

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 03-191
) (Enforcement)
COMMUNITY LANDFILL COMPANY, INC.,)
an Illinois corporation, and the CITY OF MORRIS,)
an Illinois municipal corporation,)
)
Respondents.)

NOTICE OF FILING

TO: Christopher Grant
Environmental Bureau
Assistant Attorney General
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph
Suite 11-500
Chicago, Illinois 60601

Charles F. Helsten
Hinshaw & Culbertson, LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

Scott Belt
Scott Belt and Associates, PC
105 East Main Street
Suite 206
Morris, Illinois 60450

PLEASE TAKE NOTICE that on **February 27, 2007**, the undersigned caused to be electronically filed with Ms. Dorothy Gunn, Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601, **COMMUNITY LANDFILL COMPANY'S RESPONSE TO THE PEOPLE OF THE STATE OF ILLINOIS' MOTION TO SET HEARING DATE, OR, ALTERNATIVELY, FOR SEVERANCE OF CLAIMS**, a copy of which is attached and hereby served upon you.



One of the Attorneys for Community Landfill Co.

Mark A. LaRose
Clarissa C. Grayson
LAROSE & BOSCO, LTD.
Attorney No. 37346
200 North LaSalle Street, Suite 2810
Chicago, Illinois 60610
(312) 642-4414

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

2006, Edward Pruum, Secretary/Treasurer of Respondent Community Landfill Company, underwent emergency quintuple bypass surgery which was complicated by the presence of an aortic aneurysm and followed by a blood clot on his lung. He was hospitalized for most of the period of August 26 – September 17, 2006. (See Exh. C). On September 22, 2006, CLC filed a Motion to Cancel Hearing. Following oral argument, CLC's motion was granted by the Hearing Officer on October 3, 2006. (See Exh. A). On October 5, 2006, the People moved the Board for interlocutory review of the hearing officer's order and for expedited review. On October 19, 2006, the Board affirmed the hearing officer's cancellation of the hearing and ruled as follows:

“The Board grants the People's. motion for interlocutory review and affirms the hearing officer's cancellation of the hearing. Without any explanation or evidence of what constitutes "deteriorating conditions" or "material harm," the Board will not overrule the hearing officer's order. As noted by CLC, the People have not shown there is any existing or immediate threat of harm to human health or the environment caused by the landfill. As the hearing officer correctly noted, the issue left to be determined is remedy. CLC identified Mr. Pruum as a witness on October 2, 2006, consistent with the deadline set by the hearing officer for the filing of CLC's witness list. CLC has also properly moved the Board to cancel the hearing. Although the motion contained no date certain to reschedule the hearing, the Board finds that an instance such as this one, where a named witness experiences serious and unexpected medical problems, is extraordinary. In this case, a date certain for rescheduling the hearing cannot yet be ascertained. The Board is confident that the hearing officer will diligently work with the parties to identify a hearing date as soon as it becomes possible.”

ARGUMENT

A. The Procedure Set Forth by the Hearing Officer Should be Followed

In his October 3, 2006 Order, Hearing Officer Bradley Halloran set the matter for status on December 7, 2006. (See Exh. B, p. 2). On that date, he ordered CLC to file a report from Mr. Pruum's physician on or before January 31, 2007, providing an update on Mr. Pruum's physical condition. CLC timely complied with this order. (See Exh. C). On February 8, 2007, Hearing Officer Halloran ordered that CLC file a report from Mr. Pruum's physician on or before April 13,

2007. This schedule comports with the recommendation of Mr. Pruim's physician and with both the Hearing Officer's and Board's orders. There is no reason to prematurely alter this schedule by setting a hearing date. The Board has clearly recognized that in this case, the hearing can not yet be scheduled. The parties continue to work diligently with the hearing officer as instructed to by the Board. (Exh. A, p. 3)

Both the Hearing Officer and the Board have recognized that Edward Pruim's participation in the preparation for hearing and in the hearing itself is "imperative". (Exh. A, p. 3, Exh. B, p. 2). The Complainant has set forth nothing new that should result in changing its order. While Complainant argues that a hearing can proceed without the participation of Edward Pruim, that is really not the Complainant's decision to make. The City has set forth its reasons in its Response. While the State characterizes the present state of affairs as being "indefinite delay[ed]", events are clearly proceeding within the time frame already contemplated and established by the Board.

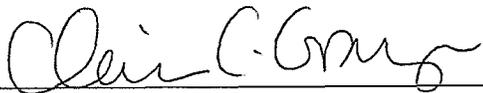
Complainant has still not even argued that Hearing Officer Halloran abused his discretion in granting CLC's Motion to Cancel Hearing. The Board should not now grant Complainant relief it has been unable to obtain through its previous attempts before both the Hearing Officer and the Board. The Board should deny Complainant's Motion to Set Hearing Date.

B. CLC will be Prejudiced if the Hearings are Severed

The City has indicated it may call both Robert Pruim (President of Community Landfill Company) and Edward Pruim as witnesses. If the hearing is severed as to the defendants, both the City, CLC and their witnesses would have to participate twice, resulting in a tremendous waste of resources for all concerned, including those of the State and the Board. In the interest of judicial economy, it is crucial to conduct this hearing so that all involved, including non-party witnesses, are afforded a complete and full hearing on all issues at the same time.

WHEREFORE, based on the foregoing, COMMUNITY LANDFILL COMPANY, INC. respectfully requests that the Board DENY Complainant's Motion to Set Hearing Date or, Alternatively, for Severance of Claims.

Respectfully submitted,

By: 
One of the Attorneys for
COMMUNITY LANDFILL COMPANY

Mark A. LaRose
Clarissa C. Grayson
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200 North LaSalle Street
Suite 2810
Chicago, Illinois 60601
(312) 642-4414

CERTIFICATE OF SERVICE

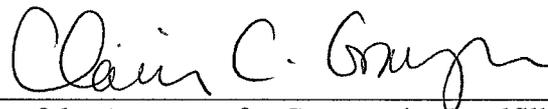
I, Clarissa C. Grayson, an attorney hereby certify that I caused to be served a copy of the foregoing **COMMUNITY LANDFILL COMPANY'S RESPONSE TO THE PEOPLE OF THE STATE OF ILLINOIS' MOTION TO SET HEARING DATE, OR, ALTERNATIVELY, FOR SEVERANCE OF CLAIMS** by the specified delivery methods listed below, this 27th day of **February 2007**, addressed as follows:

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HAND DELIVERY ONLY
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Hearing Officer
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One of the Attorneys for Community Landfill Co.

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EXHIBIT A

ILLINOIS POLLUTION CONTROL BOARD

October 19, 2006

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 COMMUNITY LANDFILL COMPANY,)
 INC., an Illinois corporation, and the CITY OF)
 MORRIS, an Illinois municipal corporation,)
)
 Respondents.)

PCB 03-191
(Enforcement – Land)

ORDER OF THE BOARD (by N.J. Melas):

The parties in this enforcement action were scheduled to go to hearing on October 24 through October 27, 2006, on the issue of remedy. On September 22, 2006, respondent, Community Landfill Company (CLC), filed a motion to cancel the hearing. CLC stated that Mr. Edward Pruum, the secretary and treasurer of CLC, had recently undergone heart surgery that was further complicated by an aortic aneurism, and was under his doctor's orders to avoid stressful work-related activities for five to six months. CLC stated that Mr. Pruum's attendance, participation, and testimony were essential for the defense of this proceeding.

On September 27, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), responded, objecting to CLC's motion to cancel the hearing. On September 28, 2006, respondent, City of Morris (Morris), filed responses in favor of canceling the hearing. Hearing officer Brad Halloran held a telephonic status conference on September 28, 2006, at which the parties made oral arguments in support of their positions. On October 2, 2006, Morris filed a witness list identifying Mr. Pruum as a witness. On October 3, 2006, the hearing officer issued an order granting CLC's motion and canceling the hearing.¹

On October 5, 2006, the People moved for an interlocutory appeal of the hearing officer's ruling to cancel the hearing (Mot.). The People simultaneously moved for interim relief (Mot. for Int. Rel.) and expedited review of these motions. In the appeal, the People request that the Board reverse the hearing officer's October 3, 2006 ruling and keep October 24 through 27, 2006 as the hearing dates. CLC responded to the motions for interlocutory appeal and for interim relief on October 18, 2006. The Board has granted the People's motion to expedite and expedited its review of these motions and responsive pleadings.

¹ The hearing officer granted a similar motion and cancelled hearing in two other enforcement cases involving Mr. Pruum, People v. CLC, PCB 97-193, 04-207 (consolidated).

EXHIBIT A

MOTION FOR INTERLOCUTORY APPEAL

In support of its interlocutory appeal, the People argue that CLC's motion is legally insufficient and that Mr. Pruim is not a necessary party to this action. First, the People contend that pursuant to Section 101.510 of the Board's procedural rules, CLC's motion to cancel the hearing had to have proposed a date to reschedule the hearing, but did not. Mot. at 2; citing 35 Ill. Adm. Code 101.510(b). Second, the People note that Mr. Pruim is not a respondent in this matter, but is a co-owner of CLC and acts as secretary and treasurer of the corporation. *Id.* at 1. The People contend that Mr. Pruim was not previously named as a witness at the time of the motion, made less than a month away from hearing. The People argue that Mr. Pruim's participation is not necessary for a full and complete hearing on the remaining issues in this case. *Id.* at 3. The People add that using Mr. Pruim's absence to delay hearing essentially allows the respondents to continue violating the Environmental Protection Act (Act) for the near future. *Id.* at 4.

On October 12, 2006, Morris opposed the People's motion for interlocutory appeal (Resp.). Morris states that Mr. Pruim is now a named witness in this proceeding and his participation in this proceeding is essential. Resp. at 2. According to Morris, Mr. Pruim is the treasurer and chief financial officer of CLC and that matters involving closure and post closure financial assurance will necessarily involve financial questions. Morris states it fears that if only one corporate representative (Mr. Edward Pruim's brother, Mr. Robert Pruim) is called, he will "simply demur and defer to knowledge possessed by Mr. Edward Pruim . . . thereby in essence 'whipsawing' the City." *Id.*

Morris further contends there is no urgency to hold a hearing on remedy. Morris asserts that Mr. Devin Moose, Morris' primary technical consultant, stated in his deposition that no imminent and substantial threat to human health or the environment is posed by the landfill. Resp. at 3 (referring to Exhibit B of Morris' October 5, 2006 response to CLC's motion to cancel hearing and the People's response in opposition to the motion to cancel hearing). Finally, states Morris, at least one other material witness, Mr. Moose, has already made other plans and is now also unavailable to appear and testify during the originally scheduled hearing dates. *Id.* at 4.

The People replied on October 13, 2006 (Reply). In reply, the People state that the "deteriorating conditions" at the Morris Community Landfill warrant immediate action by the Board to avoid "material harm." Reply at 1. The People further state that the situation has "seriously degraded," and that closure costs have risen to \$7.4 million. For these reasons, contend the People, the Board must require that the respondents immediately secure financial assurance for closure and post-closure care of the landfill. *Id.* at 3.

On October 18, 2006, CLC responded to the People's motion. CLC states that due to the nature of Mr. Pruim's medical condition it was impossible to propose a date to reschedule the hearing. CLC Resp. at 2. CLC contends that the hearing officer's order should not be reversed absent an abuse of discretion. CLC asserts that the People did not argue that the hearing officer abused his discretion in granting the motion to cancel. *Id.* For these reasons, argues CLC, the Board should deny the motion for interlocutory appeal. *Id.* at 3.

In granting CLC's motion to cancel hearing, the hearing officer stated that due to the issues to be addressed at hearing on the issue of remedy, it appeared imperative that Mr. Pruim, as a financial officer of CLC, be present at the hearing and available to testify. The hearing officer further noted that CLC's motion to cancel was not the result of lack of diligence.

The Board grants the People's motion for interlocutory review and affirms the hearing officer's cancellation of the hearing. Without any explanation or evidence of what constitutes "deteriorating conditions" or "material harm," the Board will not overrule the hearing officer's order. As noted by CLC, the People have not shown there is any existing or immediate threat of harm to human health or the environment caused by the landfill. As the hearing officer correctly noted, the issue left to be determined is remedy. CLC identified Mr. Pruim as a witness on October 2, 2006, consistent with the deadline set by the hearing officer for the filing of CLC's witness list. CLC has also properly moved the Board to cancel the hearing. Although the motion contained no date certain to reschedule the hearing, the Board finds that an instance such as this one, where a named witness experiences serious and unexpected medical problems, is extraordinary. In this case, a date certain for rescheduling the hearing cannot yet be ascertained. The Board is confident that the hearing officer will diligently work with the parties to identify a hearing date as soon as it becomes possible.

MOTION FOR INTERIM RELIEF

The People cite no authority in support of their motion for interim relief, yet state the Board should require the respondents to immediately arrange for closure and post-closure financial assurance in the amount of \$17,448,366. Mot. for Int. Rel. at 6. The People state that the Illinois Environmental Protection Agency (Agency) has determined that respondents are required to provide \$17,448,366 of closure and post-closure financial assurance. *Id.* at 2, Exh. A. According to the People, hearings have been held in other Board proceedings on issues relating to CLC's lack of financial assurance. *Id.* at 3; citing CLC and Morris v. IEPA, PCB 01-48, 49 (consolidated). The People believe, therefore, that a third hearing is not necessary to determine the amount of financial assurance.

The People state that the Board has broad authority to take actions reasonably necessary to accomplish the purposes of the Act and that the requested relief is necessary to protect the State. Mot. for Int. Rel. at 4; citing Discovery South Group Ltd. v. PCB, 275 Ill. App. 3d 547 (1st Dist. 1995). The People contend that the Board has not hesitated to order compliance prior to final resolution of all penalty issues in the past. *Id.*; citing Kratusack v. Patel et al., PCB 95-143 (Aug. 21, 1997). Without a court-enforceable interim order to obtain compliant financial assurance, state the People, the respondents will be allowed to avoid compliance as long as the hearing is delayed. *Id.* at 5.

CLC contends that the Board was correct in finding that it was "premature" to rule on the issue of penalty until factual determinations have been made in the February 16, 2006 interim opinion and order. According to CLC, this proceeding has not been "indefinitely delayed" and

the People did not allege any imminent or irreparable harm that should prevent a postponement due to an emergency medical situation.

The Board denies the People's motion for interim relief. As the Board found in its February 16, 2006 interim opinion and order in this matter, it is premature to rule on the issue of penalty before consideration of the Section 33(c) and Section 42(h) factors. People v. CLC, PCB 03-191, slip op. at 12 (Feb. 16, 2006). In Kratusack, the Board ordered the respondent to cease and desist before sending the parties to hearing to determine any appropriate civil penalty, but only after the Board analyzed the relevant facts in light of the Section 33(c) factors. Kratusack v. Patel et al., PCB 95-143 (Aug. 21, 1997).

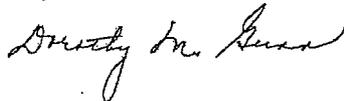
Under Section 33 of the Act, a Board order may include a direction to cease and desist from violations of the Act or any rule adopted under the Act, but only after determining the reasonableness of the emissions. See 415 ILCS 5/33(a)-(c) (2004). As held in the past, the Board considers the factors in Section 33(c) and Section 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2004)) in determining and assessing penalties and each of those factors require factual determinations. People v. CLC, PCB 97-193, slip op. at 10 (Apr. 5, 2001). The Board finds the People's request for interim relief premature.

CONCLUSION

Accordingly, for the reasons set forth above, the Board grants the People's motion for interlocutory appeal of the hearing officer's October 3, 2006 order, and affirms the hearing officer's order. The hearing originally scheduled to take place October 24 through 27, 2006 is canceled. The Board denies the People's motion for interim relief as premature and anticipates that the parties will be prepared to address the issue of remedy at hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 19, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

EXHIBIT B

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OCT 03 2006

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

October 3, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 03-191
)	(Enforcement – Land)
COMMUNITY LANDFILL COMPANY,)	
INC., and CITY OF MORRIS, an Illinois)	
municipal corporation,)	
)	
Respondents.)	

HEARING OFFICER ORDER

On February 16, 2006, the Board granted complainant's motion for summary judgment and directed that this matter proceed to hearing on the issue of remedy. One of the issues involved the respondents' failure to comply with the financial assurance requirements. Both City of Morris (Morris) and Community Landfill Company Inc. (CLC) filed respective motions for reconsideration. On June 1, 2006, the Board affirmed its order of February 16, 2006, granting complainant's motion for summary judgment and again directed that this matter proceed to hearing on the issue of remedy.

On September 22, 2006, respondent CLC filed a motion to cancel the hearing previously scheduled for October 24, 25, 26, and 27, 2006. On September 27, 2006, the complainant filed a response objecting to CLC's motion to cancel the hearing. On September 28, 2006, respondent City of Morris (Morris) filed its response to both CLC's motion to cancel the hearing and complainant's response in opposition. A telephonic status conference was held on September 28, 2006, where oral arguments were entertained. After considering the oral responses and reading the written motions and responses, the hearing officer orally notified the parties on September 28, 2006, that CLC's motion to cancel the scheduled hearing was granted. Today's order grants the motion and cancels the hearing.

CLC Motion To Cancel Hearing

CLC represents in its motion that Edward Pruim, the secretary and treasurer of CLC, underwent emergency quintuple bypass surgery that was complicated by the presence of an aortic aneurism. Edward Pruim was hospitalized from August 26, 2006 to September 9, 2006. Edward Pruim was readmitted to the hospital on September 11, 2006, with a blood clot on his lung. Pruim was released on September 17, 2006. Finally, CLC represents that Edward Pruim is recovering at his home and is receiving continued treatment for the blood clot and heart condition.

EXHIBIT B

CLC's attachments to its motion include an affidavit from CLC's attorney and letters from Dr. Daniel Rowan, Edward Pruim's cardiologist and Dr. Timothy Wollner, Edward Pruim's family physician. Both physicians state that Edward Pruim should not undergo any stressful work-related activities for at least five to six months. The prohibited activities would include any participation by way of testimony or preparation for the hearing. Finally, both physicians recommend that Edward Pruim's physical condition be reviewed again in March 2007, to ascertain whether he can partake in a hearing.

Complainant's Response In Opposition

Complainant argues that CLC's motion to cancel the hearing should be denied because Edward Pruim is not a party to this matter, and has no involvement in the prosecution of this matter. Complainant represents that Edward Pruim has yet to be disclosed as a witness and that CLC's claim that Edward Pruim testimony is necessary is a revelation. Finally, complainant argues that Edward Pruim's brother, who is the president of CLC and has been disclosed as a witness, would be able to provide all the necessary assistance to CLC. Complainant continues and states that since the financial assurance documents for the landfill reveal that financial assurance was arranged by R. Michael McDermont, Mark A. LaRose and Robert Pruim, Edward Pruim's testimony is not necessary.

Morris' Response To CLC's Motion To Cancel And To Complainant's Response

Morris argues that it would be prejudiced if the hearing is not canceled and continued until such time as Edward Pruim can be compelled to testify. Morris argues that since Edward Pruim is the treasurer and chief financial officer of CLC, and since post-closure matters relate to financial issues at issue here, it is essential that Morris be allowed to question Edward Pruim. On October 2, 2006, Morris filed a witness list pursuant to the August 17, 2006 hearing officer order. Edward Pruim is listed as one of the witnesses. Finally, Morris represents that preliminary closure activities have been initiated at the site and represents, as reflected in the attached deposition of expert witness Devin Moose, that based upon the current status of activities at the site, no eminent or substantial threat to the human health and environment is posed by the site in question.

Discussion

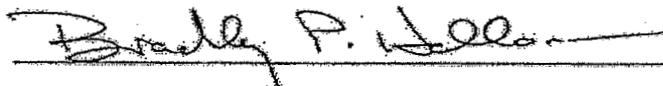
After reviewing the motion to cancel, the respective responses and taking the oral arguments into consideration, I find good cause to grant CLC's motion to cancel the hearing scheduled for October 24, 25, 26, and 27, 2006. Due to the issues that need to be addressed at hearing on the issue of remedy, it appears imperative that Edward Pruim, as a financial officer of CLC, be present at the hearing and available to testify. Additionally, I find that CLC's request to cancel was not the result of CLC's lack of diligence.

Telephonic Status Conference

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on December 7, 2006, at 11:00 a.m. Please note the

time change. The telephonic status conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 3, 2006, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 3, 2006:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
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EXHIBIT C

RECEIVED
CLERK'S OFFICE

JAN 31 2007



Cardiovascular Consultants, LLP

STATE OF ILLINOIS
Pollution Control Board

THOMAS J. QUINN, M.D., F.A.C.C., F.A.C.P.
JOSEPH W. MULARCZYK, M.D., F.A.C.C.
DANIEL A. ROWAN, D.O., F.A.C.C., F.A.C.P., F.S.C.A.I.
EVANS P. PAPPAS, M.D., F.A.C.C.
CHRISTOPHER J. SULLIVAN, M.D., F.A.C.C.

January 30, 2007

Ms. Clarissa Cutler Grayson
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60602

Re: Edward Pruim

Dear Ms. Grayson:

I am a cardiovascular physician and have practiced medicine for 20 years. I have treated Edward Pruim for approximately the last five months and am very familiar with his medical history and his current condition.

Mr. Pruim recently underwent emergency quintuple bypass surgery, which was complicated by the presence of an aortic aneurysm. Mr. Pruim was hospitalized from August 26 - September 9, 2006 in both Palos Community Hospital and Christ Hospital. I performed an angiogram and examined him numerous times during this hospitalization. Mr. Pruim was readmitted to Christ Hospital on September 11, 2006 with a blood clot on his lung. After receiving treatment for this condition, he was released on September 17, 2006.

I have treated Mr. Pruim regularly since his quintuple bypass surgery. I recently examined Mr. Pruim on January 4, 2007. Based on this recent examination, in my professional opinion, Mr. Pruim has still not fully recovered from the quintuple bypass surgery and the blood clot in his lung and is currently unable to prepare for or participate in any legal matters. It is further my opinion that the stress that he would undergo at this time in order to prepare for, testify in or attend legal proceedings could have serious and adverse effects on his health as well as have a negative impact on his future recovery.

In summary, I advise you that in my opinion Mr. Pruim continues to be physically unable to either prepare for or participate in legal proceedings at this time. I recommend that his ability to do so again be evaluated in several months.

Thank you. If you have any further questions for me, please do not hesitate to contact me.

Sincerely,

Daniel A. Rowan, D.O., FACP, FACC

EXHIBIT C