

# Adams County Legal Journal

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### FAHNESTOCK ESTATE VS. PARICHUK PAVING

*This opinion continued from last issue (4/15/2011)*

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

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-2015 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution No. 10-S-2015

SOVEREIGN BANK

vs.

BARTON REAL ESTATE LLC

PREMISES: 0 HICKORY ROAD;

TRACT #1

LITTLESTOWN, PA 17340

Parcel No.: 30-H15-0045

(CONTAINING 61 ACRES AND 116 PERCHES OF LAND NEAT MEASURE) AND

(TRACT 2) - 0 HICKORY ROAD, LOT 1 HANOVER PA 17331

Parcel No.: 32-H14-0034

MT. JOY TOWNSHIP (TRACT 1)

MT. PLEASANT TOWNSHIP (TRACT 2)

IMPROVEMENTS THEREON: LAND

JUDGMENT AMOUNT: \$948,253.13

Attorneys for Plaintiff

DANIEL P. MAZO ESQ., 610-526-6429

SEIZED and taken into execution as the property of **Barton Real Estate LLC** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-2142 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution

No. 10-S-2142

WELLS FARGO BANK NA

vs.

MICHAEL B. COBLENTZ AND

JENNIFER J. ENSOR

380 MARSH CREEK ROAD

GETTYSBURG, PA 17325

CUMBERLAND TOWNSHIP

Parcel No.: 09-E17-0087D-000

IMPROVEMENTS THEREON:

RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$254,195.53

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP  
215-563-7000

SEIZED and taken into execution as the property of **Michael B. Coblentz & Jennifer J. Ensor** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-1915 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution

No. 10-S-1915

CITIMORTGAGE INC.

vs.

DONALD W. BLACK

10 PIPER DRIVE

NEW OXFORD, PA 17350-9702

OXFORD TOWNSHIP

Parcel No.: 35-013-0130

IMPROVEMENTS THEREON:

RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$267,341.11

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP  
215-563-7000

SEIZED and taken into execution as the property of **Donald W. Black** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## FAHNESTOCK ESTATE VS. PARICHUK PAVING

*Continued from last issue (4/15/2011)*

Initially, Fahnestock claims that Anderson lacked the sufficient training and/or experience necessary to operate the Bobcat safely. Despite heroic efforts on the part of Plaintiff's counsel, the record lacks any factual support for the conclusion that Parichuk knew or should have known of this deficiency. Although evidence is contradictory as to whether any formal training occurred, it is undisputed that Anderson had significant hours of operation of the Bobcat prior to the date of the accident.<sup>3</sup> Had this matter come before the Court on a claim of negligence on the part of J.W. Paving, summary judgment would be inappropriate as Fahnestock's expert opines that standard industry practice considers appropriate training to be review of the manuals which accompany the equipment.<sup>4</sup> This proof, however, is a far cry from evidence sufficient to place Parichuk on notice that Anderson's training may have been lacking. To establish this critical link, Fahnestock relies on the close relationship between J.W. Paving and Parichuk. In essence, Fahnestock seeks to impute knowledge of a perceived lack of training without real evidence. Fahnestock's efforts to rely on pure speculation are contrary to law. *InfoSAGE, Inc. v. Mellon Ventures, L.P.* 896 A.2d at 626. Moreover, Fahnestock has not cited, nor has research by this Court revealed, any authority suggesting that Parichuk has an affirmative duty to make inquiry in this regard. Ironically, Fahnestock's claim that Parichuk had knowledge that Anderson would be the ultimate Bobcat operator carries with it the implicit conclusion that Parichuk was aware of Anderson's regular and frequent operation of the equipment; a fact tending to reinforce a reasonable belief by Parichuk that Anderson had the requisite experience and training necessary to safely operate the Bobcat. Absent evidence of knowledge to the contrary, the fact finder cannot impute the same to Parichuk.

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<sup>3</sup> Although Wells claims that Anderson had over 100 hours of training by a former employee, Anderson disputes this contention. He acknowledges, however, that he operated a Bobcat almost every day during the four months preceding the accident while, on occasion, under the supervision of Wells.

<sup>4</sup> Fahnestock points out that Anderson did not read the operating manuals for the Bobcat. Nevertheless, Anderson indicated an awareness of the danger of operating a Bobcat near others. One can only wonder what reading a manual which directs "that therefore everyone is clear of the loader before moving it" would add to this knowledge. Parichuk currently questions how, in light of this knowledge, lack of training can be considered a factual cause of Fahnestock's death. In light of disposition herein, it is not necessary to resolve that issue.

Fahnestock next argues Anderson's lack of a valid driver's license as a basis to establish unfitness. In regard to the lending of a motor vehicle, our legislature has codified the statutory duty of an automobile owner who entrusts their motor vehicle to a person who is not licensed to drive a motor vehicle on a highway or trafficway. Specifically, our Commonwealth prohibits an automobile owner from "authorizing or prohibiting an automobile owned by him or under his control to be operated by any person without a valid driver's license." 75 Pa. C.S.A. § 1574. Instantly, it is arguable whether or not the licensing requirements of the Pennsylvania Motor Vehicle Code are even applicable. See *Rissi v. Worker's Comp. Appeal Bd.*, 808 A.2d 274 (Pa. Cmwlth. 2002) (road construction and maintenance machinery are not considered motor vehicles under the Motor Vehicle Code).

Even presuming motor vehicle provisions apply instantly, Fahnestock's argument does not preclude summary judgment. Appellate authority requires that one cannot be held liable under the statute unless the vehicle owner knew or had reason to know that the ultimate driver was unlicensed. *Ferry v. Fisher*, 709 A.2d 399 (Pa. Super. 1998); *Shomo v. Scribe*, 686 A.2d 1292 (Pa. 1996). Once again, Fahnestock's evidence is lacking on this point.

A thorough review of the record reveals an absence of any evidence which would place Parichuk on notice that Anderson's license was actually suspended. Additionally, the record lacks any indication that Parichuk knew or should have known that the Bobcat might be used on a project which might momentarily cause the Bobcat to traverse a highway or trafficway thereby arguably creating a circumstance where Anderson might actually be required to possess a valid motor vehicle license. Fahnestock's assumption that Parichuk "must have known" due to the relationships between the business is nothing more than speculation without any factual foundation. Where an owner does not have any knowledge or reason to believe that the license of the operator of his vehicle had been revoked, the owner did not violate Section 1574 of the Motor Vehicle Code. *In re Moyer*, 59 A.2d 927 (Pa. 1948). Consequently, Fahnestock is unable to establish negligent entrustment under this theory.

Fahnestock's final theory of negligent entrustment rests upon the presupposition that Parichuk was aware that Anderson regularly used

marijuana and thus should have concluded that Anderson operated machinery at the job sites while under the influence of these substances. This theory is both factually and legally deficient.

Pennsylvania case law is clear in instructing that the critical time in considering whether a negligent entrustment occurred is at the time permission to operate the vehicle was given. *Robare v. Pekarcik*, 530 A.2d 534 (Pa. Cmwlth. 1987); *Wertz v. Kephart*, 542 A.2d 1019 (Pa. Super. 1988). In order to establish a colorable argument that a factual dispute exists on this issue, Fahnestock asks the Court to make a number of connections which simply are not factually supported.

As mentioned above, it is undisputed that the entrustment at issue was from Parichuk to J.W. Paving. J.W. Paving's permission to use the Bobcat was sought and obtained by Wells on the night preceding the accident. Even presuming Parichuk's knowledge that Anderson would be operating the Bobcat the following day, there is not a single fact to indicate that Parichuk knew or had reason to know that Anderson would have marijuana in his system the following morning. This lack of evidence is fatal to Fahnestock's claim.

Fahnestock points to a variety of circumstances in an effort to bridge clear evidentiary gaps. Fahnestock claims that in 2005, Anderson was convicted of possession of drug paraphernalia for an incident occurring while working for J.W. Paving in a truck lent to J.W. Paving by Parichuk. Fahnestock also points to Anderson's claim that when he was 15 or 16 years old, approximately nine to ten years prior to the accident, he told John Parichuk, Jr. that he used marijuana. Although Anderson related that John Parichuk, Jr. knew that he continued to smoke marijuana, his testimony in this regard is non-specific as to a relevant time period. Fahnestock also points to Anderson's testimony, corroborated by another witness, that he went to approximately six parties at which the Parichuks were present. Anderson claims that while at these parties, he was under the influence of marijuana and exhibited red, glassy eyes. Finally, Fahnestock points out the testimony of a J.W. Paving employee, Wayne Dutterer, who claims he observed Anderson at the work site in the presence of the Parichuks with red, glassy eyes. Whether these claims are sufficient to place Parichuk on notice requires context.

In regard to the alleged possession of drug paraphernalia conviction, there is not a shred of evidence that Parichuk had knowledge of

this incident. In fact, both Wells and Anderson indicated that they had no reason to believe that the Parichuks were aware of the incident. Fahnestock attempts to compensate for this clear void in the evidence by claiming that knowledge should be imputed due to close familial and business relationships. Unfortunately for Fahnestock, the law requires that Fahnestock prove “knowledge” or “reason to know” on the part of Parichuk. *Wertz v. Gebhart*, 542 A.2d 1019, 1024 (Pa. Super. 1998). Absent proof on this element of the claim, it is improper to impute the same. See generally, *Robare v. Pekarcik*, 530 A.2d 534, 537 (Pa. Cmwlth. 1987). Thus, without some evidence Parichuk was aware of this incident, it is not relevant to the inquiry at issue.

Fahnestock’s claim that Anderson advised Parichuk of marijuana use ten years earlier has little persuasive value. There simply is no tenable nexus between one’s marijuana use as a young teenager and their ability to safely operate a vehicle in the course of their employment ten years later on a specific date. Anderson’s statement that John Parichuk, Jr. knew “he continued to use marijuana,” without contextual parameters, adds nothing to bridge this gap.

Similarly, a claim that Anderson had red eyes at infrequent parties is insufficient circumstantial evidence to lead to any reliable conclusion. Initially, I note that although the timeframe of the parties is not specified, it appears to be over approximately a 10-15 year period. Moreover, while the evidence indicates that Anderson admits smoking marijuana prior to these parties, it is also clear that no principal in Parichuk observed his usage. There is no indication that any of the Parichuks had even observed Anderson’s condition at these parties other than the fact that both the Parichuks and Anderson were present at the same location. Such evidence has been held by appellate authority to be insufficient. See generally, *Robare v. Pekarcik*, *supra* (evidence that people were present at the same location is insufficient to impute knowledge on the part of one as to the other’s condition). Moreover, while Anderson claims to have had red, glassy eyes on these occasions, he also acknowledges that there were no obvious manifestations of his marijuana use. In fact, witnesses acknowledged, and human experience teaches, that there are many factors which can cause one’s eyes to be bloodshot. *Com. v. Kowalek*, 647 A.2d 948 (Pa. Super. 1994); *Com. Dept. of Transp., Bureau of Driver*

*Licensing v. Dixon*, 596 A.2d 286 (Pa. Cmwlth. 1991). While arguably one experienced in marijuana use and its symptoms might understand the manifestations of marijuana use, once again, it is improper to impute this knowledge on the Parichuks.

Finally, Fahnestock improperly presumes that one's social use of marijuana on six occasions over a multi-year time period reasonably places another on notice of that same person's use of marijuana while at a job site on the particular day that a vehicle is entrusted to their employer. This leap of faith is even more tenuous when considering Fahnestock must also prove that Parichuk reasonably knew that the employer would permit the employee use the vehicle while under the influence.

As mentioned above, Fahnestock places great weight in the testimony of a co-employee of Anderson who claims to have observed Anderson at the work site with red, glassy eyes. Although this witness claims that principals of Parichuk were at the same job locations when these observations were made, he offers only the assumption that Parichuk observed Anderson's symptoms or would have understood the nature of their observations. The witness candidly acknowledges that he himself could not be certain as to whether Anderson had smoked marijuana prior to his observations. The witness claimed to never have observed Anderson use controlled substances at work nor ever observed him stumbling or with slurred speech. The witness frankly acknowledged that he did not know why Anderson's eyes were glassy. Finally, this witness confirmed that he had never expressed his concerns to the Parichuks.

As mentioned, in order to prevail on the cause of action, Fahnestock essentially must establish that Parichuk knew or had reason to know, at the time consent was given to J.W. Paving to use the Bobcat on the following day, that J.W. Paving would permit an unfit operator to operate the equipment. The evidence produced does not support this proposition. Even were I to assume that Wells had reason to know that Anderson would operate the equipment while under the influence of marijuana, there is no evidence to lead to the conclusion that Parichuk was aware or had reason to know when he lent the equipment to Wells that Wells would permit an unfit operator to operate the equipment. Under the circumstances, the necessary

element of knowledge which Fahnestock is required to prove is much too remote to support a cause of action.

Summary judgment on this issue is also appropriate in light of the lack of evidence relative to causation. Specifically, there is a paucity of any evidence permitting the fact finder to conclude that Anderson's marijuana use was the factual cause of the accident. In this regard, Fahnestock cites Anderson's guilty pleas to driving under the influence of a controlled substance, 75 Pa. C.S.A. § 3802(d), and homicide by vehicle, 75 Pa. C.S.A. § 3732, as conclusive proof of the causation element. I disagree. The crime of homicide by vehicle expressly excludes driving under the influence of a controlled substance as a basis for a finding of the reckless or grossly negligent conduct necessary for a conviction under that section. Rather, 75 Pa. C.S.A. § 3735, a section for which Anderson was not found guilty, is applicable where an unintentional death results from one driving a vehicle under the influence of a controlled substance. Moreover, the subsection of 75 Pa. C.S.A. § 3802 (driving under the influence), to which Anderson pled guilty, requires only some amount, no matter how minuscule, of a controlled substance in an individual's blood while operating a vehicle. It does not require that the individual be impaired to the extent of being unable to safely operate or be in the actual physical control of the movement of the vehicle. Thus, the question of whether one had trace amounts of marijuana in their system while operating a motor vehicle is quite different than the question of whether one's use of a controlled substance impaired their judgment to the extent they were incapable of safely operating the vehicle. Fahnestock's evidence is completely lacking on the latter issue. Fahnestock has failed to provide a toxicologist or other qualified expert to offer opinion on the extent of marijuana in Anderson's system at the time of the accident or the effects that marijuana use had on Anderson's faculties. There is no indication in the record that Anderson suffered visual, speech, physical limitations, or uncoordinated movement on the morning of the accident. Although Anderson admitted to smoking marijuana the night before the accident, it is not in the realm of lay knowledge whether that would have had any effect on his coordination or ability to safely operate equipment the following day. Once again, Fahnestock seeks, unpersuasively, to fill this void in evidence with the presumption that



marijuana in the bloodstream, no matter how remote the ingestion, makes one unsafe to operate equipment. The law does not permit that factual leap.<sup>5</sup>

In an effort to avoid summary judgment, Fahnestock suggests that his cause of action is salvaged by Restatement (Second) of Torts, Section 390. That section states:

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reasons to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and others whom the supplier should expect to share in or be endangered by its use, is subject to liability of physical harm resulting to them.

*Id.*

Unlike Restatement (Second) of Torts, Section 308, this writer is unaware of any appellate authority adopting Restatement (Second) of Torts, Section 390 in this jurisdiction. Nevertheless, Fahnestock's citation to Section 390 fails to yield a different result as the same deficiency exists. Namely, there is no evidence to support the conclusion that Parichuk knew or had reason to know that Wells would permit an incompetent operator to use the Bobcat.

The result herein would be different had the evidence arguably supported a conclusion that Parichuk lent the equipment to Wells knowing that Wells regularly permitted unsafe operators to use the equipment. Despite Plaintiff's counsel's heroic efforts, however, that is not the current case. Currently, the evidence does not support a finding that Anderson's immediate employer knew that Anderson was under the influence of controlled substances while at the workplace; let alone a finding that Parichuk knew that Wells was aware of

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<sup>5</sup> Similar voids in evidence of causation exist in Fahnestock's claims that Anderson was unlicensed and improperly trained.

and permitted such conduct. Absent evidence of such a connection, there is no factual issue for jury.<sup>6</sup>

For the foregoing reasons, the attached Order is entered.<sup>7</sup>

### ORDER

AND NOW, this 29th day of October, 2010, summary judgment is granted in favor of the Defendant, John Parichuk Paving, Inc., and against the Plaintiff, William E. Fahnestock, Administrator of the Estate of David M. Fahnestock. The Prothonotary's Office is directed to enter judgment as set forth herein.

Trial in this matter scheduled for the term commencing November 1, 2010 is stricken from the trial term.

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<sup>6</sup> Fahnestock cites *Nanty-Glo v. American Surety Co.*, 163 A. 523 (Pa. 1932) for the proposition that the moving party may not solely rely upon testimony, affidavits, and depositions to resolve material issues of fact. However, the controlling part of that same doctrine instructs that if there are no material issues of fact, where the non-moving party has failed to allege facts sufficient to make out a prima facie case, then summary judgment is properly granted even if the moving party has only set forth the pleadings and depositions of his witnesses in support thereof. *Dudley v. USX Corp.*, 606 A.2d 920 (Pa. Super. 1992). Instantly, Fahnestock is unable to establish a prima facie case.

<sup>7</sup> The parties have filed a variety of Motions in Limine seeking to admit or preclude evidence at trial. As the same are moot by this decision, they will not be addressed.

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-1619 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution  
No. 10-S-1619  
CITIMORTGAGE INC.

vs.

UNKNOWN HEIRS, SUCCESSORS,  
ASSIGNS, AND ALL PERSON, FIRMS,  
OR ASSOCIATIONS CLAIMING RIGHT,  
TITLE OR INTEREST FROM OR  
UNDER SHERYL CRUIKSHANK,  
DECEASED

718 CHESTNUT HILL ROAD  
HANOVER, PA 17331-7774  
UNION TOWNSHIP

Parcel No.: 41-K18-0013-000

IMPROVEMENTS THEREON:  
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$150,362.31

Attorneys for Plaintiff  
PHELAN HALLINAN & SCHMIEG, LLP  
215-563-7000

SEIZED and taken into execution as the property of **Unknown Heirs, Successors, Assigns, and all person, firms, or associations claiming Right, Title or Interest from or under Sheryl Cruikshank, Deceased** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 11-S-0123 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution  
No. 11-S-0123

HSBC MORTGAGE SERVICES INC.

vs.

RAYMOND F. FARBER &  
KAREN L. KOELLE-FARBER a/k/a  
KAREN L. FARBER

40 MILL ROAD  
BIGLERVILLE, PA 17307  
BUTLER TOWNSHIP

Parcel No.: 07-E08-0047

IMPROVEMENTS THEREON:  
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$148,754.41

Attorneys for Plaintiff  
STERN AND EISENBERG, LLP  
215-572-8111

SEIZED and taken into execution as the property of **Raymond F. Farber & Karen L. Koelle-Farber a/k/a Karen L. Farber** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-2441 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution  
No. 10-S-2441

WELLS FARGO BANK NA

vs.

MICHAEL D. DAY  
212 BARLEY CIRCLE  
HANOVER, PA 17331  
CONEWAGO TOWNSHIP

Parcel No.: 08-012-0138---000

IMPROVEMENTS THEREON:  
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$307,227.11

Attorneys for Plaintiff  
PHELAN HALLINAN & SCHMIEG, LLP  
215-563-7000

SEIZED and taken into execution as the property of **Michael D. Day** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 11-S-0065 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution  
No. 11-S-0065

HSBC BANK USA NA

vs.

BRYAN KLINGENSMITH &  
PAULA KLINGENSMITH  
143 BRECKENRIDGE STREET  
GETTYSBURG, PA. 17325  
GETTYSBURG BOROUGH  
Parcel No.: 16-010-0222-000

IMPROVEMENTS THEREON:  
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$152,141.38

Attorneys for Plaintiff

ZUCKER, GOLDBERG & ACHERMAN,  
LLC, 908-233-8500

SEIZED and taken into execution as the property of **Bryan Klingensmith & Paula Klingensmith** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 11-S-0061 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution  
No. 11-S-0061

US BANK NATIONAL ASSOCIATION

vs.

ROBERT A. HARTLAUB III &  
LISA M. HARTLAUB  
130 BRICKYARD ROAD  
NEW OXFORD, PA. 17350  
OXFORD TOWNSHIP  
Parcel No.: 35-K12-004

IMPROVEMENTS THEREON:  
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$127,178.49

Attorneys for Plaintiff

GRENEN & BRISIC, PC  
412-281-7650

SEIZED and taken into execution as the property of **Robert A. Hartlaub III & Lisa M. Hartlaub** and to be sold by me.

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

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 17, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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.

4/22, 29 & 5/6

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-2217 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of May, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution  
No. 10-S-2217

WELLS FARGO BANK NA

vs.

BRIAN E. HOCK  
265 GEORGETOWN ROAD  
GARDNERS, PA 17324-9659  
HUNTINGTON TOWNSHIP  
Parcel No.: 22-G03-0010-000

IMPROVEMENTS THEREON:  
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$82,823.74

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP  
215-563-7000

SEIZED and taken into execution as the property of **Brian E. Hock** and to be sold by me.

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

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4/22, 29 & 5/6

**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 ANITA F. ALFORD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: James P. Sheppard, c/o Richard F. Maffett, Jr., Esq., 2201 North Second Street, Harrisburg, PA 17110

Attorney: Richard F. Maffett, Jr., Esq., 2201 North Second Street, Harrisburg, PA 17110

**ESTATE OF ETHELEINE K. GROFT, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executors: Robert J. Groft, 1365 Red Hill Road, Lot #8, New Oxford, PA 17350; Wayne C. Groft, 649 Deer Run Court, Spring Grove, PA 17362

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

**ESTATE OF THOMAS PRICE HENNINGER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrix: Roberta Carol Henninger, 1265 Highland Avenue Road, Gettysburg, PA 17325

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 28 West Middle Street, Gettysburg, PA 17325

**ESTATE OF BEVERLY MARTENZ, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Janice A. Martenz Fahber, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 2005 East Main Street, Waynesboro, PA 17268

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 2005 East Main Street, Waynesboro, PA 17268

**ESTATE OF WILLIAM R. MILLER, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Joanne I. Miller, P.O. Box 305, Orrtanna, PA 17353

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 28 West Middle Street, Gettysburg, PA 17325

**ESTATE OF FRANCES G. ROSENBERY a/k/a FRANCES G. ROSENBERY, DEC'D**

Late of the Borough of Abbottstown, Adams County, Pennsylvania

James Rosenberry, 1 West Water Street, Abbottstown, PA 17301

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

**ESTATE OF THOMAS R. ROTH, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrator: Mary Jane Duffy, 167 Heritage Dr., Gettysburg, PA 17325

**ESTATE OF GENEVIEVE M. SHELLEMAN, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Richard L. Shelleman, 237 Baer Avenue, Hanover, PA 17331

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

**ESTATE OF MARY D. VAN ALMEN, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Barbara J. Wilson, 2274 Harney Road, Littlestown, PA 17340

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

**ESTATE OF ELIZABETH R. ZEPP, DEC'D**

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

Executrix: Sally Ann Thoman Bremer, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

**SECOND PUBLICATION****ESTATE OF CATHERINE M. HARNER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Royall T. Harner, 35 Buford Avenue, No. 30, Gettysburg, PA 17325

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

**ESTATE OF ETHEL K. HOCKENSMITH, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Barbara Anne Forney, 427 Baltimore Street, Gettysburg, PA 17325; Lynn E. Hockensmith, P.O. Box 45, McKnightstown, PA 17343

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

**ESTATE OF PATRICK A. MARTINELLI, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Frances J. Martinelli, 865 Sherman Drive, Gettysburg, PA 17325

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

**ESTATE OF MARIE EIGNER SCHELLER a/k/a MARIE SCHELLER, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Margareta Eigner Lindsley, 1175 Old Harrisburg Road, Gettysburg, PA 17325

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

**ESTATE OF PAUL S. WEIRICK, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrix: Suzanne W. Geiger, 110 Front Street, Dunellen, NJ 08812

**THIRD PUBLICATION****ESTATE OF MYRON PARKER BOWMAN, JR., DEC'D**

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executor: Sidonia Bowman, c/o Scott A. Ruth, Esq., 4 High St., Hanover, PA 17331

Attorney: Scott A. Ruth, Esq., 4 High St., Hanover, PA 17331

**ESTATE OF AILEEN E. FOLEY, DEC'D**

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Rosemary A. Foley, 2235 Minneapolis Avenue, Minneapolis, MN 55406

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

(continued on page 6)

**THIRD PUBLICATION (CONTINUED)****ESTATE OF JOSEPH W. MATULEVICH, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: John Hughes, c/o Robert Clofine, Esq., Elder Law Firm of Robert Clofine, 120 Pine Grove Commons, York, PA 17403

Attorney: Robert Clofine, Esq., Elder Law Firm of Robert Clofine, 120 Pine Grove Commons, York, PA 17403

**ESTATE OF EDWARD L. SPANGLER, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executrix: Linda S. Mummert, 45 Brierwood Blvd., Hanover, PA 17331

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

**NOTICE BY THE ADAMS COUNTY CLERK OF COURTS**

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements 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—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, May 6, 2011 at 8:30 a.m.

**BIDDINGER**—Orphan's Court Action Number OC-37-2011. The Account of Amy M. Drumm, Personal Representative of the Estate of Robert A. Biddinger, deceased, late of Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

4/22 & 29

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation for PANCHOS RACING PRODUCTS, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on December 28, 2010, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Guthrie, Nonemaker, Yingst & Hart, LLP  
Solicitor

4/22

**FICTITIOUS NAME NOTICE**

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on March 28, 2011, pursuant to the Fictitious Name Act, setting forth that ASJ Imaging Systems, Inc., of 235 South Street, McSherrystown, PA 17344, is the only entity owning or interested in a business, the character of which is emergency restoration and cleaning services and that the name, style and designation under which said business is and will be conducted is ASJ EMERGENCY RESTORATION AND CLEANING and the location where said business is and will be conducted is 235 South Street, McSherrystown, PA 17344.

Guthrie, Nonemaker, Yingst & Hart, LLP  
Solicitor

4/22

**NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW  
COURT OF COMMON PLEAS  
CIVIL DIVISION  
ADAMS COUNTY  
NO. 2011-S-52

DEUTSCHE BANK TRUST COMPANY  
AMERICAS AS TRUSTEE FOR RALI  
2007QS7

vs.

JEFFREY W. HEARE

**NOTICE**

TO JEFFREY W. HEARE:

You are hereby notified that on JANUARY 11, 2011, Plaintiff, DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2007QS7, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ADAMS County Pennsylvania, docketed to No. 2011-S-52. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 8 PARADISE COURT, NEW OXFORD, PA 17350 whereupon your property would be sold by the Sheriff of ADAMS County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

**NOTICE**

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or

objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

ADAMS COUNTY  
COURT ADMINISTRATOR  
ADAMS COUNTY COURTHOUSE  
GETTYSBURG, PA 17325  
(717) 334-6781, EXT. 213

LAWYER REFERRAL SERVICE  
MIDPENN LEGAL SERVICES  
128 BRECKENRIDGE STREET  
GETTYSBURG, PA 17325  
(717) 334-7624

4/22

**NOTICE**

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company was filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about March 25, 2011, for the purpose of obtaining a Certificate of Organization for a limited liability company under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the limited liability company is MOUNTAIN GETAWAY, LLC.

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

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