

In The Circuit Court for Baltimore City
CIVIL

CJC

110863

In the Matter of

NELSON S. WINTER, ET AL

VS

MITCHELL J. PIJANOWSKI, ETAL

B. (T) rowbndse - CR

DATE	DOCKET ENTRIES	NO.
3/22/90	COMPLAINT FOR CONSTRUCTION, EXHIBITS	1
"	SUMMONSES ISSUED.	
4-20-90	Affidavit of Service	2
4-27-90	Stipulation of Facts by all counsel	3
5-29-90	Opp. of Jacob Metz and Jerry	
	T. Lambdin attorneys enter for	
	Mitchell J. Pijunowski and	
	Antoinette V. Litwinski a	
	joint answer to the bill of	
	complaint for construction.	4
6-6-90	Defts: Audrey A. Boering & Dorothy M.	
	Bechtel by their counsel James D. Stone	
	& Robert S. Bowser, Jr. files joint answer	
	to Bill of Complaint	5
6-19-90	Request for hearing on the merits.	6
7-9-90	Joint Memorandum filed on	
	behalf of respondents Mitchell	
	J. Pijunowski and Antoinette	
	V. Litwinski.	7
7-13-90	Joint Memorandum filed on behalf of	
	Defts Audrey A. Boering & Dorothy M.	
	Bechtel	8
7/19/90	Case submitted to the Court for determination	
	without the aid of a jury. (Hollander, J)	
7/19/90	Heard & held Sub Curia (Hollander, J)	
10-30-90	Memorandum opinion + order of Ct (Judge	
	dated 10-25-90 (Judge Hollander) Nos	9

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY OTHER CASE NO. 90081076/CE110893 PAGE 1 of

PARTIES

ATTORNEY(S)

NELSON S. WINTER,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED,
LATE OF BALTIMORE CITY

VS

MITCHELL J. PIJANOWSKI
AND
ANTOINETTE V. LITWINSKI
AND
AUDREY A. BOENNING
AND
DOROTHY M. BECHTEL

NELSON S. WINTER, ESQ.

059847

Jacob Matz 203240
Jerry T. Lambdin 911688

JAMES D. STONE - 389885
ROBERT R. BOWIE, JR. 422637

referred to as the "Will") were both drafted by attorneys. The Will was duly admitted to probate in the Orphans' Court on September 9, 1989.

By Item II of the Will, Schoenhals gave her residuary estate to her husband, Walter Schoenhals, if he survived her. However, Schoenhals' husband died in 1969. Provision for such event was made in Item III of the Will, which is the subject of contention in this case. Item III provides as follows:

In the event my said husband, WALTER SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A. BOENNING, of Hyattsville, Maryland, who is a daughter of my husband; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland, who is a daughter of my husband; MRS. GERTRUDE PIJANOWSKI of Baltimore, Maryland, who is my sister; and EDWARD LITWINSKI of White Marsh, Maryland, who is my brother; in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees. (Emphasis added).

Both Audrey A. Boenning ("Boenning") and Dorothy M. Bechtel ("Bechtel") are living at the present time. Gertrude Pijanowski died in September, 1980. She is survived by a son, Mitchell Pijanowski ("Pijanowski"). Edward Litwinski died in September, 1982, leaving no children. He is, however, survived by his

Cl. Clerk

FILED

OCT 30 1990
(91)
CIRCUIT COURT FOR BALTIMORE CITY

NELSON S. WINTER,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED,
LATE OF BALTIMORE CITY,

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IN THE
CIRCUIT COURT
FOR

Petitioner

*

BALTIMORE CITY

v.

*

MITCHELL J. PIJANOWSKI

*

and

*

ANTOINETTE V. LITWINSKI

*

and

*

AUDREY A. BOENNING

*

and

*

DOROTHY M. BECHTEL,

*

Case No. 90081076/CE110893

Respondents

*

* * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

This is a Bill of Complaint for Construction of a Will. The matter was submitted on an agreed stipulation of facts, requiring solely the interpretation by this court of the residuary clause of the Will of Anna A. Schoenhals.

I. Factual Summary

Anna A. Schoenhals ("Schoenhals" or "Testatrix") died in August, 1989. Her Last Will & Testament, dated June 7, 1960, and First Codicil thereto, dated November 24, 1979 (together

wife, Antoinette Litwinski ("Litwinski"). Boenning, Bechtels, Pijanowski and Litwinski are all Respondents in this action.

Boenning and Bechtel claim that Pijanowski and Litwinski are not entitled to any distribution under the Will. Pijanowski and Litwinski contend that, as the sole surviving family and heirs at law of Gertrude Pijanowski and Edward Litwinski, the predeceased legatees, they are entitled to share in the distribution of the estate under the Will. They argue that unless they share in the estate, all of the property will be distributed to the family of Schoenhals' husband, and Schoenhals' own family will be excluded. They urge that such a result would clearly be contrary to the intent of the Testatrix.

II. Scope of Review

The standards for construction of a will are well established. The paramount concern of the court in construing a will is to ascertain and effectuate the testator's expressed intent. Emmert v. Hearn, 309 Md. 19, 23 (1987); Leroy v. Kirk, 262 Md. 276, 279 (1971); Marty v. First Nat'l Bank of Balt., 209 Md. 210, 216 (1956). "What must be sought is not what the testator meant as distinguished from what his words express, but '...simply what is the true meaning of his words' not merely what he meant, but what his words mean." Marty v. First Nat'l. Bank of Balt., 209 Md. at 216, (citation omitted, emphasis in original). See also, Banghart v. Vieweg, 261 Md. 214 (1971) (effect must be given to testator's expressed intentions rather than indulgence in conjecture, however strong).

The intent of the testator ordinarily must be gathered from the four corners of the will. Reedy v. Barber, 253 Md. 141, 148 (1969). Moreover, the words of the will are given their "plain meaning and import." Leroy, 262 Md. at 280. But the courts have emphasized that words having legal significance are to be construed in their ordinary sense unless the will clearly indicates otherwise. Patchell v. Groom, 185 Md. 10, 15 (1945). This is particularly true where, as here, a will is drawn by "one learned in the law and skilled in the use of its terminology." Judik v. Travers, 184 Md. 215, 225 Id. (1944).¹ In such situations, "the words employed will be considered as having been deliberately chosen to express the testator's intention and will ordinarily be given their accustomed technical meaning."

III. Discussion

The essence of the contention of Respondents Pijanowski and Litwinski is that the term "survivors", as used in the clause at issue, should be construed to include the heirs at law of the legatees who predeceased the Testatrix, and not merely the remaining members of the enumerated group of legatees. Respondents correctly point out that there have been different conclusions reached in various jurisdictions as to the meaning of the term "survivors". See generally,

1. Whether the words of a will are given their ordinary or legal meaning, however, "[e]xtrinsic evidence should not be admitted to show that the testator meant something different from what his language imports.... What he meant to say must be gathered from what he did say.'" Emmert, 309 Md. at 23, quoting Fersinger v. Martin, 183 Md. 135, 138 (1944).

Annotation, Wills: Gift Over to "Survivors" of Class or Group of Designated Beneficiaries as Restricted to Surviving Members of Class or Group, or as Passing or Heirs of Representatives of Deceased Beneficiary, 54 A.L.R. 3d 280 (1973). However, in this State there exists no uncertainty as to the interpretation of the term "survivor" in a clause such as the one in issue here.

In Saia v. Sain, 73 Md. App. 322 (1987), the Court was asked to interpret a similar testamentary clause using the word "survivors." The Saia Court reached a conclusion contrary to that urged by Pijanowski and Litwinski concerning the meaning of this term. The analysis set out in Saia is dispositive in the case sub judice.

In Saia, the testatrix devised and bequeathed the residue of her estate "to the survivors of the following:" and proceeded to set forth the names of eight beneficiaries. 73 Md. App. at 324. Saia held that a bequest to "survivors" of a class or group of designated beneficiaries in the residuary clause of a will is not ambiguous, but is restricted to surviving members of the group. 73 Md. App. at 324. "'A survivor is one who continues to live after the death of those who comprise his group...'" Id. at 325 (quoting Ross v. Safe Deposit & Trust Co., 168 Md. 65, 72-73 (1934)).

Respondents Pijanowski and Litwinski argue that Saia is distinguishable and does not control in the interpretation of the clause before this court. They claim that the language and structure of the clause in Saia are materially different

from those at issue here. This court finds that argument unpersuasive. The attempt to distinguish Saia fails primarily for two reasons.

First, the holding in Saia was not so narrow as to depend solely on the exact position of words within the provision there analyzed. On the contrary, the Saia Court relied on cases containing slightly differing formulations of this phraseology in stating the preferable construction of "survivor". Indeed, the will in one case specifically directed a devise to enumerated legatees, "or their survivors or survivor, share and share alike." Estate of Carlson, 39 Ill. App. 3d 281, 350 N.E. 2d 306, 307-08 (1976). This language and structure is virtually identical to that found in Schoenhals' Will. Schoenhals' Will sets forth the names of certain legatees, and then provides, in the event one or more of them should predecease her, that the share that would have belonged to such legatee "shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees."

Second, the entire thrust of the Saia opinion was directed to the essential meaning and precise definition of the term "survivors" itself. The Court found that this term meant something distinct from the term "heirs," thus reaffirming the long-established rule in Maryland. What the Court said in Saia is certainly pertinent here:

When the term 'survivor' is used in conjunction with a gift to a group or class of beneficiaries, under the common law the survivorship clause of the will is deemed to indicate the intention of the testator that, should any member of the class predecease the testator, the share of the deceased beneficiary goes to the remaining named members

of the class, rather than to this [sic] children or issue of the predeceased beneficiary.

73 Md. App. at 327, quoting from Carlson, 350 N.E. 2d at 309. Accord, Croft v. McKie, 235 S.C. 231, 111 S.E. 2d 210 (1959); Holt v. Miller, 33 N.E. 2d 19 (Ohio App. 1937); In re Estate of Gallop, 248 So. 2d 686 (Fla. Dist. Ct. App. 1971). See also, 4 Page, WILLS, Sec. 34.32 (4th ed. 1961 & Supp. 1986); 80 Am.Jur. 2d Wills Sec. 1228 (1975); 96 C.J.S. Wills Sec. 729 (1957); Miller, CONSTRUCTION OF WILLS, Secs. 272, 276 (1927).²

Pijanowski and Litwinski also rely on Item VI of the Will to support their construction of Item III. By the terms of Item VI of the Will, Schoenhals provided:

All of the directions of any sort or kind of this, my Last Will and Testament, contained for the payment of any sum or sums of money or the transfer of property, real, personal or mixed, shall be taken or made upon the expressed condition, in each and every instance, that such beneficiary, legatee or distributee shall take such sum or sums of money or property, real, personal or mixed, to which he or she may be entitled, the same to be paid or transferred directly to him or her, and also that the said beneficiary, legatee or distributee so taking shall be held by my Executor and his successors and assigns, free, clear and discharged of any and all debts, liens or judgments now standing or later recovered against him or her, and free and clear from any assignments or transfers of his or her interests, in this, my Last Will and Testament, levies, judgments, executions, attachments and sequestrations, and free and clear from any and all other processes of every kind, nature or description that may be instituted against such beneficiary,

2. These cases, contrary to the argument advanced by Pijanowski and Litwinski, do not depend on a narrow reading of the distinct factual circumstances they present. Rather, they set forth the general rule in those jurisdictions adopting the same interpretation of the term "survivors".

legatee or distributee named in this, my Last Will and Testament.

(Emphasis added).

Pijanowski and Litwinski argue that the term "distributee" refers technically to a person who is entitled to share in the distribution of an estate of one who dies intestate, as an heir under a statute pertaining to intestacy. According to their argument, the decedent obviously never intended to die intestate. They assert that the only way in which there could be a 'distributee' under Testatrix's will would be in the case of an heir at law of one of the named legatees taking the share of a named legatee who predeceased Schoenhals by application of the statutes of descent and distribution. "Such, clearly, is the 'distributee' which is anticipated unequivocally by Testatrix's repeated reference to 'distributees' in Item VI of the Will." Respondents' Joint Memorandum, at 8.

This court finds the position of respondents Boenning and Bechtel more persuasive as to Item VI. They characterize Item VI as part of a boilerplate spendthrift clause. The general intent of a testator is to prevail over minor discrepancies, omissions or contradictions. McElroy v. Mercantile-Safe Dep. Co., 229 Md. 276, 283 (1962); the intention of the Testatrix is manifest in the residuary clause. Additionally, it would seem odd, indeed, if the Will at issue were construed so that a technical reading of the term "distributee" would have the indirect consequence of altering the well-settled meaning

of the term "survivors" -- a term utilized directly by Testatrix in the heart of the dispositive clause of her Will.

However harsh the result, the proper construction of the Will is that which is apparent from its face. No ambiguity is present in the residuary clause at issue, and any search for, or conjecture about, Testatrix's intention beyond the four corners of her Will is inappropriate under the circumstances. If Testatrix had meant to include the heirs at law of the class she designated under the residuary clause, she could simply have used the word "heirs," or made some other direct specification. In the instant case, the term "survivors" was employed by an attorney at law, and this Court has no choice but to give it the accepted and technical meaning. The term must be considered to have been deliberately chosen to express the intention of Testatrix. Schoenhals' Will shows her intention to devise her estate only to those members of the group specifically named who outlived her, which necessarily excludes the heirs at law of predeceased members of the group.

This court concludes that Boenning and Bechtel are the sole surviving legatees named in the Will of Anna A. Schoenhals, and that they are therefore entitled to the entire residuary estate.

Therefore, for the foregoing reasons, it is this 29th day of October, 1990, by the Circuit Court for Baltimore City,

ORDERED that distribution be made under the Last Will and Testament of Anna A. Schoenhals, to Boenning and Bechtel, in accordance with this Opinion.

Ellen L. Hollander

Ellen L. Hollander, Judge

cc: Nelson S. Winter, Esquire
Jacob S. Matz, Esquire
Jerome T. Lambdin, Esquire
James D. Stone, Esquire
Robert R. Bowie, Jr., Esquire

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GRANTEE REC. ST 1953

This Deed, Made this

25th

day of August,

in the year one thousand nine hundred and fifty-three

by and between

----- ANNA BARNETT, widow, -----

of the City of Baltimore,

in the State of Maryland, of the first part, and

----- RUTH WEINBERG -----

of the second part.

Witnesseth, That in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations, the receipt of which is hereby acknowledged,

the said ANNA BARNETT

do as grant and convey unto the said RUTH WEINBERG, her

personal representatives and assigns all that lot of ground situate in Baltimore City aforesaid, and described as follows, that is to say:

Beginning for the same on the southernmost side of Dudley Avenue at the distance of four hundred ninety-three feet eight and three-quarter inches eastwardly from the southeasternmost corner of Dudley and Kansas Avenue, and running thence eastwardly binding on the southernmost side of Dudley Avenue fifteen feet and four inches to a point in a line with the center of the partition wall erected between the house on the lot now being described and the house erected on the lot to the east thereof; thence southwardly along said line so drawn and passing through the center of said partition wall and continuing the same course in all one hundred and five feet to the northernmost side of a fifteen foot alley there situated; thence westwardly binding on said alley fifteen feet and four inches and thence northwardly and in the course passing through the center of the partition wall erected between the house on the lot now being described and the house erected on the lot adjoining thereto on the west in all one hundred and five feet to the place of beginning. The improvements thereon are known as 3419 Dudley Avenue.

BEING the same lot of ground described in a deed, dated August 6, 1931 and recorded among the Land Records of Baltimore City in Liber S.C.L. 5240, folio 504 from Frank Novak to James L. Barnett and Anna Barnett, his wife, as tenants by the entireties; the said James L. Barnett having died ~~May~~ May 21, 1953.

Together with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in any wise appertaining.

To Have and To Hold the said described lot of ground and premises, unto and to the use of the said IRVING WEINBERG, her personal representatives and assigns, for all the residue of the term of years yet to come and unexpired therein, with the benefit of renewal forever; subject to the payment of the annual rent of Sixty-four (\$64.00) Dollars, payable half-yearly on the first days of January and July in each and every year.

And the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

Witness the hand and seal of said grantor

Test:

Myrtille M. Greenwood
Myrtille M. Greenwood

Anna Barnett (SEAL)
Anna Barnett

(SEAL)

State of Maryland, City of Baltimore, to wit:

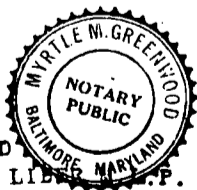
I HEREBY CERTIFY, That on this 25th day of August, in the year one thousand nine hundred and fifty-three before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared ANNA BARNETT,

the grantor named in the above Deed, and she acknowledged the foregoing Deed to be her act.

AS WITNESS my hand and Notarial Seal.

Myrtille M. Greenwood
MYRTILLE GREENWOOD Notary Public.

AUG 25 1953
REC'D FOR RECORD
BALTIMORE CITY, LIB. S.C.L. 5240, F. 9255



INDEXED & RECORDED IN THE LAND RECORDS OF
P. GE 497 M. LUTHER PITTMAN, CLERK

GRANTEE DEC 31 1955

9255 PAGE 499

THIS DEED, made this 25th day of August, 1953 by RUTH WEINBERG, of the City of Baltimore, in the State of Maryland, of the first part, and ANNA BARNETT of the said City and State of the second part.

WITNESSETH, that in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said RUTH WEINBERG does hereby grant and assign unto ANNA BARNETT for and during the term of her natural life, with full power and authority unto the said ANNA BARNETT, at any time or times during her lifetime, to sell, mortgage, lease, convey, or otherwise dispose of the same (said power to extend to a sale, mortgage, lease, conveyance or other disposition of the remainder or remainders as well as her said life estate therein), and from and immediately after the death of the said ANNA BARNETT, as to so much thereof as shall not have been disposed of in execution of the aforesaid power, unto EDWARD LISWINSKI, of the City and State aforesaid, his personal representatives and assigns, all that lot or parcel of ground situate, lying and being in the City of Baltimore aforesaid, and described as follows, that is to say:

BEGINNING for the same on the southernmost side of Dudley Avenue at the distance of four hundred ninety-three feet eight and three-quarter inches eastwardly from the southeasternmost corner of Dudley and Mannasota Avenues, and running thence eastwardly binding on the southernmost side of Dudley Avenue fifteen feet and four inches to a point in a line with the center of the partition wall erected between the house on the lot now being described and the house erected on the lot to the east thereof; thence southwardly along said line so drawn and passing through the center of said partition wall and continuing the same course in all one hundred and five feet to the northernmost side of a fifteen foot alley there situated; thence westwardly binding on said alley fifteen feet and four inches and thence northwardly and in the course passing through the center of the partition wall erected between the house on the lot now being described and the house erected on the lot adjoining thereto on the west in all one hundred and five feet to the place of beginning. The improvements thereon are known as 3419 Dudley Avenue.

BEING the same lot of ground described in a deed of even date and recorded or intended to be recorded simultaneously herewith among the Land Records of Baltimore City from Anna Barnett, widow, to the grantor herein.

TOGETHER with the buildings and improvements thereon and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the lot of ground and premises above described and heroby intended to be conveyed unto and to the use of the said ANNA BARNETT for and during the term of her natural life, with full power and authority unto the said ANNA BARNETT at any time or times during her lifetime, to sell, mortgage, lease, convey or otherwise dispose of the same (said power to extend to a sale, mortgage, lease, conveyance or other disposition of the remainder or remainders as well as her said life estate therein), and from and immediately after the death of the said ANNA BARNETT, as to so much thereof as shall not have been disposed of in execution of the aforesaid power, unto and to the use of the said EDWARD LIWINSKI, his personal representatives and assigns, for all the rest and residue of the term of years yet to come and unexpired therein with the benefit of renewal thereof forever, subject to the payment of the annual rent of Sixty-four Dollars (\$64.00) payable in equal half-yearly installments on the first days of January and July in each and every year.

WITNESS the hand and seal of said grantor.

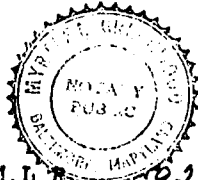
Test: Myrtle M. Greenwood Ruth Weinberg (SEAL)
Myrtle M. Greenwood Ruth Weinberg

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this _____ day of August, 1953, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared RUTH WEINBERG, the above named grantor, and she acknowledged the foregoing deed to be her act.

AS WITNESS my hand and Notarial Seal.

AUG 25 1953



Myrtle M. Greenwood
Notary Public

REC'D FOR RECORD
BALTIMORE CITY, LIBER M.L.P.

20' P. & RECORDED IN THE LAND RECORDS OF
9255 PAGE 499 H. LUTHER PITTMAN, CLERK

JUN 28 1960 GRANTEE

ASSIGNMENT-CODE-CITY OR COUNTY--
No Title Examination
No Consideration
No Stamps Necessary

872 PAGE 534

This Deed, Made this 24TH day of MAY

in the year one thousand nine hundred and sixty by and between

----- ANNA SCHOENHALS -----

of the City of Baltimore, in the State of Maryland, of the first part, and

----- DORA BECKER, Unmarried, of the same City and State -----

of the second part.

Witnesseth, That in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, ANNA SCHOENHALS, acting under, by virtue and in pursuance of the power and authority contained in the deed hereinafter referred to, does hereby grant and convey unto DORA BECKER, her personal representatives and assigns

~~the said~~

~~do~~ grant and convey unto the said

~~personal representatives and assigns~~ all that lot of ground situate in the City of Baltimore aforesaid, and described as follows, that is to say:

Beginning for the same on the southernmost side of Dudley Avenue at the distance of four hundred ninety-three feet eight and three-quarter inches eastwardly from the southeasternmost corner of Dudley and Mannasota Avenues, and running thence eastwardly binding on the southernmost side of Dudley Avenue fifteen feet and four inches to a point in a line with the center of the partition wall erected between the house on the lot now being described and the house erected on the lot to the east thereof; thence southwardly along said line so drawn and passing through the center of said partition wall and continuing the same course in all one hundred and five feet to the northernmost side of a fifteen foot alley there situated; thence westwardly binding on said alley fifteen feet and four inches and thence northwardly and in the course passing through the center of the partition wall erected between the house on the lot now being described and the house erected on the lot adjoining thereto on the west in all one hundred and five feet to the place of beginning. The improvements thereon are known as 3419 Dudley Avenue.

BEING the same lot of ground and premises which by deed, dated August 25, 1953, and recorded among the Land Records of Baltimore City in Liber M. L. P. No. 9255, folio 499, was granted and conveyed by Ruth Weinberg to Anna Barnett for life, with full power of sale or other dis-

position, and in exercise of said power these presents are executed; Anna Barnett having married Walter Schoenhals on January 16, 1960, in Baltimore, Maryland.

Together with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in any wise appertaining.

To Have and To Hold the said described lot of ground and premises, unto and to the use of the said DORA BECKER, her

personal representatives and assigns, for all the residue of the term of years yet to come and unexpired therein, with the benefit of renewal forever; subject to the payment of the annual rent of Sixty-four (\$64.00) - Dollars, payable half-yearly on the first days of January and July, in each and every year.

And the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

Witness the hand and seal of said grantor

Test:

Walter Schoenhals
WALTER SCHOENHALS

Anna Schoenhals (SEAL)
ANNA SCHOENHALS

..... (SEAL)

State of Maryland, City of Baltimore, to wit:

I HEREBY CERTIFY, That on this 20th day of May in the year one thousand nine hundred and sixty, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared ANNA SCHOENHALS

the grantor named in the above Deed, and she acknowledged the foregoing Deed to be her act.

AS WITNESS my hand and Notarial Seal.

Walter H. Criswell
WALTER H. CRISWELL Notary Public.

My Commission expires May 1, 1961
3326 Agnew Road, Baltimore, Md.

REC'D FOR RECORD MAY 25 1960 11:15 M. & RECORDED IN THE LAND RECORDS OF BALTIMORE CITY, LIBER J.W.O. 872 PAGE 534 JAMES V. CARNEY, CLERK

JUN 28 1960 GRANTEE

ASSIGNMENT-CODE-CITY OR COUNTY-22
No Title Examination
No Consideration
No Stamps Necessary

872 PAGE 536

This Deed, Made this 24th day of May

in the year one thousand nine hundred and sixty by and between
----- DORA BECKER, Unmarried -----

of the City of Baltimore, in the State of Maryland, of the first part, and
WALTER SCHOENHALS and ANNA SCHOENHALS, his wife, of the same City and State,
of the second part.

Witnesseth, That in consideration of the sum of Five Dollars (\$5.00) and other good
and valuable considerations, the receipt whereof is hereby acknowledged,

the said DORA BECKER

does grant and convey unto the said WALTER SCHOENHALS and ANNA SCHOENHALS, his
wife, as tenants by the entireties, the survivor of them, their assigns
and the survivor's

personal representatives and assigns all that lot of ground situate
in the City of Baltimore aforesaid, and described as follows, that is to say:

Beginning for the the same on the southernmost side of Dudley Avenue at the
distance of four hundred ninety-three feet eight and three-quarter inches
eastwardly from the southeasternmost corner of Dudley and Mannasota Avenues,
and running thence eastwardly binding on the southernmost side of Dudley
avenue fifteen feet and four inches to a point in a line with the center
of the partition wall erected between the house on the lot now being
described and the house erected on the lot to the east thereof; thence
southwardly along said line so drawn and passing through the center of
said partition wall and continuing the same course in all one hundred and
five feet to the northernmost side of a fifteen foot alley there situated;
thence westwardly binding on said alley fifteen feet and four inches and
thence northwardly and in the course passing through the center of the
partition wall erected between the house on the lot now being described and
the house erected on the lot adjoining thereto on the west in all one
hundred and five feet to the place of beginning. The improvements thereon
are known as 3419 Dudley Avenue.

BEING the same lot of ground and premises which by deed of even date
and recorded or intended to be recorded immediately prior hereto among the
Land Records of Baltimore City was granted and conveyed by Anna Schoenhals
to the said Dora Becker.

Together with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in any wise appertaining.

To Have and To Hold the said described lot of ground and premises, unto and to the use of the said WALTER SCHOENHALS and ANNA SCHOENHALS, his wife, as tenants by the entireties, the survivor of them, their

assigns and the survivor's - - - - - personal representatives and assigns, for all the residue of the term of years yet to come and unexpired therein, with the benefit of renewal forever; subject to the payment of the annual rent of Sixty-four (\$64.00) - Dollars, payable half-yearly on the first days of January and July, in each and every year

And the said party of the first part hereby covenant5 that she not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

Witness the hand and seal of said grantor .

Test:

Regina M. Cox
REGINA M. COX

Dora Becker (SEAL)
DORA BECKER

..... (SEAL)

State of Maryland, City of Baltimore, to wit:

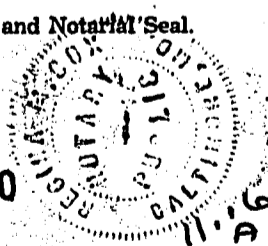
I HEREBY CERTIFY, That on this 24th day of May in the year one thousand nine hundred and sixty, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared DORA BECKER,

the grantor named in the above Deed, and she acknowledged the foregoing Deed to be her act.

AS WITNESS my hand and Notarial Seal.

My Commission expires May 1, 1961.

MAY 25 1960
REC'D FOR RECORD
BALTIMORE CITY, LIBER J.T.O.



Regina Cox
Regina Cox Notary Public.

11:16 AM. & RECORDED IN THE LAND RECORDS OF
PAGE 536 JAMES F. CARMEX, CLERK
872

LAW OFFICES
JACOB MATZ, P.A.
528 EAST JOPPA ROAD
TOWSON, MARYLAND 21204

(301) 823-5805

August 13, 1990

Rec'd
8/13/90

Honorable Ellen L. Hollander
Circuit Court For Baltimore City
100 North Calvert Street
Room #420
Baltimore, Maryland 21202

RE: Winter, et al vs. Pijanowski, et al
Case No. 90081076/CE 110893

Dear Judge Hollander:

This joint response to the letter from Messrs. Stone and Bowie dated July 25, 1990, also supplements our letter dated July 20, 1990, in which the four deeds were sent to you and made a part of the record.

Prior to the hearing we had requested information from Nelson S. Winter, Esquire as to whether or not he knew if the late Walter Schoenhals had prepared a will prior to his death. Mr. Winter indicated that he had no knowledge one way or the other. Since the hearing before your Honor on July 19, 1990 we have located and obtained a copy of Walter Schoenhals' will dated June 7, 1960, recorded in Wills, Liber LCS No. 333, Folio 213 in the office of the Register of Wills for Baltimore City. A copy of the will is enclosed herewith and we request that it be made part of the record in this case.

On page two the letter of Messrs. Stone and Bowie dated July 25, 1990 reference was made to the Marty V. First National Bank of Maryland case. The Marty case also stated on pages 216 and 217 as follows:

" . . . What the words express is to be interpreted according to their plain meaning and import. Stein V. Safe Deposit & Trust Co., 127 Md. 206. This expressed intention of a testator must be gathered from the language of the entire will, particularly, from the clause in dispute, read in the light of the surrounding circumstances at the

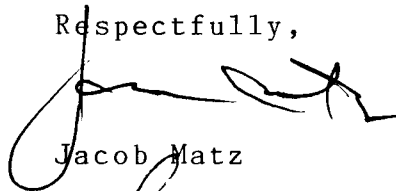
time the will was made." Chism V. Reese, 190 Md. 311;
West V. Sellmayer, 150 Md. 478; Jones V. Holloway, 183
Md. 40; Robinson v. Mercantile Trust Co., 180 Md. 336;
Hutton V. Safe Deposit & Trust Co., 150 Md. 539, 554."
(Emphasis added).

In view of the enclosed Will and the four Deeds forwarded on July 20, 1990, it is apparent that the facts of this case are clearly distinguishable from the Saia case.

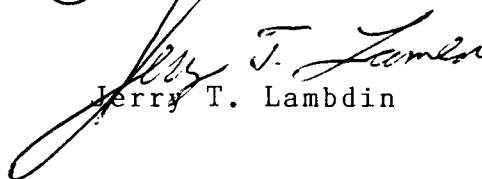
Anne and Walter Schoenhals were married on January 16, 1960 (See Deed dated May 24, 1960 in Liber 872 Folio 534). This was a second marriage in their later years. The apparent source of Anna Schoenhals' Estate was her home property on Dudley Avenue. These facts plus the enclosed Will of Walter Schoenhals, would we respectfully submit, clearly establish an intention on both of them that their joint estates should be divided into four equal parts.

It appears clear when reviewing all of the relevant documents that the testatrix, Anna Schoenhals, intended that her sister and brother, and their heirs, would take an equal one fourth share of her estate.

Respectfully,



Jacob Matz



Jerry T. Lambdin

JTL:am

cc: James D. Stone, Esquire
Robert R. Bowie, Jr., Esquire
Nelson S. Winter, Esquire

Enclosure

INDEXED

1970 No. 11
Case 1078

WILL

Walter Schoenhals

Small Estate

Exhibited and filed on the 11th day of Feb.

*Small Estate Liber:
Folio:*

Exhibited and filed on the 11th day
of February 1970. Proved and
recorded on the 23rd day of March
1970 same day filed and recorded
in Wills, Liber L.C.S. No. 333
Folio 213 and examined.....
Test: LEROY C. SHAUGHNESSY
REGISTER OF WILLS FOR BALTIMORE CITY

Paid 50 No Copy Paid

LAST WILL AND TESTAMENT

OF

WALTER SCHOENHOLS

Witnessed by

James H. Marsh

and

LAST WILL AND TESTAMENT

OF

WALTER SCHOENEHALS

- - - - -

I, WALTER SCHOENEHALS, of the City of Baltimore, State of Maryland, being of lawful age and of sound and disposing mind, memory and understanding, do hereby make, publish and declare this to be my Last Will and Testament, and do hereby revoke any and all wills and codicils thereto heretofore made by me.

ITEM I.

I hereby authorize, empower and direct the Executor of my estate, hereinafter named, to pay all of my legal debts, funeral and burial expenses, the costs of procuring and erecting a suitable marker at my grave if none has been erected at the time of my death, and the costs of the administration of my estate out of the assets of my estate.

The total amount of money to be expended in connection with my funeral and burial and procuring and erecting a suitable marker at my grave as aforesaid shall be in the sole and absolute discretion of the Executor of my estate, and any and all costs and expenses incurred in connection with my funeral and burial and procuring and erecting a suitable marker at my grave as aforesaid shall be chargeable against and paid out of the assets of my estate without regard to any limitation or restriction imposed by law and it shall not be necessary for the Executor of my estate to secure any order, approval or ratification of the Orphans' Court of Baltimore

City or any other court, commission, board or other agency to do so regardless of the amount of such costs and expenses.

ITEM II.

After the payment of all my legal debts, funeral and burial expenses and the costs of procuring and erecting a suitable marker at my grave as aforesaid and the costs of the administration of my estate, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to my wife, ANNA A. SCHOENHALS, if she is living at the time of my death.

ITEM III.

In the event my said wife, ANNA A. SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A. BOENNING of Hyattsville, Maryland, who is my daughter; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland, who is my daughter;

MRS. GERTRUDE PIANOWSKI of Baltimore, Maryland, who is a sister of my wife; and EDWARD LITWINSKI of White Marsh, Maryland, who is a brother of my wife, in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees.

ITEM IV.

Any and all property of every kind, character and description, whether real, personal or mixed, which at the time of my death is owned by my said wife, ANNA A. SCHOENHALS, and me in our joint names, or which upon my death will pass to my said wife by operation of law or under which my said wife is a beneficiary, including, but not limited to, bank accounts, real estate or any interest therein, securities and life insurance policies, shall be the sole and separate property of my said wife, ANNA A. SCHOENHALS, and shall not be subject to any of the terms and provisions of this written instrument.

ITEM V.

During the period of administration and settlement of my estate, my Executor is hereby granted full power and authority to pay over to my said wife, ANNA A. SCHOENHALS, if she is living, out of the corpus of my estate or the income therefrom, such sums or sums of money from time to time as

my Executor may deem advisable or proper to provide for my said wife's proper and comfortable care, maintenance and support, but in each instance my Executor shall take into consideration all other sources of income and the financial resources of my said wife as the same may be known to my Executor and the standard of living to which my said wife has become accustomed.

ITEM VI.

W. S.

All of the directions of any sort or kind of this, my Last Will and Testament, contained for the payment of any sum or sums of money or the transfer of property, real, personal or mixed, shall be taken or made upon the expressed condition, in each and every instance, that such beneficiary, legatee or distributee shall take such sum or sums of money or property, real, personal or mixed, to which he or she may be entitled, the same to be paid or transferred directly to him or her, and also that the said beneficiary, legatee or distributee so taking shall be held by my Executor and his successors and assigns, free, clear and discharged of any and all debts, liens or judgments now standing or later recovered against him or her, and free and clear from any assignments or transfers of his or her interests, in this, my Last Will and Testament, levies, judgments, executions, attachments and sequestrations, and free and clear from any and all other processes of every kind, nature or description that may be instituted against such beneficiary, legatee or distributee named in this, my Last Will and Testament.

ITEM VII.

In order to facilitate the settlement of my estate, I hereby authorize and empower the Executor of my estate, in his sole and absolute discretion, without any application to, or any order of, the Orphans' Court of Baltimore City or any other court, board, commission or agency, so to do, and for such consideration as to my Executor shall seem proper, to sell, lease, grant, assign, convey, transfer, exchange, or in any other manner, conditionally or absolutely, to dispose of all or any part of my property, real, personal or mixed, and to make, execute, acknowledge and deliver proper deeds, conveyances and transfers therefor; and in the case of any such sale or other disposition, it shall not be necessary for the purchaser or any other person so dealing with my said Executor to see to the application of the purchase money or other consideration.

ITEM VIII.

The full amount of any and all estate, inheritance, succession and transfer taxes, and governmental charges of every kind, which may be lawfully assessed by, or be or become due and payable to, the United States of America or any state or political subdivision thereof or any other taxing authority, as a result or in consequence of my death, shall be paid by my Executor out of the assets of my estate, and such taxes and charges shall be paid by my Executor before he distributes my estate, and such payment shall be made without any right of reimbursement therefor whatsoever from any person, corporation or other legal entity.

ITEM IX.

All provisions made under this, my Last Will and Testament, for the benefit of my wife, ANNA A. SCHOENHALS, are contingent upon my said wife surviving me for a period of sixty (60) days; and in the event my said wife does not survive me for the said period of sixty (60) days, then the provisions of this, my Last Will and Testament, shall be applied and interpreted in the same manner as they would have been if my said wife had predeceased me.

ITEM X.

W. S.

I hereby nominate, constitute and appoint as the Executor of this, my last Will and Testament, as herein set forth, WADE H. CRESWELL, of Baltimore, Maryland. In the event the said WADE H. CRESWELL predeceases me or for any other reason is not able or refuses to act as the Executor of my estate, I hereby nominate, constitute and appoint as the Executor of my estate, WILLIAM H. MARSHALL, ESQ., of the Baltimore Bar. In the event the said WILLIAM H. MARSHALL acts as the Executor of my estate, he is hereby authorized and empowered to fully and completely exercise any and all of the power and authority which I have vested in WADE H. CRESWELL as the Executor of this, my Last Will and Testament, under the terms and provisions of this written instrument. Inasmuch as I have absolute confidence in the integrity of both the said WADE H. CRESWELL and WILLIAM H. MARSHALL, it is my wish and I hereby direct that the one acting as the

Executor of my estate be excused from the necessity of giving bond except to the extent required by law.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal, this 7th day of June, in the year of Our Lord, nineteen hundred and sixty.

Walter Schoenhals (SEAL)
Walter Schoenhals

Signed, sealed, published and declared by WALTER SCHOENHALS, the above named Testator, as and for his last Will and Testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

3-11-70
10/2/70 RB Edw. F. Ferman 3326 Fairwood Dr.

3-11-70
10/2/70 RB Grace Creswell 3326 Fairwood Ave.

3-11-70
10/2/70 RB Wm. H. Marshall - - - - - Little Bldg. Bldg. 2nd

Just clerk

CH + CLK
8/23

LAW OFFICES

HILL, JOHNSON, FOLEY, STONE & MILES

SAMUEL D. HILL
JOSEPH L. JOHNSON
JOHN F. FOLEY, JR.
JAMES D. STONE
EUGENE L. MILES, III
SAMUEL P. PIAZZA

6TH FLOOR, 29 W. SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204

(301) 828-1050
FAX (301) 828-4311

COUNSEL
MORTON E. ROME
STANLEY L. HOLMES

HAVRE DE GRACE, MD. OFFICE
412 GREEN STREET 21078
(301) 939-3456

July 25, 1990

FILED

JUL 26 1990

CIRCUIT COURT FOR
BALTIMORE CITY

Honorable Ellen L. Hollander
Circuit Court for Baltimore City
100 North Calvert Street
Room 420
Baltimore, Maryland 21202

Re: Winter, et al vs. Pijanowski, et al
Case No. 90081076/CE 110893

Dear Judge Hollander:

Per your request in the hearing on the above case on July 19, 1990, we have conducted research regarding the nature and kind of evidence, if any, that may be admitted by the Court to ascertain the intention of a testator.

Generally, the Maryland courts have held that extrinsic evidence may be admitted to determine a testator's intent and the circumstances surrounding the drafting of the will. However, the admissibility of such evidence is limited to cases of uncertainty where the intent of the testator is not clear from the four corners of the will or where there is a latent ambiguity. Veditz v. Athey, 239 Md. 435, 449-50, 212 A.2d 115 (1964). In Veditz, the Court allowed evidence regarding the acquisition of the real estate in question, the strawman deed in connection therewith and the relationship of the parties to the testatrix. The Court excluded evidence of supposed oral declarations made by the testatrix that her intention in purchasing the property was to provide for one of the parties in dispute. Id.

It is important to note that where a will is drafted by a competent and experienced attorney, the customary technical meaning of these words will be applied. Scott v. Shaffler, 269 Md. 432, 436, 306 A.2d 531 (1972); Veditz v. Athey, 239 Md. at 444-445; Judik v. Travers, 184 Md. 215, 225, 40 A.2d 306 (1944). And as the Court stated in Veditz, "extrinsic evidence that something different was meant than

Honorable Ellen L. Hollander
Page 2

that which the language imports is inadmissible." 239 Md. at 441.

Similarly, the Court stated the following principle of construction in Marty v. First National Bank of Baltimore, 209 Md. 210, 216-17, 120 A.2d 841 (1956) (quoted verbatim in Scott v. Shaffler, 269 Md. at 435; Leroy v. Kirk, 262 Md. 276, 279-80, 277 A.2d 611 (1971):

"In seeking to find what the testator meant, we adhere to the rules and guides which the cases have established. Intention is primary and paramount. This is not the presumed but the expressed intention of the testator. What must be sought is not what the testator meant as distinguished from what his words express, but * * * simply what is the true meaning of his words; not merely what he meant, but what his words mean."
(Emphasis added).

The Court goes on to state that the intention of the testator must be discerned from the language of the clause in dispute as read in light of the entire will and "the surrounding circumstances at the time the will was made". Id. In other words, as is stated even more clearly in Hebden v. Keim, 196 Md. 45, 51, 75 A.2d 126 (1950) quoted verbatim in Banghort v. Vieweg, 261 Md. 214, 219, 274 A.2d 337 (1970):

. . . the Court, in construing a will, is governed, not by what the Court may think the testator wanted to say, but by what his words actually meant, because his words were designed to express his intention.

The Maryland Court of Appeals most recently applied these rules in Emmert v. Hearn, 309 Md. 19, 23, 522 A.2d 377 (1987), a case involving the construction of the term "personal property". Again, the Court stated that "extrinsic evidence should not be admitted to show that the testator meant something different from what his language imparts . . ." And as Banghort noted, this principle of construction dates back as far as 1853. See Walston v. White, 5 Md. 297 (1853).

Additionally, we wish to state for the record that the Will in question is neither ambiguous nor uncertain. The term "survivor" has a specific technical meaning which has been established and followed in the Maryland case law for over 100 years. See our Joint Memorandum filed on behalf of Respondents Audrey A. Boenning and Dorothy M. Bechtel. And since testatrix's Will was drafted by an attorney, the technical meaning of the term should be applied. Thus, extrinsic evidence is unnecessary in the instant case to determine the intention of the testatrix in the use of the term "survivor" in Item III of the Will. In Saia v. Sain, 73 Md. App. 322, 333 A.2d 1336 (1987) which is controlling in this case, the Court held that where a testatrix bequeathed her estate to the "survivor" of a group of specifically named individuals, only those members of the group who outlived the testatrix should share in the legacy gift, excluding the heirs at law of predeceased members of the group.

During the above referenced hearing, Your Honor expressed concern that in construing the term "survivor" in accordance with the case law, no blood relative would take as a residuary legatee. However, in light of the deeds admitted into evidence on behalf of Respondents Antoinette Litwinski and Mitchell J. Pijanowski, as well as the language of the Will itself, it appears that the testatrix was well aware of the possibility of eliminating her blood relatives.

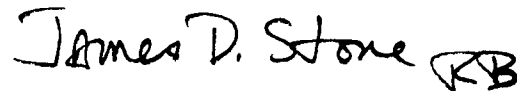
In 1960, the testatrix transferred real property recorded solely in her name, with Edward Litwinski as beneficiary of said property, to a tenancy by the entirety. As a tenancy by the entirety, testatrix's husband, his heirs and assigns, would take the property in the event testatrix predeceased her husband, thus eliminating any and all blood relatives. In this event, testatrix made no provision for her blood relatives.

Additionally, in her Will dated June 7, 1960, testatrix bequeathed her entire estate to her husband, and in the event he predeceased her, she included Item III, naming a class of residuary legatees. Testatrix's husband predeceased her in 1969 and for twenty years thereafter, she made no changes in her Will regarding Item III. Mrs. Pijanowski and Mr. Litwinski predeceased the testatrix by 9 and 7 years respectively, yet no effort was made on the part of the testatrix to amend her Will to insure that blood relatives were not excluded as residuary legatees of her estate.

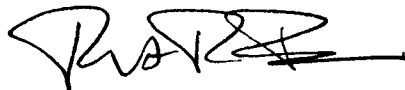
Honorable Ellen L. Hollander
Page 4

Taking into consideration the circumstances surrounding the drafting of the Will and First Codicil thereto as well as the body of case law regarding the construction of the term "survivor", it is clear that the testatrix intended the surviving members of the group alone to take, excluding heirs at law of predeceased members.

Respectfully,



James D. Stone



Robert R. Bowie, Jr.

JDS/ma

cc: Nelson S. Winter, Esquire
Jacob Matz, Esquire
Jerome Lambdin, Esquire

HAND DELIVERED TO COURT HOUSE

LAW OFFICES
JACOB MATZ, P.A.
528 EAST JOPPA ROAD
TOWSON, MARYLAND 21204

(301) 823-5805

July 20, 1990

Hon. Ellen L. Hollander
Circuit Court For Baltimore City
100 North Calvert Street
Room 420
Baltimore, Maryland 21202

Re: Winter, et al vs. Pijanowski, et al
Case No.: 90081076/CE110893

Dear Judge Hollander:

Enclosed are four (4) deeds on property number 3419 Dudley Avenue referred to in the hearing on the above case on July 19, 1990, as follows:

1. Deed dated August 25, 1953 from Anna Barnett, widow, to Ruth Weinberg, recorded in liber M.L.P. 9255, folio 497;
2. Deed dated August 25, 1953 from Ruth Winberg to Anna Barnett, with full powers, recorded in liber M.L.P. 9255, folio 499;
3. Deed dated May 24, 1960 from Anna Schoenhals to Dora Becker, recorded in liber J.F.C. 872, folio 534;
4. Deed dated May 24, 1960 from Dora Becker to Walter Schoenhals and Anna Schoenhals, his wife, recorded in liber J.F.C. 872, folio 536.

As agreed between the Court and counsel these enclosures are being filed in this case.

Respectfully,


Jacob Matz

JM:js
Enclosures

cc: Nelson S. Winter, Esquire
James D. Stone, Esquire
Robert R. Bowie, Jr., Esquire
Jerry T. Lambdin, Esquire

Hand Delivered to Courthouse

FILED

JUL 13 1990

CIRCUIT COURT FOR
BALTIMORE CITY

8

NELSON S. WINTER
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED
LATE OF BALTIMORE CITY

Petitioner

v.

MITCHELL J. PIJANOWSKI

and

ANTOINETTE V. LITWINSKI

and

AUDREY A. BOENNING

and

DOROTHY M. BECHTEL

Respondents

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

IN EQUITY

Case: 90081076

CE110893

JOINT MEMORANDUM FILED ON BEHALF OF
RESPONDENTS AUDREY A. BOENNING AND
DOROTHY M. BECHTEL

Issue

Whether the Testatrix, in using the term "survivor" in Item III of her Last Will and Testament, intended to include only those members of the group who outlive the Testatrix and to exclude any and all issue and heirs at law of the predeceased residuary legatees?

Statement of Facts

Item III in the Last Will and Testament of Anna A. Schoenhals, dated June 7, 1960 and First Codicil thereto dated November 24, 1979, bequeaths the residue of her estate as follows:

In the event my said husband, WALTER SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A. BOENNING of Hyattsville, Maryland, who is a daughter of my husband; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland, who is a daughter of my husband; MRS. GERTRUDE PIANOWSKI of Baltimore, Maryland, who is my sister; and EDWARD LITWINSKI of White Marsh, Maryland, who is my brother; in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they

were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees.

The testatrix, a resident of Baltimore City, died on August 19, 1989. Testatrix's husband predeceased her in 1969. Mrs. Gertrude Pianowski died on September 12, 1980, and Edward Litwinski died on September 22, 1982, both predeceasing the testatrix. Mrs. Pianowski is survived by her son, Mitchell Pianowski, who is making a claim for his mother's share. Mr. Litwinski is survived by his wife, Antoinette Litwinski, who is likewise making a claim for her husband's share. Mrs. Boenning and Mrs. Bechtel make the claim that the residue of the estate be divided between them since it was the intention of the testatrix in using the term "survivor" in Item III to include only those members of the class who outlive the testatrix and to exclude any and all issue and heirs at law of the predeceased members of the group.

Analysis

To determine whether the testatrix, in using the word "survivor" in Item III of her Last Will and Testament, intended to include only those members of the group who outlive the testatrix and to exclude any and all issue and heirs at law of predeceased residuary legatees, it is necessary to examine the relevant Maryland case law construing the term "survivor" as well as commentary by the leading writers on the construction of wills.

In Maryland, the term "survivor" has generally been defined as "one who outlives another; one of two or more persons who lives after the other or others have died." Edgar G. Miller, Jr., The Construction of Wills in Maryland, §262 (1927). Once defined, determining who will take as a survivor depends upon the intention of the testator as discerned from the designations made in the Will. As the Court stated in Judik v. Travers, 184 Md. 215, 221, 40 A.2d 306, 309 (1944), "in construing wills the supreme law of every case is the intention of the testator, and when once that is ascertained, it must be given effect, insofar as it is lawful, and all other considerations whatsoever, must yield to it."

The construction of the term "survivor" has been a source of great difficulty in courts throughout the country, often leading to conflicting results. See generally Annot., "Wills: Gift Over to Survivors in Class or Group of Designated Beneficiaries as Restricted to Surviving Members of Class or Group, or as Passing to Heirs or Representatives of Deceased Beneficiary", 54 A.L.R. 3d 280 (1973 and Supp. 1989). However, in situations like the case at hand, the Maryland courts have been generally consistent and clear-cut in holding that where members of a group of beneficiaries or legatees outlive the testator, they alone will take and the issue and heirs at law of predeceased members of the group take nothing.

The Court of Appeals handed down this general rule in Demill v. Reid, 71 Md. 175; 17 A. 1014 (1889), and it has

been followed, with minor variations, since its inception in 1889:

It seems to us to be clear law, as well as good sense, that in a case like this where there is an ultimate limitation upon a contingency to a class of persons plainly described, and there are persons answering the description, in esse when the contingency happens, they alone can take. 71 Md. at 191.

The Court later quoted this passage in

Ross v. Safe Deposit and Trust, 168 Md. 65, 176 A. 483 (1934), in which case the term "survivors" was held to be limited to the testator's living daughters and sons as were still "cestuis que trust" under the will, and did not include the children of a predeceased son who were not explicitly provided for in the will. In so holding, the Court additionally defined a "survivor" as "one who continues to live after the death of those who comprise his group." 168 Md. at 72-73.

Most recently, the Court of Special Appeals in Saia v. Sain, 73 Md. App. 322, 333, A.2d 1336 (1987) reinforced these principles in a case factually analogous to the case at hand. In Saia, the testatrix in a residuary clause of her Will, bequeathed her estate to the "survivors" of a group of specifically named individuals. The issue in the case was whether such use of the term "survivor" was ambiguous and should render the residuary clause void,

thus allowing the heirs at law of predeceased members of the group to share in the estate. The Court held that, as a matter of law, "the word 'survivors' when used to limit a group, is not ambiguous but is subject to a precise definition", 73 Md. App. at 324. Relying primarily on Ross, along with various out-of-state opinions, the Court stated that the term "survivors" should be given its literal meaning - to outlive another. In this context, only those members of the group who outlived the testatrix should share in the gift, excluding the heirs at law of predeceased members of the group.

In the instant case, the testatrix similarly uses the term "survivor" in reference to those members of the group who should outlive her, stating that in the event any of the aforesaid legatees predeceases her, such share or shares "shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees". As in Saia, there is nothing ambiguous here about the use of the term survivor. It appears that the sole intention of the testatrix, in using the term, was to limit the group and as such, the remaining legatees who outlived the testatrix alone should share in the residuary estate, excluding the heirs at law of predeceased members of the group.

As a general rule, then, "the word 'survivors' when used of a class is limited to the individuals of such a class, and does not include their children." 4 Page, Wills, §34.32 (4th ed. 1961 and Supp. 1986) as quoted in Saia, 73 Md. App. at 327. To determine whether a bequest is to a class or to individuals, one must ascertain the intention of the testator by examining the will as a whole. See Newlin v. Mercantile Trust Co., 161 Md. 622, 158 A. 51 (1931).

A gift made to beneficiaries by name is not prima facie indication of a gift to individuals if it can be discerned that the intention of the testator is to clarify class membership. See Evans v. Safe Deposit & Trust Co., 190 Md. 332, 58 A.2d 649 (1947). Similarly, class distinction can be inferred where the group of beneficiaries or legatees are subject to the addition or deletion of members. See 4 Page, Wills, §35.3 (4 ed. 1961). In light of the foregoing analysis, Item III of the will in question bequeathed the residuary estate to a class.

Although Maryland has passed a statute preventing lapse where an expressed legatee dies before the testator but after the execution of the will, thus passing on the legacy as if the predeceased legatee had owned the property either dying testate or intestate, this statute does not control in the case at hand. See Md. Estate & Trusts Code Ann. §4-403 (1974). Maryland has adopted the theory that such

statute preventing lapse only applies where there is a bequest to an individual beneficiary and not to a class. Where the bequest is to a class and members of the class die before the time for fixing the class, the legacy passes to those members of the class in being at the time for fixing the class and the heirs of the predeceased members of the class are not entitled to share in the legacy. See Stahl v. Emery, 147 Md. 123, 127 A. 760 (1925).

In the instant case, the time for fixing the class was at the death of the testatrix. At that time, two members of the class were in being, and as "survivors" of the testatrix, they should take the residuary legacy, excluding the heirs at law of the predeceased members of the class.

Furthermore, where a provision indicates that the residue of the estate goes to the survivors of the class, this is generally an indication that the testator's intention to exclude operation of a statute against lapse and thus the legacy would not pass to the heirs at law of the predeceased members of the class. See 4 Page, Wills, §35.18 (4th ed. 1961). In the case at bar, the expression, "the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees," (emphasis added), indicates the testatrix's intention to exclude operation of the statute.

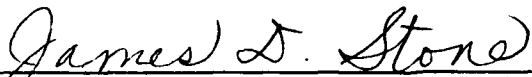
Additionally, as stated in The Construction of Wills in Maryland, "Survivors, when not explained otherwise by other parts of the will, is to be interpreted according to its strict meaning and will be confined to its literal signification when it is possible to do so without violating the clear meaning of the rest of the will." Miller, §276. Here, there is nothing to indicate a contrary construction of the term survivor. The use of the boilerplate terms "beneficiaries, legatees or distributees" in Item VI is part of a spendthrift clause to prevent creditors from seizing the share of a beneficiary legatee or distributee. The use of these terms does not convey an intention on the part of the testatrix that the heirs at law of the predeceased members of the class should take or that the anti-lapse statute should be employed in interpreting the provisions of Item III.

Thus, Item III, when construed in light of the will as a whole, shows an intention on the part of the testatrix to follow the accepted principles of the construction of the term "survivor" and of wills generally as stated in the Maryland case law. As such, the residuary legatees in being at the time of the death of the testatrix should alone share in the residuary estate and the heirs of the predeceased members of the class should take nothing.

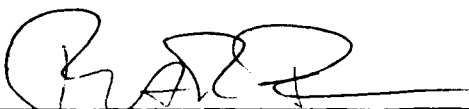
Conclusion

In light of the relevant Maryland case law, the word "survivors" in Item III of the Will refers solely to the living residuary legatees, those members of the class in being at the time of the death of the testatrix. As such, they alone should share in the residuary estate, excluding those heirs of the two predeceased residuary legatees.

Respectfully submitted,



James D. Stone *a.*
Hill Johnson Foley Stone & Miles
Suite 600
29 West Susquehanna Avenue
Towson, Maryland 21204
(301) 828-1050



Robert R. Bowie, Jr.
Suite 600
29 West Susquehanna Avenue
Towson, Maryland 21204
(301) 583-2400

Attorneys for Respondents
Audrey A. Boenning and
Dorothy M. Bechtel

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 1990, a copy of the foregoing Joint Memorandum was mailed, postage prepaid, to Nelson A. Winter, Esquire, 7814 Ruxway Road, Towson, Maryland 21204, attorney for the Estate, and to Jacob Matz, Esq., 582 E. Joppa Road, Towson, Maryland 21204, attorney for Respondent Mitchell J. Pijanowski, and to Jerry T. Lambdin, Charles Chlan & Associates, 428 Eastern Avenue, Baltimore, Maryland 21221, attorney for Respondent Antoinette V. Litwinski.

James D. Stone
James D. Stone a.

LAW OFFICES
JACOB MATZ, P.A.
528 EAST JOPPA ROAD
TOWSON, MARYLAND 21204
—
(301) 823-5805

July 9, 1990

FILED
JUL 9 1990
CIRCUIT COURT FOR
BALTIMORE CITY

Nelson S. Winter, Esquire
7814 Ruxway Road
Towson, Maryland 21204

Re: Winter, et al vs. Pijanowski, et al. - CE 110893/90081076

Dear Nelson:

Enclosed is a copy of the Joint Memorandum filed on behalf of the Respondents, Mitchell J. Pijanowski and Antoinette V. Litwinski.

With copies of this letter I am likewise sending a copy to James D. Stone, Esq. and Robert R. Bowie, Jr., Esq., counsel for the remaining Respondents.

Sincerely

Jacob Matz

JM:js

CC: Jerry D. Lambdin, Esquire
Clerk of Circuit Court For Baltimore City
James D. Stone, Esquire
Robert R. Bowie, Jr., Esquire

(7)

FILED

JUL 9 1990

NELSON S. WINTER
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED
LATE OF BALTIMORE CITY

CIRCUIT COURT FOR
BALTIMORE CITY

IN THE
CIRCUIT COURT
FOR

Petitioner

BALTIMORE CITY

v.

IN EQUITY

MITCHELL J. PIJANOWSKI

Case: 90081076

and

CE110893

ANTOINETTE V. LITWINSKI

and

AUDREY A. BOENNING

and

DOROTHY M. BECHTEL

Respondents

* * * * *

JOINT MEMORANDUM FILED ON BEHALF OF RESPONDENTS'
MITCHELL J. PIJANOWSKI AND ANTOINETTE V. LITWINSKI

STATEMENT OF FACTS

The testatrix, Anna A. Schoenhals, died a resident of Baltimore City on August 18, 1989. Testatrix's husband, Walter Schoenhals, predeceased testatrix in 1969.

By Item III of her will, dated June 7, 1960, testatrix devised and bequeathed the residue of her estate as follows:

In the event my said husband, WALTER SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A. BOENNING of Hyattsville, Maryland, who is a daughter of my husband; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland, who is a daughter of my husband; Mrs. Gertrude Pianowski of Baltimore, Maryland, who is my sister; and EDWARD LITWINSKI of White Marsh, Maryland, who is my brother; in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees.

(Emphasis added.)

By the terms of Item VI of her will, the testatrix provided as follows:

All of the directions of any sort or kind of this, my Last Will and Testament, contained for the payment of any sum or sums of money or the transfer of property, real, personal or mixed, shall be taken or made upon the expressed condition, in each and every instance, that such beneficiary, legatee or distributee shall take such sum or sums of money or property, real,

personal or mixed, to which he or she may be entitled, the same to be paid or transferred directly to him or her, and also that the said beneficiary, legatee or distributee so taking shall be held by my Executor and his successors and assigns, free, clear and discharged of any and all debts, liens or judgments now standing or later recovered against him or her, and free and clear from any assignments or transfers of his or her interests, in this, my Last Will and Testament, levies, judgments, executions, attachments and sequestrations, and free and clear from any and all other processes of every kind, nature or description that may be instituted against such beneficiary, legatee or distributee named in this, my Last Will and Testament.

(Emphasis added.)

On November 24, 1979, the testatrix executed a codicil to the above-quoted will, which did not effect any substantive change in the dispositive provisions set forth above.

Two of the residuary legatees named in Item III of testatrix's will, as set forth above, predeceased the testatrix. The remaining two residuary legatees under Item III of testatrix's will assert that they are entitled to the entire residuary estate, to the exclusion of the surviving families of the two residuary legatees who predeceased testatrix. The surviving son of one of the predeceased residuary legatees, and the surviving wife of the other predeceased legatee, as the sole surviving family and heirs at law of the predeceased legatees, claim that they are entitled to share in the distribution of the testatrix's estate, under the language of testatrix's will.

Maryland law is controlling.

QUESTION PRESENTED

Under the terms of testatrix's will are the surviving heirs at law of the two residuary legatees who predeceased testatrix entitled to share in the distribution of testatrix's estate with the two living residuary legatees, or are the two living residuary legatees entitled to the entire residuary estate?

CONCLUSION

Construing testatrix's will as a whole, in light of applicable legal principles and authorities, the surviving heirs at law of the two predeceased residuary legatees are entitled to share equally in the distribution of the testatrix's estate with the two living residuary legatees.

DISCUSSION OF AUTHORITY

Under well-settled principles of testamentary construction, the primary and paramount goal in the construction of a will is to find the intention of the testator. See Leroy v. Kirk, 262 Md. 276, 277 A.2d 611 (1971). In applying this familiar rule of will construction, the Maryland Court of Special Appeals has recognized that the intention of a testator must be determined from a reading of the will at issue as a whole, and from pertinent circumstances surrounding the testator at the time of execution of the will. See Reedy v. Barber, 253 Md. 141, 251 A.2d 882 (1969). In construing the will so as to divine the

testator's intent from the four corners of the will, the words of the will are given their plain meaning and import, but words having legal significance are construed in that sense, unless the will clearly indicates a contrary intent on the part of the testator. See Emmert v. Hearn, 309 Md. 19, 522 A.2d 377 (1987). Moreover, in determining the meaning of a particular clause in a will, the entire will must be examined, in order to give effect to every part of the will as far as possible. See Newlin v. Mercantile Trust Co. of Baltimore, 161 Md. 622, 158 A. 51 (1932). In this regard, a reviewing court will attempt to harmonize apparently conflicting provisions in a will, so as to carry out the testator's general intent. See Duering v. Brill, 127 Md. 104, 96 A. 269 (1915). However, where there is an irreconcilable conflict between two clauses in the will, the latter clause must prevail as being the latest expression of the testator's intention. See Scholtzhauer v. Kummer, 149 Md. 583, 132 A. 53 (1926).

The appellate courts of the several states have reached widely divergent results in cases where a construction of the term "survivor" has been sought, but the decisions which appear to have addressed this issue evidently have applied the general rule that a will must be construed as whole and that each case must be determined with particular attention to the specific language and the peculiar facts involved in the case before the court, rather than by application of any blanket doctrine, in

resolving this issue in various contexts. See generally Annot., "Wills: Gift Over to 'Survivors' in Class or Group of Designated Beneficiaries as Restricted to Surviving Members of Class or Group, or as Passing to Heirs or Representatives of Deceased Beneficiary," 54 A.L.R.3d 280 (1973 & Supp. 1989). Several appellate decisions have held, on the facts presented, that the term "survivor," as used in a will to modify the designation of beneficiaries, includes the heirs at law of any predeceased beneficiaries, while other courts have held that the term does not include such surviving heirs at law, but includes only beneficiaries who have not predeceased the testator. Id.

In In re Barr's Estate, 2 Pa. 428 (1846), where the testator directed that his residuary estate be divided among his brothers and sisters, "or their survivors," the Pennsylvania Supreme Court held that the term "survivors" included the heirs at law of the brothers and sisters of testator who predeceased the testator, and that such heirs at law were entitled to share in the distribution of testator's residuary estate under the residuary clause of testator's will. Likewise, in In re Will of Leroy, 54 Misc. 2d 33, 281 N.Y.S.2d 287 (1967), the court held that where the testator directed that the residue of his estate be divided between three named beneficiaries, "or to the survivor or survivors thereof," that the heirs at law of the named beneficiaries who had predeceased the testator were entitled to

share in the distribution of the residue of the estate, under the terms of the residuary clause of the will set forth above.

By contrast, where a will provides that if certain named beneficiaries should die without issue their testamentary share should pass to the "survivors," appellate courts have generally held that such language indicates that the testator intended that the named beneficiaries who outlived the testator should take the shares of the named beneficiaries who predeceased testator, leaving no issue. See, e.g., Ross v. Safe Deposit & Trust Co., 116 Md. 65, 176 A. 43 (1934); Croft v. McKie, 235 S.C. 231, 111 S.E.2d 210 (1959). Likewise, at least one appellate court has held that the term "survivor" does not include heirs, where the term "survivor" is used solely for the purpose of setting forth measuring lives, rather than designating any ultimate testamentary legatee or devisee. See Holt v. Miller, 33 N.E.2d 19 (Ohio Ct. App. 1937). Also, where a testamentary bequest has been made to certain named beneficiaries or "their survivors, share and share alike," such language has been held to support the conclusion that "survivors" in such a context does not include heirs at law of the named beneficiaries. See In re Estate of Carlson, 39 Ill. App. 3d 281, 350 N.E.2d 306 (1976).

The term "distributee" has long been recognized as having a distinct legal connotation, which is defined in Black's Law Dictionary as follows:

An heir; a person entitled to share in the distribution of an estate. This term is admissible to denote one of the persons who are entitled, under the statute of distributions, to the personal estate of one who is dead intestate.

(Citations omitted; emphasis added); see Black's Law Dictionary, 597 (3d ed. 1933). The definition of "distributee" in the more recent 5th edition of Black's Law Dictionary is virtually identical to the definition set forth above. See Black's Law Dictionary 426 (5th ed. 1979).

Applying the above authorities to the facts of the instant case, and construing the testatrix's will as a whole, it is evident that the term "survivors," as used in testatrix's will, was intended by testatrix to include the heirs at law of any of the named residuary legatees who predeceased testatrix. The plain language of Item III of the will clearly indicates that the testatrix intended the surviving family of any named residuary legatee who predeceased testatrix to share in the distribution of testatrix's residuary estate. The term "legatee," as used in this clause, clearly refers to the named residuary beneficiaries as individuals rather than as members of a group. And it is to the "survivors" of each of these named individual "legatees" that the will directs distribution of the testatrix's residuary estate.

The above conclusion is rendered inescapable when considered in conjunction with the fact that later in her will, in Item VI, testatrix repeatedly referred to the "beneficiaries, legatees, or

distributees" under the will (emphasis added). Under the definition of "distributee," set forth above, a distributee is not a legatee or devisee, but derives his or her status solely from the statutes pertaining to intestacy. Inasmuch as the testatrix clearly did not intend to die intestate, as evidenced by her execution of her will, the only manner in which there could be a "distributee" under testatrix's will would be in the case of an heir at law of one of the named legatees taking the share of a named legatee who predeceased testatrix, by application of the statutes of descent and distribution. Such, clearly, is the "distributee" which is anticipated unequivocally by testatrix's repeated references to "distributees" in Item VI of the will.

To the extent that the case of Saia v. Sain, 73 Md. App. 315, 533 A.2d 1336 (1987), indicates a contrary result, that case is easily distinguishable from the instant case on its facts, and is accordingly not determinative of the instant controversy. In Saia v. Sain, supra, the testatrix devised and bequeathed the residue of her estate "to the survivors of the following:" and then proceeded to set forth the names of eight beneficiaries. No other evidence from the other clauses of the will or otherwise was presented to the court for its determination of the issue as to who was entitled to the residuary shares of certain named legatees who predeceased the testatrix. The Maryland Court of Special Appeals held that the specific language employed by the

testatrix, in the absence of any other evidence of contrary intent, indicated that the testatrix intended the predeceased residuary legatees' shares to pass to the named residuary legatees who outlived the testatrix, to the exclusion of the heirs at law of the predeceased named legatees.

The facts of Saia v. Sain, supra, are clearly inapposite to the facts of the instant case. In Saia, the will at issue provided only for a residuary bequest to the survivors of certain named legatees; by contrast, in the instant case, the will at issue first sets forth the names of certain legatees, and then provides that the share of any such named legatee who predeceased the testatrix shall go to the survivors of that legatee, with no indication that testatrix intended such residuary shares to pass to the survivors of the group of named legatees rather than to the intestate survivors of the individual legatees. Moreover, in the Saia case, the will at issue contained no other language which might indicate that the testatrix had intended the shares of predeceased legatees to pass to the heirs at law of those predeceased legatees. By contrast, in the instant case the language of Item VI of testatrix's will clearly indicates that testatrix contemplated that if any named residuary legatee were to predecease her, such named legatee's share should pass, under the laws of descent and distribution, to such legatee's heir at law, as a "distributee" under testatrix's will.

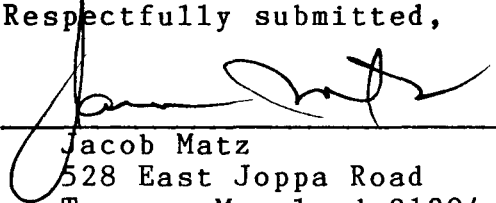
Finally, all of the cases cited by the Maryland Court of Special Appeals in its decision in Saia v. Sain, supra, are easily distinguishable from the facts of the instant case, and so provide no further support for the proposition that the instant residuary legacy should pass solely to the named residuary legatee who outlived the testatrix, to the exclusion of the heirs at law of the predeceased legatees. For instance, in Ross v. Safe Deposit & Trust Co., supra, the dispositive clause of the will at issue provided for a gift over to "survivors" of certain named beneficiaries, but only if those named beneficiaries were to die without issue. Clearly, the testamentary provision regarding death without issue militated towards the finding that the will in that case should not be construed as passing property to heirs at law, where the will elsewhere provided for the passing of property to heirs at law of the beneficiaries in question, so long as such heirs at law were also issue of the beneficiaries; in such a situation, it was evidently not difficult for the court to determine that the testator fully intended to provide for certain heirs at law, as long as such heirs at law were also issue, but, conversely, that testator clearly did not intend to provide for heirs at law who were not issue, which would have been the result had the court ruled that "survivors" in that case included heirs. The same situation obtained in Croft v. McKie, supra, where, as in Ross v. Safe Deposit & Trust Co., supra, the will at issue provided for a

bequest to "survivors" of certain beneficiaries, but only if those beneficiaries should die without issue. Under those circumstances, the appellate court held that the term "survivors" did not include heirs at law of the named beneficiaries. In Holt v. Miller, supra, the appellate court construed the term "survivor" not to include heirs at law of the named beneficiaries; yet, in that case, the term "survivor" was used to designate a measuring of the life of an intervening estate prior to distribution of the remainder interest, rather than to designate any substantive beneficial interest under the will. In In re Estate of Carlson, supra, the court reached its conclusion that the term "survivors" did not include heirs at law of the named beneficiaries, largely because elsewhere in the will at issue the testator had made specific bequests of \$1,000 apiece to each of the three named beneficiaries, without making any bequests or reference to the issue, children, or heirs of those three persons, and the court held that this factor alone was strong enough indication of the testator's intent not to provide for such others to warrant the court's finding that the term "survivors" did not include heirs at law in that case.

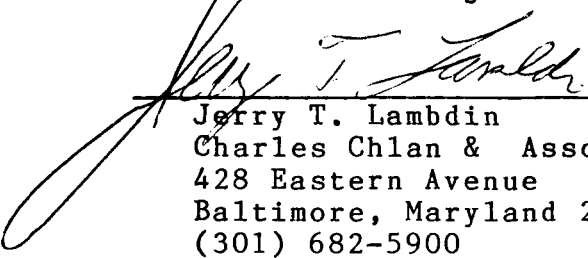
As the foregoing clearly indicates, the will here at issue clearly passes an interest in testatrix's residuary estate to the heirs at law of the named residuary legatees who predeceased testatrix, as manifested by the dispositive clause itself, and the other provisions of the will which clearly indicate that

testatrix anticipated that the heirs at law of the residuary legatees, as "distributees," would take a share of the residuary estate in the event that the residuary legatees predeceased the testatrix. Furthermore, as the above review indicates, the cases which might superficially indicate a contrary result are, upon close inspection, factually quite distinct from the instant case. Accordingly, based upon a construction of the will as a whole, in light of the above authorities, it would appear that the heirs at law of the residuary legatees who predeceased the testatrix are entitled to share in the residuary estate with the named residuary legatees who are still living.

Respectfully submitted,



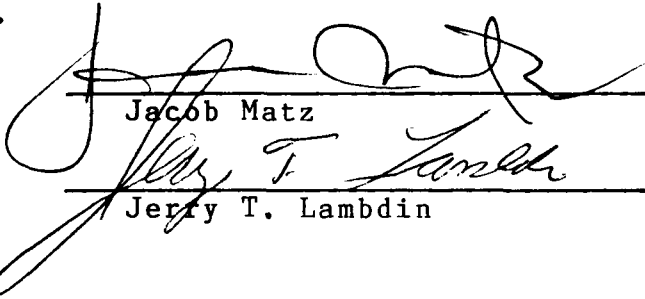
Jacob Matz
528 East Joppa Road
Towson, Maryland 21204
(301) 823-5805
Attorney for Respondent
Mitchell J. Pijanowski



Jerry T. Lambdin
Charles Chlan & Associates
428 Eastern Avenue
Baltimore, Maryland 21221
(301) 682-5900
Attorney for Respondent,
Antoinette V. Litwinski

CERTIFICATE OF SERVICE

We hereby certify that on July, 9, 1990, a copy of the foregoing Joint Memorandum was mailed, postage prepaid, to Nelson A. Winter, Esquire, 7814 Ruxway Road, Towson, Maryland 21204, Attorney for the Estate, and to James D. Stone, Esquire, and Robert R. Bowie, Jr., Esquire, 29 W. Susquehanna Avenue, Suite 600, Towson, Maryland 21204, attorneys for Respondents, Audrey A. Boenning and Dorothy M. Bechtel.



Jacob Matz



Jerry T. Lambdin

2/3/90

STEPHEN C. WINTER AND ASSOCIATES
ATTORNEYS AT LAW
606 BOSLEY AVENUE
TOWSON, MARYLAND 21204
301-321-6222
Telecopier FAX (301) 339-7742

STEPHEN C. WINTER
CHRISTOPHER M. MAY, JR.

NELSON S. WINTER
COUNSEL

June 15, 1990

FILED

JUN 19 1990

CIRCUIT COURT FOR
BALTIMORE CITY.

Mr. Robert J. Ignatowski
Assignment Commissioner
Circuit Court for Baltimore City
Clarence M. Mitchell Jr. Courthouse
100 North Calvert Street
Room 219
Baltimore, Maryland 21202

Re: Nelson S. Winter etc., v. Mitchell J. Pijanowski,
et al.
Case No.: 90081076CE110893

Dear Mr. Ignatowski:

Answers have been filed to my Bill of Complaint and we are now ready to set a date for a hearing on the merits of the case. Will you please put this case on the trial docket. If possible all counsel would prefer a hearing on Thursday, July 19, 1990.

Please let me hear from you as soon as possible.

Thanking you.

Sincerely,


Nelson S. Winter

NSW:slb

cc: James D. Stone, Esquire
29 W. Susquehanna Avenue
6th Floor
Towson, MD 21204

Jacob Matz, Esquire
528 E. Joppa Road
Towson, MD 21204

Jerome T. Lambdin, Esquire
426 Eastern Avenue
Essex, MD 21224

FILED

JUN 6 1990

CIRCUIT COURT FOR
BALTIMORE CITY.

5

NELSON S. WINTER,
Personal Representative of the
Estate of ANNA A. SCHOENHALS,
Deceased, Late of Baltimore City

Petitioner

vs.

MITCHELL PIJANOWSKI, et al

Respondents

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* IN EQUITY
* Case No: 90081076
* CE 110893

JOINT ANSWER TO BILL OF COMPLAINT
FOR CONSTRUCTION

Respondents, Audrey A. Boening and Dorothy M. Bechtel,
by their counsel James D. Stone and Hill, Johnson, Foley, Stone
and Miles, answers Petitioner's Bill of Complaint for
Construction as follows:

1. Respondents admit Paragraphs 1-10 and 12-15.
2. Respondents deny Paragraph 11.



James D. Stone.
Hill, Johnson, Foley Stone & Miles
29 W. Susquehanna Avenue
Suite 600
Towson, Maryland 21204
(301) 828-1050



Robert R. Bowie, Jr.
Law Offices of Robert R. Bowie, Jr.
29 W. Susquehanna Avenue
Suite 600
Towson, Maryland 21204
(301) 583-2400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 31st day of June, 1990 that a copy of the foregoing Joint Answer to Bill of Complaint for Construction was mailed to Jacob Matz, Esquire, 528 E. Joppa Road, Towson, Maryland 21204, Attorney for Mitchell Pijanowski; Nelson S. Winter, Esquire, 606 Bosley Avenue, Towson, Maryland 21204, Attorney for Estate; and Jerome T. Lambdin, Esquire, 426 Eastern Avenue, Essex, Maryland 21228, Attorney for Antoinette V. Litwinski.

James D. Stone

James D. Stone
Attorney for Respondents,
Audrey Boening and Dorothy Bechtel

LAW OFFICES
JACOB MATZ, P.A.
528 EAST JOPPA ROAD
TOWSON, MARYLAND 21204

(301) 823-5805

FILED

MAY 20 1990
CIRCUIT COURT FOR
BALTIMORE CITY

Clerk's Office
Circuit Court For Baltimore City
111 North Calvert Street
Baltimore, Maryland 21202

Re: Case No.: 90081076/CE110893
Nelson S. Winter, Pers. Rep., etc. vs. Pijanowski, et al.

Dear Mr. Clerk:

Enclosed for filing in the above captioned case is the Joint Answer To Bill of Complaint For Construction on behalf of Mitchell J. Pijanowski and Antoinette V. Litwinski.

Copies of this pleading have this date been sent to Mr. Winter and Mr. Stone.

Thank you for your cooperation.

Sincerely,


Jacob Matz

JM:je

Encls.

cc: Nelson S. Winter, Esquire
James D. Stone, Esquire
Jerry T. Lambdin, Esquire

NELSON S. WINTER
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED,
LATE OF BALTIMORE CITY

Petitioner

v.

MITCHELL J. PIJANOWSKI

and

ANTOINETTE V. LITWINSKI

and

AUDREY A. BOENNING

and

DOROTHY E. RECHTEL

Respondents

* * * * *

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
IN EQUITY
Case: 90081076
CE110893

FILED
NOV 29 1990
CIRCUIT COURT FOR
BALTIMORE CITY

JOINT ANSWER TO BILL OF COMPLAINT FOR CONSTRUCTION

Mitchell J. Pijanowski and Antoinette V. Litwinski, by Jacob Matz, Jerry T. Lambdin and Charles M. Brian their attorneys, for Answer to the Bill of Complaint For Construction states as follows:

1. That the Respondents admit the allegations contained in paragraphs numbered 1, 2, 3, and 4.
2. That the Respondents lack sufficient knowledge or facts to admit or deny the allegations contained in paragraph number 5.
3. That the Respondents admit the allegations contained in paragraph numbers 6, 7, and 8.
4. That the Respondents, in answer to paragraph number 9,

admit that the decedent's residuary estate became distributable under and as directed by both Items III and VI of her Last Will and Testament, dated June 7, 1960.

5. That the Respondents admit the allegations contained in paragraphs numbered 10 and 11.

6. Answering paragraph number 12, the Respondents deny that Audrey A. Boenning and Dorothy . Bechtel, notwithstanding their claims, are entitled to the entire residuary estate, but aver that upon the reading of the entire will of Anna A. Schoenhals, along with Item VI of said will, that the entire residuary estate should be distributed equally, share and share alike, to:

Audrey A. Boenning, stepdaughter

Dorothy M. Bechtel, stepdaughter

Mitchell J Pijanowski, son of the late Gertrude Pijanowski, and

Antoinette V. Litwinski, wife of the late Edward Litwinski.

Under the terms of Item VI of her will, the testatrix provided as follows:

ITEM VI

All of the directions of any sort or kind of this, my Last Will and Testament, contained for the payment of any sum or sums of money or the transfer of property, real, personal or mixed, shall be taken or made upon the expressed condition, in each and every instance, that such beneficiary, legatee or distributee shall take such sum or sums of money or property, real, personal or mixed, to which he or she may be entitled, the same to be paid or transferred directly to him or her, and also that the said beneficiary, legatee or distributee so taking shall be held by my Executor and his successors and assigns, free, clear and discharged of any and all debts, liens or judgments now standing or later recovered against him or her, and free and clear from any assignments or transfers of his or her interests, in this, my Last Will and Testament, levies, judgments, executions, attachments and

sequestrations, and free and clear from any and all other processes of every kind, nature or description that may be instituted against such beneficiary, legatee or distributee named in this, my Last Will and Testament.

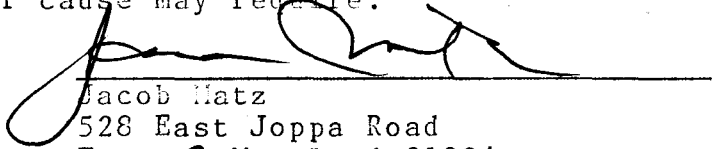
7. That the Respondents admit the allegations contained in paragraph numbers 13, 14, and 15.

WHEREFORE, your Respondents pray the following relief.

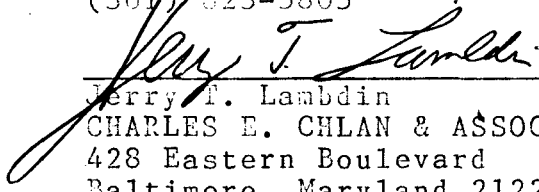
A. That this Honorable Court interpret the Last Will and Testament of Anna A. Schoenhals, and, in particular, Items III and VI of said will, to determine the proper distribution under said provisions.

B. That the Respondents Antoinette V. Litwinski and Mitchell J. Pijanowski be, and they are entitled to share in the residuary estate on an equal basis, as they are survivors of two of the named legatees, and as distributees, and survivors, would take a share of the Residuary Estate in the event the Residuary Legatees predeceased the Testatrix.

C. That your Respondents may have such other and further relief as the nature of their cause may require.



Jacob Matz
528 East Joppa Road
Towson, Maryland 21204
(301) 823-5805




Jerry F. Lambdin
CHARLES E. CHLAN & ASSOCIATES
428 Eastern Boulevard
Baltimore, Maryland 21221
(301) 682-5900

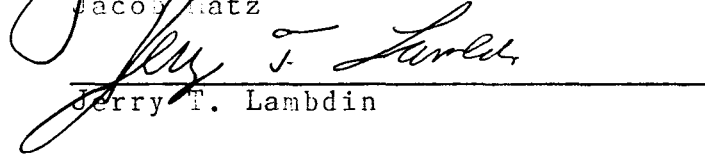
Attorneys for Respondents, Mitchell
J. Pijanowski and Antoinette V.
Litwinski.

CERTIFICATE OF MAILING

I HEREBY certify that on this 29th day of May, 1990, a copy of the foregoing Joint Answer to Bill of Complaint for Construction was mailed postage prepaid to Nelson A. Winter, Esquire, 606 Bosley Avenue, Towson, Maryland 21204, and James D. Stone, Esquire 29 W. Susquehanna Avenue, Towson, Maryland 21204.



Jacob Matz



Jerry T. Lambdin

FILED

APR 27 1990

CIRCUIT COURT FOR
BALTIMORE CITY

3

NELSON S. WINTER, *
PERSONAL REPRESENTATIVE OF *
THE ESTATE OF *
ANNA A. SCHOENHALS, DECEASED, *
LATE OF BALTIMORE CITY *
606 Bosley Avenue *
Towson, Maryland 21204 *

Petitioner *

v. *

MITCHELL J. PIJANOWSKI *
c/o Jacob Matz, Esquire *
528 East Joppa Road *
Towson, Maryland 21204 *

and *

ANTOINETTE V. LITWINSKI *
c/o Jerome T. Lambdin, Esquire* *
426 Eastern Avenue *
Essex, Maryland 21221 *

and *

AUDREY A. BOENNING *
c/o James D. Stone, Esquire *
29 W. Susquehanna Avenue *
6th Floor *
Towson, Maryland 21204 *

and *

DOROTHY M. BECHTEL *
c/o James D. Stone, Esquire *
29 W. Susquehanna Avenue *
6th Floor *
Towson, Maryland 21204 *

Respondents *

* * * * *

STIPULATION OF FACTS

1. Anna A. Schoenhals, of Baltimore City died 8/18/89. Her Last Will & Testament dated June 7, 1960 and First Codicil thereto dated November 24, 1979, were duly admitted to probate in the Orphans' Court of Baltimore City.

V

2. By Item 1 of the First Codicil to decedent's Will, Nelson S. Winter, Petitioner, in this case was named Personal Representative. Mitchell J. Pijanowski, Antoinette V. Litwinski, Audrey A. Boenning & Dorothy M. Bechtel are the Respondents.

3. By Item II of the decedent's Will, she gave her residuary estate to her husband, Walter Schoenhals, (who died 10/11/69) if he survived her.

4. That Item III of the Will provides as follows:

In the event my said husband, WALTER SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A. BOENNING of Hyattsville, Maryland, who is a daughter of my husband; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland, who is a daughter of my husband; MRS. GERTRUDE PIJANOWSKI of Baltimore, Maryland, died 9/12/80, who is my sister; and EDWARD LITWINSKI of White Marsh, Maryland, died 9/22/82, who is my brother; in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees.

5. That Walter Schoenhals, having predeceased, his wife, Anna A. Schoenhals, the provisions of Item III of the Will became effective and the decedent's residuary estate became distributable to the following in equal shares:

Audrey A. Boenning, stepdaughter
Dorothy M. Bechtel, stepdaughter (incorrectly called
Dorothy M. Burrit in the Bill of Complaint).
Gertrude Pijanowski, sister
Edward Litwinski, brother

6. Gertrude Pijanowski died 9/12/80, her husband, Mitchell Pijanowski, have predeceased her on 10/11/53. She had a son, Mitchell J. Pijanowski, who is living and one of the Respondents. He is claiming as a survivor of his mother, the share she would have received if living.

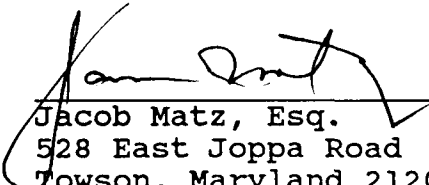
7. Edward Litwinski, died 9/22/82, having had no children, but survived by his wife, Antoinette V. Litwinski. She is claiming as a survivor of her husband, the share he would have received if living.

8. The only question before this court is the interpretation of Item III of the decedent's Will.

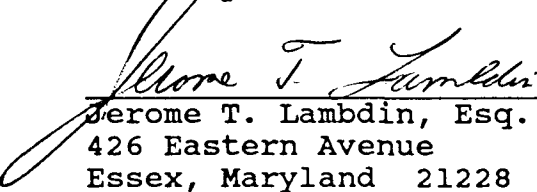
(a) If the Court finds that the decedent intended that the four (4) named legatees in Item III of the Will were a class of persons closed by the Will, then the surviving members of that class, namely Audrey A. Boenning and Dorothy M. Bechtel, are entitled to take the decedent's residuary estate in equal shares, or

(b) If the Court finds that the distribution of the residuary estate should be made to the four named legatees or their respective survivors then the residuary estate should be distributed in equal shares to the following:

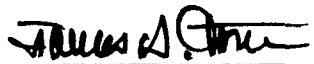
Audrey A. Boenning
Dorothy M. Bechtel
Mitchell J. Pijanowski
Antoinette V. Litwinski



Jacob Matz, Esq.
528 East Joppa Road
Towson, Maryland 21204
Attorney for Mitchell J. Pijanowski



Jerome T. Lambdin, Esq.
426 Eastern Avenue
Essex, Maryland 21228
Attorney for Antoinette v. Litwinski



James D. Stone, Esq.
29 W. Susquehanna Ave., 6th Fl.
Towson, Maryland 21204
Attorney for Audrey A. Boenning and
Dorothy M. Bechtel

Nelson S. Winter
Nelson S. Winter
606 Bosley Avenue
Towson, Maryland 21204
Telephone: (301) 321-6222
Personal Representative of
Estate of Anna A. Schoenhals
and Petitioner

~~825 4133~~
825 4133

D:NSW\Schoen.STP
slb/der/clr
3/29/90 (3)

FILED
APR 20 1990
CIRCUIT COURT FOR
BALTIMORE CITY

2

NELSON S. WINTER,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED,
LATE OF BALTIMORE CITY
606 Bosley Avenue
Towson, Maryland 21204

Petitioner

v.

MITCHELL J. PIJANOWSKI
c/o Jacob Matz, Esquire
528 East Joppa Road
Towson, Maryland 21204

and

ANTOINETTE V. LITWINSKI
c/o Jerome T. Lambdin, Esquire*
426 Eastern Avenue
Essex, Maryland 21221

and

AUDREY A. BOENNING
c/o James D. Stone, Esquire
29 W. Susquehanna Avenue
6th Floor
Towson, Maryland 21204

and

DOROTHY M. BECHTEL
c/o James D. Stone, Esquire
29 W. Susquehanna Avenue
6th Floor
Towson, Maryland 21204

Respondents

* * * * *

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
IN EQUITY
Docket:

Folio:
Case: 90081076CE110893

AFFIDAVIT OF SERVICE

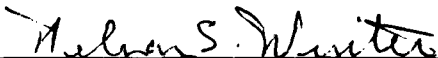
I hereby certify under the penalties of perjury that on March 22, 1990, I did forward by certified mail, return receipt requested, to the Respondents in care of their respective counsel a copy of the Bill of Complaint for Construction filed in this case.

United States Post Office, return receipts are attached hereto signed by the following counsel for the Respondents:

Jacob Matz, Esq.
528 East Joppa Road
Towson, Maryland 21204
Counsel for Mitchell J. Pijanowski
Service made on March 26, 1990

Jerome T. Lambdin, Esq.
426 Eastern Avenue
Essex, Maryland 21221
Counsel for Antoinette V. Litwinski
Service made on March 26, 1990

James D. Stone, Esq.
29 W. Susquehanna Avenue, 6th Floor
Towson, Maryland 21204
Counsel for Audrey A. Boenning and Dorothy M. Bechtel
Service made on March 27, 1990



Nelson S. Winter
Counsel and Personal Representative
of Estate of Anna A. Schoenhals

NSW/clr
C2:SCHOEN.AFF
4/17/90 (1)

**UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS**

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

**RETURN
TO**



Print Sender's name, address, and ZIP Code in the space below.

Stephen C Winter

1006 Bosley Avenue, St C

TOWSON, MD 21284

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to:

Jerome T. Lambdin ESQ
426 Eastern Avenue
Essex, MD 21221

4. Article Number

P 071 328 522

Type of Service:

- Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee

X

6. Signature - Agent

X

7. Date of Delivery

3/26/90

8. Addressee's Address (*ONLY if requested and fee paid*)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE
USE, \$300

RETURN TO 

Print Sender's name, address, and ZIP Code in the space below.

STEPHEN C. WILSON ASSOCIATES
606 BOSLEY AVENUE
TOWSON, MARYLAND 21204
(301) 321-6222

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to:

James D Stone, Esq.

29 W. Susquehanna Ave
6th Floor

TOWSON, MD 21204

4. Article Number

P 671 388 523

Type of Service:

- Registered
 Certified
 Express Mail

- Insured
 COD

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee

X

6. Signature - Agent

X

Wm. Minster OMS

7. Date of Delivery

MAR 27 1990

8. Addressee's Address (ONLY if requested and fee paid)

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE. \$300

RETURN
TO



Print Sender's name, address, and ZIP Code in the space below.

Stephen C. Winter

606 Baskey Ave. Suite C

TOWSON MD 21204

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to:

Jacob Matz Esq.
528 E. Tappa Rd
TOWSON, MD 21204

4. Article Number

5 671 388 524

Type of Service:

- Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee

X J. M. Zyzanski

6. Signature - Agent

X C.S.

7. Date of Delivery

3/26/90

8. Addressee's Address (*ONLY if requested and fee paid*)

Circuit Court for Baltimore City
Saundra E. Banks, Clerk
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

WRIT OF SUMMONS

Case Number 90081076CE110893

STATE OF MARYLAND,

~~CITY OF BALTIMORE TO WIT:~~

Certified Mail

TO Mitchell J. Pijanowski
c/o Jacob Matz, Esq.
528 E. Joppa Rd.
Towson, Md. 21204

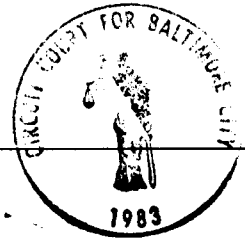
You are hereby summoned to file a written response by pleading or motion in this Court to the attached
Complaint filed by Nelson S. Winter, etc. 606 Bosley Avenue
(Name & Address)
Towson Md. 21204

within 30 days after service of this summons upon you.

WITNESS the Honorable Chief Judge of the Eighth Judicial Circuit of Maryland.

Date Issued 03/23/90

Saundra E. Banks
CLERK Clerk
Circuit Court for Balto. City



TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF'S RETURN

Person Served _____	Time _____	Date _____
Person Served _____	Time _____	Date _____
Non Est (Reason) _____		
Fee \$ _____	Sheriff _____	

NOTE:

1. This summons is effective for service only if served within 60 days after the date it is issued
2. Proof of service shall set out the name of the person served, date and the particular place and manner of service. If service is not made, please state the reasons.
3. Return of served or unserved process shall be made promptly and in accordance with Rule 2-126.
4. If this summons is served by private process, Process server shall file a separate affidavit as required by Rule 2-126 (a).

JP

Circuit Court for Baltimore City
Saundra E. Banks, Clerk
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

WRIT OF SUMMONS

Case Number 90081076CF110893

STATE OF MARYLAND,

~~CITY OF BALTIMORE TO WIT:~~

Certified Mail

TO: Antoinette V. Litwinski
c/o Jerome T. Lambdin, Esq.
426 Eastern Avenue
Essex Md. 21221

You are hereby summoned to file a written response by pleading or motion in this Court to the attached
Complaint filed by Nelson S. Winter etc. 606 Bosley Avenue
(Name & Address)
Towson Md. 21204

within 30 days after service of this summons upon you.

WITNESS the Honorable Chief Judge of the Eighth Judicial Circuit of Maryland.

Date Issued 03/23/90

Saundra E. Banks
CLERK



TO THE PERSON SUMMONED:

Clerk

Circuit Court for Balto. City

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95

Circuit Court for Baltimore City
Saundra E. Banks, Clerk
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

WRIT OF SUMMONS

Case Number 90081076CF110893

STATE OF MARYLAND,

~~CITY OF BALTIMORE TO WIT~~

Certified Mail

TO: Audrey A. Boenning
c/o James D. Stone, Esq.
29 W. Susquehana Ave. 6th fl.
Towson Md. 21204

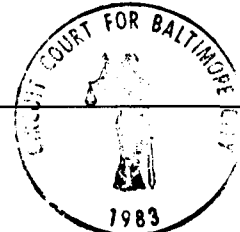
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Complaint filed by Nelson S. Winter etc. 606 Bosley Avenue
(Name & Address)
Towson Md. 21204

within 30 days after service of this summons upon you.

WITNESS the Honorable Chief Judge of the Eighth Judicial Circuit of Maryland.

Date Issued 03/23/90

Saundra E. Banks
CLERK



TO THE PERSON SUMMONED:

Clerk
Circuit Court for Balto. City

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

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Non Est (Reason) _____		
Fee \$ _____	Sheriff _____	

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Q5

Circuit Court for Baltimore City
Saundra E. Banks, Clerk
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

WRIT OF SUMMONS

Case Number 90081076CE110893

STATE OF MARYLAND,

~~CITY OF BALTIMORE TO WIT:~~

Certified Mail

TO: Dorothy M. Bechtel
c/o James D. Stone, Esq.
29 W. Susquehana Avenue 6th Fl.
Towson, Md. 21204

You are hereby summoned to file a written response by pleading or motion in this Court to the attached

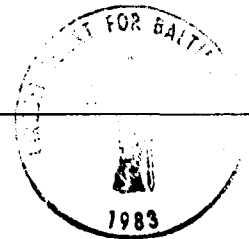
Complaint filed by Nelson S. Winter etc. 606 Bosley Avenue
(Name & Address)
Baltimore Md. 21204

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WITNESS the Honorable Chief Judge of the Eighth Judicial Circuit of Maryland.

Date Issued 03/23/90

Saundra E. Banks
CLERK



TO THE PERSON SUMMONED:

Clerk
Circuit Court for Balto. City

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
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SHERIFF'S RETURN

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25

90081076

CE110893

FILED

MAR 22 1990 IN THE

NELSON S. WINTER,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF
ANNA A. SCHOENHALS, DECEASED
LATE OF BALTIMORE CITY
606 Bosley Avenue
Towson, Maryland 21204

CIRCUIT COURT FOR
BALTIMORE CITY

* FOR
* BALTIMORE CITY

Petitioner * IN EQUITY

v. * Docket:

MITCHELL J. PIJANOWSKI
c/o Jacob Matz, Esquire
528 East Joppa Road
Towson, Maryland 21204

* Folio:

* Case:

and

ANTOINETTE V. LITWINSKI
c/o Jerome T. Lambdin, Esquire
426 Eastern Avenue
Essex, Maryland 21221

*

*

*

and

AUDREY A. BOENNING
c/o James D. Stone, Esquire
29 W. Susquehanna Avenue
6th Floor
Towson, Maryland 21204

*

*

*

and

DOROTHY M. BECHTEL
c/o James D. Stone, Esquire
29 W. Susquehanna Avenue
6th Floor
Towson, Maryland 21204

*

*

*

Respondents

* * * * *

BILL OF COMPLAINT FOR CONSTRUCTION

Petitioner, Nelson S. Winter, Esquire, Personal Representative
of and Attorney for the Estate of Anna A. Schoenhals, petitions

9:17AM03/23/90 002#2431 A ***
#0900810
#0000076
CIVIL \$80.00
LIBRA \$10.00
**TTL \$90.00
CHECK \$90.00
CHNG \$0.00

all
R.M.

USA

this Honorable Court for a construction of the Last Will and Testament of the decedent, Anna A. Schoenhals, saying:

1. That Anna A. Schoenhals, late of Baltimore City, died on August 18, 1989.

2. That subsequent to the death of the said Anna A. Schoenhals, your Petitioner offered for probate with the Orphans' Court of Baltimore City, a Last Will and Testament of said decedent, dated June 7, 1960, Anna A. Schoenhals, and a First Codicil thereto dated November 24, 1979. Copies of said documents are attached hereto and incorporated herein by reference.

3. That the said First Codicil to the said Last Will and Testament named your Petitioner as Personal Representative.

4. That Letters of Administration were granted to your Petitioner by the Register of Wills for Baltimore City in administrative probate, under Estate Number A30661.

5. That after the sale of assets and payment of expenses, the estate consists of interest-bearing checking and money market accounts of approximately \$50,000.

6. That the aforesaid Will and First Codicil dated June 7, 1960 and November 24, 1979, respectively, are presently in the estate file maintained by the Register of Wills for Baltimore City in Estate Number A30661.

7. That the decedent by Item II of her said will dated June 7, 1960, gave her residuary estate to her husband, Walter Schoenhals, who died on October 11, 1969, if he survived her.

8. That Item III of the Will provided that, if Walter

Schoenhals predeceased her (Anna A. Schoenhals) all the rest, residue and remainder of her property and estate would be distributed to four named legatees, in equal shares. In the event that one or more of the said legatees predeceased Anna A. Schoenhals, then such share or shares "shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees."

That for clarification the provisions of Item II and III of the decedent's will read as follows:

ITEM II.

"After the payment of all my legal debts, funeral and burial expenses and the costs of procuring and erecting a suitable marker at my grave as aforesaid and the costs of the administration of my estate, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to my husband, WALTER SCHOENHALS, if he is living at the time of my death.

ITEM III.

In the event my said husband, WALTER SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A BOENNING of Hyattsville, Maryland, who is a daughter of my husband; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland, who is a daughter of my husband; MRS. GERTRUDE PIANOWSKI of Baltimore, Maryland, who is my sister; and EDWARD LITWINSKI of White Marsh, Maryland, who is my brother;

in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees."

9. That the said Walter Schoenhals, having predeceased his wife, Anna A. Schoenhals, on October 11, 1969, the decedent's residuary estate became distributable as directed by Item III of her Last Will and Testament, dated June 7, 1960.

10. That the persons named to take the residuary estate by Item III of the will and their relationship to the testatrix are as follows:

Audrey A. Boenning, stepdaughter
Dorothy M. Burrit, stepdaughter
Gertrude Pijanowski, sister
(spelled in will "Pianowski")
Edward Litwinski, brother

Gertrude Pijanowski died September 12, 1980, her husband Mitchell Pijanowski, having predeceased her on October 11, 1953. She had one child, a son, Mitchell J. Pijanowski, who is living and one of the named Respondents.

Edward Litwinski died September 22, 1982, having had no children, but survived by his wife, Antoinette V. Litwinski, one of the named Respondents.

Audrey A. Boenning and Dorothy M. Bechtel are living and are named as Respondents.

11. That Respondents, Mitchell J. Pijanowski and Antoinette V. Litwinski, have informed your Petitioner that they believe they

are entitled to the shares of the residuary estate of Anna A. Schoenhals which were bequeathed to Gertrude Pijanowski and Edward Litwinski by Item III of the Last Will and Testament of Anna A. Schoenhals.

12. That Respondents Audrey A. Boenning and Dorothy M. Bechtel claim that because of the deaths of Gertrude Pijanowski and Edward Litwinski they are the sole surviving legatees named in the will and are therefore entitled to the entire residuary estate.

13. That it is not possible to properly administer and close the estate of Anna A. Schoenhals, deceased, until such time as the resolution of the issue of the proper distribution under Item III of the Last Will and Testament is resolved.

14. That all of the Respondents are represented by counsel and have authorized that service of process be made on their counsel.

15. That your Petitioner files herewith copies of the death certificates of:

Walter S. Schoenhals, 10/11/69 (DOD)

Gertrude Pijanowski, 9/12/80 (DOD)

Edward Litwinski, 9/22/82 (DOD)

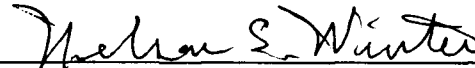
which he prays be made a part hereof.

WHEREFORE, your Petitioner prays the following relief:

A. That this Honorable Court interpret the Last Will and Testament of Anna A. Schoenhals, and, in particular, Item III of said will, to determine the proper distribution under said provision.

B. That your Petitioner may have such other and further relief as the nature of his cause may require.


AND AS IN DUTY BOUND, ETC.



NELSON S. WINTER
Personal Representative of the
Estate of Anna A. Schoenhals
606 Bosley Avenue
Towson, Maryland 21204

ATTESTATION

THE UNDERSIGNED, Nelson S. Winter, does hereby solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Bill of Complaint for Construction are true and correct to the best of his knowledge, information and belief.


Nelson S. Winter

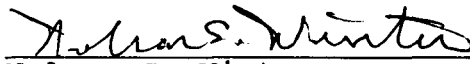
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 1990, a copy of the foregoing Bill for Construction was sent by certified mail, return receipt requested, to:

Jacob Matz, Esq.
Attorney for Mitchell J. Pijanowski
528 East Joppa Road
Towson, Maryland 21204

Jerome T. Lambdin, Esq.
Attorney for Antoinette v. Litwinski
426 Eastern Avenue
Essex, Maryland 21228

James D. Stone, Esq.
Attorney for Audrey A. Boening and Dorothy M. Bechtel
29 W. Susquehanna Ave., 6th Fl.
Towson, Maryland 21204



Nelson S. Winter
606 Bosley Avenue
Towson, Maryland 21204
Telephone: (301) 321-6222

CMM/NSW:clr
L2/Shoenhals.boc

LAST WILL AND TESTAMENT

OF

ANNA A. SCHOENHALS

- - - - -

I, ANNA A. SCHOENHALS, of the City of Baltimore, State of Maryland, being of lawful age and of sound and disposing mind, memory and understanding, do hereby make, publish and declare this to be my Last Will and Testament, and do hereby revoke any and all wills and codicils thereto heretofore made by me.

ITEM I.

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I hereby authorize, empower and direct the Executor of my estate hereinafter named, to pay all of my legal debts, funeral and burial expenses, the costs of procuring and erecting a suitable marker at my grave if none has been erected at the time of my death, and the costs of the administration of my estate out of the assets of my estate.

The total amount of money to be expended in connection with my funeral and burial and procuring and erecting a suitable marker at my grave as aforesaid shall be in the sole and absolute discretion of the Executor of my estate, and any and all costs and expenses incurred in connection with my funeral and burial and procuring and erecting a suitable marker at my grave as aforesaid shall be chargeable against and paid out of the assets of my estate without regard to any limitation or restriction imposed by law and it shall not be necessary for the Executor of my estate to secure any order, approval or ratification of the Orphans' Court of Baltimore

City or any other court, commission, board or other agency to do so regardless of the amount of such costs and expenses.

ITEM II.

After the payment of all my legal debts, funeral and burial expenses and the costs of procuring and erecting a suitable marker at my grave as aforesaid and the costs of the administration of my estate, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to my husband, WALTER SCHOENHALS, if he is living at the time of my death.

ITEM III.

In the event my said husband, WALTER SCHOENHALS, predeceases me, then, and in that event, I give, devise and bequeath, absolutely, all of the rest, residue and remainder of my property and estate of every kind, character and description, whether real, personal or mixed, and wheresoever the same may be situate, and whether in my possession or in expectancy, or to which I may be entitled at the time of my death, or to which I may have any right or power of testamentary appointment or disposition, to MRS. AUDREY A. BOENNING of Hyattsville, Maryland, who is a daughter of my husband; MRS. DOROTHY M. BECHTEL of Westport, Baltimore, Maryland,

who is a daughter of my husband; MRS. GERTRUDE PIANOWSKI of Baltimore, Maryland, who is my sister; and EDWARD LITWINSKI of White Marsh, Maryland, who is my brother; in equal shares. In the event that any one or more of the foregoing legatees predeceases me, then, and in that event, the share or shares which any one or more of the aforesaid legatees who predeceases me would be entitled to receive under the provisions of this paragraph of this written instrument, if she, he or they were living, shall be distributed in equal shares to the survivor or survivors of the aforesaid legatees.

ITEM IV.

Any and all property of every kind, character and description, whether real, personal or mixed, which at the time of my death is owned by my said husband, WALTER SCHOENHALS, and me in our joint names, or which upon my death will pass to my said husband by operation of law or under which my said husband is a beneficiary, including, but not limited to, bank accounts, real estate or any interest therein, securities and life insurance policies, shall be the sole and separate property of my said husband, WALTER SCHOENHALS, and shall not be subject to any of the terms and provisions of this written instrument.

ITEM V.

During the period of administration and settlement of my estate, my Executor is hereby granted full power and authority to pay over to my said husband, WALTER SCHOENHALS, if he is living, out of the corpus of my estate or the income therefrom, such sum or sums of money from time to time as

my Executor may deem advisable or proper to provide for my said husband's proper and comfortable care, maintenance and support, but in each instance my Executor shall take into consideration all other sources of income and the financial resources of my said husband as the same may be known to my Executor and the standard of living to which my said husband has become accustomed.

ITEM VI.

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All of the directions of any sort or kind of this, my Last Will and Testament, contained for the payment of any sum or sums of money or the transfer of property, real, personal or mixed, shall be taken or made upon the expressed condition, in each and every instance, that such beneficiary, legatee or distributee shall take such sum or sums of money or property, real, personal or mixed, to which he or she may be entitled, the same to be paid or transferred directly to him or her, and also that the said beneficiary, legatee or distributee so taking shall be held by my Executor and his successors and assigns, free, clear and discharged of any and all debts, liens or judgments now standing or later recovered against him or her, and free and clear from any assignments or transfers of his or her interests, in this, my Last Will and Testament, levies, judgments, executions, attachments and sequestrations, and free and clear from any and all other processes of every kind, nature or description that may be instituted against such beneficiary, legatee or distributee named in this, my Last Will and Testament.

ITEM VII.

In order to facilitate the settlement of my estate, I hereby authorize and empower the Executor of my estate, in his sole and absolute discretion, without any application to, or any order of, the Orphans' Court of Baltimore City or any other court, board, commission or agency, so to do, and for such consideration as to my Executor shall seem proper, to sell, lease, grant, assign, convey, transfer, exchange, or in any other manner, conditionally or absolutely, to dispose of all or any part of my property, real, personal or mixed, and to make, execute, acknowledge and deliver proper deeds, conveyances and transfers therefor; and in the case of any such sale or other disposition, it shall not be necessary for the purchaser or any other person so dealing with my said Executor to see to the application of the purchase money or other consideration.

ITEM VIII.

The full amount of any and all estate, inheritance, succession and transfer taxes, and governmental charges of every kind, which may be lawfully assessed by, or be or become due and payable to, the United States of America or any state or political subdivision thereof or any other taxing authority, as a result or in consequence of my death, shall be paid by my Executor out of the assets of my estate, and such taxes and charges shall be paid by my Executor before he distributes my estate, and such payment shall be made without any right of reimbursement therefor whatsoever from any person, corporation or other legal entity.

ITEM IX.

All provisions made under this, my Last Will and Testament, for the benefit of my husband, WALTER SCHOENHALS, are contingent upon my said husband surviving me for a period of sixty (60) days; and in the event my said husband does not survive me for the said period of sixty (60) days, then the provisions of this, my Last Will and Testament, shall be applied and interpreted in the same manner as they would have been if my said husband had predeceased me.

ITEM X.

W H
I hereby nominate, constitute and appoint as the Executor of this, my Last Will and Testament, as herein set forth, WADE H. CRESWELL, of Baltimore, Maryland. In the event the said WADE H. CRESWELL predeceases me or for any other reason is not able or refuses to act as the Executor of my estate, I hereby nominate, constitute and appoint as the Executor of my estate, WILLIAM H. MARSHALL, ESQ., of the Baltimore Bar. In the event the said WILLIAM H. MARSHALL acts as the Executor of my estate, he is hereby authorized and empowered to fully and completely exercise any and all of the power and authority which I have vested in WADE H. CRESWELL as the Executor of this, my Last Will and Testament, under the terms and provisions of this written instrument. Inasmuch as I have absolute confidence in the integrity of both the said WADE H. CRESWELL and WILLIAM H. MARSHALL, it is my wish and I hereby direct that the one acting as the Executor of my estate be excused

from the necessity of giving bond except to the extent required by law.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal, this 7th day of June, in the year of Our Lord, nineteen hundred and sixty.

Anna A. Schoenhals (SEAL)
Anna A. Schoenhals

Signed, sealed, published and declared by ANNA A. SCHOENHALS, the above named Testatrix, as and for her last Will and Testament, in the presence of us, who, at her request, in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

Edith C. ... 3376 Ravenwood Ave
Grace Caswell 3326 Ravenwood Ave.
Wm. H. Marshall 717 Little Bldg. Bldg. 2 Md.

FIRST CODICIL
TO
LAST WILL AND TESTAMENT
OF
ANNA A. SCHOENHALS

I, ANNA A. SCHOENHALS, of the City of Baltimore, State of Maryland, being of sound and disposing mind, memory, and understanding, do make, publish, and declare this as and for a First Codicil to my Last Will and Testament dated June 7, 1960.

ITEM 1. I hereby revoke Item X of my said Will and substitute in lieu thereof the following;

I nominate, constitute, and appoint NELSON S. WINTER to be Personal Representative of my Estate.

If the said NELSON S. WINTER predeceases me or is unable or unwilling to act then I appoint his son, STEPHEN C. WINTER as my Personal Representative.

I direct my Personal Representative shall not be required to give a bond for the faithful performance of his duties.

In addition to the powers and authorities given fiduciaries by law, I authorize and empower my Personal Representative to sell any part of my Estate that he deems proper and to compromise any matter in favor of or against my Estate and his decision in respect thereto shall be final and binding upon all persons interested in my Estate.

ITEM 2. As herein modified, I hereby confirm and republish my said Last Will and Testament.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 24th day of November, 1979.

Anna Schoenhals (SEAL)
ANNA A. SCHOENHALS

SIGNED, SEALED, PUBLISHED, and DECLARED by the above named, ANNA A. SCHOENHALS, as and for a First Codicil to said Last Will and Testament dated June 7, 1960, in our presence, who, at her request, in her presence, and in the presence of each other, have hereinto subscribed our names as witnesses this 24th day of November, 1979.

Wade H. Criswell
Name

9509 Holiday Manor Road
Bethesda, Md. 21236

Address

Grace Criswell
Name

9509 Holiday Manor Road
Bethesda, Md. 21236

Address

VALID ONLY
WITH
IMPRESSED
SEAL

I HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF A
RECORD ON FILE IN THE DIVISION OF VITAL RECORDS.

DATE ISSUED:

AUG 29 1969

Julia Sander-Rondale
STATE REGISTRAR OF VITAL RECORDS

BALTIMORE CITY HEALTH DEPARTMENT
69 10103 CERTIFICATE OF DEATH REG. NO. 69 10103

BIRTH NO. _____ NAME OF DECEASED WALTER SCHOENHALS DATE AND HOUR OF DEATH 11 OCTOBER 1969 11:30 a.m.

PLACE IN BALTIMORE, MARYLAND, WHERE PRONOUNCED DEAD _____ FULL NAME OF HOSPITAL OR INSTITUTION UNIVERSITY OF MARYLAND HOSPITAL IF NOT IN HOSPITAL OR INSTITUTION, GIVE STREET ADDRESS OR LOCATION _____

USUAL RESIDENCE (Where deceased lived, if institution residence before admission) A. STATE MARYLAND B. COUNTY BALTIMORE CITY

C. CITY OR TOWN BALTIMORE D. INSIDE CITY LIMITS? YES NO

E. STREET AND NUMBER 3419 DUDLEY AVE. 21213

SEX MALE RACE WHITE MARRIED NEVER MARRIED WIDOWED DIVORCED DATE OF BIRTH 10-25-1894 AGE 74 Yrs. 74 Mo. 7 D. 4 Hrs. 4

10. USUAL OCCUPATION, SERVICE OR KIND OF WORK OR KIND OF BUSINESS OR INDUSTRY RETIRED Lithographer - Govt. 11. PLACE OF BIRTH (State or foreign country) MARYLAND 12. CITIZEN OF WHAT COUNTRY? U.S.A.

13. FATHER'S NAME GEORGE SCHOENHALS 14. MOTHER'S MAIDEN NAME ANNIE HURTT

15. Was Deceased Ever in U. S. Armed Forces? (Yes or no) _____ 16. SOCIAL SECURITY NO. 215-09-7989 17. MARRIAGE (Name of spouse) ANNIE (nee Litwinski) SCHOENHALS ADDRESS above

CAUSE OF DEATH ANNIE SCHOENHALS - WIFE

DISEASE OR CONDITION DIRECTLY LEADING TO DEATH MULTIPLE PULMONARY EMBOLI (IMMEDIATE CAUSE) DUE TO, OR AS A CONSEQUENCE OF: VENOUS THROMBOSIS

ANTICIPATED CAUSES: _____ DISEASES OR CONDITIONS, if any, giving rise to the above cause (A) stating the UNDERLYING CONDITION last: _____

OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO THE DEATH BUT NOT RELATED TO THE TERMINAL DISEASE OR CONDITION GIVEN IN PART I: _____

18A. DATE OF OPERATION _____ 18B. OPERATION FOR WHICH OPERATION WAS PERFORMED _____ 18C. AUTOPSY (Yes or No) NO 18D. IF YES, STATE REASONS CONSIDERED IN CHOOSING CAUSE OF DEATH: _____

19A. ACCIDENT WAS UNDERLYING? OR CONTRIBUTING CAUSE OF DEATH (Verify medical records) _____ 19B. PLACE OF INJURY (e.g., in or adjacent to home, farm, factory, street, office, etc.) _____

20A. TIME OF INJURY (Month, Day, Hour, Min) _____ 20B. INJURY OCCURRED _____ 20C. HOW DID INJURY OCCUR _____

21. I certify that (1) (He/she) attended the deceased from 10/8/69 to 10/11/69 and that (2) (He/she) last saw the deceased alive on 10/11/69 and that (3) (He/she) opinion death occurred on the date and hour and from the causes stated above. (1) (2) (3) (did not) view the body after death.

22A. SIGNATURE A. M. Doyle 22B. DATE SIGNED 10/11/69

23A. PHYSICIAN'S NAME (Typed) _____ 23B. ADDRESS _____

24A. BURIAL REMOVAL (Specify) Burial 24B. DATE 10/14/69 24C. NAME OF CEMETERY OR CREMATOR Loudon Park Cemetery 24D. LOCATION Baltimore, Md.

25A. DATE WHEN AT HEALTH DEPT. OCT 15 1969 25B. NAME OF REGISTRAR Julia Sander-Rondale 25C. FUNERAL DIRECTOR Schlunck Funeral Home, Inc. ADDRESS 3331 Orleans Lane

Decomposed prior to autopsy, written approval must be obtained before the remains are embalmed or final disposition.

VALID ONLY
WITH
IMPRESSED
SEAL

I HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF A
RECORD ON FILE IN THE DIVISION OF VITAL RECORDS.

DATE ISSUED: AUG 29 1989

Jeani Benson-Rondale
STATE REGISTRAR OF VITAL RECORDS

1 - STATE REGISTRAR		STATE OF MARYLAND		DEPARTMENT OF HEALTH AND MENTAL HYGIENE		8 0 2 3 0 5 5	
1. DECEASED NAME (TYPE OR PRINT)		FIRST MIDDLE LAST		2a. DATE OF DEATH MONTH DAY YEAR		2b. HOUR	
GERTRUDE M. PIJANOWSKI				09/12/80		6:09am	
3. SEX	4. RACE	5. DATE OF BIRTH MONTH DAY YEAR		6. AGE (IN YEARS LAST BIRTHDAY)		7. IF UNDER 1 YEAR IF UNDER 24 HRS. MONTH DAY HOUR MIN.	
FEMALE	WHITE	NOV. 19 1907		72 YRS.			
7a. BIRTHPLACE (STATE OR FOREIGN COUNTRY)	7b. CITIZEN OF WHAT COUNTRY?	8. MARRIED <input type="checkbox"/> NEVER MARRIED <input type="checkbox"/> WIDOWED <input checked="" type="checkbox"/> DIVORCED <input type="checkbox"/>		9. BALTIMORE CITY OR COUNTY OF DEATH			
MARYLAND	U.S.A.			BALTIMORE CITY MD.			
10. CITY OR TOWN OF DEATH	11. NAME OF HOSPITAL, NURSING HOME OR OTHER INSTITUTION (IF NOT IN SUCH FACILITY, GIVE STREET ADDRESS)		12a. USUAL OCCUPATION (TYPE OF WORK FOR MOST OF WORKING LIFE)		12b. KIND OF BUSINESS OR INDUSTRY		
BALTIMORE	JOHNS HOPKINS HOSPITAL		HOMEMAKER				
13a. USUAL RESIDENCE (IF NURSING HOME OR OTHER INSTITUTION, GIVE RESIDENCE BEFORE ADMISSION)	13b. COUNTY	13c. CITY OR TOWN	13d. INSIDE CITY LIMITS? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	13e. STREET ADDRESS			
MARYLAND		BALTIMORE	YES	234 S. MADEIRA ST.			
14. FATHER'S NAME FIRST MIDDLE LAST		15. MOTHER'S MAIDEN NAME FIRST MIDDLE LAST					
JOHN LITWINSKI		ANNA PISKOR					
16a. WAS DECEASED EVER IN U.S. ARMED FORCES? (YES NO OR UNKNOWN)		16b. SOCIAL SECURITY NO.		17. INFORMANT ADDRESS			
NO		216 34 0909		MITCHELL PIJANOWSKI			
18. CAUSE OF DEATH (Enter only one cause per line for 1a, 1b, and 1c)							APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH
PART 1. DEATH WAS CAUSED BY IMMEDIATE CAUSE (a) <i>cardiopulmonary arrest</i>							
410 - Conditions, if any, which gave rise to immediate cause (a), stating the underlying cause last							
DU TO, OR AS A CONSEQUENCE OF (b) <i>myocardial infarction</i>							
DU TO, OR AS A CONSEQUENCE OF (c)							
PART 2. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO THE TERMINAL DISEASE OR CONDITION GIVEN IN PART 1 a							
19a. DATE OF OPERATION		19b. CONDITION FOR WHICH OPERATION WAS PERFORMED		20a. AUTOPSY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		20b. IF YES, WERE FINDINGS USED IN CERTIFYING CAUSES OF DEATH? YES <input type="checkbox"/> NO <input type="checkbox"/>	
21a. ACCIDENT WAS UNDERLYING OR CONTRIBUTING CAUSE OF DEATH (IF EITHER NOTIFY MEDICAL EXAMINER)		21b. TIME OF INJURY HOUR A.M. MONTH DAY YEAR P.M. 19		21c. HOW INJURY OCCURRED (ENTER NATURE OF INJURY IN ITEM 18 PART 1 OR PART 2)			
21d. INJURY OCCURRED AT HOME <input type="checkbox"/> AT WORK <input type="checkbox"/>		21e. PLACE OF INJURY (AT HOME STREET FACTORY OFFICE FARM ETC.)		21f. LOCATION STREET CITY OR TOWN COUNTY STATE			
22a. I certify that (i) (this hospital) attended the deceased from <i>08 08</i> 19 <i>82</i> to <i>09 12</i> 19 <i>82</i> , that (ii) (we) last saw the deceased alive on <i>09 12</i> 19 <i>82</i> , and that in my (our) opinion death occurred on the date and hour and from the causes stated above. (If (we) (did) did not view the body after death							
22b. SIGNATURE <i>[Signature]</i>				DEGREE		22c. DATE SIGNED <i>9/12/82</i>	
				ATTENDING PHYSICIAN <input type="checkbox"/> MEDICAL DIRECTOR <input type="checkbox"/> STAFF PHYSICIAN <input checked="" type="checkbox"/>			
22d. PHYSICIAN'S NAME (TYPE OR PRINT) <i>Gelman</i>				22e. ADDRESS <i>Johns Hopkins Univ</i>			
23a. BURIAL, CREMATION, REMOVAL		23b. DATE		23c. NAME OF CEMETERY OR CREMATORY		23d. LOCATION	
BURIAL		9/17/1980		ST. STANISLAUS CEM.		BALTIMORE MD	
24. GENERAL DIRECTOR: RAYMOND L. KACZOROWSKI				25a. DATE REC'D. BY REGISTRAR: SEP 15 1980		25b. REGISTRAR'S SIGNATURE <i>[Signature]</i>	

VALID ONLY
WITH
IMPRESSED
SEAL

I HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF A
RECORD ON FILE IN THE DIVISION OF VITAL RECORDS.

DATE ISSUED:

AUG 29 1989

Laura Sanderson-Rondale
STATE REGISTRAR OF VITAL RECORDS

STATE OF MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE CERTIFICATE OF DEATH										
1 - FOR STATE REGISTRAR	REG. NO. 8 2 2 3 2 5 1									
1. DECEASED NAME (TYPE OR PRINT) FIRST MIDDLE LAST EDWARD J. LITWINSKI					2a. DATE OF DEATH MONTH DAY YEAR 09-22-82		2b. HOUR 9:20 PM			
3. SEX Male		4. RACE White		5. DATE OF BIRTH MONTH DAY YEAR July 13 1910		6. AGE (IN YEARS LAST BIRTHDAY) 72		7. MONTHS DAYS HOURS MIN.		
8. BIRTHPLACE (COUNTRY) Md.		7b. CITIZEN OF WHAT COUNTRY? USA		8. MARRIED <input type="checkbox"/> NEVER MARRIED <input type="checkbox"/> WIDOWED <input type="checkbox"/> DIVORCED <input type="checkbox"/>		9. BALTIMORE CITY OR COUNTY OF DEATH Baltimore City MD				
10. CITY OR TOWN OF DEATH Baltimore		11. NAME OF HOSPITAL, NURSING HOME OR OTHER INSTITUTION (IF NONE, SUCH FACILITY, FIVE STREET ADDRESS) Church Hospital Corporation				12a. USUAL OCCUPATION (TYPE OF WORK OR MEAT OF WORKING LIFE) Tool & Die Maker		12b. KIND OF BUSINESS OR INDUSTRY		
13a. USUAL RESIDENCE (IF NEAR HOME OR OTHER INSTITUTION, USE RESIDENCE BEFORE ADMISSION) 13a. STATE Md.					13b. COUNTY Balto.	13c. CITY OR TOWN Balto.	13d. INSIDE CITY LIMITS? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	13e. STREET ADDRESS 3906 Foster Ave.		
14. FATHER'S NAME John Litwinski				15. MOTHER'S MAIDEN NAME Inna						
16a. WAS DECEASED EVER IN U.S. ARMED FORCES? (YES, NO, OR UNKNOWN)		16b. SOCIAL SECURITY NO. 215-07-4350		17. INFORMANT ADDRESS Antoinette Litwinski 3906 Foster Ave.						
18. CAUSE OF DEATH Enter only one cause per line for a, b, and c. PART 1 DEATH WAS CAUSED BY IMMEDIATE CAUSE BY PULMONARY EMBOLISM 1991 ADVANCED METASTATIC MALIGNANCY LIVER DUE TO OR AS A CONSEQUENCE OF DUE TO OR AS A CONSEQUENCE OF APPROXIMATE INTERVAL BETWEEN ONSET AND DEATH										
PART 2 OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RELATED TO THE TERMINAL DISEASE OR CONDITION GIVEN IN PART 1: (1) PULMONARY EDEMA (2.) OBSTRUCTIVE JAUNDICE										
MEDICAL CERTIFICATION 9 9	19a. DATE OF OPERATION 09-14-82		19b. CONDITION FOR WHICH OPERATION WAS PERFORMED OBSTRUCTIVE JAUNDICE				20a. AUTOPSY? YES <input type="checkbox"/> NO <input type="checkbox"/>	20b. IF YES, WERE FINDINGS USED IN CERTIFYING CAUSES OF DEATH? YES <input type="checkbox"/> NO <input type="checkbox"/>		
	21a. ACCIDENT OR UNDERLYING OR CONTRIBUTING CAUSE OF DEATH (IF EITHER NOT KNOWN, AT EXAMINER'S OPTION)		21b. TIME OF INJURY HOUR A.M. MONTH DAY YEAR P.M. 19		21c. HOW INJURY OCCURRED					
	21d. INJURY OCCURRED		21e. PLACE OF INJURY (AT HOME, STREET, FACTORY, OFFICE, FARM, ETC.)		21f. LOCATION					
	22a. I certify that I (this hospital) attended the deceased from 08-30-1982 to 09-22-1982 that I (we) last saw the deceased alive on 09-22-1982 and that in my (our) opinion death occurred on the date and hour and from the causes stated above. I (we) did (did not) view the body after death.									
22b. SIGNATURE <i>Sompalli Prasad</i>					DEGREE ATTENDING PHYSICIAN <input type="checkbox"/> MEDICAL DIRECTOR <input type="checkbox"/> STAFF PHYSICIAN <input checked="" type="checkbox"/>			22c. DATE SIGNED		
22d. PHYSICIAN'S NAME (TYPE OR PRINT) DR. SOMPALLI PRASAD M.D.					22e. ADDRESS CHURCH HOSPITAL CORPORATION 100 N. BROADWAY BALTIMORE, MARYLAND 21231					
23a. BURIAL, CREMATION, REMOVAL Burial		23b. DATE 9-27-82		23c. NAME OF CEMETERY OR CREMATORY St. Stanislaus Cem		23d. LOCATION Balto. COUNTY Md.				
24. FUNERAL DIRECTOR John T. Teber & Sons Inc. 401 S. Chester St.					25a. DATE REC'D. BY REGISTRAR SEP 24 1989		25b. REGISTRAR'S SIGNATURE <i>John J. Cahill</i>			

D. Lee
2-1-10
Image 109

From: Jennifer Hafner
To: Ray Connor, Doris Byrne, Sheila Simms, Edward Papenfuse
Date: Monday, February 01, 2010 9:55:48 AM
Subject: MSA SC 5458-82-150

I have added five additional cases to this work order which need to be pulled and scanned. They are -

DUMBELLS ASSCS, ETAL V CONSUMER PROTECTION Box 739 Case No. 90059044 [MSA T2691-3376, OR/11/12/24]

File should be named msa_sc5458_82_150_[full case number]-####

WINTER, ETAL VS PIJANOWSKI, ETAL Box 783 Case No. 90081076 [MSA T2691-3420, OR/11/12/68]

DL 2-1-10
Image 109

File should be named msa_sc5458_82_150_[full case number]-####

POINDEXTER VS ALEXANDER & ALEXANDER Box 927 Case No. 90164037 [MSA T2691-3564, OR/11/14/44]

File should be named msa_sc5458_82_150_[full case number]-####

LEBSON MD VS BOARD OF MUNICIPAL Box 959 Case No. 90184037 [MSA T2691-3596, OR/11/14/76]

File should be named msa_sc5458_82_150_[full case number]-####

HARRINGTON VS SECRETARY OF PUBLIC SAFETY Box 969 Case No. 90190075 [MSA T2691-3606, OR/11/15/2]

File should be named msa_sc5458_82_150_[full case number]-####