

BAR NEWS ITEM

SENATOR HARRIS WOFFORD'S ADVISORY  
COMMITTEE FOR FEDERAL JUDICIAL NOMINATIONS  
VACANCY  
U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
PENNSYLVANIA

Senator Harris Wofford's Advisory Committee for Federal Judicial Nominations for the Middle District of Pennsylvania is now accepting applicants for a vacancy on the United States District Court for the Middle District of Pennsylvania. The vacancy is located in Harrisburg. Questionnaires may be obtained from the Committee's Chairperson, Morey M. Myers, at: Schnader, Harrison, Segal & Lewis, 108 North Washington Ave., Scranton, PA 18503, (717) 342-6100. Questionnaires must be postmarked by June 10, 1994.

BROWN, ET AL. V. GARVIS, ET AL., C.P. Franklin County  
Branch, No. A.D. 1992-574

*Pennsylvania Wage Payment and Collection Law (43 P.S. § 260.1, et seq.) --Federal Fair Labor Standards Act (29 U.S.C. § 203, et seq.) --Contracts --Fraud --Employees' Claim of Personal Liability of Corporate Officers for Unpaid Wages --Definition of Employer Under State and Federal Statutes --What is "active role in decision making" as Intended by State Statute" --What is "acting directly or indirectly in the interest of an employer in relation to an employee" as Intended by Federal Statute --Economic Reality test, rather than Common Law Concepts of Agency, prevails --Operational Control of Significant Aspects of Corporation's Day to Day Functions -Damages Awarded under Statutory Claims, but not Under Contract Theory --Insufficiency of Evidence of Contract Theory --Definition of Fraud --Elements of Fraud Held Proven --Punitive Damages Held Warranted*

1. In order for a corporate officer to be personally liable, under the State Statute (43 P.S. § 260.2a, et seq.) for wages owed by the corporation, he must be found to have actively participated in decisions or given advice regarding pay or compensation, rather than to have merely carried out decisions made by others.

2. Although acting as a corporate officer and having check signing authority are insufficient indicia alone of one's status as "employer," each individual defendant's combined duties, responsibilities and actions in operating the plant indicate sufficient decision making capacity, here, to warrant liability.

3. Those individuals acting as project managers may be found to be employers based on the broad supervisory power inherent in that role through production and financial decision making.

4. The only apparent purpose for the Legislature to have included an agent or officer of a corporation employing persons in the Commonwealth within the definition of "employer," was to subject those persons to liability in the event that the corporation failed to make wage payments.

5. The obvious reason for making an agent or officer of a corporation personally liable for unpaid wages was that since corporate expenditures are made by corporate officers and it is more likely that the limited funds of an insolvent corporation will be used to pay wages and that a work force will be reduced while the corporation is still capable of meeting its obligations to its employees, if personal liability is imposed

on the persons who make these decisions.

6. The Federal Fair Labor Standards Act (29 U.S.C. § 203 [d]) defines "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an 'employee.'"

7. The remedial purpose of the Fair Labor Standards Act dictates an expansive definition of the term "employer," and this definition has been further refined in terms of "economic reality," rather than common law concepts of agency.

8. To be classified as an "employer," under the Federal statute, the party need only have operational control of significant aspects of the corporation's day to day functions.

9. Under Pennsylvania case law, anything calculated to deceive an individual to his disadvantage is actionable as fraud or misrepresentation, including deliberate nondisclosure or concealment of facts, false representations and actions which induce a person to assent to something which he otherwise would not have done.

10. Fraud is proved when it is shown that the false representation was made knowingly, or in conscious ignorance of the truth, or recklessly without caring whether it be true or false.

11. The following elements establish a cause of action in fraud: a) a misrepresentation; b) a fraudulent utterance thereof; c) an intention by the maker that the recipient will thereby be induced to act; d) justifiable reliance by the recipient upon the misrepresentation; e) damage to the recipient as a proximate result.

12. The plaintiff must prove the elements of fraud by a standard higher than a preponderance of the evidence standard.

13. Witnesses to fraud must be credible and distinctly remember the facts to which they testify.

14. In the instant case, the most telling indicia of fraud is that the defendants deducted unemployment taxes, and federal, state and local taxes from the employees' paychecks, as reflected by their pay stubs, yet from day one did not remit these amounts to the taxing authorities, and the defendants conceded that they intentionally failed to disclose this fact to the employees.

15. The case opinion goes on, to discuss several other factual scenarios, indicative of fraud, and established by the evidence, in this

case.

16. In Pennsylvania, punitive damages are appropriate only in instances of outrageous conduct, done with bad motive and with reckless indifference to the rights of others.

17. Any award of punitive damages must be based upon instances of intentional, wilful, or wanton conduct after consideration of the act, itself, the circumstances, the motive of the wrongdoer and the relations of the parties.

18. In the instant case, it is held that an award of punitive damages is warranted, and an award of \$1,000.00 is made for this purpose, to each plaintiff, in addition to compensatory damages.

*Carolyn L. Carter, Esq., Attorney for Plaintiffs*  
*James K. Reed, Esq., Attorney for Defendants.*

## OPINION AND ORDER

WALKER, P.J.: November 8, 1993:

## FINDINGS OF FACT

Plaintiffs are former employees of defendant Geyer Industries, Inc., which was formed in July of 1992 to operate a millworking plant in Chambersburg, Pennsylvania. The plant was formerly owned and operated by George Geyer. Defendants are individuals and corporations alleged to be employers of the plaintiffs in conjunction with the operation of the Chambersburg plant. The plaintiffs filed a four count complaint seeking unpaid wages, statutory penalties and punitive damages as a result of the nonpayment of wages for the last two pay periods before the plant closed on October 7, 1992. The plaintiffs' claims are based on the Pennsylvania Wage Payment and Collection Law and the federal Fair Labor Standards Act. The plaintiffs also allege breach of contract and fraud.

After a non-jury trial which took place on September 9 and 10, 1993, the court makes the following findings of fact:

1. Defendants Merle Garvis is the C.E.O. and co-owner of the corporate defendants Geyer Industries, Inc. ("Geyer"), MASCOMM Systems, Inc. ("MASCOMM"), and Garvis Archi-

tectural Millwork, Inc. ("GAM"), all Virginia corporations. GAM underwent Chapter 7 liquidation in 1992. Defendant Merle Garvis admits personal liability and liability of Geyer for the unpaid wages.

2. Defendant Theresa Garvis is a director and treasurer of both Geyer and MASCOMM and is registered agent and incorporator of Geyer. She has check signing authority for Geyer. Theresa Garvis signed most of the checks drawn on the Geyer account, prepared payroll for the Chambersburg plant and paid several employees of that plant with personal checks drawn on her account with defendant Merle Garvis.

3. Defendant Steven Garvis is president of Geyer and GAM, and is a director of Geyer. He has check signing authority for Geyer and has exercised this authority to a lesser extent than Theresa Garvis but to a greater extent than Merle Garvis. He acted as a project manager for many of the projects at the Chambersburg plant. Testimony established that a project manager acted as principal decision-maker regarding his project as it progressed through the plant, including both production and financial aspects of the project. Steven Garvis was part of the management team that operated the Chambersburg plant as a committee (along with Todd Garvis, David Herson and Joseph Gerhart) until approximately the second week of September when defendant Merle Garvis tightened the reins.

4. Defendant Kent Garvis was data analyst at the Chambersburg plant. Testimony established that Kent Garvis acted in a supervisory capacity at the plant and took over as plant manager after David Herson left in early September 1992. Testimony also established that Kent Garvis conducted or participated in key meetings with employees at the plant, gave directions to employees, scheduled overtime hours and offered to pay at least one employee by personal check in order to continue work in pending projects after the plant closed.

5. Defendant Todd Garvis was a vice president of GAM. Testimony established that he functioned as project manager for many of the projects at the Chambersburg plant and gave instructions to employees on day-to-day operational matters.

6. Defendant Joseph Gerhart is the accountant for the named corporate defendants and comptroller of Geyer. He set up the accounting system for Geyer, approved purchase orders and

monitored payroll preparation, accounts payable and receivable. Testimony established that he had a major role in running the plant with authority over many day-to-day matters. Gerhart conducted key meetings with employees regarding payroll problems and instructed them regarding their work, their paychecks and working hours. Gerhart also acted as project manager for the CIA project.

7. Defendant David Herson, a Virginia employee of the defendants, came to Chambersburg to set up the plant and get it running. He acted as plant manager until early September when he returned to Virginia. Herson testified that he was a member of the committee that ran the Chambersburg plant until defendant Merle Garvis tightened the reins in September.

8. After reviewing the testimony, the court finds that each individual defendant who acted as project manager or plant manager was an agent of Geyer and Merle Garvis.

9. Geyer was formed in July 1992 for the purpose of operating the Chambersburg plant. Payroll was initially processed through the MASCOMM account until the Geyer account was set up on September 23, 1992.

10. The Chambersburg plant was subjected to two lockouts by former owner George Geyer, the first in mid-September. The second lockout occurred in early October and ended when Merle Garvis obtained a temporary restraining order and posted bond.

11. On September 4, 1992, a \$20,000 check for W.M. Schlosser Co., Inc. was deposited into the Geyer account. On September 11, 1992, a check was issued to George Geyer in the amount of \$9,354.36. After a "Stop Payment" was put on the \$20,000 check, Theresa Garvis attempted to stop payment on the check to George Geyer but was unsuccessful.

12. Insufficient funds were available to cover the payroll checks issued to plaintiffs on September 18, 1992. Defendants Gerhart and Kent Garvis conducted a meeting at the Chambersburg plant to inform the employees that their checks would bounce. These bounced checks were eventually made good.

13. Unemployment taxes and federal, state and local taxes were never paid to the taxing authorities, although the proper amounts were withheld from the employees' paychecks, as reflected by their pay stubs. Workmen's Compensation payments were with-

held and paid to the proper authorities.

14. In late September through early October 1992, the pace of work increased at the Chambersburg plant, with several employees requested to work overtime.

15. On October 7, 1992, the Chambersburg plant closed. The employees were not paid for the eight working days prior to the closing. Defendant Kent Garvis asked several employees to continue working in order to complete contracts, promising to pay at least one employee by personal check at the end of each day.

16. After the Chambersburg plant closed, accounts receivable continued to come into Geyer. The individual defendants continued to receive and cash pay checks during that time and through the end of the year. The October 9, 1992 payroll added Merle Garvis, Kent Garvis, Todd Garvis, and Joseph Gerhart to the payroll. Records reflect a \$7500 check from Geyer to GAM eight days after the plant closed.

17. Testimony established that the individual defendants knew two weeks ahead of time that the Chambersburg plant would close and that there would be insufficient funds to pay the employees.

## DISCUSSION

Pennsylvania Wage Payment and Collection Law 43 P.S. § 260.9a provides in pertinent part:

(b) Actions by an employee, labor organization, or party to whom any type of wages is payable ... may be maintained in any court of competent jurisdiction [against his employer].

The statute further provides for liquidated damages:

Where wages remain unpaid for thirty days beyond the regularly scheduled payday ... the employee shall be entitled to claim, in addition, as liquidated damages and amount equal to twenty-five percent (25%) of the total amount of wages due, or five hundred dollars (\$500), whichever is greater.

43 P.S. § 260.10.

The defendants argue that, with the exception of defendants Merle Garvis and Geyer, they are not employers within the

meaning of the Wage Payment and Collection Law. "Employer" is statutorily defined as

every person, firm, partnership, association, corporation, receiver or other officer of a court of this Commonwealth and any agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.

43 P.S. § 260.2a

Plaintiffs and defendants cite *Mobney v. McClure*, 390 Pa. Super. 338, 568 A.2d 682 (1990), *aff'd* 529 Pa. 430, 604 A.2d 1021 (1992), as providing the controlling definition of "employer" where an employee seeks to hold a corporate officer personally liable for unpaid wages. The individual at issue in *Mobney* was corporate counsel who received a small monthly retainer for his services to the corporation. He also had check signing authority, was corporate secretary and owned a small amount of stock. The court declined, however, to hold him personally liable for the unpaid wages because testimony did not indicate that he "actively participated in decisions or gave advice regarding pay or compensation. Instead, [it showed] that he merely carried out decisions made by others." *Id.* at 344, 568 A.2d at 686. The court held that civil liability for nonpayment of wages requires "an active role in decision making." *Id.* at 345, 568 A.2d at 686.

At trial, defendants attempted to portray Merle Garvis as the sole decision maker regarding the operation of the Chambersburg plant. Although acting as corporate officer and having check signing authority are insufficient indicia alone of one's status as "employer," each individual defendant's combined duties, responsibilities and actions in operating the plant indicate sufficient decision making capacity to warrant liability. The court finds that the testimony of the employees presented at trial was credible as to defendants' key roles in operating the plant on a day-to-day basis.

Those individuals acting as project managers may be found to be employers based on the broad supervisory power inherent in that role through production and financial decision making. (Steven Garvis, Todd Garvis, Joseph Gerhart). Moreover Steven Garvis and Theresa Garvis not only had check signing authority but exercised it to a greater extent than did Merle Garvis. Several

**LEGAL NOTICES, Cont.**

ject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Mary Widney  
Plaintiff

6/17/94

**NOTICE OF FILING APPLICATION  
FOR A REMOTE SERVICE FACILITY  
(RSF) BRANCH**

Notice is hereby given that Chambersburg Trust Company, of Chambersburg, Franklin County, Pennsylvania, did on June 13, 1994, submit to the Department of Banking, of the Commonwealth of Pennsylvania, an application for a Letter of Authority to establish a Remote Service Facility branch office at:

112 North Seventh Street  
Chambersburg  
Franklin, PA 17201

All interested persons may file comments in favor of, or in protest of the application, in writing, with the Department of Banking, Commonwealth of Pennsylvania, 333 Market Street, 16th Floor, Harrisburg, Pennsylvania 17101-2290. All comments to be considered must be received by the Department not later than fifteen (15) calendar days after the date of publication of this notice.

Chambersburg Trust Company  
14 North Main Street  
Chambersburg, PA 17201

6/17/94

**IN THE COURT OF COMMON PLEAS  
OF THE 39TH JUDICIAL DISTRICT  
OF FRANKLIN COUNTY, PENNSYLVANIA - ORPHANS' COURT DIVISION**

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 7, 1994.

NAUGLE: First and final account, statement of proposed distribution and notice to the creditors of Elmer E. Naugle and Dauphin Deposit Bank and Trust Com-

**LEGAL NOTICES, Cont.**

pany, Co-Executors of the Estate of Nellie I. Naugle, late of the Borough of Shippensburg, Franklin County, Pennsylvania, deceased.

William E. Vandrew, Clerk  
Rhonda King, Chief Deputy  
Orphans Court Division  
Franklin County, Pennsylvania

6/17, 6/24/94

defendants were involved in the day-to-day financial decision making (Theresa Garvis, Steven Garvis, Todd Garvis, Joseph Gerhart). Testimony established that all defendants were fully apprised of the financial condition of Geyer throughout the relevant period.

Other actions that suggest employer status are paying employees by personal check (Merle, Theresa and Kent Garvis), participating as part of the management team that ran the plant by committee (Steven and Todd Garvis, David Herson, Joseph Gerhart), and exercising broad supervisory powers in the operation of the plant (David Herson, Kent and Steven Garvis, Joseph Gerhart). These supervisory powers did not consist of merely carrying out the orders of Merle Garvis but involved giving detailed and varied orders to employees, including ship foreman Randy Yaukey, regarding hours worked, scheduling and production of work, details of how specific tasks were to be performed and an integral involvement in personnel and payroll matters. Testimony established that the plant employees were under the impression that these individuals ran the plant.

Thus, the cumulative effect of the testimony is that each individual defendant played a sufficiently active role in the decisions made during the operation of the Chambersburg plant to warrant their individual liability under the statute. Such a conclusion is consistent with the oft-stated purpose of allowing for personal liability of corporate officers:

The Legislature had some purpose for including an agent or officer of a corporation employing persons in the Commonwealth within the definition of employer, and the only apparent purpose was to subject these persons to liability in the event that a corporation or similar entity failed to make wage payments. Its reason for doing so is obvious. Decisions dealing with personnel matters and the expenditure of corporate funds are made by corporate officers and it is far more likely that the limited funds of an insolvent corporation will be used to pay wages and that a work force will be reduced while the corporation is still capable of meeting its obligations to its employees if personal liability is imposed on the persons who make these decisions.

*Ward v. Whalen*, 18 D.&C. 3d 710 (C.P. Allegheny County 1981). It was established that each individual defendant was

aware of the financial situation which led to the bounced checks, the unpaid wages and the plant closing. These individuals were in a position to influence or implement the financial decisions which contributed to and resulted from the plant's financial predicament. Therefore, it is appropriate to hold these defendants liable as "employers" under the statute.

Plaintiffs also point out that defendants admitted in their answer that each was an employer as that term is defined by the Wage Payment and Collection Law. Defendants subsequently filed a petition to amend their answer, seeking to withdraw this admission. By order dated June 3, 1993, the court denied the petition but stated that the defendants will be allowed to introduce individually at trial evidence from which the fact finder could conclude that they are not employers within the meaning of the Act. Defendants Steven, Todd, Kent and Theresa Garvis failed to testify or even appear at trial and thus did not overcome their admission. Joseph Gerhart and David Herson testified at trial. Gerhart did not overcome his admission as the court did not find his testimony credible. Similarly, David Herson's testimony did not overcome his admission since it clarified his role as plant manager. Merle Garvis' testimony was ineffective in limiting liability to himself and Geyer.

#### Fair Labor Standards Act

The plaintiffs also seek damages under the Federal Fair Labor Standards Act which requires that an employer pay his covered employee a minimum hourly wage. 29 U.S.C. § 206(a). Violation of this provision warrants liability in the amount of the employee's unpaid minimum wages "and in an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). The Act defines "employer" as "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. § 203(d).

The remedial purpose of the FLSA dictates an expansive definition of this term. *Dole v. Solid Waste Services Inc.* 733 F.Supp. 895, 923 (E.D. Pa. 1989). Case law has further refined this definition in terms of "economic reality" rather than common law concepts of agency. *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962, 965 (6th Cir. 1991). "The FLSA contemplates

## THE DREAM TEAM

LIST 10 LAWYERS YOU KNOW (INCLUDE YOURSELF)  
TO CREATE THE PERFECT LAW FIRM,  
SPORTS TEAM OR GOOD TIME GROUP:

- |          |           |
|----------|-----------|
| 1. _____ | 6. _____  |
| 2. _____ | 7. _____  |
| 3. _____ | 8. _____  |
| 4. _____ | 9. _____  |
| 5. _____ | 10. _____ |

THE NATIONAL AVERAGE FOR THE DISEASE OF  
ALCOHOLISM/ADDICTION IS NEARLY 1 OUT OF 10.  
ANYBODY YOU KNOW NEED HELP?

- LCL -

Lawyers Concerned For Lawyers of Pennsylvania, Inc.  
**LAWYERS' CONFIDENTIAL HELPLINE**

1-800-472-1177

7 Days a Week - 24 Hours a Day

- CONFIDENTIAL -

LEGAL NOTICES, Cont.

District prepared by William A. Brindle Associates, Inc. dated November 22, 1993.

The Petition seeks approval of the Court for sale of the aforementioned real estate to the Bear Valley Franklin County, Pennsylvania, Joint Authority for the sum or purchase price of thirty thousand (\$30,000.00) dollars pursuant to the terms and conditions of a certain resolution of the Board of School Directors of the District adopted on August 16, 1993.

A hearing on the above-referenced Petition will be held on Tuesday, the 5th day of July, 1994, at 9:30 o'clock A.M. in the courtroom designated by the Franklin County Court Administrator.

John R. Stoner, President  
Board of School Directors  
Tuscarora School District

6/10, 6/17, 6/24/94

IN THE COURT OF COMMON PLEAS  
OF THE 39TH JUDICIAL DISTRICT  
OF FRANKLIN COUNTY, PENNSYLVANIA - ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 7, 1994.

NAUGLE: First and final account, statement of proposed distribution and notice to the creditors of Elmer E. Naugle and Dauphin Deposit Bank and Trust Company, Co-Executors of the Estate of Nellie I. Naugle, late of the Borough of Shippensburg, Franklin County, Pennsylvania, deceased.

William E. Vandrew, Clerk  
Rhonda King, Chief Deputy  
Orphans Court Division  
Franklin County, Pennsylvania

6/17, 6/24/94

LEGAL NOTICES, Cont.

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on June 1, 1994, an application for a certificate for the conducting of a business under the assumed or fictitious name of Mercersburg Exxon, with its principal place of business at 141 North Main Street, Mercersburg, PA 17236. The names and addresses or the persons owning or interested in said business are Anthony W. Hawk, 12564 Ft. Loudon Road, Mercersburg, PA 17236 and G. Todd Sixeas, 6971 Charlestown Road, Mercersburg, PA 17236.

Janice M. Hawbaker  
Attorney

6/24/94

NOTICE OF FILING OF  
ARTICLES OF INCORPORATION

Notice is hereby given that Articles of Incorporation were filed with the Pennsylvania Department of State at Harrisburg, Pennsylvania. The name of the proposed corporation organized under the provisions of Commonwealth of Pennsylvania Business Corporation Law of 1988 is Coyle Friends, Incorporated.

Law Offices of Welton J. Fischer  
550 Cleveland Avenue  
Chambersburg, PA 17201

6/24/94

there being several simultaneous employers who may be responsible for compliance with the FLSA." *Id.* "To be classified as an employer... [t]he party need only have "operational control of *significant aspects* of the corporations's day to day functions." *Id.* at 966 (emphasis in original).

The practical meaning of the term "employer" appears to be similar to the WPCL version of that term. Therefore, for the same reason that the individual defendants would be classified as employers under the state statute, as discussed above, these defendants would fall within the purview of the FLSA. Indeed, the "economic reality" of the situation at the Chambersburg plant is that although Merle Garvis may have been the ultimate decision maker, he delegated authority over "significant aspects of the corporation's day to day functions" to these defendants, allowing them to act as employers as that term is defined in the FLSA. *See Dole*, 942 F.2d at 965.

Additional support for this conclusion is the fact that, in their answer to the complaint, the defendants admitted their status as employers within the meaning of this statute. As previously discussed, the defendants failed to overcome that admission at trial.

Breach of Contract

In Count III of their complaint, plaintiffs alleged that defendants contracted to pay them agreed-upon wages for agreed-upon services and that they breached this contract. In their answer, defendants admitted to the contract but partially denied the breach. Defendants sought to withdraw this admission in a subsequent petition to amend their answer. By order dated June 3, 1993, the court denied the petition but stated that, at trial, the court will allow any of the defendants individually to introduce evidence from which the fact finder could conclude that they did not contract with the employees for their services.

The parties presented minimal testimony at trial with respect to the breach of contract claim. There was some evidence presented regarding services performed by several of the employees at the Marlo Furniture store in Laurel, Maryland. Plaintiffs are claiming unpaid wages for those services. The

court finds, however, that this evidence was unclear and inconclusive as to which defendant(s), if any, contracted with the plaintiffs for those services. The court need not discuss the plaintiffs' contract claims further since the damages sought in Count III, with the exception of the claimed Marlo wages, are awarded under the statutory claims.

#### Fraud

In Count IV of their complaint, the plaintiffs seek damages, including punitive damages, based on a cause of action in fraud. Anything calculated to deceive an individual to his disadvantage is actionable as fraud or misrepresentation, including deliberate nondisclosure or concealment of facts, false representations and actions which induce a person to assent to something which he otherwise would not have done. *Delabanty v. First National Bank*, 318 Pa. Super. 90, 107-108, 464 A.2d 1243, 1251-1251 (1983). "[F]raud is proved when it is shown that the false representation was made knowingly, or in conscious ignorance of the truth, or recklessly without caring whether it be true or false." *Id.* at 108, 464 A.2d at 1252.

The following elements establish a cause of action in fraud:

1. a misrepresentation;
2. a fraudulent utterance thereof;
3. an intention by the maker that the recipient will thereby be induced to act;
4. justifiable reliance by the recipient upon the misrepresentation;
5. damage to the recipient as a proximate result.

*Brindle v. West Allegheny Hospital*, 406 Pa. Super. 572, 574, 594 A.2d 766, 768 (1991). Plaintiffs must prove the elements of fraud by a standard higher than a preponderance of the evidence standard. *Delabanty*, 318 Pa. Super. at 109, 464 A.2d at 1253. This means that witnesses must be "credible [and] distinctly remember the facts to which they testify..." *Id.*

Applying these principles to the facts in this case it is clear that

plaintiffs have made out their fraud claim. The plaintiff-employees presented consistent and credible testimony regarding the circumstances surrounding their short-lived employment with Geyer and the Garvises. By contrast, defendants Gerhart and Merle Garvis presented testimony that was not in the least credible.

Several actions are most indicative of fraud on the part of defendants. The most telling is the fact that the defendants deducted unemployment taxes, and federal, state and local taxes from their employees' paychecks, as reflected by their pay stubs, yet from day one did not remit these amounts to the taxing authorities. The defendants conceded that they intentionally failed to disclose this fact to the employees. Several plaintiffs testified that they would have left Geyer and sought other employment if they had known these taxes were unpaid.

Defendants also intentionally concealed from the plaintiffs the fact that they planned to close the Chamberburg plant. This nondisclosure was intended to induce the plaintiffs to continue working to complete the pending contracts and, as David Herson testified, to get every cent of work out of the plant before it closed. Herson further testified that he, Gerhart and the Garvis family knew that the workers were not going to be paid for their services during those last two weeks prior to the plant's closing. Indeed, the plaintiffs justifiably relied on the impression created by the increased pace of production at the plant and the requested overtime hours that the previous payroll problems were temporary and that their jobs were not in jeopardy. As several plaintiffs testified, if they had know of the true state of affairs at the plant they would have looked for other employment.

Other factors were characteristic of the defendants' fraud. The defendants knew ahead of time that there were insufficient funds to cover the September 18 payroll. Additionally, Merle Garvis added Kent and Todd Garvis, and Joseph Gerhart to the payroll during and after the time that the plaintiffs went unpaid for their services. Each individual defendant continued to receive wages through the end of 1992. Yet the plaintiff-employees continued to be unpaid. Exhibits representing deposits into and disbursements from the Geyer account show that sufficient funds came into the account to pay the employees. Instead, these funds



## LEGAL NOTICES

Please Note: Legal notices are published in 6-point type, exactly as worded by the advertiser. Neither the Journal nor the printer will assume any responsibility to edit, make spelling corrections, or eliminate errors in grammar. All legal notices must be submitted in typewritten form and will be printed using the spelling, punctuation and vocabulary of the copy as submitted. The Journal also reserves the right to reject illegible or other inappropriate copy.

### FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on April 7, 1994, an application for a certificate for the conducting of a business under the assumed or fictitious name of The Martol Company, with its principal place of business at 342 Tyrone St. (P.O. Box 487) Greencastle, PA 17225. The names and addresses of the persons owning or interested in said business are Amy J. Bartola and Marcia Wothington.

7/1/94

### FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on June 10, 1994, an application for a certificate for the conducting of a business under the assumed or fictitious name of E-Z Does It Tree Service formerly Whitfield's Tree Service, with its principal place of business at 685 Black Gap Road, Fayetteville, PA 17222. The names and addresses of the persons owning or interested in said business are Kenneth D. Jones, 685 Black Gap Road, Fayetteville, PA 17222 and Frederick H. Strine, 796 Mickey Inn Lane, Chambersburg, PA 17201.

7/1/94

## LEGAL NOTICES, Cont.

NOTICE is hereby given that Articles of Incorporation were filed on June 13, 1994 in the Department of State of the Commonwealth of Pennsylvania, for the purpose of obtaining a certificate of incorporation. The name of the corporation to be organized under the Business Corporation Law, Act of December 21, 1988, P.L. 1444, 177, Section 103, 15 Pa.C.S.A. Section 101 et seq., is Chambersburg Community Development Corporation. The purpose for which the corporation is organized is to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under this Act.

J. McDowell Sharpe  
Sharpe, Wenger & Sharpe  
257 Lincoln Way East  
Chambersburg, PA 17201

7/1/94

Notice is hereby given pursuant to the provisions of the Act of Assembly of December 16, 1982, P.L. 1309, and its amendments and supplements which have been filed with the Secretary of the Commonwealth of Pennsylvania at Harrisburg on September 1, 1993 an application for a certificate for the conducting of business under the assumed or fictitious name of Penn Mar Real Estate Settlement Services. The name and address of the person owning or interested in said business is D. L. Reichard, II, P.O. Box 8, Waynesboro, Pennsylvania 17268.

D. L. Reichard, II  
P.O. Box 8  
Waynesboro, PA 17268

7/1/94

### NOTICE

NOTICE IS HEREBY GIVEN that articles of incorporation have been filed with the Commonwealth of Pennsylvania, Department of State at Harrisburg, Pennsylvania, on or about June 22, 1994, under the provisions of the Non-profit Corporation Law of 1988. The name of the proposed corporation is Charles Nitterhouse Post No. 1599 VFW of the United States.

7/1/94

went to the individual and corporate defendants. For example, eight days after the plant closed Geyer issued a check to the now defunct GAM for seventy-five hundred dollars. At trial, neither Merle Garvis nor comptroller Gerhart could provide an explanation for this check.

These facts clearly show a pattern of fraud on the part of the defendants, to the direct prejudice of the plaintiffs. These acts are most directly traceable to Merle Garvis and Geyer. Testimony shows, however, that Gerhart had an integral role in these actions, as did Theresa Garvis. At the very least, their involvement in payroll preparation indicates that they knew about and failed to disclose the nonpayment of payroll taxes. Testimony of David Herson also established that each individual defendant knew of and failed to disclose the fact of insufficient funds for the September 18 payroll, the fact of the plant's imminent closure and the fact that plaintiffs would not be paid for their final eight days of work. For these reasons the court imposes liability in fraud on each individual defendant and Geyer. The involvement of MASCOMM in the plant's payroll is sufficient to warrant liability on the part of that corporate defendant.

In Pennsylvania, punitive damages are appropriate only in instances of outrageous conduct, done with bad motive and with reckless indifference to the rights of others. *Martin v. Johns-Manville Corp.*, 508 Pa. 157, 169-172, 494 A.2d 1088, 1096-1098 (1985).

"Any award must be based upon intentional, willful, or wanton conduct after consideration of the act itself, the circumstances, the motive of the wrong doer and the relations of the parties."

*Joseph A. Myers Real Estate v. Slaybaugh*, 17 D.&C.3d 746, 750 (C.P. Adams County 1981).

The court finds that defendants' actions warrant the award of punitive damages. These defendants engaged in intentional, willful and outrageous conduct in the manner in which they treated these employees. These plaintiffs gave their services to the company, worked overtime when requested and gave Geyer the benefit of the doubt during the September payroll problems and lockouts by continuing to work to complete Geyer's

contracts. These employees have a right to be paid for their services to the defendants. For these reasons, the court awards punitive damages in the amount of \$1,000 to each plaintiff.

### CONCLUSION

The court finds Merle Garvis, Theresa Garvis, Todd Garvis, Kent Garvis, Steven Garvis, David Herson, Joseph Gerhart and corporate defendants Geyer Industries, Inc. and MasComm Systems, Inc. to be employers as defined in the Pennsylvania Wage Payment and Collection Law and the Federal Fair Labor Standards Act.

The court finds in favor of the plaintiffs with respect to Counts I, II and IV of the complaint and awards unpaid wages in the amounts stipulated by the parties as set out in Appendix A (Plaintiffs' Exhibit 19 dated August 9, 1993). These amounts exclude, however, fourteen hours each for Robert Brown and Ronald Statler and also exclude the amounts claimed for the Marlo project, as these were not sufficiently proved at trial. The court also awards liquidated damages under the WPCL and FLSA, punitive damages in the amount of \$1,000 to each plaintiff and reasonable attorneys' fees and costs to be established by plaintiffs. (See Appendix B for amounts awarded to each plaintiff.)

### ORDER OF COURT

November 8, 1993, the court finds in favor of the plaintiffs regarding Counts I, II and IV of the complaint. The court finds Merle Garvis, Theresa Garvis, Todd Garvis, Kent Garvis, Steven Garvis, David Herson, Joseph Gerhart and corporate defendants Geyer Industries and MasComm Systems, Inc. to be employers as defined in Pennsylvania Wage Payment and Collection Law and the Federal Fair Labor Standards Act, and each to be jointly and severally liable for damages awarded under Counts I, II and IV.

The court awards unpaid wages as shown on the attached Appendix A. The court awards each plaintiff damages under Pennsylvania Wage Payment and Collection Law and Federal Fair Labor Standards Act in amounts shown on Appendix B.

The court finds the defendants' actions justify the awarding of punitive damages. Therefore, the court awards plaintiffs punitive damages in an amount of one thousand (\$1,000) dollars each.

The court awards plaintiffs reasonable attorney fees, the amount to be decided at a later time.\*

---

\* Editor's Note: See Appendices A and B, attached to Opinion and Order, and appearing herein, on the immediately next following two (2) pages.

LEGAL NOTICES, Cont.

with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 22nd day of June, 1994, for the purpose of obtaining a certificate of incorporation. The name of the proposed corporation organized under the provisions of the Business Corporation Law of 1988 is M.C.M. Hair Studio, Ltd., 1811 Molly Pitcher Highway South, Chambersburg, PA 17201. The purposes for which the corporation has been organized is the operation of a hair studio and styling salon and to engage in and to do any lawful act concerning any lawful business for which businesses may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

William C. Cramer, Esq.  
414 Chambersburg Trust Bldg.  
Chambersburg, PA 17201

7/8/94

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on June 1994, an application for a certificate for the conducting of a business under the assumed or fictitious name of Fairfield Productions, with its principal place of business at 11790 Village Heights Drive P.O. 334 Zullinger, PA 17272. The name and address of the person owning or interested in said business is John R. Shindledecker 11790 Village Drive P.O. 334 Zullinger, PA 17272.

7/8/94

LEGAL NOTICES, Cont.

APPENDIX A\*

CALCULATION OF GROSS AMOUNTS OWED TO PLAINTIFFS

NAME	1st Wk.	1st Wk.	OT	2nd Wk.	Wages	Other	TOTAL
	Hourly	Regular		Hours	Hours	Owed	
	Rate	Hours	Hours	Hours	Owed	Owed	
Robert Brown	\$6.00	20.00		36.00*	\$324.00	\$47.60T	\$371.60
Claudia Carter	\$6.00	40.00	6.50	31.25	486.00	(50.00)L	\$436.00
Devon Coble	6.00	40.00	10.00	31.00	486.00**		486.00
Steven DeHoff	7.50	28.00		21.00	367.50	7.50R	375.00
Tina Franklin	6.00	40.00	5.50	31.50	478.50		478.50
Randy Heckman	10.25	40.00	7.25	29.75	826.41		826.41
Doris Hoover	5.00	30.25		20.00	251.25		251.25
Leon Johns	11.25	40.00	3.00	16.00	680.62		680.62
Beverly Lannen	7.00	40.00	8.50	29.00	572.25		572.25
James Menter	8.00	40.00	10.25	30.50	687.00		687.00
Roger Miller	7.25	40.00	6.00	19.50	496.63		486.63
Larry Mugrage	7.50	40.00		24.00	480.00	7.50R	487.50
Charlene O'Donnell	7.00	40.00	5.75	32.25	566.12		566.12
Saundra Perry	8.50	40.00		24.00	544.00		544.00
Albert Pugh	4.50	25.00		8.00	148.50		148.50
Robert Stanley	5.00	40.00	13.25	20.00	399.38		399.38
Ronald Statler	7.00	40.00	11.75	36.00*	655.38		655.38
Richard Stottlemeyer	8.00	40.00	9.25	30.25	673.00		673.00
Dale Stouffer	9.25	40.00	10.00	29.50	781.62		781.62
Bradley Valentine	6.00	38.00		32.00	420.00		420.00
David Weaver	8.00	40.00	10.50	29.00	678.00		678.00
David West							
Randy Yaukey	10.00	40.00	6.00	30.50	795.00	95.60T	890.60

NOTE: Hours are taken from time cards produced by employer. "Other amounts" owed include travel reimbursement ("T"), a loan to a worker ("L"), and returned check charges ("R").

\* Includes 14 hours not recorded on time cards.

\*\* The court notes that, by its calculation, wages owed to Devon Coble amount to \$516. However, the parties stipulated to the above amounts from plaintiffs' Exhibit 19.

\* Editor's Note: Appendix to Brown et al. v. Garvis et al., opinion immediately preceding these Appendices, herein.

APPENDIX B\*

NAME	Unpaid Wages	WPCL Penalty	FLSA Penalty	Punitive Damages	TOTAL
Robert Brown (+ 47.60 travel reimbursement)	\$252.00	\$500.00	\$105.00	\$1000.00	\$1,904.60
Claudia Carter (50.00 loan to employee)	486.00	500.00	202.50	1000.00	2238.50
Devon Coble	486.00**	500.00	245.00	1000.00	2231.00
Steven DeHoff (+ 7.50 returned check charge)	367.50	500.00	49.00	1000.00	1924.00
Tina Franklin	478.50	500.00	199.38	1000.00	2177.88
Randy Heckman	826.41	500.00	0.00	1000.00	2326.41
Doris Hoover	251.25	500.00	175.88	1000.00	1927.13
Leon Johns	680.62	500.00	0.00	1000.00	2180.62
Beverly Lannen	572.25	500.00	122.62	1000.00	2194.87
James Menter	687.00	500.00	42.94	1000.00	2229.94
Roger Miller	496.63	500.00	85.62	1000.00	2082.25
Larry Mugrage (+ 7.50 returned check charge)	480.00	500.00	64.00	1000.00	2051.50
Charlene O'Donnell	566.12	500.00	121.32	1000.00	2187.44
Saundra Perry	544.00	500.00	0.00	1000.00	2044.00
Albert Pugh	148.50	500.00	132.00	1000.00	1780.50
Robert Stanley	399.38	500.00	279.56	1000.00	2178.94
Ronald Statler	557.38	500.00	119.43	1000.00	2176.81
Richard Stottlemeyer	673.00	500.00	42.06	1000.00	2215.06
Dale Stouffer	781.62	500.00	0.00	1000.00	2281.62
Bradley Valentine	420.00	500.00	175.00	1000.00	2095.00
David Weaver	678.00	500.00	42.37	1000.00	2220.37
David West [Q]	0.00	500.00	0.00	1000.00	1500.00
Randy Yaukey (+ 95.60 travel reimbursement)	795.00	500.00	0.00	1000.00	2390.60

[Q] This plaintiff quit after receiving a bad check for wages. His penalty is based on the wages represented by the bad check.

\* FLSA penalty is the amount by which double the minimum wage exceeds plaintiff's actual wages owed.

\* WPCL penalty is \$500 for each plaintiff.

\*\* The court notes that, by its calculation, wages owed to Devon Coble amount to \$516. However, the parties stipulated to the amounts listed on plaintiffs' Exhibit 19, which lists unpaid wages owed to Devn Coble as \$486.

\* Editor's Note: Appendix to Brown, et al. v. Garvis, et al., opinion immediately preceding these appendices, herein.

NANCY J. RAY V. PENNSYLVANIA STATE POLICE, LIEUTENANT MATTHEW E. HUNT, TROOPER HARDING, TROOPER JOHN RIDGE AND TROOPER LES FREELING, C.P. Franklin County Branch, No. 1993-155.

*Civil Action-Tort claim to recover for emotional distress caused by failure to police to return remains of murdered daughter to mother for burial-Doctrine of sovereign immunity as a bar to intentional torts-Negligent mishandling of a corpse-Negligent infliction of emotional distress.*

1. Mother's claim against state police for intentional infliction of emotional distress for the mishandling of her daughter's remains is barred by the doctrine of sovereign immunity.
2. Although current Pennsylvania law permits a cause of action for the intentional mishandling of a corpse, a claim of negligent mis-handling is not similarly recognized.
3. A claim of negligent infliction of emotional distress is based primarily on mental suffering caused by improper handling of the remains and is a variant of an action for the negligent mishandling of a corpse.
4. The claim of negligent infliction of emotional distress is barred because it is derived from the unrecognized cause of action for the negligent mishandling of a corpse.
5. Even if a cause of action for negligent mishandling of a corpse were recognized, a claim for negligent infliction of emotional distress would fail unless the plaintiff had personally witnessed the allegedly tortious mishandling.

*Daniel F. Wolfson, Esquire* Attorney for Plaintiff  
*John M. Abel, Esquire,* Attorney for the Defendants

OPINION AND ORDER

Kaye, J., December 9, 1993:

OPINION

Nancy J. Ray (hereinafter "plaintiff") has filed a civil tort action against the Pennsylvania State Police in which she claims that she has suffered severe emotional distress and psychophysiological problems due to the failure of the State Police to return