

Borough Settles Lawsuit With Bank Over Cemetery Maintenance Fund

By Sheilagh Casey

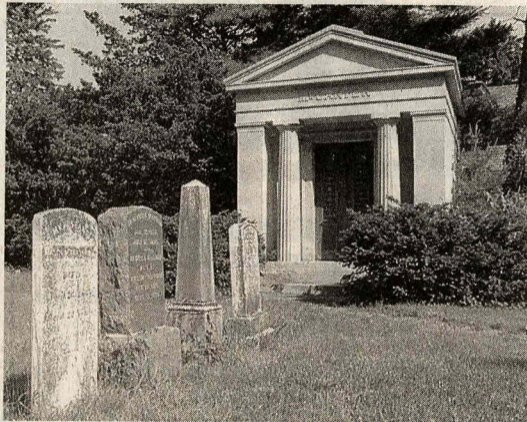
RUMSON — Perhaps it's the oldest cemetery in Monmouth County. Certainly it's the only one in Rumson. And now the small burial plot at Conover Lane and Rumson Road is under the care of the borough.

First Union National Bank had been the administrator of a trust account meant to pay for the cemetery maintenance. On June 6, the bank settled a lawsuit filed by attorney George W.C. "Bill" McCarter by paying \$20,000 to the Borough

of Rumson. The lawsuit claimed that the bank had negligently run through a trust fund created to maintain the cemetery and the McCarter mausoleum there, alleging breach of fiduciary duty and mismanagement of the trust.

"First Union thought this trust was too small for anyone to care if the bank just walked away from it," Bill McCarter said. "Fortunately, the law gives taxpayers a remedy

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SCOTT LONGFIELD

The McCarter Mausoleum and the cemetery at the corner of Rumson Road and Conover Lane have a new caretaker, the Borough of Rumson.

Cemetery •

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in a case like this.”

The bank settled the lawsuit with a check equalling the two contributions to the trust rather than go to trial. The court relieved the bank of its duties under the trust.

Rumson Borough Administrator Gary Sammon said, “We will definitely invest the money and use the proceeds for the normal maintenance of the cemetery.” The borough is now working on securing title to the plot, whose owner is unknown.

The trust with the bank had been established in 1955 with \$10,000 under the will of Thomas N. McCarter of Rumson, a former Attorney General of New Jersey and the founder of the PSE&G utility company. He is the great

granduncle of Bill McCarter. The original account was in the Fidelity Union Trust Bank, which, through several mergers, became

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the responsibility of First Union.

In 1978, Thomas McCarter’s daughter, Madeleine McC. Kelly, left an additional \$10,000 to the trust under her will. The trust stated that the bank was to use trust funds to maintain the McCarter

mausoleum and the cemetery “in permanent good order.”

In the 1980s, the trust grew to nearly \$30,000. “There was some interest and the bank did, for a while, maintain the cemetery,” Bill McCarter said. The lawyer said that a building contractor who did work in the cemetery during the mid-80s to early 90s was paid from the trust account.

The cemetery was so neglected by the end of the 90s that Eagle Scout John Erwin of Rumson organized a team to restore it. “They did a wonderful job,” Bill McCarter said. Borough Administrator Gary Sammon said, “They reset 80 tombstones.”

Last summer, a neighbor cut the nearly foot-high grass.

In June, 2000, First Union officials proposed giving the balance of \$300 back to the borough, if the borough would take over maintenance and deliver an unconditional release to the bank.