township, Adams County, Pennsylvania, bounded and limited as follows, to-wit:

BEGINNING for a corner at a steel pin at the Northern corner of other lands of Trimen Industries, Inc., Grantee herein, conveyed by Bi-Wis Corporation, Grantor herein, by Deed dated January 15, 1975, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 316, page 1157, said steel pin being set North thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds West four hundred seventy-seven and eighty-eight hundredths (477.88) feet from the center of Township Route 497; thence from said point of Beginning and binding on the aforesaid lands previously conveyed by Bi-Wis Corporation to Trimen Industries, Inc., Grantee herein, South fifty-three (53) degrees fifteen (15) minutes West four hundred fifty-one and

fifty-three hundredths (451.53) feet to a steel pin at lands now or formerly of Alwine Brick Co.; thence along said last mentioned lands of Alwine Brick Co., North thirty-six (36) degrees forty-five (45) minutes West two hundred eighty-nine and ninety-seven hundredths (289.97) feet to a point; thence along other lands of Bi-Wis Corporation, Grantor herein, of which this was formerly a part, North fifty-three (53) degrees fifteen (15) minutes East four hundred fifty and ninety-three hundredths (450.93) feet to a point at lands now or formerly of Philip Eisenhart; thence along said last mentioned lands South thirty-six (36) degrees thirty-two (32) minutes fifty-four (54) seconds East one hundred ninety-seven and thirty-five hundredths (197.35) feet to a post; thence along lands of Bi-Wis Corporation, Grantor herein, South thirty-seven (37) degrees thirty-three (33) minutes thirteen (13) seconds East ninety-two and sixty-three hundredths (92.63) feet to a steel pin, the point and place of BEGINNING. CONTAINING 3 Acres.

The above description was taken from a Subdivision Plan prepared by Donald E. Worley, Registered Surveyor, dated August 16, 1974, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plat Book 5, page 44, and designated thereon as "Option Area".

IT BEING the same premises which Bi-Wis Corporation, by deed dated January 18, 1978, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 335, page 883, granted and conveyed unto Trimen Industries, Inc.

SEIZED and taken into execution as the property of **Trimen Industries, Inc.** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
NO. RT-18-06(A-1)

NOTICE

TO: Aubrey C. Williams, Jr.

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for January 8, 2007, at 9:00 a.m., prevailing time, in the Conference Room on the 4th Floor of the Adams County Courthouse, at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: (717) 337-9846
Chester G. Schultz, Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

12/22, 29 & 1/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-359 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot or piece of ground situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point near the centerline of S.R. 0134, the Taneytown Road, at a corner of Lot No. 3 on the hereinafter mentioned draft of survey and subdivision plan; thence in S.R. 0134, the Taneytown Road, South Ten (10) degrees Three (03) minutes Seventeen (17) seconds East, One Hundred Thirty-five and Thirty-nine One-hundredths (135.39) feet to a point near the centerline of said S.R. 0134, the Taneytown

Road; thence continuing in S.R. 0134, the Taneytown Road, South Eight (08) degrees Sixteen (16) minutes Twenty-six (26) seconds East 287.82 feet to a point in said S.R. 0134, the Taneytown Road; thence South Eighty-four (84) degrees Fifty (50) minutes Thirteen (13) seconds West, Twenty-five and Eighty-three One-hundredths (25.83) feet to an existing railroad spike on line of land of the Mt. Joy Evangelical Lutheran Church and along the edge of Benner Road; thence crossing Benner Road, North Five (05) degrees Forty (40) minutes Eighteen (18) seconds West, Twenty-six and Forty One-hundredths (26.40) feet to an existing wooden post; thence along and in said Benner Road, South Eighty (80) degrees Eleven (11) minutes Thirty (30) seconds West, One Hundred Forty-seven and Twenty-five One-hundredths (147.25) feet to an existing cotton gin spindle One (1) foot North of the centerline of said Benner Road; thence in said Benner Road, South Eighty (80) degrees Nine (09) minutes Twenty-five (25) seconds West, One Hundred Fifty-five (155.00) feet to a railroad spike set near the centerline of Benner Road, and at a corner of Lot No. 5; thence by Lot No. 5, North Twenty-six (26) degrees Eight (8) minutes Fifteen (15) seconds West, Two Hundred Seventy and Seventy-one One-hundredths (270.71) feet to a steel pin set on line of Lot No. 5 and at a corner of Lot No. 3; thence by Lot No. 3, and passing through a steel pin set Twenty-five (25) feet from the next mentioned point, North Sixty-one (61) degrees Fifty-six (56) minutes Twenty-five (25) seconds East, Four Hundred Thirty-one and One One-hundredths (431.01) feet to a point near the centerline of S.R. 0134, Taneytown Road, at a corner of Lot No. 3, the place of BEGINNING.

CONTAINING 2.847 Acres, more or less. BEING PARCEL #30-F17-65.

THE ABOVE DESCRIPTION was taken from a draft of survey and subdivision plan entitled "Scheller Subdivision", dated October 27, 1997, and revised January 19, 1998, as prepared by Richard W. Boyer, Professional Land Surveyor No. 17399-E, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 73 at pages 23 and 23A, and designated as Lot No. 4 thereon.

UNDER AND SUBJECT to certain restrictions contained in prior deeds and instruments of record.

BEING the same premises which Vincent Scheller and Marie Scheller, husband and wife, by Deed dated September 2, 1999 and recorded on September 3, 1999 in the Office of the Recorder of Deeds in and for Adams County in Deed Book 1909, Page 141, granted and conveyed unto Joseph M.

Regler, IV and April L. Regler, husband and wife, as tenants by the entireties, in fee.

SEIZED AND TAKEN as the property of Joseph M. Regler, IV and April L. Regler under Judgment No. 03-S-359.

Premises Being: 2585 Taneytown Rd., Gettysburg, PA 17325

SEIZED and taken into execution as the property of **April L. Regler & Joseph M. Regler, IV** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

LEGAL NOTICE-ANNUAL MEETING

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 13th, 2007 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt
President & Treasurer; Director

12/15, 22, 29 & 1/5

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, of the application for registration under the Fictitious Name act. The name of the business is THE HAHN-TED PLACE, with its principal place of business at 710 Wiermans Mill Road, York Springs, Pennsylvania 17372. The registrant is Theodore A. Wachhaus of 710 Wiermans Mill Road, York Springs, PA 17372.

Wendy Weikal-Beauchat
Beauchat & Beauchat, LLC
63 West High Street
Gettysburg, PA 17325
(717) 334-4515

12/29

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 MARY E. ADAMS, DEC'D
Late of Highland Township, Adams County, Pennsylvania
Executor: Gary E. Adams, 1815 Knoxlyn Rd., Gettysburg, PA 17325
Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF WILLIAM L. ANGELL, DEC'D
Late of Butler Township, Adams County, Pennsylvania
Executrix: Sandra G. Angell, 1665 Knoxlyn Rd., Gettysburg, PA 17325
Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MARLYN W. BEAM, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Keith E. Beam, 506 Reservoir Road, Gardners, PA 17324
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF DONALD A. GANTZ, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Administrators: Jessica Wilkinson, 1330 Herman Myers Road, Hagerstown, MD 21742; Jeremy Gantz, 98 Loomis Street, Burlington, VT 05401; Stacie Gantz, 2816 W. Woodford Ave., Ft. Collins, CO 80521
Attorney: Clayton R. Wilcox, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF LAURIE HERTZOG HESS, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Administrator: Dean K. Hess, 1310 Quaker Valley Road, Biglerville, PA 17307
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF BERNADETTE E. LUCKENBAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Executors: Edward F. Luckenbaugh, Jr., 45 Cashtown Rd., P.O. Box 29, Cashtown, PA 17310; Robert M. Luckenbaugh, 60 Maple Ave., Gettysburg, PA 17325
Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF MELVIN C. REYNOLDS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania
Executors: James R. Reynolds, 60 Skyline Drive, Mechanicsburg, PA 17050; Connie R. Taylor, 131 South Main Street, Box 323, Bendersville, PA 17306
Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle St., Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ERNST P. HALL, DEC'D
Late of Union Township, Adams County, Pennsylvania
Executrix: Barbara A. Hall, 607 Winston Drive, Endwell, NY 13760
Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

ESTATE OF PEARL E. LEPPA, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executors: David H. Leppa, 472 Fairview Drive, Hanover, PA 17331; Shirley A. Sager, 492 Pine Grove Road, Hanover, PA 17331; Wayne L. Leppa, 30 Moul Avenue, Hanover, PA 17331

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

ESTATE OF MARGARET D. NELSON, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania
Executor: Mark W. Nelson, 209 Christopher Road, Forest Hill, MD 21050

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF LYNN L. SHEFFER, DEC'D

Late of Reading Township, Adams County, Pennsylvania
Administrator: Nathaniel P. Sheffer, c/o Schrack & Linsench Law Offices, 124 West Harrisburg St., P.O. Box 310, Dillsburg, PA 17019-0310
Attorney: Schrack & Linsench Law Offices, 124 West Harrisburg St., P.O. Box 310, Dillsburg, PA 17019-0310

ESTATE OF HERBERT A. SNYDER, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Herbert A. Snyder, Jr., 746 Company Farm Road, York Springs, PA 17372
Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF W. NORTH STERRETT, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania
Executor: William N. Sterrett, Jr., 1332 Ridgeview Circle, Downingtown, PA 19335
Attorney: Puhl, Eastman & Thrasher, Attorneys at Law, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EILEEN F. WAGAMAN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Executrices: Janice M. Neiderer, 1080 Beck Mill Road, Hanover, PA 17331; Deanna L. Robinson, 233 Providence Drive, McSherrystown, PA 17344
Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

ESTATE OF OLGA K. WICKHAM, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Patricia W. Hoffman, 60 Twin Lakes Dr., Gettysburg, PA 17325
Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 06-S-961 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 26th day of January, 2007, 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 the following tract of land situate in Reading Township, Adams County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point on Schofield Drive at Lot Nos. 289 and 290 and running South 14 degrees 19 minutes 09 seconds West 150 feet to a point at Lot No. 292 and running thence South 75 degrees 40 minutes 51 seconds East 200 feet to a point at Lot No. 288 and running thence North 14 degrees 19 minutes 09 seconds East 150 feet to a point at Lot No. 289 and running thence North 75 degrees 40 minutes 51 seconds West 200 feet to a point and place of **BEGINNING**. **BEING KNOWN** as Lots No. 290 and 291 on a Plan of Lots known as Lake Meade Subdivision as recorded in the Office of the Recorder of Deeds for Adams County, Pennsylvania, in Plan of Lots Book No. 1, page 1.

UNDER AND SUBJECT, NEVERTHELESS, to all easements, rights of way, restrictions, covenants and conditions as set forth or referred to in prior recorded Deeds.

TITLE TO SAID PREMISES IS VESTED IN Gerald A. Pennabaker and Sabina L. Pennabaker, husband and wife, by Deed from Wilhelm Mabus and Delores I. Mabus, his wife, dated 05/05/1988, recorded 05/16/1988, in Deed Book 488, page 1137.

AND THE SAID Sabina L. Pennabaker being so seized thereof, departed this life on October 5, 2000, intestate, leaving to survive the following heir(s) at law:

Gerald A. Pennabaker, husband, 121 Schofield Drive, East Berlin, PA 17316

AND Letters of Administration on the Estate of Sabina L. Pennabaker, deceased aforesaid were duly granted unto Gerald A. Pennabaker by the Register of Wills of Adams County, Pennsylvania on July 10, 2001 at Estate Docket # 1-01-257.

Premises being: 121 Schofield Drive, East Berlin, PA 17316

Tax Parcel No. 37-014-0047

SEIZED and taken into execution as the property of **Gerald A. Pennabaker, Sr.** 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 February 16, 2007, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 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.

12/15, 22 & 29

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION
NO. RT-18-06(A-2)

NOTICE

TO: Daniel Gary Romberger

YOU ARE HEREBY NOTIFIED that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for January 8, 2007, at 9:00 a.m., prevailing time, in the Conference Room on the 4th Floor of the Adams County Courthouse, at Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to your child.

You should contact your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, PA 17325
Telephone number: (717) 337-9846
Chester G. Schultz, Attorney at Law
145 Baltimore Street
Gettysburg, PA 17325

12/22, 29 & 1/5

TRUST ESTATE NOTICE

Margaret Merrill Leavy died on May 22, 2006, a resident of Cumberland Township, Adams County, Pennsylvania. During her lifetime she created a revocable trust for her benefit. All persons indebted to her or the trust are requested to make payment, and those having claims against her or the trust are requested to present the same, without delay, to:

UNITED BANK AND TRUST,
WASHTENAW, TRUSTEE
ATTN: Daniel E. Cogan, Sr. VP
P.O. Box 1127
Ann Arbor, MI 48106-1127

Or to:

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

12/15, 22 & 29

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 8, 2007, at 9:00 a.m.

WINTERS—Orphans' Court Action Number OC-29-05. The First and Final Account of April D. Reed and David R. Winters Jr., Co-Executors of the Estate of Cheryl Winters, a.k.a. Cheryl A. Winters, deceased, late of Latimore Township, Adams County, Pennsylvania.

ROHRBAUGH—Orphans' Court Action Number OC-168-06. The First and Final Account of Charles M. Rohrbaugh, Administrator C.T.A. of the Estate of Elwood A. Rohrbaugh, deceased, late of Gettysburg Borough, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

12/29 & 1/5