

Adams County Legal Journal

ol. 37

April 5, 1996

No. 45, pp. 237-240

ANNOUNCEMENT

The Internal Revenue Service has determined, in response to the Application filed by Adams County Bar Association, that it is exempt from Federal Income Tax under Section 501 (a) of the Internal Revenue Code as an organization described in Section 501 (c) (6) and so notified to the Association by a letter dated March 1, 1996.

4/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-41 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a post for a corner at the North side of East Main Street; thence along the North side of said street, South 74 degrees West, 35 feet to a post; thence by land formerly of W. E. Wolff, North 16 degrees West, 165 feet to an

alley; thence by said alley, North 74 degrees East, 35 feet to a post; thence along another alley, South 16 degrees East, 165 feet to a post; the place of BEGINNING. CONTAINING 21 perches and 57-3/4 square feet, more or less.

BEING the same which Adrian L. Slaybaugh and Joyce E. Slaybaugh, husband and wife, by deed dated August 12, 1987, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 465 at page 258 granted and conveyed unto Edna V. Misner, single, the Defendant herein.

IMPROVED WITH 4-unit, 2 1/2-story apartment building.

SEIZED and taken into execution as the property of **EDNA V. MISNER** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 6, 1996.

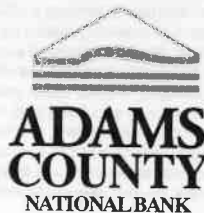
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

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



Member FDIC

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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 03/13/1996, for the purpose of obtaining a Certificate of Incorporation of a business corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177. The name of the corporation is MICHELANGELO'S HAIR STUDIO, INC. The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

Michelangelo's Hair Studio, Inc.
 209 Locust Street
 East Berlin, PA 17316

4/5

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act," 54 Pa. C.S.A. §301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is MISTY MOUNTAIN TRADING CO. The address of the principal office or place of business of the business to be carried on under or through the fictitious name is 2792 Old Carlisle Road, Gardners, Adams County, Pennsylvania 17324. The name and address of the person who is party to the registration is Karen Webb, of 2792 Old Carlisle Road, Gardners, Adams County, Pennsylvania 17324. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on March 12, 1996.

John R. White
 Campbell, White & George
 122 Baltimore Street
 Gettysburg, PA 17325
 Attorneys for Applicant

4/5

FICTITIOUS NAME NOTICE

On March 26, 1996, an application to conduct business with the fictitious name of MICHAEL J. KUMP FLOOR COVERINGS, with a principal office at 71 Clear View Lane, Biglerville, Pennsylvania 17307, was filed by Michael J. Kump with the Department of State pursuant to the Fictitious Names Act (54 Pa. C.S.A. §301 et seq.). The purpose of the business is the sale, installation and servicing of various floor coverings.

Wendy Weikal-Beauchat, Esquire
 Beauchat & Beauchat
 Attorney for the Applicant

4/5

IN THE COURT OF
 COMMON PLEAS OF
 ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
 NO. 96-S-29
 Action to Quiet Title

RANDALL INSKIP, Plaintiff,
 vs.

MICHAEL P. BULL and LOYOLA FEDERAL SAVINGS AND LOAN ASSOCIATION, Defendants.

TO: MICHAEL P. BULL:

NOTICE

You are notified that the Plaintiff has commenced an action to quiet title against you by complaint filed to the above docket number on January 16, 1996, which action you are required to defend.

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

This action concerns the premises hereinafter described:

ALL that lot of ground situate in the Borough of Gettysburg, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin at the Northern property line of East Water Street at corner of land now or formerly of Charles L. Taylor, and extending thence by said Taylor land, North 7 degrees 15 minutes West, 149.5 feet to a point on line of land now or formerly of Edna Zane, and extending thence by said Zane land, North 82 degrees 45 minutes East, 17.3 feet to an iron pin; thence by land now or formerly of Fred M. Sanders and Margaret L. Sanders, South 6 degrees 56 minutes

East, 107.5 feet; thence by same, South 82 degrees 45 minutes West, .25 of a foot; thence by same and through the center of a partition in the building on the premises hereby conveyed and the premises immediately to the East thereof, South 6 degrees 56 minutes East, 42 feet to an iron pin at the Northern property line of East Water Street; thence by said property line, South 82 degrees 45 minutes West 16.2 feet to the place of BEGINNING.

The lot of ground hereby conveyed being the same which the Tax Claim Bureau, of the County of Adams, Pennsylvania, as Trustee, by deed dated December 15, 1995, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 1125 at page 10, conveyed to Randall Inskip.

TOGETHER WITH all of the rights and SUBJECT TO all of the restrictions referred to in the deed recorded in the office of the aforesaid Recorder of Deeds in Record Book 542 at page 689.

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

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

Court Administrator
 Adams County Courthouse
 Baltimore Street
 Gettysburg, PA 17325
 (717) 334-6781

Bigham & Raffensperger
 By Edward G. Puhl
 Edward G. Puhl, Esquire
 Attorney for Plaintiff
 16 Lincoln Square
 Gettysburg, PA 17325
 (717) 334-2159

4/5

ROBERT VS. MCVEARRY, ET UX.

1. The owner of upper land has the right to have surface water flowing on or over his land discharged through a natural water course onto the land of another.
2. A land owner may not alter the natural flow of surface water on his property by concentrating it in an artificial channel and discharging it upon the lower land of his neighbor even though no more water is thereby collected than would naturally have flowed upon the neighbor's land in a diffused condition.
3. Plaintiff is obligated to suffer some incidental increased flow over his land resulting from the construction of Defendants home, however, Defendants may not concentrate that water and divert it upon Plaintiff's land by artificial means which diversion, at times, will significantly increase the flow in a location which is not the natural course of the surface water.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-846, MIRIAM G. ROBERT VS. JOHN T. MCVEARRY, JR. AND JOAN A. MCVEARRY.

Gary E. Hartman, Esq., for Plaintiff

Wendy Weikal-Beauchat, Esq., for Defendants

MEMORANDUM OPINION

Kuhn, J., September 29, 1995.

Plaintiff filed this action in equity seeking removal of two drainage pipes installed by Defendants which Plaintiff claims diverts water onto her property and constitutes a trespass and/or nuisance.

Plaintiff is the owner of an unimproved wood lot located on the southwest corner of Herr's Ridge and Red Oak Lane which she and her deceased husband purchased in 1966 for investment purposes and to prevent construction thereon while they occupied the adjacent lot to the south. In 1981, Defendants purchased an unimproved wood lot west of and adjacent to Plaintiff's lot and two years later constructed a home toward the rear of the lot. Both lots slope from the higher ground on the south (rear) side of the lots to lower ground at the front of the lots along Red Oak Lane. The natural water flow across Defendants' lot is in a northeasterly direction. There is a slight swale at the front of Defendants' lot along Red Oak Lane which empties into a more defined swale that cuts across Plaintiff's lot. A stoned "S" shaped driveway leads from Defendants' home to Red Oak Lane where it cuts to within two feet of Plaintiff's western boundary.

In Spring, 1984, Defendants noticed a four to six inch deep ponding effect to the west side of their driveway during wet times caused by the driveway's higher elevation. The location of the ponding is a wooded, natural area. In order to alleviate the ponding effect in April, 1994, Defendants installed two drain pipes under their driveway. The eastern end of the pipes terminate within four to four and one-half feet of Plaintiff's lot. Each pipe is approximately 10 inches in diameter and lie side-by-side.

Plaintiff became immediately concerned regarding the effect the pipes would have on the concentrated volume of water flowing across her property and its impact on the value of her lot. Plaintiff admitted that she had not personally seen water come through the pipes onto her lot after a rainfall.

Bruce VanDyke, a real estate salesperson with four years of experience, testified on behalf of Plaintiff. Mr. VanDyke visited the lot in November, 1994, after an all-night rain and saw what he described as a significant amount of water going through the pipes onto Plaintiff's lot. On another occasion he checked the pipes during a hard rain and observed flow approximately one foot wide coming from the pipes. He noted that the rate and volume of flow through the pipes was greater than the natural rate and flow of surface water. On yet another visit he noticed evidence of slight erosion at the end of the pipe. Mr. VanDyke opined that the mere presence of the pipes affected the market value of Plaintiff's lot because they would raise concerns for prospective purchasers.

Marshall Miller, a real estate broker with 20 years of experience, testified for Plaintiff and opined that the presence of the pipes could impact the fair market value of Plaintiff's lot by \$10,000 because of questions that would be raised by prospective purchasers.

Defendant, John McVearry, testified that the pipes have alleviated his ponding problem. He felt he could not effectively place the pipes at the roadway end of his driveway without raising the level of a major portion of his front area with fill.

After the hearing and view held on May 25, 1995, the Court visited the site on five separate occasions. At 4:45 P.M. on May 25, 1995, after a hard 30 minute rain, I found no evidence of water flowing through the pipe. At 7:15 P.M. on May 25, 1995, after a hard 60 minute rain I found some ponding near the western end of the pipes with some minimal flow out of the pipes. The rate of flow was not sufficient to disturb leaves or create erosion. The following morning at 7:50 A.M. there was no evidence of water flow. At 6:15 P.M. on May 28, 1995, after a day of steady rain I found no ponding and no drainage onto Plaintiff's lot. Finally, I visited the site on June 25, 1995, approximately 30 minutes after a very heavy rainfall that caused local flooding. There was ponding and evidence of an eroded "chute" at the western end of the pipes. On Plaintiff's side a heavy volume of water flowed from the pipes at a width of three to four feet for some distance. Because of heavy vegetation no evidence of streaming or erosion was observed on Plaintiff's lot.

There are numerous general rules applicable to surface waters¹ which are sometimes easier stated than applied. One source notes that,

¹"Surface waters" have been defined as "waters on the surface of the ground usually created by rain or snow, which are of a casual or vagrant character, following no definite course and having no substantial or permanent existence." *Richman v. Home Insurance Co. of N. Y.*, 172 Pa. Super. 383, 387-8, 94 A.2d 164, 166 (1953).

“Water must flow as it is wont to flow.” Because water is descendible by nature, the owner of higher ground has an easement in lower land for the discharge of all waters that naturally rise in or flow or fall upon the higher. *LaForm v. Bethlehem Township*, 346 Pa. Super. 512, 521-2, 499 A.2d 1373, 1377-8 (1985).

This is known as a right of flowage and exists only in the natural ways and natural quantities. *McCormick Coal Comp., Inc. v. R. R. Schubert*, 379 Pa. 309, 311, 108 A.2d 723, 724 (1954).

In *Lucas v. Ford*, 363 Pa. 153, 69 A.2d 114 (1949) the Court stated,

The owner of upper land has the right to have surface waters flowing on or over his land discharged through a natural water course onto the land of another, but he may not cut an artificial channel to divert that water . . . He may make proper and profitable use of his land even though such use may result in some change in quality or quantity of the water flowing to the lower land . . . If that change is not unreasonable in relation to the use, any loss resulting to the owner of the lower land is *damnum absque injuria* . . . In that connection, the upper owner may lay artificial drains in his land provided they do not divert the water from its natural course or cause unnecessary injury to the lower owner. 363 Pa. at 155-6; 69 A.2d at 116 (citations omitted).

In *Rau v. Wilden Acres, Inc.*, 376 Pa. 493, 103 A.2d 422 (1954) the same court added

that,

A landowner may not alter the natural flow of surface water on his property by concentrating it in an artificial channel and discharging it upon the lower land of his neighbor even though no more water is thereby collected than would naturally have flowed upon the neighbor's land in a diffused condition. One may make improvements upon his own land . . . grade it and build upon it, without liability for any incidental effect upon adjoining property even though there may result some additional flow of surface water thereon through a natural water-course, but he may not, by artificial means, gather the water into a body and precipitate it upon his neighbor's property. 376 Pa. at 494, 103 A.2d at 423. (citations omitted).

See also *St. Andrew's Evangelical Lutheran Church of Audobon v. Township of Lower Providence*, 414 Pa. 40, 198 A.2d 860 (1964).

Although most of the evidence presented in this case focused upon the installation of the two pipes, an earlier act by Defendants bears as directly upon the resolution of the dispute. From a view of the area in question one

can conclude that the natural flow of the surface water was in a northeasterly direction across the area of the ponding to the area of the swale at the northeast corner of Defendant's lot. There is no indication of a natural swale between those points. To the extent water would flow from Defendant's to Plaintiff's land prior to 1984, one would conclude that it was very diffused. When Defendants constructed their driveway they blocked and concentrated that natural flow thereby creating the ponding effect during times of high water.

The authorities cited above indicate that Plaintiff be obligated to have to suffer some incidental increased flow resulting from construction of Defendants' home, however, Defendants may not concentrate that water divert it in a easterly direction upon Plaintiff's land by artificial means. From the contour of the land and the Court's visits to the site, we conclude that the diversion, at times, will significantly increase the flow in a location which is not the natural course of the surface water.

Certainly, there are times when the concentrated flow of the surface waters are minimal. However, that occurs when there is no ponding. The fact that significant water flow occurs only occasionally does not diminish Plaintiff's right to relief.

So that it is clear to the reader of this Opinion, we do not find the presence of the pipes, standing alone, to create a nuisance despite the Realtor's opinion that the presence of the pipes would diminish the value of Plaintiff's lot. We do not live in isolation and we must tolerate certain activities taking place lawfully on our neighbor's property. It is the effect the pipes have on the diversion of the surface water which creates the problem.

It seems to the Court that Defendants had two less intrusive avenues available to relieve the problem. First, they could have had top soil delivered to the area where the ponding occurs so surface water would remain diffused and flow in a sheeting fashion across the driveway. Second, they would have installed a much smaller (i.e. two inch) pipe and run it under the driveway in a northeasterly direction to the natural swale near Red Oak Lane.

The Court does not believe Defendants maliciously installed the existing pipes. We recognize that removal will involve some expense (although the ends of the pipes could be filled in and covered over) however, we feel compelled to grant Plaintiff some relief.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 29th day of September, 1995, Defendants are hereby directed to abate the nuisance created on Plaintiff's premises by the unlawful concentration and discharge of surface water through the two drain pipes laid under their driveway. The pipes shall be removed or capped and covered.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 91-S-5 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of May, 1996, at 10:00 o'clock in the noon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail and washer in the centerline of the Emmitsburg Road (US Business Route 15) on line of land of The United States of America, and passing through a US government monument 33.34 feet from the beginning of this course, North 87 degrees 55 minutes 30 seconds East, 182.10 feet to an iron pin at corner of Lot No. 4; thence along Lot No. 4, South 02 degrees 04 minutes 30 seconds East, 199.98 feet to an iron pin at corner of Lot No. 2; thence along Lot No. 2 and passing through a reference iron pin 29.87 feet from the end of this course, North 71 degrees 49 minutes 20 seconds West, 277.40 feet to a nail in the centerline of the Emmitsburg Road; thence in the centerline of the Emmitsburg Road, North 34 degrees 51 minutes 40 seconds East, 130.04 feet to the above described place of BEGINNING. CONTAINING 35,487 square feet or .815 Acre.

The above description was taken from a subdivision plan of the Crouse & McDonnell development recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 69.

BEING THE SAME PREMISES which Patricia K. Crouse, widow, E. A. McDonnell and Ethel B. McDonnell, husband and wife, Patricia K. Crouse and E. A. McDonnell, a partnership, trading as, Crouse & McDonnell, by deed dated 10/9/87 and recorded 10/13/87 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 470-526, granted and conveyed unto Ronald E. Rotz and Cheryl B. Rotz, husband and wife.

IMPROVED WITH DWELLING.

SEIZED and taken into execution as the property of **RONALD E. ROTZ AND CHERYL B. ROTZ** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 14, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 24, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/5, 12 & 19

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1039 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Adams County - Tax Map K-11, Parcel 208

BEGINNING at a point in the center of Racetrack Road (Township Road No. T-505) at Lot No. 14 of the hereinafter referred to Subdivision Plan; thence crossing said Racetrack Road and continuing along said Lot No. 14 South thirty-four (34) degrees fifty-six (56) minutes forty (40) seconds East, three hundred ninety-four and six hundredths (394.06) feet to a point at lands now or formerly of James W. Grindrod; thence along said lands South fifty-seven (57) degrees West, one hundred fifty-three and twelve hundredths (153.12) feet to a point at Lot No. 12; thence along said Lot No. 12 North thirty-three (33) degrees West, four hundred one and ninety-seven hundredths (401.97) feet to a point in the center of the aforementioned Racetrack Road; thence in and through the center of said Racetrack Road, North fifty-nine (59) degrees eighteen (18) minutes fifty-one (51) seconds East, forty-eight and seventy-three hundredths (48.73) feet to a point; thence in and through the same North sixty (60) degrees fifty-two (52) minutes twenty-seven (27) seconds East, ninety-one and twenty-seven hundredths (91.27) feet to the point and place of BEGINNING. CONTAINING 1.3384 Acres and designated as Lot No. 13 on a Final Subdivision Plan prepared for Annetta E. O'Brien Estate by Donald E. Worley, Professional Land Surveyor, dated September 7, 1983, revised January 30, 1984, and August 13, 1984, and recorded in Plat Book 40, Pages 85 and 85-A, of the Adams County Records.

IT BEING a part of a larger tract of land which the Farmers and Merchants Bank by its Deed dated July 18, 1942, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 159, page 473, granted and conveyed unto David I. O'Brien and Annetta E. O'Brien, his wife, as tenants by the entireties. The said David I. O'Brien having predeceased the said Annetta E. O'Brien, title in and to the above described tract of land became vested in the said Annetta E. O'Brien under and by virtue of the laws of the

Commonwealth of Pennsylvania relating to tenancies by the entireties.

AND IT BEING the same tract of land which Julia O'Brien and Robert O'Brien, Executors of the Last Will and Testament of Annetta E. O'Brien, Deceased, by their deed dated December 30, 1986, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Book 0446, Page 1123, granted and conveyed unto Eugene C. Staub and Margarethe J. Staub, his wife, **MORTGAGORS HEREIN.**

SEIZED and taken into execution as the property of **EUGENE C. STAUB AND MARGARETHE J. STAUB** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
February 28, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/5, 12 & 19

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 JOHN E. BAUER, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Administrator: Robert F. Bauer, 39-17 44th Street, Sunnyside, NY 11104
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ROBERT H. BISHE, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executrix: Gladys V. Bishe, 67 Walker Avenue, Gettysburg, PA 17325
Attorney: Pyle and Entwistle, 33 West Middle Street, Gettysburg, PA 17325

ESTATE OF MILDRED KATHRYN HOFF, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325
Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF NAOMI H. CHRONISTER, DEC'D
Late of the Borough of Arendtsville, Adams County, Pennsylvania
Executrix: Jannie-Lee Mentzer, P. O. Box 217, Arendtsville, PA 17303
Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF J. HAMBLETON RAY, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executor: Clifford W. Ray, R. D. #2, Box 50, Kingsley, PA 18826
Attorney: Bigham & Raffensperger, Attorneys at Law, 16 Lincoln Sq., Gettysburg, PA 17325

ESTATE OF CHARLES F. RINEHART, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Administratrix C.T.A.: Sylvia K. Noel, 300 Fairview Avenue, McSherrystown, PA 17344
Attorney: Crabbs & Frey, Daniel M. Frey, Attorney, 14 Center Square, Hanover, PA 17331

ESTATE OF DANIEL D. SANDERS, DEC'D
Late of the Borough of McSherrystown, Adams County, Pennsylvania
Executor: Mary Sanders Lawrence, 29 Main Street, McSherrystown, PA 17344
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF EVELYN M. BECKER a/k/a EVELYN MARY BECKER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executors: Joseph C. Becker; John B. Becker
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

ESTATE OF RALPH CURTIS DEATRICK, DEC'D
Late of Cumberland Township, Adams County, Pennsylvania
Executor: Claude M. Lewenz, 369 North Street, Greenwich, CT 06830
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF KATHRYN V. HAY, DEC'D
Late of Highland Township, Adams County, Pennsylvania
Administrator: Robert L. Hay, 625 Meadowbrook Lane, Gettysburg, PA 17325
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EFFIE M. KLEINGINNA, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: Scott L. Kelley, Esquire, 209 Broadway, Hanover, Pennsylvania 17331
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF VERNON F. LAMBERSON a/k/a GEORGE VERNON FRANKLIN LAMBERSON, DEC'D
Late of Hamilton Township, Adams County, Pennsylvania
Executor: Carson C. Lamberson, 1270 Oxford Road, New Oxford, PA 17350
Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF VERNA B. LILLICH a/k/a VERNA EVELYN LILLICH, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: Jack E. Housman, 303 Forge Court, Spring Grove, PA 17362
Attorney: William W. Hafer, Esquire, 215 Baltimore Street, Hanover, PA 17331

ESTATE OF HILDA C. SANDERST, DEC'D
Late of the Borough of Littlestown, Adams County, Pennsylvania
Administrator: Gregory Sanders, 43 N. Queen Street, Littlestown, PA 17340
Attorney: Clayton R. Wilcox, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HARVEY W. STIMER a/k/a HARVEY WILHELM STIMER a/k/a HARVEY W. STIMER, SR., DEC'D
Late of Reading Township, Adams County, Pennsylvania
Executrices: Harriet E. Hartzell; Joaneleene E. Small
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

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 or about March 29, 1996, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is CHOICE APOTHECARY, INC. and the purpose for which it is being organized is for the operation of a pharmacy business including sale of sundry goods, leasing of equipment and all other goods and services offered by a comprehensive pharmacy and all other activities permitted by the PA Business Corporation Law, as amended, within and outside the Commonwealth of Pennsylvania, and the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 105 Fourth Street, East Berlin, Pennsylvania, 17316.

Wilcox, James and Cook
Attorneys at Law
234 Baltimore Street
Gettysburg, PA 17325

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-53 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those two lots of ground situate on the East side of Gettysburg-Harrisburg State Highway in Latimore Township Adams County, Pennsylvania, more particularly bounded and described as follows:

LOT A: BEGINNING at an iron pin on or along the State Highway aforesaid at lands now or formerly of Estella Stallsmith, also known as Lot #3; thence along said Highway in a Northerly direction for a distance of 50 feet to an iron pin at lands now or formerly of Sherrill Smith, also known as Lot #5; thence by said lands in an Easterly direction for a distance of 199 feet to an iron pin on the West side of a 22 foot alley; thence along the western side of said alley in a Southerly direction for a distance of 50 feet to an iron pin at Lot #3 aforesaid; thence by Lot #3 in a Westerly direction for a distance of 199 feet to an iron pin, the place of BEGINNING. CONTAINING 9,950 square feet more or less.

It being known as Lot #4 on plan of lots as laid out by C. E. Pearson.

LOT B: BEGINNING at an iron pin on the East side of the 22 feet alley aforesaid at Lot #3 1/2; thence along the East side of said alley in a Northerly direction for a distance of 50 feet to an iron pin at Lot #5 1/2; thence by said lot in an Easterly direction for a distance of 98 feet more or less to a stake at lands now or formerly of John Mumper; thence by said lands in a Southerly direction for a distance of 50 feet to a stake at lot #3 1/2 aforesaid; thence by said lot in a Westerly direction for a distance of 98 feet, more or less, to an iron pin, the place of BEGINNING.

It being known as part of Lot #4 1/2 on plan of lots as laid out by C. E. Pearson.

BEING the same two lots of ground that James A. Pennington and Joyce R. Pennington, husband and wife, by deed dated October 27, 1934, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania in Record Book 957 at page 162, sold and conveyed unto Randy E. Noble, Sr., and Barbara A. Smith, the Defendants herein.

IMPROVED WITH a 1 1/2-story single family dwelling with a detached 2-car garage.

SEIZED and taken into execution as the property of **RANDY E. NOBLE, SR. AND BARBARA A. SMITH** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 5, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-42 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at an existing nail in the center of Legislative Route No. 01025, known as the Bullfrog Road, and at the Northeast corner of the tract of land conveyed by Samuel S. McNair and wife to Robert J. Kreitz and wife by deed recorded in Deed Book 285 at page 354; thence by said last mentioned tract of land, South 60 degrees 52 minutes West, 296.50 feet, more or less, to a pipe at post; thence by land of Samuel S. McNair and wife, North 29 degrees 56 minutes West, 1599.24 feet, more or less, to a pipe; thence by land of Insbuck and Haggart, Inc., North 81 degrees 19 minutes 20 seconds East, 225.68 feet, more or less, to a pipe at post; thence by same and by land now or formerly of Richard Varish, South 39 degrees 26 minutes 25 seconds East, 621.24 feet, more or less, to a pin at post; thence by land now or formerly of Thomas Bittle, South 42 degrees 22 minutes 5 seconds West, 155.42 feet, more or less, to a post; thence by same, South 18 degrees 45 minutes 55 seconds East, 167.18 feet, more or less, to a steel fence post; thence by same and through an existing pipe, North 71 degrees 10 minutes 40 seconds East, 277.78 feet, more or less, to an existing nail in the center of the aforesaid Bullfrog Road; thence in said Bullfrog Road, South 17 degrees 16 minutes East, 490 feet, more or less, to an existing railroad spike at the west edge of the paving of the Bullfrog Road; thence in the Bullfrog Road, South 29 degrees 32 minutes 40 seconds East, 166 feet, more or less, to an existing nail, the place of BEGINNING. CONTAINING 10 acres, more or less.

The description of this tract was obtained from a draft of survey made by J. Riley Redding, dated December 11, 1978.

BEING the same tract of land which Randolph N. Smith and Cynthia J. Smith, husband and wife, by deed dated April 27, 1981, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 356 at page 1076 conveyed to Keller E. Misner and Anna Mae Misner, husband and wife, and Edna V. Misner, single; and the said Keller E. Misner having died, entire title became vested in Anna Mae Misner and Edna V. Misner, the Defendants herein.

IMPROVED WITH a single-family, one-story vinyl and brick dwelling with attached garage.

SEIZED and taken into execution as the property of **EDNA V. MISNER** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 6, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

3/22, 29 & 4/5

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 Friday, April 12, 1996, at 9:00 o'clock a.m.

RICHARDSON—Orphans' Court Action Number OC-24-96. The First and Final Account of Nadine Warren and Donald Richardson, Administrators of the Estate of Donald F. Richardson, deceased, late of Menallen Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

3/29 & 4/5

Adams County Legal Journal

Vol. 37

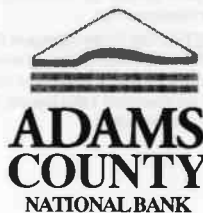
April 12, 1996

No. 46, pp. 241-246

IN THIS ISSUE

GUISE, ET AL. VS. TNT ENTERPRISES, INC.

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



Member FDIC

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that on February 15, 1996 an application for registration of the fictitious name CARING PARTNERS HOME HEALTH was filed under the Fictitious Names Act, 54 Pa.C.S.A. § 301, et. seq., in the Department of State of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, an application for the conduct of business at its principal office or place of business situated at P.O. Box 128, 2990 Carlisle Pike, New Oxford, Adams County, Pennsylvania, 17350. The name and address of the entity which is a party to this registration is: The Brethren Home, P.O. Box 128, 2990 Carlisle Pike, New Oxford, Adams County, Pennsylvania, 17350.

Latsha & Capozzi
Post Office Box 825
Harrisburg, PA 17108-0825

4/12

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. Section 311), there was filed in the office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on March 27, 1996, an Application for Registration of the fictitious name TURNING POINT STABLES, the address of the principal place of business being 961 Old Harrisburg Road, Gettysburg, PA 17325. The names and addresses of the parties to said registration are: Russell A. Kessel, 961 Old Harrisburg Rd., Gettysburg, PA 17325, and Carol L. Kessel, 961 Old Harrisburg Rd., Gettysburg, PA 17325.

Bigham & Raffensperger
Attorneys

4/12

SEIZED and taken into execution as the property of **JOSEPH A. HURRELL and JAMIE S. HURRELL** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 21, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/12, 19 & 26

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, on March 27, 1996, pursuant to the Fictitious Name Act, Act No. 1982-295, setting forth that Perry S. Lyons of 119 West Deep Run Road, Westminster, Maryland, is the only individual engaged or interested in a business, the character of which is for the purpose of a martial arts school and that the name, style and designation under which said business is and will be conducted is PENN-MAR KARATE ACADEMY, and the principal office or place of business is 410 West King Street, Suite B, Littlestown, Adams County, Pennsylvania.

Crabbs & Frey
Solicitor

4/12

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-N-66 and 95-S-740 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of May, 1996, at 10:00 o'clock in the forenoon at the Court house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 548 on a plan of lots of LAKE MEADE SUBDIVISION, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Deed Book 1 at page 4, and SUBJECT TO all legal highways, assessments, rights of way and restrictions of record.

BEING the same as that which Lake Meade, Inc., by its deed dated the 30th day of October, 1967, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 264 at page 853, sold and conveyed unto Evelyn M. Wallman, the Grantor herein named.

TOGETHER WITH the rights and SUBJECT TO the easements, conditions, covenants, etc., as recorded in the above mentioned deed from Lake Meade, Inc., to Evelyn M. Wallman.

GUISE, ET AL. VS. TNT ENTERPRISES, INC.

1. Whatever the status in Pennsylvania of Restatement Torts 2d §46 which deals with infliction of emotional distress by outrageous conduct, it is clear that Pennsylvania Courts require physical injury, contrary to the Restatement position.

2. The basis upon which Restatement Torts 2d §46 (2) rests is observation by Plaintiff of outrageous conduct inflicted upon a third person and it is, as in the case of punitive damages, initially for the Court to determine if the conduct is sufficiently outrageous to justify recovery.

3. For Restatement Torts 2d §46 (2) to apply, shock must result from contemporaneous observance of a traumatic event by Plaintiff closely related to the victim, and resulting direct emotional impact.

4. Plaintiff's cannot maintain a separate action for intentional infliction of emotional distress under Restatement §46 and emotional distress related to injuries (illness) suffered by Plaintiff must be viewed as a demand for damages resulting from Defendant's negligence.

5. Punitive damages require outrageous conduct on the part of Defendants and in determining whether punitive damages are justifiable, one must look to the act itself, together with the circumstances including the motive of the wrongdoers and the relations between the parties.

6. While a delay between cause of negligence and trauma is not fatal, there is still the need for direct emotional impact and, since illness lacks the requirement of immediate shock, the Plaintiff parents may recover for fear and emotional distress resulting from their own injuries but may not do so for fear engendered by injuries suffered by their children.

7. The breach of a contractual duty, whether pleaded in assumpsit or as a tort, cannot justify punitive damages unless there is also a breach of a duty to society.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-690, SHAWN C. GUISE, ANGELA L. HAWBAKER GUISE, MATTHEW S. GUISE, A MINOR, BY SHAWN C. GUISE AND ANGELA L. HAWBAKER GUISE, HIS PARENTS AND GUARDIANS AND SHAWN M. GUISE AND ANGELA L. HAWBAKER GUISE, HIS PARENTS AND NATURAL GUARDIANS VS. TNT ENTERPRISES, INC., D/B/ A CULLIGAN TNT ENTERPRISES, INC. AND JAMES L. HILL.

Michael A. George, Esq., for Plaintiffs

John A. Statler, Esq., for Defendants

John A. Wolfe, Esq., for Defendants

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., October 4, 1995.

On February 15, 1995, plaintiffs filed a multiple count complaint against defendants. Shawn C. Guise (Shawn) and Angela L.

Hawbaker Guise (Angela) are the parents of two minor children, Matthew C. Guise and Shawn M. Guise, who will be referred to as "children."

The complaint describes a landlord and tenant relationship between plaintiffs and James C. Hill (Hill) which began January 1, 1992, and lasted until December 31, 1993. Water for the leased premises was provided by a shallow well, which plaintiffs say was subject to contamination from surface water running into the well. Hill contracted with TNT Enterprises, Incorporated (TNT) to treat the water. A Culligan Water Treatment System, equipped with an ultra violet disinfectant light, was installed and serviced by TNT. According to the complaint, plaintiffs dealt directly with TNT thereafter and paid monthly bills.

All plaintiffs began suffering health problems in 1992, consisting of stomach cramps, joint stiffness and other stomach disorders. When they complained to TNT about the condition of the water, TNT indicated that tests showed the water to be high in iron but otherwise safe for human consumption.

When illness persisted in 1993, and Angela developed skin rashes and bumps, plaintiffs arranged for an independent test, the results of which indicated that the water was unfit for human consumption, because of bacterial contamination and turbidity.

Among the causes of action advanced are claims based upon both negligent and intentional infliction of emotional distress. Plaintiffs also seek punitive damages.

Defendants have demurred to various counts, arguing that those particular allegations cannot support an award of damages.

We began by reviewing standards for ruling on demurrer.

The standard for ruling on a demurrer has been described as follows:

In reviewing a demurer, the receiving (sic) court must accept the facts and all reasonable inferences drawn therefrom of the party against whom the motion is granted. (citation omitted):

All material facts set forth in the complaint as well as all inferences reasonable deducible therefrom are admitted as true for (the purpose of this review) (citation omitted). The question presented is whether, on the facts averred, the law says with certainty that no recovery is possible. (citation omitted), Where a doubt exists as to

whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. (citation omitted).

Gabel v. Cambuzzi, 532 Pa. 584, ___, 616 A.2d 1364, 1367 (1992).

However, the court does not accept conclusions as true. Frankel v. Northeast Land Company, 391 Pa.Super. 226, 570 A.2d 1065 (1990).

Next, we must venture into the state of the law concerning infliction of emotional distress.

It is still an open question whether Pennsylvania has adopted Restatement Torts 2d § 46 which deals with infliction of emotional distress by outrageous conduct. A Superior Court panel recently reviewed the subject and found that some panels had upheld the action which others had rejected it. Hart v. O'Malley, 436 Pa.Super. 151, 647 A.2d 542 (1994). Whatever the status, it is clear that Pennsylvania courts require physical injury, contrary to the Restatement position. *id.* Physical injury cannot be mere transitory discomfort, but prolonged headaches, upset stomach, involuntary muscle tension, physical pain and nervousness will suffice. Johnson v. Caparelli, 425 Pa.Super. 404, 625 A.2d 668 (1993).

Restatement § 46 covers two situations. The first, § 46(1), applies to conduct directed at a plaintiff. The second, § 46(2), involves conduct directed at a third person.¹ It has been suggested that not only must plaintiff be present during the traumatic event, but known by defendant to be present. Johnson v. Caparelli, *supra*.

One panel decision holds that recovery for negligent infliction of emotional distress may lie even if there is a hiatus between defendant's negligence and the traumatic event. In Love v. Cramer, 414 Pa.Super. 231, 606 A.2d 1175 (1992), preliminary objections were overruled when plaintiff alleged negligent medical care which resulted in the death of plaintiff's mother seven weeks later. That court held allegations sufficient when negligence constituted the proximate cause of injury, witnessed by plaintiff who was at her mother's side at the time of death:

The basis upon which § 46(2) rests, however, is observation by plaintiff of outrageous conduct inflicted upon a third person. More is required than in the case of negligent infliction.

¹Since Pennsylvania requires bodily harm as a prerequisite for recovery, there is no need to distinguish between § 46(2)(a) and 46(2)(b).

As in the case of punitive damages, *Rizzo v. Michener*, 401 Pa.Super. 47, 584 A.2d 973 (1991), it is initially for the court to determine if conduct is sufficiently outrageous to justify recovery. *Hackney v. Woodring*, 424 Pa.Super. 96, 622 A.2d 286 (1993). *Johnson v. Caparelli*, supra. If reasonable minds could differ, the issue must be submitted to a jury. *id.*

It would seem that recovery in negligent infliction of emotional distress is restricted to traumatic events involving persons closely related to plaintiff. *Bloom v. Dubois*, 409 Pa.Super. 83, 597 A.2d 671 (1991).

It also seems that recovery for negligent infliction is limited to traumatic incidents involving people other than plaintiff.

In describing the development of the law in this area, Superior Court observed that “[t]he tort of negligent infliction of emotional distress has evolved almost exclusively in the context of those who observe injury to close family members and as a consequence of the shock emotionally distressed.” *Armstrong v. Paoli Memorial Hospital*, 430 Pa.Super. 36, 633 A.2d 605, 609 (1993).

If plaintiff is injured as a result of defendant’s negligence, he or she may recover for injuries proximately caused by that negligence. Thus, an independent action for emotional distress is unnecessary and duplicative.

Furthermore, the law, as determined by collected cases, is that shock must result from contemporaneous observance of a traumatic event by plaintiff closely related to the victim, with resulting direct emotional impact. *id.* 633 A.2d at 610.

This court concludes that plaintiffs cannot maintain a separate action for intentional infliction, under Restatement § 46 and that emotional distress related to injuries (illness) suffered by plaintiffs must be viewed as a demand for damages resulting from defendants’ negligence.

The question then becomes whether Shawn and Angela are entitled to damages as a result of stress, fear and worry caused by injury (illness) to their children. All cases, of which this court is aware, involved some discrete traumatic event. Given that a delay between causal negligence and trauma is not fatal, *Love v. Cramer*, supra., there is still the need for direct emotional impact. We do not intend to minimize illness, but find it lacks the requirement of immediate shock. Discussions relating to this cause of action emphasize the lack of time and opportunity on the part of a plaintiff to prepare. Illness, although certainly distressing, is usually a long

term experience, comparatively speaking. It certainly was in the case before us. Thus, while Angela and Shawn may recover for fear and emotional distress resulting from their own injuries, they may not do so for fear engendered by injuries suffered by their children.

Punitive damages require outrageous conduct on the part of defendants, Restatement Torts 2d §908. *Ruffing v. 84 Lumber Co.*, 410 Pa.Super. 459, 600 A.2d 545 (1991). The element of recklessness required has been likened to that required for a crime and the difference between it and negligence is so marked as to amount to a difference in kind. There must be an easily perceptible danger of substantial bodily harm. Restatement supra., §500; *Moran v. G & W.H. Corson, Inc.*, 402 Pa.Super. 101, 586 A.2d 416 (1991).

In determining whether punitive damages are justifiable, one must look to the act itself, together with all the circumstances including the motive of the wrong doers and the relations between the parties. *id.*

This last cited case is instructive. A defendant which supplied asbestos products in the sixties was immunized from exemplary damages because: 1) there was no proof defendant knew the hazards of asbestos at that time; and 2) such hazards were generally not well known at that time.

It is common knowledge that contaminated drinking water can be a serious threat to health. Plaintiffs allege that TNT assured them that the water was potable. We need not decide whether the representations were intentional or negligent. Defendants have not attacked allegations of fraud on the part of TNT. Thus, any challenges to the demand for punitive damages, mounted by TNT, must fail.

Allegations do not, however, support a claim against Hill. Plaintiffs allege negligence and the breach of the covenant of habitability. While this implied condition of the lease is very important, it implicates no public policy. The breach of a contractual duty, whether pleaded in assumpsit or as a tort, cannot justify punitive damages unless there is also a breach of a duty to society. *Deardorff v. Rife*, 28 A.C.L.J. 217 (1987).

Although we must assume as true allegations that Hill knew well water was unsafe, plaintiff has also averred that Hill contracted with TNT to solve the problem. There is nothing outrageous about this conduct. Facts alleged do not support the conclusion, recited in ¶33 of the complaint, that Hill consciously disregarded a high risk that water was unsafe and posed a risk of serious harm to plaintiffs.

The attached order is entered.

ORDER OF COURT

AND NOW, this 4th day of October, 1995, demurrers to Counts V, VI, XXIII and XXIV are sustained to the extent that those counts purport to plead an action separate and apart from negligence. Allegations shall remain, however, as pleading damages and shall require an answer by defendants. Demurrers to Counts VII, VIII, XV, XVI, XXV, XXVI are sustained and those counts are dismissed. The demurrer to punitive damages is overruled as to TNT Enterprises, Inc., but sustained as to James L. Hill. Plaintiffs may file an amendment to their amended complaint, or a second amended complaint within the next twenty days. If they opt to forego such a pleading, they may file a notice to defendants to file an answer within twenty days. Defendants may file answers within twenty days of such notice or twenty days from the filing of a second amended complaint, if either is filed, and, failing such filing, within forty days of this order.

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 J. H. AUGUST BORLEIS, DEC'D

Late of Straban Township, Gettysburg, Adams County, Pennsylvania

Executrix: Lillian Teich, 9616 Wells Parkway, Norfolk, VA 23503

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEROY J. HELWIG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administrator: Barbara Lau Helwig Jenkins, 2609 S. Marston Road, New Windsor, MD 21776

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

ESTATE OF JAMES J. KUYKENDALL, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administratrix: Mary K. Wagner, 275 North Middleton Road, Carlisle, PA 17103

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIAN M. MILHIMES, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Executors: Opal Milhimes, 1290 Hunterstown-Hampton Road, New Oxford, PA 17350; Ronald Milhimes, 1080 Hunterstown-Hampton Road, New Oxford, PA 17350

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

ESTATE OF MARY E. NAUGLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Keith Donaldson Naugle, 423 Baltimore Street, Gettysburg, PA 17325

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

ESTATE OF MILDRED P. TERLINGO, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Thomas C. Weikel, 35 Bragg Street, Hanover, PA 17331

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

ESTATE OF ALMA L. KEENEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Galen E. Keeney, 215 Pearl Street, Harrisburg, PA 17109

Attorney: James D. Campbell, Jr., Esquire, Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110

SECOND PUBLICATION

ESTATE OF JOHN E. BAUER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Robert F. Bauer, 39-17 44th Street, Sunnyside, NY 11104

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

ESTATE OF ROBERT H. BISHE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Gladys V. Bishe, 67 Walker Avenue, Gettysburg, PA 17325

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

ESTATE OF MILDRED KATHRYN HOFF, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF NAOMI H. CHRONISTER, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Executrix: Jannie-Lee Mentzer, P. O. Box 217, Arendtsville, PA 17303

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

ESTATE OF J. HAMBLETON RAY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Clifford W. Ray, R. D. #2, Box 50, Kingsley, PA 18826

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

ESTATE OF CHARLES F. RINEHART, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix C.T.A.: Sylvia K. Noel, 300 Fairview Avenue, McSherrystown, PA 17344

Attorney: Crabbs & Frey, Daniel M. Frey, Attorney, 14 Center Square, Hanover, PA 17331

ESTATE OF DANIEL D. SANDERS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Mary Sanders Lawrence, 29 Main Street, McSherrystown, PA 17344

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 91-S-5 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of May, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail and washer in the centerline of the Emmitsburg Road (US Business Route 15) on line of land of The United States of America, and passing through a US government monument 33.34 feet from the beginning of this course, North 87 degrees 55 minutes 30 seconds East, 182.10 feet to an iron pin at corner of Lot No. 4; thence along Lot No. 4, South 02 degrees 04 minutes 30 seconds East, 199.98 feet to an iron pin at corner of Lot No. 2; thence along Lot No. 2 and passing through a reference iron pin 29.87 feet from the end of this course, North 71 degrees 49 minutes 20 seconds West, 277.40 feet to a nail in the centerline of the Emmitsburg Road; thence in the centerline of the Emmitsburg Road, North 34 degrees 51 minutes 40 seconds East, 130.04 feet to the above described place of BEGINNING. CONTAINING 35,487 square feet or .815 Acre.

The above description was taken from a subdivision plan of the Crouse & McDonnell development recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 69.

BEING THE SAME PREMISES which Patricia K. Crouse, widow, E. A. McDonnell and Ethel B. McDonnell, husband and wife, Patricia K. Crouse and E. A. McDonnell, a partnership, trading as, Crouse & McDonnell, by deed dated 10/9/87 and recorded 10/13/87 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 470-526, granted and conveyed unto Ronald E. Rotz and Cheryl B. Rotz, husband and wife.

IMPROVED WITH DWELLING.

SEIZED and taken into execution as the property of **RONALD E. ROTZ AND CHERYL B. ROTZ** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 14, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 24, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/5, 12 & 19

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1039 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Adams County - Tax Map K-11, Parcel 208

BEGINNING at a point in the center of Racetrack Road (Township Road No. T-505) at Lot No. 14 of the hereinafter referred to Subdivision Plan; thence crossing said Racetrack Road and continuing along said Lot No. 14 South thirty-four (34) degrees fifty-six (56) minutes forty (40) seconds East, three hundred ninety-four and six hundredths (394.06) feet to a point at lands now or formerly of James W. Grindrod; thence along said lands South fifty-seven (57) degrees West, one hundred fifty-three and twelve hundredths (153.12) feet to a point at Lot No. 12; thence along said Lot No. 12 North thirty-three (33) degrees West, four hundred one and ninety-seven hundredths (401.97) feet to a point in the center of the aforementioned Racetrack Road; thence in and through the center of said Racetrack Road, North fifty-nine (59) degrees eighteen (18) minutes fifty-one (51) seconds East, forty-eight and seventy-three hundredths (48.73) feet to a point; thence in and through the same North sixty (60) degrees fifty-two (52) minutes twenty-seven (27) seconds East, ninety-one and twenty-seven hundredths (91.27) feet to the point and place of BEGINNING. CONTAINING 1.3384 Acres and designated as Lot No. 13 on a Final Subdivision Plan prepared for Annetta E. O'Brien Estate by Donald E. Worley, Professional Land Surveyor, dated September 7, 1983, revised January 30, 1984, and August 13, 1984, and recorded in Plat Book 40, Pages 85 and 85-A, of the Adams County Records.

IT BEING a part of a larger tract of land which the Farmers and Merchants Bank by its Deed dated July 18, 1942, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 159, page 473, granted and conveyed unto David I. O'Brien and Annetta E. O'Brien, his wife, as tenants by the entireties. The said David I. O'Brien having predeceased the said Annetta E. O'Brien, title in and to the above described tract of land became vested in the said Annetta E. O'Brien under and by virtue of the laws of the

Commonwealth of Pennsylvania relating to tenancies by the entireties.

AND IT BEING the same tract of land which Julia O'Brien and Robert O'Brien, Executors of the Last Will and Testament of Annetta E. O'Brien, Deceased, by their deed dated December 30, 1986, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Book 0446, Page 112, granted and conveyed unto Eugene C. Staub and Margarethe J. Staub, his wife, MORTGAGORS HEREIN.

SEIZED and taken into execution as the property of **EUGENE C. STAUB AND MARGARETHE J. STAUB** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
February 28, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/5, 12 & 19

Adams County Legal Journal

Vol. 37

April 19, 1996

No. 47, pp. 247-254

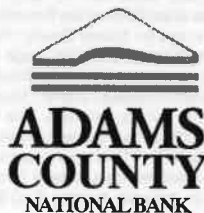
CONTINUING LEGAL EDUCATION PROGRAMS

1. *Medical Cost Containment in Workers' Compensation Cases*

Tuesday, June 11, 1996—8:30 a.m.

Room 307A, Adams County Courthouse—4 C.L.E. credits in substantive law and 0 C.L.E. credits in ethics. Registration through P.B.I.

Adams County National Bank's commitment to its communities is more than a fleeting promise. It is a tradition founded upon our more than 130 years of service to the individuals, businesses and organizations in these communities.



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-N-66 and 95-S-740 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of May, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 548 on a plan of lots of LAKE MEADE SUBDIVISION, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Deed Book 1 at page 4, and SUBJECT TO all legal highways, assessments, rights of way and restrictions of record.

BEING the same as that which Lake Meade, Inc., by its deed dated the 30th day of October, 1967, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 264 at page 853, sold and conveyed unto Evelyn M. Wallman, the Grantor herein named.

TOGETHER WITH the rights and SUBJECT TO the easements, conditions, covenants, etc., as recorded in the above mentioned deed from Lake Meade, Inc., to Evelyn M. Wallman.

SEIZED and taken into execution as the property of JOSEPH A. HURRELL and JAMIE S. HURRELL and to be sold by me

Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA March 21, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/12, 19 & 26

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-S-1039 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 April, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

Adams County - Tax Map K-11, Parcel 208

BEGINNING at a point in the center of Racetrack Road (Township Road No. T-505) at Lot No. 14 of the hereinafter referred to Subdivision Plan; thence crossing said Racetrack Road and continuing along said Lot No. 14 South thirty-four (34) degrees fifty-six (56) minutes forty (40) seconds East, three hundred ninety-four and six hundredths (394.06) feet to a point at lands now or formerly of James W. Grindrod; thence along said lands South fifty-seven (57) degrees West, one hundred fifty-three and twelve hundredths (153.12) feet to a point at Lot No. 12; thence along said Lot No. 12 North thirty-three (33) degrees West, four hundred one and ninety-seven hundredths (401.97) feet to a point in the center of the aforementioned Racetrack Road; thence in and through the center of said Racetrack Road, North fifty-nine (59) degrees eighteen (18) minutes fifty-one (51) seconds East, forty-eight and seventy-three hundredths (48.73) feet to a point; thence in and through the same North sixty (60) degrees fifty-two (52) minutes twenty-seven (27) seconds East, ninety-one and twenty-seven hundredths (91.27) feet to the point and place of BEGINNING. CONTAINING 1.3384 Acres and designated as Lot No. 13 on a Final Subdivision Plan prepared for Annetta E. O'Brien Estate by Donald E. Worley, Professional Land Surveyor, dated September 7, 1983, revised January 30, 1984, and August 13, 1984, and recorded in Plat Book 40, Pages 85 and 85-A, of the Adams County Records.

IT BEING a part of a larger tract of land which the Farmers and Merchants Bank by its Deed dated July 18, 1942, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Deed Book 159, page 473, granted and conveyed unto David I. O'Brien and Annetta E. O'Brien, his wife, as tenants by the entireties. The said David I. O'Brien having predeceased the said Annetta E. O'Brien, title in and to the above described tract of land became vested in the said Annetta E. O'Brien

under and by virtue of the laws of the Commonwealth of Pennsylvania relating to tenancies by the entireties.

AND IT BEING the same tract of land which Julia O'Brien and Robert O'Brien, Executors of the Last Will and Testament of Annetta E. O'Brien, Deceased, by their deed dated December 30, 1986, and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Book 0446, Page 1123, granted and conveyed unto Eugene C. Staub and Margarethe J. Staub, his wife, MORTGAGORS HEREIN.

SEIZED and taken into execution as the property of EUGENE C. STAUB AND MARGARETHE J. STAUB and to be sold by me

Bernard V. Miller Sheriff

Sheriff's Office, Gettysburg, PA February 28, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that schedule of distribution will be filed the Sheriff in his office on May 20, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/5, 12 & 19

IN THE COURT OF COMMON PLEAS OF THE 51ST JUDICIAL DISTRICT OF ADAMS COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

NOTICE IS HEREBY GIVEN that Farmers & Merchants Trust Company, Guardian of Tonya N. Russell, Verdell Russell, II, has filed its First and Final Account and Statement of Proposed Distribution with the above Court and it will be presented to the Court for confirmation on May 20, 1996.

Farmers & Merchants Trust Company, Guardian of Tonya N. Russell and Verdell Russell, II

4/19

**TRONE VS. LITTLESTOWN BOROUGH
ZONING HEARING BOARD**

1. Whether or not a permit to conduct an accessory use on his property is being requested by a land owner, the land owner has the burden of proving that his proposed use meets the definition of an accessory use under the applicable zoning ordinance.

2. The burden is upon the land owner to convince the Court that his small plumbing business conducted on his residential property is a customary residential accessory use under the zoning ordinance.

3. Where a home occupation permitted under a zoning ordinance is limited to the "practice of a personal service" a small plumbing business does not qualify.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 91-S-20, VICTOR A. TRONE VS. LITTLESTOWN BOROUGH ZONING HEARING BOARD.

Harry L. McNeal, Esq., for Appellant
Clayton R. Wilcox, Esq., for Appellee
Harold Eastman, Esq., for Intervenor
John R. White, Esq., for Intervenor

DECISION ON ZONING APPEAL

Kuhn, J., October 6, 1995.

AND NOW, this 6th day of October, 1995, the Court enters the following:

FINDINGS OF FACT

1. Appellant, Victor A. Trone, owns an 82 x 180 foot parcel of real estate improved with a residence located at 445 West King Street, Littlestown, Pennsylvania.

2. The property is bordered on the south by West King Street, on the west by Columbus Avenue, on the north by State Alley and on the east by real estate owned by Clyde Harner.

3. In early August, 1990, Appellant received a written notice that he was unlawfully conducting a business in his home and advised that he could appeal that decision or seek a zoning variance.

4. Appellant filed an Application with the Borough of Littlestown Zoning Hearing Board seeking both an interpretation of and variance from Section 202.1 of the Zoning Ordinance.

5. The property is situate in an R-2 Medium Density Residential District.

6. Appellant is a plumbing and heating contractor who employs two persons in his business.

7. Appellant's customers are located in both Adams and York Counties but 25% of his business is in the Littlestown area.

8. Appellant's business is listed in the white pages of the local telephone book as "445 W. King Littlestown" and in the yellow pages as "Littlestown" and gives a different telephone number (359-4152) than Appellant's personal telephone number (359-9727).

11. Appellant also advertised himself in the newspaper as an authorized dealer for all Ready Steel Building Systems, Inc. and listed the 359-4152 telephone number but no address.

12. Appellant owns two business vehicles (a van and a pickup truck) which are generally parked along Columbus Avenue during the entire weekend and before 7:30 A.M. and after 4:00 P.M. Monday through Friday. Printing on the side of the van reads "Victor A. Trone Plumbing—Heating Cont. Littlestown, Pa. 717-359-4152."

13. No actual plumbing or electrical work is done at the real estate except for paperwork performed by Appellant in a 10 x 12 foot basement room and the receipt of telephone calls.

14. No customers or salespersons come to the real estate.

15. No business sign has been erected on the premises.

16. The employees arrive at the property each morning, park their vehicles, enter the residence for several minutes and then depart in the business vehicles to perform their labors.

17. Business supplies are delivered to and kept in a warehouse at the rear of 218 North Franklin Street, Hanover, Pennsylvania.

18. Business mail is received at P.O. Box 421, Littlestown, Pennsylvania.

19. Appellant's income tax filings use the post office box address.

20. Appellant pays a business privilege tax to the Borough of Littlestown.

21. The Zoning Hearing Board rejected Appellant's application for a variance and determined that his business use of the premises was not permitted under the zoning ordinance.¹

CONCLUSIONS OF LAW

1. This Court has jurisdiction.

2. Appellant's business use of the premises at 445 West King Street,

¹By earlier Opinion entered in this case we ruled that the findings of fact and conclusions of law which did not accompany the board's decision but which were filed after the appeal was taken had to be stricken and the court was required to enter its own findings and conclusions. Since that time *Bishop Nursing Home, Inc. v. Zoning Hearing Board of Middletown Township*, 162 Pa. Comlth. Ct. 118, 638 A.2d 383 (1994), *Alloc. den.* 649 A.2d 676 (1994) held that the trial court commits no error if it relies on the board's findings and conclusions, even if filed late, rather than enter its own, if the findings and conclusions do appear in the record and the appellant has not been prejudiced because he was permitted to supplement the appeal.

Littlestown, Pennsylvania, does not constitute an accessory use as contemplated by the Littlestown Zoning Ordinance.

3. Appellant has not established entitlement to a variance.

DISCUSSION

The first issue to be resolved is the nature of the proceeding and the burden of proof. Appellant was seeking an interpretation and a variance and the Zoning Hearing Board advertised the hearing in that manner. However, the action which initiated this proceeding was an enforcement notice (which has not been made part of the record) alleging that Appellant was in violation of the Zoning Ordinance by conducting an unauthorized business, setting forth potential penalties if he continued beyond 30 days and advising him of his right to appeal to the Zoning Hearing Board. At the hearing before the Board, it was clear that Appellant was seeking an interpretation and that he put forth no evidence designed to secure a variance.

An enforcement notice is accusatory in nature and failure to file a timely appeal with the zoning hearing board can result in a conclusive determination of guilt with sanctions to follow. 53 P.S. §10616.1. It is generally repugnant to our system of jurisprudence to place the burden of proof and persuasion on the party being accused of conducting illegal activity. Nevertheless, there is authority which suggests that Appellant has the burden of proof in this case.

The Court has discovered no case directly on point. However, as a general rule, a landowner who seeks a permit to conduct an accessory use on his property has the burden of proving that his proposed use meets the definition of an accessory use under the applicable zoning ordinance. *Gold v. Zoning Board of Adjustment*, 393 Pa. 401, 403, 143 A.2d 59, 60 (1958); *Thomas v. Zoning Hearing Board of Benner Township*, 121 Pa. Comlth. Ct. 393, 395, 550 A.2d 1045, 1047 (1988). Perhaps this is significant because we noticed that in cases where a zoning officer issued a cease and desist order it was the landowner's failure to produce evidence that the existing use constituted an accessory use which was fatal. *Champaine v. Zoning Hearing Board of East Bradford Township*, 30 Pa. Comlth. Ct. 544, 374 A.2d 752 (1977). Thereby indicating that even where a permit was not being requested by the landowner he still has the burden of proof.

Interestingly, it is Appellant who raises this issue but it was Appellant, not the zoning officer, who proceeded at the hearing to offer testimony. Thus, it appears that the parties themselves believed Appellant had the burden and appellant proceeded in an attempt to meet that burden.

We will now address the merits.

The Zoning Ordinance provides, in pertinent part, as follows:

Section 202 R-2 Medium Density Residential District

Specific Intent It is the purpose of this Section to provide for medium density single family residential development in the Borough...

202.1 Use Regulations

A. Used by Right. In any R-2 District, land, buildings or premises shall be used by right only for one or more of the following:

1. Single family detached house.

...

B. Accessory Uses. Only the following accessory uses shall be permitted:

1. Customary agricultural and residential accessory uses

...

4. Home occupations subject to Section 702.6 of this Ordinance.

Thus, the use to which Appellant has put his property would be permitted if it generally meets the definition of an accessory use and it is either a customary residential accessory use or a home occupation. The definitional section of the Zoning Ordinance defines an "accessory use" as

A use conducted on the same lot as a principal use to which it is related and located either within the same structure or in an accessory structure or as an accessory use of land; except that off-street parking need not be located on the same lot.

A use which is clearly incidental to, and customarily found in connection with, a particular principal use.

"Home occupation" is defined as an accessory use which: is clearly incidental or secondary to the residential use of the dwelling unit, or

is customarily carried on within a dwelling unit or accessory building by one or more occupants of such dwelling unit except that in connection with the practice of a profession, two persons not residing in such dwelling unit may be employed, and

occupies not more than 25 percent of total floor area of such dwelling unit or 500 feet, whichever is less;

does not permit the following operations:

selling articles produced elsewhere than on the premises;

having exterior displays of goods visible from the outside;

storing materials or products outside a principal or accessory building or other structure;

making external alterations which are not customary in residential buildings;

includes the following occupations: the professional practice of medicine, dentistry, architecture, law and engineering; artists, beauticians, barbers and veterinarians, excluding stables or kennels.

As noted above, Section 202.1.B.4 subjects "home occupations: to the provisions of Section 702.6 of the Ordinance. That section provides:

A. Uses Permitted The term "home occupation" shall be limited to the practice of personal service, subject to these regulations, performed by a resident of the dwelling which is incidental or secondary to the use of the property as a residence.

B. Size Restrictions The area used for the practice of a home occupation shall occupy no more than 24% of the total floor area of the practitioner's dwelling unit.

C. Parking Requirements Three off-street parking spaces in addition to those required for residents shall be required if the practice of the home occupation involves contact with the public or the employment of others.

D. Personnel Restrictions

1. No person other than a resident may practice the occupation, excepting assistants to the practitioner.

2. No more than two persons shall be employed by the practitioner of the occupation to provide secretarial or clerical assistance.

E. Use Restrictions

1. No retail sales shall be permitted.

2. No advertising other than signs permitted in

residential zoning districts or restricted by Sign Regulations, Section 701 of This Ordinance shall be permitted.

3. No conduct of any activity shall be visible from any property line.

We first must determine whether appellant's business activities constitute a customary residential accessory use. In order to meet this requirement there are two basic criteria. 1) the use is conducted on the premises and 2) it is incidental to and customarily found in connection with a single family detached residential dwelling.² The Court has no difficulty concluding that Appellant's business use of his property, based upon the record presented, is incidental to the principal residential use. Whether this type of business use is customarily found in connection with this type of residential use may be more difficult to ascertain.

Caselaw has discussed various considerations applicable to determining whether a use is customarily found in connection with a principal use. In *Gold v. Zoning Board of Adjustment*, supra., the Court suggested a "practical and sensible approach" in deciding that a single chair barber shop in a residence would be a commercial use not ordinarily or customarily conducted in a home but rather is one ordinarily conducted in a business shop or building. 143 A.2d at 60. In *Champaigne v. Zoning Hearing Board of East Bradford Township*, supra., the Court noted that proof of customary accessory use entails a showing that a "significant percentage" of like principal uses in the area have an accessory use of the nature and extent in question. The Court said that to be meaningful the accessory uses being compared must be in conformity with the zoning regulations in their locale. 374 A.2d at 754. One year later the same court in *Klein v. Township of Lower Macungie*, supra. held that it was not necessary to a determination of what is customary that a majority or even a "substantial" number of residential properties in the neighborhood contain the accessory use in question. 395 A.2d at 610. In *Thomas v. Zoning Hearing Board of Benner Township*, supra., the area from which comparisons are made to determine what is customary is the "surrounding area" not just the immediate neighborhood or development. 550 A.2d at 1047. Finally, in *Page v. Zoning Hearing Board of Walker Township*, 80 Pa. Comlth. Ct. 589, 471 A.2d 1348 (1984) the Court acknowledged that zoning hearing boards and courts may simply "take notice of general experi-

²The phrase "customary and incidental" is to be distinguished from the phrase "customarily incidental." *Klein v. Township of Lower Macungie*, 39 Pa. Comlth. Ct. 81, 84, 395 A.2d 609, 610 (1978).

ence” and understanding as to what business occupations are customarily conducted in a residential dwelling as well as considering factual information as to what may be customary within a particular community or region. 471 A.2d at 1349.

The record before this Court offers no factual evidence whether a small plumbing business operated as a sole proprietorship is customarily found in connection with a single family detached residential use. The record only suggests that commercial businesses are located across West King Street from Appellant’s residence. The undersigned, from his own experience, is aware that small plumbing contractors in the Adams County area often operate out of their residence. Whether zoning regulations are applicable in those areas is unknown. However, a quick check of the local telephone book suggested that at least 16 of the 43 plumbing contractors listed operated that business from the same address that appears to be the owner’s residence. This fact, standing alone, provides a weak basis upon which to reach a well reasoned conclusion.

The Court does recognize that a barber shop, *Gold, supra.*, a beauty shop, *Boreth v. Philadelphia Zoning Board of Adjustment*, 396 Pa. 82, 151 A.2d 474 (1959), and a motor vehicle repair and inspection business, *Perez, supra.*, *Page, supra.*, have not been considered customarily incidental to residential use. *Klein, supra.* Parking of heavy equipment and vehicles associated with an asphalt business along the street at the owner’s residence, having business vehicles picked up from and delivered to that location by employees, when combined with receipt of some business calls at the home and use of the home telephone number in business and advertisements was not considered an accessory use in a residential area despite the fact that all the work was done elsewhere. *Taddeo v. Commonwealth*, 49 Pa. Comlth. Ct. 485, 412 A.2d 212 (1980). In the closest case on point a plumbing, heating and air conditioning business in the owner’s home was not considered a use “customarily carried on within a dwelling unit” in *Hill v. Hamilton Township Zoning Hearing Board*, 45 D & C3d 390 (Monroe 1986). There the owner used one room as an office from where he ordered supplies and reviewed job permits, all jobs were done off-site; a detached garage was used to store supplies and the six business vehicles were parked at the owner’s residence until they were removed by employees who then parked their personal vehicles at the residence.

There is no doubt that the cases cited above involve some factual differences when compared to Appellant’s business situation. Nevertheless, the burden is Appellant’s to satisfy³ and in this case, that burden

is critical. If Appellant only parked the one business vehicle he drives at his residence, did not advertise the business as at his residence and did not have his employees depart from and return to his residence, this issue might well be decided differently. Based upon the record and the complete absence of any authority which recognizes Appellant's business as customarily found on residential property the Court is compelled to reluctantly conclude that the current business use cannot be considered a customary residential accessory use under the Zoning Ordinance.

Appellant would nevertheless prevail if his business use is a home occupation accessory use. One must carefully examine the language used in the ordinance. The way Section 202.1.B is structured, it would seem that the use must meet both the accessory use definition and the home occupation definition. This Section states "only the following accessory uses shall be permitted: . . . (4) Home occupations. . ." If the use must be both an accessory use (incidental to and customarily found in connection with a residence) and a home occupation (an accessory use which is incidental to the residential use or is customarily carried on within a dwelling unit) we are left with an inconsistency. Ambiguity exists where both the conjunctive and disjunctive are required. This ambiguity will be viewed in Appellant's favor.

However, regardless of whether or not there is ambiguity in the ordinance, Appellant's use does not fit the requirements for a home occupation for one simple reason. Section 702.6 provides that a home occupation is limited to the "practice of a personal service. . ." Plumbing contractors are not personal service practitioners. In addition, Appellant might only be able to provide three off-street parking spaces whereas five would be required. Unlike the issue regarding "personal service" this parking issue could perhaps be rectified.

Little has been argued regarding Appellant's request for a variance and little needs to be discussed. Appellant has failed to establish all the criteria to qualify for a variance. *Township of Harrison v. Smith*, 161 Pa. Comlth. Ct. 166, 636 A.2d 288 (1993).

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 6th day of October, 1995, Appellant's appeal from the decision of the Littlestown Borough Zoning Hearing Board is denied.

³If the burden was placed upon the Borough or others adverse to Appellant's business use the case for finding against this being an accessory use would likewise fail.

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 HERBERT C. ALDRICH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Ruth E. Aldrich, 14A York Drive, New Oxford, PA 17350

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

ESTATE OF SHIRLEY I. BENNETT, DEC'D

Late of 106 5th Street, Borough of Hanover, York County, Pennsylvania

Executor: Brent P. Smith, 2045 Oxford Road, New Oxford, Pennsylvania 17350

Attorney: Alison H. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, Pennsylvania 17350

ESTATE OF HELENE E. CODORI, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Richard C. Codori, 316N. Stratton St., Gettysburg, PA 17325; James R. Codori, 390 Ridgewood Drive, Gettysburg, PA 17325; Michael P. Codori, 13400 Oriental Court, Rockville, MD 20853

Attorney: John R. White, Campbell, White & George, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF CATHERINE BAKER STRONG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Edwin G. Strong, Jr., 129 Roberts Drive, Somerdale, NJ 08083

Attorney: Walton V. Davis, Esquire, 31 S. Washington St., Gettysburg, PA 17325

ESTATE OF ARBUTUS C. TONER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Samuel J. Toner, 235 Creek Road, Gardners, PA 17324; George G. Toner, 6956 Birchwood Road, Harrisburg, PA 17112

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

ESTATE OF MARY E. YOHE, DEC'D
Late of Hamilton Township, Adams County, Pennsylvania

Executor: James H. Wallace, 308 W. King Street, Abbottstown, PA 17301

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

SECOND PUBLICATION

ESTATE OF J. H. AUGUST BORLEIS, DEC'D

Late of Straban Township, Gettysburg, Adams County, Pennsylvania

Executrix: Lillian Teich, 9616 Wells Parkway, Norfolk, VA 23503

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEROY J. HELWIG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administrator: Barbara Lau Helwig Jenkins, 2609 S. Marston Road, New Windsor, MD 21776

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

ESTATE OF JAMES J. KUYKENDALL, SR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administratrix: Mary K. Wagner, 275 North Middleton Road, Carlisle, PA 17103

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIAN M. MILHIMES, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Executors: Opal Milhimes, 1290 Hunterstown-Hampton Road, New Oxford, PA 17350; Ronald Milhimes, 1080 Hunterstown-Hampton Road, New Oxford, PA 17350

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

ESTATE OF MARY E. NAUGLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Keith Donaldson Naugle, 423 Baltimore Street, Gettysburg, PA 17325

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

ESTATE OF MILDRED P. TERLINGO, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Thomas C. Weikel, 35 Bragg Street, Hanover, PA 17331

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

ESTATE OF ALMA L. KEENEY, DEC'D
Late of Franklin Township, Adams County, Pennsylvania

Executor: Galen E. Keeney, 215 Pearl Street, Harrisburg, PA 17109

Attorney: James D. Campbell, Jr., Esquire, Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110

THIRD PUBLICATION

ESTATE OF JOHN E. BAUER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Robert F. Bauer, 39-17 44th Street, Sunnyside, NY 11104

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

ESTATE OF ROBERT H. BISHE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Gladys V. Bishe, 67 Walker Avenue, Gettysburg, PA 17325

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

ESTATE OF MILDRED KATHRYN HOFF, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 91-S-5 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 3rd day of May, 1996, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate, lying and being in Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a nail and washer in the centerline of the Emmitsburg Road (US Business Route 15) on line of land of The United States of America, and passing through a US government monument 33.34 feet from the beginning of this course, North 87 degrees 55 minutes 30 seconds East, 182.10 feet to an iron pin at corner of Lot No. 4; thence along Lot No. 4, South 02 degrees 04 minutes 30 seconds East, 199.98 feet to an iron pin at corner of Lot No. 2; thence along Lot No. 2 and passing through a reference iron pin 29.87 feet from the end of this course, North 71 degrees 49 minutes 20 seconds West, 277.40 feet to a nail in the centerline of the Emmitsburg Road; thence in the centerline of the Emmitsburg Road, North 34 degrees 51 minutes 40 seconds East, 130.04 feet to the above described place of BEGINNING. CONTAINING 35,487 square feet or .815 Acre.

The above description was taken from a subdivision plan of the Crouse & McDonnell development recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 1 at page 69.

BEING THE SAME PREMISES which Patricia K. Crouse, widow, E. A. McDonnell and Ethel B. McDonnell, husband and wife, Patricia K. Crouse and E. A. McDonnell, a partnership, trading as, Crouse & McDonnell, by deed dated 10/9/87 and recorded 10/13/87 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 470-526, granted and conveyed unto Ronald E. Rotz and Cheryl B. Rotz, husband and wife.

IMPROVED WITH DWELLING.

SEIZED and taken into execution as the property of **RONALD E. ROTZ AND CHERYL B. ROTZ** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 14, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 24, 1996, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/5, 12 & 19

Adams County Legal Journal

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April 26, 1996

No. 48, pp. 255-258

CONTINUING LEGAL EDUCATION PROGRAMS

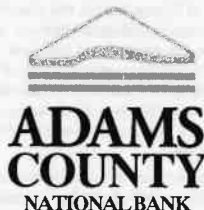
1. *Medical Cost Containment in Workers' Compensation Cases*

Tuesday, June 11, 1996—8:30 a.m.

Room 307A, Adams County Courthouse—4 C.L.E. credits in substantive law and 0 C.L.E. credits in ethics. Registration through P.B.I.

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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LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the County of Adams, Pennsylvania, by its duly elected and incumbent Board of County Commissioners, adopted the following Resolution, after publication in accordance with law, at the Commissioners' regularly-scheduled public meeting on Wednesday, April 24, 1996, in the Commissioners' Meeting Room (Second Floor), Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Adams County, Pennsylvania 17325. FURTHER, NOTICE is hereby given that on Wednesday, May 1, 1996, the Articles of Incorporation of the "Adams County Transit Authority" will be filed with the Secretary of the Commonwealth of Pennsylvania.

A RESOLUTION OF THE COUNTY OF ADAMS, PENNSYLVANIA, BY ITS BOARD OF COUNTY COMMISSIONERS, TO ORGANIZE, ESTABLISH AND INCORPORATE THE "ADAMS COUNTY TRANSIT AUTHORITY," PURSUANT TO THE "MUNICIPALITY AUTHORITIES ACT OF 1945," AS AMENDED; APPROVING AND ADOPTING THE ARTICLES OF INCORPORATION OF THE "ADAMS COUNTY TRANSIT AUTHORITY"; AUTHORIZING AND DIRECTING THE ADVERTISEMENT OF NOTICE OF THE SAID COUNTY'S INTENTION TO FILE THE ARTICLES OF INCORPORATION OF THE PROPOSED AUTHORITY WITH THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; APPOINTING THE FIRST MEMBERS OF THE BOARD OF THE SAID AUTHORITY; AND SETTING FORTH OTHER POWERS AND DUTIES OF THE SAID AUTHORITY

WHEREAS, by Resolution, dated April 24, 1996, the County of Adams, Pennsylvania (the "County"), by its duly elected and incumbent Board of County Commissioners (the "Commissioners"), authorized the organization, establishment and incorporation of a body corporate and politic, pursuant to the "Municipality Authorities Act of 1945," Act of May 2, 1945, P.L. 382, as amended [53 P.S. §301 et seq.] (the "Act"), to be known as the Adams County Transit Authority (the "Authority"), for the purpose of providing surface motor vehicle public transportation services through the Authority; and

WHEREAS, the County, by its Commissioners, desires to approve the form of, and authorize and direct the execution and filing of, the Articles of Incorporation of the Authority, and to authorize and direct the advertisement of notice of intention to file such Articles of Incorporation

with the Secretary of the Commonwealth of Pennsylvania on Wednesday, May 1, 1996; and

WHEREAS, the County, by its Commissioners, desires to appoint the first members of the Board of the Authority; and

WHEREAS, the County, by its Commissioners, desires to set forth and establish the powers and duties of the Authority, as well as other matters concerning the organization, establishment and incorporation of the Authority.

NOW, THEREFORE, BE IT RESOLVED, AND IT IS HEREBY RESOLVED, by the County, by its Commissioners, as follows:

1. The County, by its Commissioners, hereby organizes, establishes and incorporates the "Adams County Transit Authority," pursuant to the provisions of the "Municipality Authorities Act of 1945," Act of May 2, 1945, P.L. 382, as amended [53 P.S. §301 et seq.].

2. Pursuant to the Act, the project or projects which shall be undertaken by the Authority shall be for the purpose of providing municipal surface motor vehicle transportation services in the County of Adams, including the leasing and/or purchasing of real and/or personal property necessary for the rendering of said services, the employment of such persons as are necessary for the rendering of such services, and to do and to perform all acts necessary for the rendering of said services; provided, however, that the Authority shall not engage in any other activities or services, other than municipal surface motor vehicle transportation services, without the prior, written consent and authorization of the County, by its Commissioners.

3. The Authority shall have no power to pledge the full faith and credit or taxing power of the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, nor shall the bonds issued by the Authority be deemed to be obligations of the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, nor shall the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, be liable for the payment of principal, premium, if any, or interest on any of said Authority bonds, nor shall the members, officers or employees of the Authority be personally liable on any such Authority obligations.

4. The Articles of Incorporation of the Authority, to be filed with the Secretary of the Commonwealth of Pennsylvania on

Wednesday, May 1, 1996, shall be in the form as attached hereto as Exhibit "A," and incorporated herein. The Commissioners are hereby authorized and directed to execute and file said Articles of Incorporation, as aforesaid, on behalf of the County.

5. Notice of intention to file the Authority's Articles of Incorporation, as aforesaid, as well as notice of the adoption of the present Resolution and the Commissioners' April 24, 1996 Resolution shall be advertised in The Gettysburg Times and the Adams County Legal Journal on April 26, 1996.

6. The powers of the Authority shall be exercised by a governing body (the "Board"), composed of seven (7) members (the "Members"). The Commissioners hereby appoint the below-named Members of the Board, whose terms of office shall commence as of January 24, 1996, or as otherwise required or permitted pursuant to the provisions of the A [53 P.S. §303.C.]. The initial term of office of two (2) members shall be for one (1) year, of two (2) members for two (2) years, of one (1) member for three (3) years, of one (1) member for four (4) years, and of one (1) member for five (5) years, from the first Monday in January, 1997. Thereafter, whenever a vacancy has occurred by reason of the expiration of the term of any Member, the Commissioners shall appoint a member of the Board for a term of five (5) years from the date of expiration of the prior term to succeed the member whose term has expired. The names, addresses and initial terms of office of the first members of the Board of the Authority are as follows:
Names and Addresses: Initial Term of Office:

M. Francis Coulson 1/24/96*-1/6/1998
1075 Old Harrisburg Road
Gettysburg, PA 17325

Donald B. Shetter 1/24/96*-1/6/1998
157 South Main Street
Biglerville, PA 17307

John O'Brien 1/24/96*-1/6/1999
1075 Old Harrisburg Road
Gettysburg, PA 17325

Ronald Smith 1/24/96*-1/6/1999
c/o Bank of Hanover
2 York Street
Hanover, PA 17331

Thomas L. Collins 1/24/96*-1/6/2000
1324 Hilltown Road
Biglerville, PA 17307

William J. Little 1/24/96*-1/6/2001
c/o Borough of Gettysburg
59 East High Street
Gettysburg, PA 17325

Willis H. Musselman 1/24/96*-1/6/2002
147 Carlisle Street
Gettysburg, PA 17325

*or as otherwise permitted or required pursuant to the Act [53 P.S. §303.C.]

IN WITNESS WHEREOF, the County, by its Commissioners, has duly adopted the present Resolution this 24th day of April, 1996.

ATTEST:

Brenda J. Constable, Chief Clerk

COUNTY OF ADAMS

ADAMS COUNTY COMMISSIONERS

Harry Stokes, Chairman

Thomas J. Weaver, Commissioner

Thomas L. Collins, Commissioner

A true and correct copy of the above-proposed Resolution may be examined without charge or obtained for a charge not greater than the cost thereof at the Adams County Commissioners' Office, Second Floor, Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Adams County, Pennsylvania 17325, during regular business hours. (Monday - Friday, 8:00 a.m. - 4:30 p.m.).

John R. White

Adams County Solicitor

Exhibit "A"

**ARTICLES OF INCORPORATION
OF THE ADAMS COUNTY
TRANSIT AUTHORITY**

1. The name of the Authority shall be the "Adams County Transit Authority," a body corporate and politic, with its initial registered office and address at 257 North Fourth Street, Rear, Gettysburg, Adams County, Pennsylvania 17325.

2. The Authority is organized, established and incorporated pursuant to and in accordance with the provisions of the "Municipality Authorities Act of 1945," Act of May 2, 1945, P.L. 382, as amended [53 P.S. §301 et seq.] (the "Act").

3. Two (2) other Authorities have been organized under the Act and are in existence in or for the County of Adams, Pennsylvania, the incorporating municipality:

Adams County Housing Authority
139 Carlisle Street
Gettysburg, Adams County,
Pennsylvania 17325

Adams County Solid Waste Authority
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, Adams County,
Pennsylvania 17325

4. The name of the incorporating municipality is the County of Adams, Pennsylvania, a duly incorporated municipality, political subdivision and Sixth Class County of the Commonwealth of Pennsylvania (the "County"). The governing body and municipal authorities of the County are the Adams County Commissioners (the "Commissioners"). The names and addresses of the members of the Board of County Commissioners of the County of

Adams, Pennsylvania, are as follows:

Harry Stokes, Chairman

22 Mummasburg Street

Gettysburg, Pennsylvania 17325

Thomas J. Weaver, Commissioner

106 North Street

McSherrystown, Pennsylvania 17344

Thomas L. Collins, Commissioner

1324 Hilltown Road

Biglerville, Pennsylvania 17307

5. The names, addresses and term of office of the first members of the Board of the Authority are as follows:

Names and Addresses: Initial Term of Office

M. Francis Coulson 1/24/96*-1/6/1998
1075 Old Harrisburg Road
Gettysburg, PA 17325

Donald B. Shetter 1/24/96*-1/6/1998
157 South Main Street
Biglerville, PA 17307

John O'Brien 1/24/96*-1/6/1999
1075 Old Harrisburg Road
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Ronald Smith 1/24/96*-1/6/1999
c/o Bank of Hanover
2 York Street
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Thomas L. Collins 1/24/96*-1/6/2000
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c/o Borough of Gettysburg
59 East High Street
Gettysburg, PA 17325

Willis H. Musselman 1/24/96*-1/6/2002
147 Carlisle Street
Gettysburg, PA 17325

*or as otherwise permitted or required pursuant to the Act [53 P.S. §303.C.]

6. Pursuant to the Act, the project or projects which shall be undertaken by the Authority shall be for the purpose of providing municipal surface motor vehicle transportation services in the County of Adams, Pennsylvania, including the leasing and/or purchasing of real and/or personal property necessary for the rendering of said services, the employment of such persons as are necessary for the rendering of such services, and to do and to perform all acts necessary for the rendering of said services; provided, however, that the Authority shall not engage in any other activities or services other than municipal surface motor vehicle transportation services, without the prior, express consent and authorization of the County by its Commissioners.

7. The Authority shall have no power to pledge the full faith and credit or taxing power of the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, nor shall the bonds issued by the Authority be deemed to be obligations of the Commonwealth of Pennsylvania, the County, or any political subdivision thereof, nor shall the Commonwealth of Pennsylvania, the County or any political subdivision thereof, be liable

for the payment of principal, interest, or premium, if any, on any of said Authority bonds; nor shall the members, officers or employees of the Authority be personally liable on any such Authority obligations.

IN WITNESS WHEREOF, the County, by its Commissioners, has duly adopted the present Articles of Incorporation of the "Adams County Transit Authority," this 24th day of April, 1996.

ATTEST:

Brenda J. Constable, Chief Clerk

COUNTY OF ADAMS

ADAMS COUNTY COMMISSIONERS

Harry Stokes, Chairman

Thomas J. Weaver, Commissioner

Thomas L. Collins, Commissioner

4/26

GETTYSBURG FOUNDRY SPECIALTIES CO. VS.
HOBART BROTHERS, INC.

1. While revocation of acceptance of an item sold for nonconformity is permitted only if the nonconformity substantially impairs the value to the purchaser, the test is subjective and must be resolved by the fact finder in all but the clearest cases and should not be resolved at the demurrer stage.
2. A demurrer is generally not the proper place to determine whether an express warranty has been limited or nullified.
3. It is generally understood that an "as is" clause only disclaims implied, not express, warranties.
4. Whether a buyer discovers a breach and gives notice of it within a reasonable time is normally a jury question and only under the situation where the facts are undisputed and the buyer clearly ought to have known of the alleged defect does the question of reasonableness become one for the court.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-305, GETTYSBURG FOUNDRY SPECIALTIES CO. VS. HOBART BROTHERS CO.

Thomas A. Beckley, Esq., for Plaintiff
David P. Baker, Esq., for Defendant

OPINION ON DEFENDANT'S PRELIMINARY
OBJECTIONS

Kuhn, J., October 10, 1995.

Plaintiff, Gettysburg Foundry Specialties Co. filed a two count complaint against Defendant, Hobart Brothers Co. Therein Plaintiff averred that Defendant, through its agent, offered to sell a 40,000,000 BTU Propane Vaporizer, which offer Plaintiff accepted on July 7, 1995, by issuing a purchase order. After installation Plaintiff discovered that the unit had a capacity of only 20,000,000 BTU. In Count I Plaintiff asserts a breach of express warranty and in Count II Plaintiff seeks rescission. Defendant, in turn, filed preliminary objections in the nature of a demurrer to both counts, a motion to strike, and a motion for more specific pleading. Those preliminary objections are before the Court for disposition.

When reviewing preliminary objections, the court must accept all material facts set forth in the complaint as well as all inferences reasonably deducible therefrom as true. Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings and no evidence outside the complaint may be considered. To sustain a demurrer the face of the complaint must indicate that the claims made may not be sustained and the law will not permit a recovery. Where a doubt exists whether a demurrer should be

sustained, that doubt should be resolved by overruling the demurrer. *Powell v. Drumheller*, ___ Pa. ___, ___ 653 A.2d 619, 621 (1995); *Mellon Bank, N.A. v. Fabinyi*, 437 Pa. Super. 559, 568, 650 A.2d 895, 899 (1995). In resolving the demurrer filed in this case, we note that Defendant has made numerous factual averments in its brief which may not be considered. A demurrer cannot be a speaking demurrer and be used to supply facts missing from the complaint. *Hall v. Goodman Comp.*, 310 Pa. Super. 465, 477, 456 A.2d 1029, 1035 (1983).

In demurring to Count I Defendant raises three deficiencies. Defendant first argues that Plaintiff failed to plead that the vaporizer represented substantial value in the transaction. The writings purported to be the offer and acceptance note that the sale includes the vaporizer, a 30,000 gallon tank, and all propane in the system for a total price of \$20,000.00. Plaintiff contends that the representation as to capacity constituted an express warranty, *Elliott-Lewis Corp. v. York-ShIPLEY, Inc.*, 372 Pa. 346, 94 A.2d 47 (1953); 13 Pa. C.S.A. §2313. Defendant relies on *Ford Motor Credit Comp. v. Caiazzo*, 387 Pa. Super. 561, 564 A.2d 931 (1989) and 13 Pa. C.S.A. §2608 for the proposition that revocation of acceptance of an item sold for nonconformity is permitted only if the nonconformity substantially impairs the value to the purchaser. 574 A.2d at 936. While Plaintiff has not specifically pled language that the lack of capacity “substantially impaired the value” of the vaporizer to Plaintiff, the import of the averments in Paragraph 9 of the Complaint can be read to state the same meaning. There Plaintiff averred that because of the incorrect BTU capacity “the vaporizer was and is not the size vaporizer GFS needs for its use.” Ford notes that whether the nonconformity substantially impairs the value of the item to the purchaser is a subjective test which must be resolved by the fact finder in all but the clearest of cases and should not be resolved at the demurrer stage. *Id.*

Second, Defendant seeks dismissal because the written documents indicate that the sale was “as is, where is” and Plaintiff failed to plead that 40,000,000 BTU was part of the basis of the bargain. Essentially, Defendant contends that the “as is” language is a valid disclaimer of the warranty of capacity. Initially, it is clear from the Complaint that the capacity of the vaporizer was the basis of the bargain.¹

A demurrer is generally not the proper place to determine whether an express warranty has been limited or nullified. *Girton Sales Co., Inc. v. Lerew’s Farm Market, Inc.*, 20 D & C3d 540 (Columbia Co.

¹Paragraph 8 of the Complaint reads “The representations by Hobart formed the basis between Hobart and GFS. GFS would not have purchased the equipment if the defendant’s vaporizer was other than 40,000,000 BTU.”

1981). 13 Pa. C.S.A. §2316(a) requires that words which create an express warranty and words tending to limit or negate the warranty shall be construed as consistent with each other whenever reasonable. It is not unreasonable for a fact finder to conclude that the express warranty as to capacity was not negated or limited by the "as is" language and that, in this context, they were not inconsistent. It is also generally understood that an "as is" clause only disclaims implied, not express, warranties. *Tenwick v. Byrd*, 9 Ark. App. 340, 659 S.W. 2d 950, 952 (1983).

Third, Defendant contends that Plaintiff should have pled when it discovered the alleged breach of warranty. The Complaint alleges that the offer was accepted on July 7, 1993. It does not set forth when the equipment was delivery or when the defect was discovered. On January 26, 1994, a letter from Plaintiff's counsel to Defendant stated that the reduced BTU capacity was discovered after installation.

The U.C.C. provides that a buyer must within a reasonable time after he discovers or should have discovered the breach so notify the seller or be barred from any remedy. 13 Pa. C.S.A. §2607(c)(1). Although Plaintiff may eventually have to prove the reasonableness of its notice the Complaint is not defective for its failure to be more precise. In considering a motion to dismiss for failure to state cause of action the Court in *Bednarski v. Hideout Homes & Realty, Inc.*, 709 F. Supp. 90 (M.D. Pa. 1988) held that for purposes of that motion the filing of a civil complaint may be sufficient and timely notice under §2607. The Court quoted the following language from *Rad Services, Inc. v. American Refining Group, Inc.*, 330 Pa. Super. 308, 479 A.2d 565 (1984),

Whether a buyer discovers a breach and gives notice of it within a reasonable time is normally a jury question . . . Only under the situation where the facts are undisputed and the buyer clearly ought to have known of the alleged defect does the question of reasonableness become one for the court. 330 Pa. Super. at 312, 479 A.2d at 567 (citations omitted).

Here even if the vaporizer was delivered to Plaintiff on July 7, 1993, and the lack of capacity discovered immediately at most notice was given just over five months later. Whether under the circumstances the delay is reasonable and timely is a jury question. Therefore, lack of more detailed pleading, although better form, is not the basis to legally grant a demurrer.

Therefore, for the reasons stated, the demurrer to Count I will be denied.

In demurring to Count II, Defendant argues that despite Plaintiff's request for rescission based upon mutual mistake this count should be dismissed because Plaintiff failed to aver that it either lacked an adequate remedy at law or that it would suffer irreparable injury.

Neither party has identified any case which holds that the failure to aver lack of adequate remedy at law is the basis to dismiss the action. Pa. R.C.P. 1020(d)(1) requires the joinder of causes of action arising out of the same transaction. Plaintiff will be required to elect its remedy at some point but now is not that time.

Next, Defendant moves to strike the Complaint for an alleged failure to comply with Pa. R.C.P. 1019(a) which requires that material facts be stated in a concise and summary form. Defendant complains that paragraphs 7, 8 and 9 state legal conclusions and that paragraph 11 is inherently inconsistent. Whether an averment is a fact or a legal conclusion depends upon the context in which it is pled. We find no basis to strike these paragraphs. As to Paragraph 11, internal inconsistency, if it exists, does not constitute a basis to strike that averment.

Finally, Defendant moves for a more specific pleading because 1) of the alleged inconsistency in paragraph 11, and 2) the pleading consists of legal conclusions. Pa. R.C.P. 1028(a)(3) allows preliminary objections where there is insufficient specificity in the pleading. The relief requested will be denied if the pleading is sufficient to enable the responding party to file his answer. *Tanon v. Knouse*, 34 Ad. Co. L.J. 207, 209 (1992).

When all the allegations of the Complaint are considered together, we conclude that Defendant is able to prepare its defense. The Complaint does not only consist of legal conclusions. It is clear that all the equipment purchased was sold as a unit for \$20,000.00. There is no need to require more specificity.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 10th day of October, 1995, Defendant's preliminary objections are denied. Defendant is granted twenty (20) days from the date of mailing of this Order to file a responsive pleading.

ESTATE NOTICES

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

FIRST PUBLICATION

ESTATE OF CYRIL J. BUSBEY, DEC'D
Late of Hanover, Adams County, Pennsylvania

Executrices: Rebecca Mondorf, 1067 Kohler Mill Road, New Oxford, PA 17350; Jacqueline M. Busbey, 1145 Irishtown Road, New Oxford, PA 17350
Attorney: John M. Crabbs, Esq., Attorney for the Estate, 202 Broadway, Hanover, PA 17331, (717) 637-9799

ESTATE OF J. LLOYD DEATRICH a/k/a JACOB LLOYD DEATRICH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administrator, c.t.a.: Gregory L. Kiersz, Patterson, Kiersz & Ganley, P.C., 239-B East Main Street, Waynesboro, PA 17268-1681

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

SECOND PUBLICATION

ESTATE OF HERBERT C. ALDRICH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Ruth E. Aldrich, 14A York Drive, New Oxford, PA 17350

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

ESTATE OF SHIRLEY I. BENNETT, DEC'D

Late of 106 5th Street, Borough of Hanover, York County, Pennsylvania

Executor: Brent P. Smith, 2045 Oxford Road, New Oxford, Pennsylvania 17350

Attorney: Alison H. Peterson, Esq., Peterson & Peterson, 515 Carlisle Street, Hanover, Pennsylvania 17350

ESTATE OF HELENE E. CODORI, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Richard C. Codori, 316N. Stratton St., Gettysburg, PA 17325; James R. Codori, 390 Ridgewood Drive, Gettysburg, PA 17325; Michael P. Codori, 13400 Oriental Court, Rockville, MD 20853

Attorney: John R. White, Campbell, White & George, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF CATHERINE BAKER STRONG, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Edwin G. Strong, Jr., 129 Roberts Drive, Somerdale, NJ 08083

Attorney: Walton V. Davis, Esquire, 31 S. Washington St., Gettysburg, PA 17325

ESTATE OF ARBUTUS C. TONER, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executors: Samuel J. Toner, 235 Creek Road, Gardners, PA 17324; George G. Toner, 6956 Birchwood Road, Harrisburg, PA 17112

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

ESTATE OF MARY E. YOHE, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: James H. Wallace, 308 W. King Street, Abbottstown, PA 17301

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

THIRD PUBLICATION

ESTATE OF J. H. AUGUST BORLEIS, DEC'D

Late of Straban Township, Gettysburg, Adams County, Pennsylvania

Executrix: Lillian Teich, 9616 Wells Parkway, Norfolk, VA 23503

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LEROY J. HELWIG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administrator: Barbara Lau Helwig Jenkins, 2609 S. Marston Road, New Windsor, MD 21776

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

ESTATE OF JAMES J. KUYKENDALL, SR., DEC'D

Late of the Borough of McSherrytown, Adams County, Pennsylvania

Administratrix: Mary K. Wagner, 275 North Middleton Road, Carlisle, PA 17103

Attorney: Charles W. Wolf, Esq., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIAN M. MILHIMES, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Executors: Opal Milhimes, 1290 Hunterstown-Hampton Road, New Oxford, PA 17350; Ronald Milhimes, 1080 Hunterstown-Hampton Road, New Oxford, PA 17350

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

ESTATE OF MARY E. NAUGLE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Keith Donaldson Naugle, 423 Baltimore Street, Gettysburg, PA 17325

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

ESTATE OF MILDRED P. TERLINGO, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Thomas C. Weikel, 35 Bragg Street, Hanover, PA 17331

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

ESTATE OF ALMA L. KEENEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Galen E. Keaney, 215 Pearl Street, Harrisburg, PA 17109

Attorney: James D. Campbell, Jr., Esquire, Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 95-N-66 and 95-S-740 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of May, 1996, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

All that certain lot of land situated in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 548 on a plan of lots of LAKE MEADE SUBDIVISION, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Misc. Deed Book 1 at page 4, and SUBJECT TO all legal highways, assessments, rights of way and restrictions of record.

BEING the same as that which Lake Meade, Inc., by its deed dated the 30th day of October, 1967, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Deed Book 264 at page 853, sold and conveyed unto Evelyn M. Wallman, the Grantor herein named.

TOGETHER WITH the rights and SUBJECT TO the easements, conditions, covenants, etc., as recorded in the above mentioned deed from Lake Meade, Inc., to Evelyn M. Wallman.

SEIZED and taken into execution as the property of **JOSEPH A. HURRELL** and **JAMIE S. HURRELL** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
March 21, 1996.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on **June 17, 1996**, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

4/12, 19 & 26

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Pennsylvania Fictitious Names Act, 54 Pa.C.S.A. Sections 301 et seq., of the filing of an Application for Registration for Fictitious Name under the said Act. The fictitious name is SUGARBAKERS. The address of the principal office or place of business to be carried on under or through the fictitious name is 810 Carlisle Street, Hanover, York County, Pennsylvania 17331. The name and address of the individual who is interested in the business is MCK Enterprises, Inc., 161 Briarwood Boulevard, Hanover, Adams County, Pennsylvania 17331. An Application for Registration of the said Fictitious Name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on April 4, 1996.

Wolfe & Rice
47 West High Street
Gettysburg, PA 17325
Attorneys for Applicant

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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 the 22nd day of March, 1996, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania of 1988, as amended.

The name of the Corporation is A.S.C. SALES, INC. The purpose for which said Corporation is organized is to engage in and do any lawful act concerning any or all business for which corporations may be incorporated under the Business Corporation Law of 1988, December 21, P.L. 1444, No. 177 Section 103, effective October 1, 1989 including but not limited to the sale of computer wire desk grommets and related items.

Stonesifer and Kelley
Attorneys at Law
209 Broadway
Hanover, PA 17331

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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 the 22nd day of March, 1996, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania of 1988, as amended.

The name of the Corporation is LINCOLN SPEED AND CUSTOM, INC. The purpose for which said Corporation is organized is to engage in and do any lawful act concerning any or all business for which corporations may be incorporated under the Business Corporation Law of 1988, December 21, P.L. 1444, No. 177 Section 103, effective October 1, 1989 including but not limited to the sale of parts and equipment for customizing automobiles and light-duty trucks.

Stonesifer and Kelley
Attorneys at Law
209 Broadway
Hanover, PA 17331

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