

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OF THE
2 STATE OF ILLINOIS

3
4 WASTE MANAGEMENT OF ILLINOIS, INC.,)
))
5 Petitioner,)
))
6 vs) No. PCB 03-104
))
7 COUNTY BOARD OF KANE COUNTY,)
ILLINOIS,)
8)
9 Respondent.)

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11 TRANSCRIPT OF PROCEEDINGS held in the
12 hearing of the above-entitled matter, taken
13 stenographically by Maria E. Shockey, CSR, before
14 BRADLEY P. HALLORAN, Hearing Officer, at the Kane
15 County Courthouse, 100 South Third Street, Room 240,
16 Chicago, Illinois, on the 14th of April, A.D., 2003,
17 at 9:15 a.m.

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1 A P P E A R A N C E S:

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ILLINOIS POLLUTION CONTROL BOARD,
100 West Randolph Street
Suite 11-512
Chicago, Illinois 60601
(312) 814-6983

5 BY: MR. BRADLEY P. HALLORAN, HEARING OFFICER

6

PEDERSEN & HOUP, T,
161 North Clark Street
Suite 3100
Chicago, Illinois 60601
(312) 261-2149

9 BY: MR. DONALD J. MORAN

10 On behalf of the Petitioner;

11

QUERREY & HARROW, LTD.,
175 West Jackson Boulevard, Suite 1600
Chicago, Illinois 60604
(312) 540-7000

14 BY: MS. JENNIFER J. SACKETT POHLENZ

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On behalf of the Respondent;

16

ANCEL GLINK DIAMOND BUSH DICIANNI & ROLEK, PC.,
140 South Dearborn Street
Suite 600
Chicago, Illinois 60603
(312) 782-7606

19 BY: MR. DERKE J. PRICE

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On behalf of the Village of South Elgin.

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm with the
3 Illinois Pollution Control. I'm also assigned to
4 this matter entitled Waste Management of Illinois,
5 Inc., the Petitioner, versus the County Board of
6 Kane County, Illinois, PCB 03-104. Today is April
7 14, 2003, approximately 9:15 a.m.

8 Before we get started on the
9 hearing, the respondent filed a couple of motions, a
10 motion in limine and a motion to bar on April 9.
11 The petitioner was instructed to file its response
12 by noon on April 10; however, I just received his
13 response.

14 Any further argument, Ms. Pohlenz,
15 regarding your motion in limine and motion to bar?

16 MS. POHLENZ: Just one matter. I
17 think that we've covered everything within the
18 motion and we'll stand on it. However, with respect
19 to the one aspect of our motion seeking to bar
20 petitioner from presenting any argument or evidence,
21 on the last two pages of legal citations, a
22 compilation of legal citations, that are pages 9
23 and 10 -- no, I'm sorry -- on pages 5 and 6 of the
24 December 10, 2002 Walter letter or memorandum, I

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1 Ms. Pohlenz.

2 Could you introduce yourself and
3 who you're representing?

4 MS. POHLENZ: Yes. My name is
5 Jennifer Sackett Pohlenz, and I represent the
6 Respondent, the Kane County Board in this matter.

7 HEARING OFFICER HALLORAN: Thank you,
8 Ms. Pohlenz.

9 Mr. Moran, would you like to
10 introduce yourself, and do you have any further
11 argument on Ms. Pohlenz' motion?

12 MR. MORAN: Yes. My name is
13 Donald Moran. I represent Waste Management of
14 Illinois, Inc., the Petitioner.

15 I haven't had an opportunity to
16 review the case that Ms. Pohlenz cites. It sounds
17 inapposite to the issue that's been raised in the
18 motion to bar. What we're simply asking to do is
19 that we include within this record the full
20 memorandum that was provided by Mr. Walter to his
21 fellow county board members on December 10.

22 That memorandum included two pages
23 of what appears to be a xeroxed copy of the Smith
24 Hurd Annotated Statutes or some other legal treatise

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1 that had brief summaries of various siting cases.
2 There's also notations on these two pages, which
3 evidently were made by Mr. Walter and which are
4 appended or included in that document, presumably,
5 in support of his memorandum in his attempt to
6 persuade other members of the County Board.

7 So I think for purposes of
8 inclusion, for purposes of completeness, that entire
9 document ought be in this record.

10 HEARING OFFICER HALLORAN:

11 Ms. Pohlenz?

12 MS. POHLENZ: I would just object to
13 the statement evidently made by Mr. Walter, because
14 I don't believe there's any evidence before the
15 Hearing Officer in support of that statement.

16 HEARING OFFICER HALLORAN: Okay. I'm
17 going to deny your motion in limine, Ms. Pohlenz,
18 especially if we all know it's a drastic measure,
19 and I'll allow you to object during the hearing at
20 the appropriate time if you feel the need especially
21 based on Mr. Moran's representations.

22 Also, the motion to bar certain
23 allegations in evidence in the posthearing briefs,
24 I'm also going to deny that motion. And feel free

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1 by all means to raise that in your posthearing brief
2 at the appropriate time.

3 Briefly, to continue, I want to
4 state that the Petitioner, Waste Management, alleges
5 in its petition that the siting decision was
6 fundamentally unfair and that several findings
7 regarding the statutory criteria was against the
8 weight of evidence.

9 This hearing has been scheduled in
10 accordance with the Illinois Environmental
11 Protection Act and the Pollution Control Board Rules
12 of Procedure. It will be conducted according to the
13 procedural rules found in Section 107.400 and
14 Section 101, Subpart F.

15 It does look like we have about
16 16 or 17 members of the public. Are you all going
17 to make a public comment or testimony subject to
18 cross-examination? If I could just see a show of
19 hands, please.

20 (No response).

21 In other words, you can step up
22 here and be subject to cross but you would be sworn
23 in or you can just stand up here and state your
24 peace if you so choose, and we'll do that right

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1 after the close of the case in chiefs.

2 MR. PRICE: (Indicating).

3 HEARING OFFICER HALLORAN: Your name?

4 MR. PRICE: My name is Derke Price.

5 I'm the attorney for the Village of South Elgin. I
6 will be making a comment. I won't be offering any
7 testimony.

8 HEARING OFFICER HALLORAN: Okay. Your
9 last name again?

10 MR. PRICE: Price, P-R-I-C-E.

11 HEARING OFFICER HALLORAN: Okay. Just
12 a little background, as most of you know, I will not
13 be making the ultimate decision in this case,
14 rather, the Pollution Control Board will decide it.

15 They're going to review the
16 transcript of these proceedings and the remainder of
17 the record and the posthearing briefs. My job is to
18 ensure that the hearing is orderly and a clear
19 record is developed so that the Board can have all
20 the proper information before it while it makes its
21 decision.

22 After the hearing, the parties
23 will also have an opportunity to submit posthearing
24 briefs, and we'll discuss the posthearing briefing

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1 schedule on a short break. Also, public comment,
2 written public comment, is accepted and that will be
3 taken into consideration as well by the Board.

4 We've already introduced the
5 parties, and it's my understanding that there's
6 going to be no witnesses, is that correct, Counsel?

7 MR. MORAN: (Indicating).

8 HEARING OFFICER HALLORAN: So, I
9 guess, Mr. Moran, if you choose to do an opening or
10 present anything, this is the time to do it.

11 MR. MORAN: Yes. Mr. Hearing Officer,
12 all we would do as previously indicated is formally
13 offer the respondent's responses to our request to
14 admit, to formally make those part of the record.
15 But other than that document, we have no witnesses
16 to present. We have no other evidence or any other
17 documents we wish to offer.

18 HEARING OFFICER HALLORAN: Okay.
19 Thank you. Do you wish to offer those at this time?

20 MR. MORAN: I have one copy of this.
21 I'm not sure why I don't have a couple. I'd like to
22 submit this and then ask for leave to submit
23 additional copies to make the record complete. I
24 don't have an extra copy.

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1 HEARING OFFICER HALLORAN:

2 Ms. Pohlenz, any objection?

3 MS. POHLENZ: Yes, Mr. Hearing
4 Officer. We object to the submittal of it to the
5 extent it is an offer of factual information on
6 which no claim of fundamental fairness has been
7 made, for example, stating recitation of the dates
8 on which certain Board Members were sworn in office.

9 Additionally, we object to it as
10 it is the first response, I believe, and not the
11 supplemental response that was filed, that is, the
12 full response on behalf of the respondent.

13 And, lastly, we object to
14 admission of pages 5 and 6 of the December 10, 2002
15 memo as that is publically available information.
16 And that summarizes the objections.

17 HEARING OFFICER HALLORAN: Any
18 response, Mr. Moran?

19 MR. MORAN: Yes. The document that
20 we're seeking to have admitted should have been part
21 of the County record when it was assembled. And the
22 principle reason for our submission of it now is in
23 my review of what was being maintained by the County
24 Clerk, the Walter memorandum was not maintained by

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1 the County Clerk in its entirety. All we're seeking
2 to do is to ensure that the entire memorandum is
3 made part of this record.

4 With respect to the responses to
5 the request to admit, it's certainly my intent to
6 submit whatever the final version of those responses
7 were that were provided by the respondent. I
8 thought that's what I gave you, if it isn't, then
9 I'm happy to submit whatever their final responses
10 are.

11 HEARING OFFICER HALLORAN: Do you want
12 to take a look at this again and see if they're in
13 here?

14 MR. MORAN: Well, I really can't tell
15 because both of them were titled Responses to
16 Request to Admit. And without actually going
17 through and comparing the first one with the second
18 one, it would not be easy for me to do it. Maybe
19 Ms. Pohlenz could do it more readily if she could
20 recognize which version was the last version.

21 MS. POHLENZ: I believe it was titled
22 Supplemental but -- may I approach?

23 HEARING OFFICER HALLORAN: Oh, please
24 do.

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1 MS. POHLENZ: This is the first one.
2 And I'll just point as evidence to that paragraph
3 Number 15 in which it says: Pursuant to the
4 April 7, 2003 agreement of counsel for petitioner,
5 no response is provided at this time, and respondent
6 will supplement its response to petitioner's request
7 to admit and provide a response to request
8 Number 15 on April 8, 2002.

9 And this document is dated also on
10 page 8, April 7, so that is -- additionally, it
11 appears as though the document contains an Exhibit B
12 with no Exhibit A, and the response itself did not
13 have any exhibits attached to it. It was actually
14 the request to admit that had exhibits attached to
15 it.

16 HEARING OFFICER HALLORAN: If there's
17 nothing further, I'm going to deny your objections,
18 Ms. Pohlenz. I will accept Petitioner's
19 Exhibit Number 1 into evidence, again, it's
20 respondent's responses to petitioner's request to
21 admit with an attachment entitled Exhibit B. But in
22 any event, they're all coming in as Petitioner's
23 Exhibit Number 1.

24 MS. POHLENZ: Just for the record,

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1 Mr. Hearing Officer, if I may, Exhibit B, there was
2 no exhibits attached to our responses.

3 HEARING OFFICER HALLORAN: Okay. I
4 think you've made that clear for the record. Thank
5 you very much.

6 Anything else, Mr. Moran?

7 MR. MORAN: No. That's all we have,
8 Mr. Hearing Officer.

9 HEARING OFFICER HALLORAN: So you rest
10 your case in chief then?

11 MR. MORAN: We'll rest and present our
12 arguments in our briefs.

13 HEARING OFFICER HALLORAN: Okay.
14 Thank you.

15 MS. POHLENZ: Ms. Pohlenz, do you have
16 any opening or --

17 MS. POHLENZ: No opening. I will
18 reserve it for a brief closing. However, I would
19 like to seek judicial notice of two documents. The
20 first is Kane County, Ordinance Number 01281
21 amending Section 11-100 through 11-107 of the Kane
22 County Code, Rules of Procedure for the Regional
23 Pollution Control facility site approval application
24 in an unincorporated area of Kane County.

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1 This is the siting ordinance of
2 Kane County, and I would ask the Hearing Officer to
3 take judicial notice of it and to admit it.

4 HEARING OFFICER HALLORAN: Okay. I
5 probably won't take judicial notice. Mr. Moran --

6 MR. MORAN: I have no objection
7 putting it in.

8 HEARING OFFICER HALLORAN: All right.
9 I'll accept it as Respondent's Exhibit Number 1.

10 MS. POHLENZ: Okay. And then the
11 second is Resolution Number 98-52, again, of
12 Kane County adopting the updated Solid Waste
13 Management plan and attached to that is -- and it's
14 a certified copy.

15 Attached to it is Volume 1 and
16 Volume 2 of the Kane County Solid Waste Management
17 plan five-year update dated November 19, '97.

18 HEARING OFFICER HALLORAN: Thank you.

19 Mr. Moran?

20 MR. MORAN: I'm not sure why that
21 needs to be part of the record, but I don't have any
22 objection to submitting it.

23 HEARING OFFICER HALLORAN: Okay. So,
24 Ms. Pohlenz, if you could mark those exhibits as

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1 Number 1 and 2, please.

2 MS. POHLENZ: And, Mr. Hearing
3 Officer, I would ask because of -- just a technical
4 leave on admission of these for less than the nine
5 copies required for the actual Solid Waste
6 Management plan given its volume and then for it to
7 be on nonrecycled paper.

8 HEARING OFFICER HALLORAN: That's
9 fine.

10 MS. POHLENZ: I'm going to submit an
11 original and three copies of the Solid Waste
12 Management plan and an original and nine copies of
13 the ordinance, and I will give you a box if you
14 want.

15 HEARING OFFICER HALLORAN: Okay. That
16 would be great. Thanks.

17 HEARING OFFICER HALLORAN:
18 Respondent's Exhibit Number 1 and 2, admitted into
19 evidence.

20 HEARING OFFICER HALLORAN: Anything
21 further, Ms. Pohlenz?

22 MS. POHLENZ: No, Mr. Hearing Officer.

23 HEARING OFFICER HALLORAN: Mr. Moran,
24 I assume no rebuttal?

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1 MR. MORAN: No rebuttal.

2 HEARING OFFICER HALLORAN: Okay. So
3 this is closed as far as the case in chiefs with
4 respect the parties.

5 Mr. Price -- and before -- I just
6 saw a couple other members of the public walk in.
7 Again, you're more than welcome, in fact, we
8 encourage it if you want to stand up here and give a
9 public comment not subject to cross-examination or
10 if you want to come up here and give testimony
11 subject to cross-examination. In the latter, you
12 would be sworn in. So do I see any show of hands
13 that -- other than Mr. Price that would like to give
14 public comment?

15 (No response).

16 Okay. Mr. Price, you're on.

17 MR. PRICE: Thank you.

18 Again, my name is Derke Price for
19 the Village of South Elgin. Now that the record is
20 established and closed, our only comment at the
21 hearing stage is we'll be -- we have leave to submit
22 a written amicus curiae brief and at the end we'll
23 do that, is to note the absence of something in the
24 record, which is the State of Illinois requires all

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1 documents relative to a facility to be submitted to
2 the decision-maker.

3 In this case, Waste Management
4 failed to submit what was required about the
5 Woodland landfill on which the facility exists. And
6 I'm just going to quote from their application
7 things that they said that indicate they should have
8 submitted far more in the record for the
9 decision-maker to consider.

10 In 2.2. of their application, it
11 says: Currently, portions of the facility are used
12 to support the existing operations at the Woodland
13 landfill. Features of the facility include the
14 existence of a tension basin, the access road, the
15 scale house --

16 HEARING OFFICER HALLORAN: If you
17 could slow down a little please for the court
18 reporter. I'm sorry.

19 MR. PRICE: That's right. I'm sorry.

20 HEARING OFFICER HALLORAN: Thank you.

21 MR. PRICE: -- as shown on drawing
22 Number 2. Prior to development of the transfer
23 station building, existing structures will be raised
24 in the potable well and septic field for the

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1 existing office building will be abandoned.

2 It is our position -- they have,
3 again, referenced the Woodland landfill facility;
4 second, in the hydrogeological overview at 2.3.5.,
5 they say: The hydrogeology for the Woodland
6 landfill is described extensively in the
7 December 1993 significant modification permit
8 application prepared for the existing Woodland
9 Management II landfill operation.

10 That document was never submitted
11 to the Kane County Board for their consideration,
12 their study, their review, our cross-examination.
13 It's not a part of this record.

14 In Section 3, 3.13.3.2, detention
15 basin: The existing detention basin is currently
16 used by Woodland landfill to manage surface water
17 runoff from portions of the landfill. After
18 development of the facility, storm water runoff from
19 the Woodland landfill will continue to be routed
20 through the detention basin.

21 The detention basin is proposed to
22 be expanded to meet the storm requirements of the
23 storm water ordinance and to accommodate storm water
24 runoff from the Woodland landfill and storm water

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1 runoff from the facility. None of the backup
2 information for calculating the storm water runoff
3 for the entire Woodland landfill site was provided
4 by Waste Management as part of its application that
5 is now in this record.

6 That information needed to be
7 provided to the Kane County Board so that they can
8 consider all of that information in making their
9 decision. Waste Management chose not to do that.

10 We will detail further things
11 about how Waste Management, by locating this
12 building within the attenuation zone of the
13 landfill, has failed to provide the structural
14 calculations necessary to consider exactly how it is
15 that those structures, those three different mounds
16 might be affected by locating a building there in
17 addition to the storm water and the hydrogeologic
18 information that we pointed out from their
19 application. The rest will be in our brief.

20 Thank you.

21 HEARING OFFICER HALLORAN: Thank you,
22 Mr. Price.

23 Anything further? Any members of
24 the public wish to step up here and talk about

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1 anything on their mind relevant to the situation?

2 (No response).

3 With that said, we'll go off the
4 record and discuss the posthearing briefing
5 schedule.

6 (Whereupon, a discussion
7 was had off the record.)

8 We're back on the record. We just
9 finished discussing the briefing schedule, and,
10 again, no members of the public wish to make a
11 comment or testify, so we've established that the
12 record will be completed by April 17. Hopefully, it
13 will be on our web site by April 18. The opening
14 for Waste Management is due on or before April 30.

15 The brief for Kane County is due
16 May 12, and the amicus is also due May 12. The
17 reply by Waste Management is due May 19, there's no
18 mailbox rule that applies to those dates. I also
19 set the public comment due on April 25, and the
20 mailbox rule applies in that situation.

21 If there's nothing else, I'm
22 going to conclude this hearing, and I thank the
23 counsels for their professionalism. Thank you very
24 much -- Ms. Pohlenz, do you have something?

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1 MS. POHLENZ: May I have one moment?

2 HEARING OFFICER HALLORAN: Sure.

3 MS. POHLENZ: Will there be any
4 closing statements by petitioner?

5 HEARING OFFICER HALLORAN: I'm sorry.
6 I thought you -- sure.

7 MS. POHLENZ: I have a brief closing
8 to present.

9 HEARING OFFICER HALLORAN: Okay. I'm
10 sorry.

11 Mr. Moran, do you have a closing
12 to make?

13 MR. MORAN: I have no closing to make.

14 HEARING OFFICER HALLORAN: Okay. I
15 assumed you were saving it for posthearing briefs,
16 but go ahead, Ms. Pohlenz, with your closing.

17 MS. POHLENZ: This proceeding concerns
18 Waste Management of Illinois, Inc.'s appeal and the
19 Kane County Board's decision to deny Waste
20 Management's June 14, 2002 application to cite
21 Woodland transfer station. Waste Management has
22 appealed alleging two categories of failures: The
23 first, fundamental fairness in a conclusory sense
24 and then the second, a decision -- that the Board's

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1 decision as to whether certain criteria were met was
2 against the manifest weight of the evidence.

3 Waste Management has presented no
4 substantive evidence, no sufficient evidence
5 concerning any alleged fundamental unfairness today.
6 Further, the record fully and factually supports the
7 decision of the Kane County Board and, therefore,
8 Waste Management of Illinois, Inc.'s appeal should
9 be denied. The Kane County Board decision affirmed.

10 At this hearing, Waste Management
11 of Illinois, Inc., had an opportunity to present
12 evidence to support its fundamental fairness claim.
13 What is that claim? Well, I've been trying to
14 figure that out myself during discovery, and I'm
15 still not sure of what's being claimed. But the
16 allegation, apparently, rests on an argument that
17 the procedural and legal standard used by the Board
18 in making its decision were allegedly the wrong
19 ones.

20 Now, putting aside and not waiving
21 the issue as to whether either of these apparent
22 arguments are even fundamental fairness arguments,
23 I'll reserve that for the brief. The procedural
24 portion of this argument appears to be based on a

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1 four-page memo or letter dated December 10, 2002 by
2 Dan Walter to his fellow Board Members.

3 Waste Management, apparently, is
4 saying that the memo is factually inaccurate, but
5 how? Waste Management doesn't specify, so I'm
6 unable to defend such fundamental fairness
7 allegations today. I'm, therefore, at a
8 disadvantage since I don't know what they're alleged
9 to be.

10 And I submit to you that by not
11 identifying these, Waste Management has waived them.
12 Waste Management of Illinois, Inc., also, I believe,
13 is claiming that it didn't have the opportunity to
14 respond to Walter's memo. This is interesting as
15 the Walter document is no more than a written form
16 of deliberation statements that can and are
17 presented by Board Members orally.

18 Waste Management has no right to
19 respond to Board deliberation be it oral or written
20 during the period of time that they're making their
21 decision. Now, what about the legal standard
22 argument? Waste Management of Illinois, Inc.'s
23 apparent allegation is that the Kane County Board
24 applied the wrong one?

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1 It's nothing more than a manifest
2 weight argument cloaked as fundamental fairness so
3 that Waste Management of Illinois, Inc., can try for
4 a different standard of review on appeal. So where
5 does that leave us? Unidentified alleged factual
6 inaccuracies, response to a document that there's no
7 right to respond to, and misapplication of a legal
8 standard argument.

9 And I submit to you that this is
10 nothing more than carrying a grudge after a loss,
11 and it's willfully inadequate to prove that anything
12 about the fundamentally fair procedure of the Kane
13 County Board was unfair. This local siting decision
14 was fundamentally fair and is supported by the
15 record, and I ask that it be upheld.

16 HEARING OFFICER HALLORAN: Thank you,
17 Ms. Pohlenz.

18 With that, thank you very much.
19 Have a safe trip home, and I'll see you the next
20 time around. Thanks.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 on this date.)

24

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF DUPAGE)

3

4 I, MARIA E. SHOCKEY, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of DuPage,
7 and State of Illinois; that I reported by means of
8 machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a true
10 and correct transcript of my shorthand notes so
11 taken as aforesaid.

12

13

14 _____
15 Maria E. Shockey, CSR
16 Notary Public,
DuPage County, Illinois

17 SUBSCRIBED AND SWORN TO
18 before me this ____ day
of April, A.D., 2003.

19

20 _____
Notary Public

21

22

23

24

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