

**IN THE COURT OF COMMON PLEAS OF  
DAUPHIN COUNTY, PENNSYLVANIA**

MILTON PURCELL,	:	
ETHEL CAMPBELL,	:	CIVIL DIVISION
GRAHAM MCINTYRE,	:	
IVAN DIETRICH,	:	NO. 2005-CV-0463-EQ
RALPH FINK,	:	
HARVEY DEITRICH,	:	
GIRARD GAUGHAN,	:	
HARRY HEATH,	:	
ROBERT PATTON,	:	
GERALD LONG,	:	
JUNIOR VIA,	:	
RICHARD MATTIS,	:	
CHRISTINE COOK, and	:	
ROBERT HEIST,	:	
	:	
PLAINTIFFS	:	
vs.	:	
	:	
MILTON HERSHEY SCHOOL	:	
ALUMNI ASSOCIATION,	:	
JOHN RICE, and	:	
JERRY WATERS	:	
	:	
DEFENDANTS	:	

**MOTION FOR RECONSIDERATION**

Plaintiffs, by their attorneys, respectfully request that this Court reconsider its Order dated August 19, 2005, in which it declined to consider Plaintiffs' Motion for Summary Judgment. In support of this Motion, Plaintiffs submit the following:

1. On June 24, 2005, Commonwealth Court issued a Memorandum and Order in which it denied Defendants' Motion for a Stay of this Court's Orders subject to certain conditions. A true and correct copy of that Order is attached hereto as Exhibit "A."

2. Paragraph 4 of that Order provides that:

Pursuant to Pa.R.A.P. 1701(b) and 1701( c), the trial court remains vested with jurisdiction to enforce its order(s) and **to proceed with the merits of the matter currently before it.**

(Emphasis added).

3. Pursuant to that Order, and Pa.R.A.P. 1701(b) and 1701( c), this Court retains jurisdiction to consider and grant Plaintiffs' Motion for Summary Judgment notwithstanding the pending appeal.

4. This matter is presently pending before Judge Hoover.

5. No oral argument is requested or necessary with regard to this Motion.

6. Counsel for Defendants has advised counsel for Plaintiffs that Defendants do not concur in this Motion.

WHEREFORE, Plaintiffs respectfully request that this Court reconsider its Order dated August 19, 2005 and set an expedited briefing schedule for Plaintiffs' Motion for Summary Judgment which takes into consideration that Plaintiffs' brief in support of that motion has already been filed.

Respectfully submitted,

KLETT ROONEY LIEBER & SCHORLING  
A Professional Corporation



Dated: August 24, 2005

BY:

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Allen C. Warshaw, Esquire  
240 North Third Street, Suite 700  
Harrisburg, PA 17101-1503  
(717) 231-7718  
Counsel for Plaintiffs

**CERTIFICATE OF NON-CONCURRENCE ON**  
**PLAINTIFFS' MOTION FOR RECONSIDERATION**

I, Allen C. Warshaw, counsel for Plaintiffs, have disclosed the contents of the within Motion for Reconsideration and proposed Order to counsel for Defendants, Victor P. Stabile, who has advised that Defendants do not concur in the same.



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Allen C. Warshaw

# EXHIBIT “A”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Milton Purcell, Ethel Campbell, :  
Graham McIntyre, Ivan Dietrich, :  
Ralph Fink, Harvey Deitrich, Girard :  
Gaughan, Harry Heath, Robert :  
Patton, Gerald Long, Junior Via, :  
Richard Mattis, Christine Cook and :  
Robert Heist :

v. :

Milton Hershey School Alumni :  
Association, John Rice and :  
Jerry Waters, :

Appellants

No. 1198 C.D. 2005

MEMORANDUM AND ORDER

Before the Court is appellants' application for stay pending appeal of a June 6, 2005 order of the Court of Common Pleas of Dauphin County that granted a preliminary injunction and ordered that an election for interim officers of the Milton Hershey School Alumni Association (MHSAA) be held on Sunday, June 26, 2005. The officers elected will serve until the trial court renders a decision on the issues presented in the underlying lawsuit or until new officers are elected in November, 2005 to serve for the 2006 calendar year.

The parties have presented comprehensive arguments relating to the complex issues involved in this case, as well as their views on the respective harms that would occur in the event that a stay is or is not

granted. After consideration of these arguments, and recognizing both the standard for granting a stay set forth in Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 467 A.2d 805 (1983) as well as an appellate court's standard of review of preliminary injunctions, see In re Milton Hershey School Trust, 807 A.2d 324 (Pa. Cmwlth. 2002)<sup>1</sup>, we conclude that the stay should be denied, subject to conditions.

Pursuant to Pa.R.A.P. 1733(a), a Court may, upon its own motion or application of any party in interest, impose such terms and conditions as it deems just and will maintain the res or status quo pending final judgment. Although we will allow the election to proceed pursuant to Judge Hoover's order, a change in the control of MHSAA could have other consequences. The very bylaws that are at issue in the case below could, for example, be changed by newly-elected interim officers in such a manner that would moot the questions currently pending in this case. Additionally, the incumbent officers have initiated legal action which may well determine how the substantial financial resources of the Milton Hershey Trust should be directed. This litigation was recently successful in determining that the Alumni Association has standing to challenge an agreement between the Trust and the Attorney General to modify a prior agreement to "reform" the trust. See Milton Hershey School and Hershey Trust Company, Trustee of Milton Hershey School Trust, Appeal of Milton Hershey School Alumni

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<sup>1</sup> "Our review of a trial court's grant of a preliminary injunction is to determine whether there were any reasonable grounds for the trial court's action, and we will reverse only if no such grounds exist." Id. at \_\_\_\_ (citing City of Philadelphia v. District Council 33, 528 Pa. 355, 598 A.2d 256 (1991)).

Association, 867 A.2d 672 (Pa. Cmwlth. 2005)(petitions for allowance of appeal pending).

Appellants argue, and this Court agrees, that a change in the *interim* leadership of MHSAA could bring about a discontinuance of this pending legal action, and that should the "reform" group regain control either by election or judicial determination, their considerable efforts in pursuing the "reform" litigation could be wasted. Accordingly, pursuant to the authority of Pa.R.A.P. 1733(a), we shall deny the request for stay with conditions to mitigate the potential harms raised by the appellants.<sup>2</sup>

### **ORDER**

AND NOW, this 24th day of June, 2005, appellants' application for stay pending appeal is DENIED, subject to the following conditions:

1. The election set for June 26, 2005 under the supervision of the Honorable Warren G. Morgan shall take place as ordered by Judge Hoover.
2. Any officers elected in such interim election shall serve until replaced or until further order of either this Court or the Court of Common Pleas of

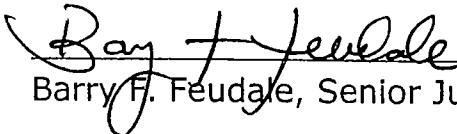
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<sup>2</sup> We note that our narrow determination as to pending litigation is not inconsistent with the broader wherefore clause of Plaintiffs, Purcell, et al, in their amended motion for preliminary injunction, wherein they requested that Judge Hoover enjoin the present board "from conducting anything other than routine board business." While the conditions imposed do limit the authority of the incoming officers, those limitations are narrowly crafted to avoid the specific harm alleged by appellants.

Dauphin County, and shall possess all lawful authority granted to them under the MHSAA bylaws and applicable law PROVIDED HOWEVER, that said officers shall not amend any bylaws of MHSAA that are at issue in the underlying litigation, and FURTHER PROVIDED that said officers shall not interfere with, discontinue, or seek to control pending litigation involving the MHSAA, the Milton Hershey Trust, and the Attorney General of Pennsylvania. For purposes of such litigation and for such purposes only, the current (i.e., appellant) officers of the MHSAA shall be deemed to represent the MHSAA in such litigation, pending further order of this Court, final resolution of this matter or a new election officers for the 2006 calendar year.

3. The Court of Common Pleas of Dauphin County shall certify the record in this matter on or before July 12, 2005. Appellants' brief on the merits and reproduced record (15 copies) shall be filed and served on or before August 5, 2005. Appellees' brief (15 copies) shall be filed on or before August 31, 2005. This matter shall be argued before a panel of this Court sitting in Harrisburg during the week of September 12, 2005.

4. Pursuant to Pa.R.A.P. 1701(b) and 1701(c), the trial court remains vested with jurisdiction to enforce its order(s) and to proceed with the merits of the matter currently before it.

  
Barry F. Feudale, Senior Judge

**Certified from the Record**

**JUN 24 2005**

**and Order Ext**

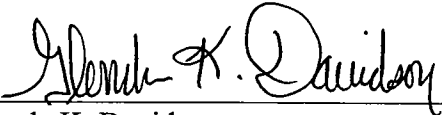
**CERTIFICATE OF SERVICE**

On the 24th day of August, 2005, I, Glenda K. Davidson, a secretary in the law offices of Klett Rooney Lieber & Schorling, hereby certify that I have served this day a true and correct copy of the foregoing **Plaintiffs' Motion for Reconsideration** in the above matter to those persons and in the manner indicated below:

Victor P. Stabile, Esquire  
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112 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17112  
**VIA HAND DELIVERY AND E-MAIL**

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New York, NY 10169  
**VIA FIRST CLASS MAIL AND E-MAIL**

  
\_\_\_\_\_  
Glenda K. Davidson

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ALUMNI ASSOCIATION,	:	
JOHN RICE, and	:	
JERRY WATERS	:	
	:	
DEFENDANTS	:	

**ORDER**

AND NOW, this \_\_\_\_ day of August, 2005, upon consideration of Plaintiffs' Motion for Reconsideration, said Motion is granted and the following briefing schedule established:

1. Defendants shall file their brief in opposition to Plaintiffs' Motion for Summary Judgment on or before September 16, 2005.
2. Plaintiffs shall file their reply brief on or before September 23, 2005.
3. Oral argument shall be held on \_\_\_\_\_, 2005, in Courtroom No. \_\_\_\_.

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J.