

1 ILLINOIS POLLUTION CONTROL BOARD

2 In the Matter of:)
3 ANTONIO D. H. NAM,)
4 Claimant,)
5 vs.) PCB 97-234
6 KIKON SUH,) (Enforcement)
7 Respondent.)

8

9 TRANSCRIPT OF PROCEEDINGS had at
10 the hearing of the above-entitled matter, taken
11 stenographically by Cheryl L. Sandeck, CSR, RPR,
12 before JOHN KNITTLE, Hearing Officer, held at
13 1000 Civic Center Drive, Niles, Illinois, on the
14 3rd day of January, 2001, at the hour of 9:30 a.m.

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1 PRESENT:

2 HEARING TAKEN BEFORE:

3 Illinois Pollution Control Board
4 100 West Randolph Street
5 Room 11-500
6 Chicago, Illinois 60601
7 (312) 814-8917,
8 BY: MR. JOHN KNITTLE

9 -----

10 JOSEPH ANNUNZIO
11 1000 Civic Center Drive
12 Niles, Illinois 60714
13 (847) 588-8027,

14 appeared on behalf of
15 the Claimant.

16 ALSO PRESENT: Mr. Antonio D. H. Nam
17 Miss Katie Sandecki
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I N D E X

PAGE

OPENING STATEMENT

By Mr. Annunzio

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ANTONIO D. H. NAM

Direct by Mr. Annunzio

10

E X H I B I T S

RECEIVED

Claimant Exhibit

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1 HEARING OFFICER KNITTLE: Good morning.
2 My name is John Knittle. I am chief hearing
3 officer with the Illinois Pollution Control Board.
4 I am also the assigned hearing officer for this
5 matter entitled Antonio D.H. Nam versus Kikon Suh,
6 Pollution Control Board Docket No. 97-234.

7 This hearing was scheduled pursuant to
8 Board regulations and appropriate notice was given
9 in the local newspaper here.

10 We have with us today Mr. Nam and also
11 Mr. Joe Annunzio, attorney for the claimant.
12 However, we have had a discussion with the
13 respondent's attorney, Mr. Jacob Rees, yesterday,
14 who indicated that he would not be appearing at
15 the hearing today, and we will go over that in a
16 little more detail in a second, Mr. Annunzio.

17 I do want to say that this hearing
18 will be run in accordance with the new Board's
19 procedural rules, which can be found at
20 Section 101.600 subpart F, hearings, evidence and
21 discovery. I will run the hearing accordingly.

22 I want note for the record that there
23 are no members of the public present. Were they
24 here, they would be afforded the opportunity to

1 provide public comment. However, that is not the
2 case.

3 Right now we do have a preliminary
4 matter I want to address. Mr. Annunzio, before I
5 start, maybe you can introduce yourself and your
6 client for the record.

7 MR. ANNUNZIO: My client's name is Antonio
8 D.H. Nam. He is the complainant in this matter.
9 My name is Joseph J. Annunzio and I represent
10 Mr. Nam.

11 HEARING OFFICER KNITTLE: Mr. Annunzio, I
12 am going to give a summary of what I think
13 happened yesterday at the prehearing status
14 conference you had with Mr. Rees. Please correct
15 me if you think I am wrong. But my understanding
16 is we are going to take the direct examination of
17 Mr. Nam here and then we are going to continue
18 this hearing. And this is an agreed continuance
19 with you and Mr. Rees; is that correct?

20 MR. ANNUNZIO: That's right.

21 HEARING OFFICER KNITTLE: We are going to
22 continue this hearing until February 6 at 10:00
23 a.m. to afford Mr. Rees the opportunity to
24 cross-examine this witness and present his case if

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1 he so desires. However, if the Board hasn't

2 stayed this matter by February 6 at 10:00 o'clock,
3 we are going to continue with the hearing and the
4 hearing will go forward. If, in fact, Mr. Rees
5 does not appear at that time, there will be no
6 cross-examination, of course, and the record will
7 close and we will discuss a briefing schedule at
8 that point in time; is that correct?

9 MR. ANNUNZIO: That is correct.

10 HEARING OFFICER KNITTLE: It is also my
11 understanding Mr. Rees is going to attempt to file
12 a third-party complaint with the Board. This is a
13 complaint that was dismissed once before by the
14 Board for service reasons. Whether or not he can
15 effectuate service at this time, it is going to be
16 up to Mr. Rees. But if he does not and if the
17 Board does not stay this matter, we are going to
18 go ahead with the hearing on February 6 and close
19 the record after that point in time.

20 That being said, do you have any other
21 preliminary matters, Mr. Annunzio?

22 MR. ANNUNZIO: No, I do not.

23 HEARING OFFICER KNITTLE: Okay. Do you
24 have an opening statement you wish to make?

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1 MR. ANNUNZIO: Yes, I do.

3 time and a no further action letter was obtained.

4 Mr. Nam, because of misrepresentations
5 made by Mr. Suh, has spent over \$120,000
6 remediating the site, \$120,000 in which he had no
7 intention of spending because he was never told
8 that there was a tank there to begin with.

9 At this time I would like to bring up
10 Mr. Nam and have him give his direct testimony.

11 HEARING OFFICER KNITTLE: Okay. Can we
12 swear him in, please?

13 MR. ANNUNZIO: Before I begin, I do have
14 one matter.

15 HEARING OFFICER KNITTLE: Sure.

16 MR. ANNUNZIO: I want to take judicial
17 notice of -- this is Exhibit A. This is a request
18 to admit for admission of facts sent to Mr. Suh
19 back on May 29th, 1998. It was filed with the
20 Board. He never responded to it.

21 HEARING OFFICER KNITTLE: Are you offering
22 this as Exhibit A?

23 MR. ANNUNZIO: Yes, I want to make sure
24 that --

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1 HEARING OFFICER KNITTLE: Right.

2 MR. ANNUNZIO: I mean, and let him -- can

3 we go off the record a second?

4 HEARING OFFICER KNITTLE: Yes.

5 (Discussion had off the record.)

6 HEARING OFFICER KNITTLE: We can go back
7 on. Before you get started, Mr. Annunzio, I am
8 going to accept this as Exhibit A. So this will
9 be entered into the record.

10 (Whereupon document so offered
11 was received in evidence as
12 Claimant Exhibit A.)

13 MR. ANNUNZIO: Thank you. There are
14 certain facts within this request that are
15 important. Mr. Kikon Suh was the owner of the
16 property of 5101 to 5107 North Kedzie Avenue from
17 on or before 1987 to August 22nd, 1989. There was
18 a total of three underground storage tanks located
19 on the property while he owned the property and
20 they were in use.

21 During that time, there was no proof
22 ever submitted through discovery or whatever that
23 he ever tested the tanks to determine that they
24 were leaking. Okay.

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1 HEARING OFFICER KNITTLE: So,
2 Mr. Annunzio, you are stating for the record
3 that pursuant to Section 101.618(f) no response

4 was made to this request to admit facts?

5 MR. ANNUNZIO: That's correct.

6 HEARING OFFICER KNITTLE: And each fact is
7 thus deemed admitted, correct?

8 MR. ANNUNZIO: That's right.

9 HEARING OFFICER KNITTLE: Okay. And the
10 Board record will bear out whether or not a
11 response was filed with the Board. I just want to
12 make it clear that you are going to rely on this
13 for the genuineness of the facts.

14 MR. ANNUNZIO: That's right.

15 HEARING OFFICER KNITTLE: You can proceed.

16 (Witness duly sworn.)

17 HEARING OFFICER KNITTLE: Mr. Annunzio?

18 ANTONIO D.H. NAM,
19 called as a witness herein on behalf of the
20 claimant having been first duly sworn, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ANNUNZIO:

24 Q. Mr. Nam, would you please state your

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1 whole name?

2 A. My whole name?

3 Q. Yes, your entire name.

4 A. Legal name is Antonio. That is my
5 baptized name. Doo Huyun, D-o-o H-u-y-u-n. The
6 last name is N-a-m.

7 Q. Can you please tell us where you live?

8 A. I live in 9402 North Keeler Avenue,
9 Skokie, Illinois 60076.

10 Q. Okay. Can you please tell us when you
11 first got involved in the property known as 5101
12 to 5107 North Kedzie?

13 A. When I buy?

14 Q. Yes, when you bought it?

15 A. I bought it August 22, 1989. I bought
16 the property.

17 Q. And who did you buy the property from?

18 A. From the Kikon Suh. And do you want me
19 to explain more?

20 Q. Yes.

21 A. When this happened?

22 Q. Yes, tell me what happened.

23 A. When I -- 1995, something like that --

24 Q. No, no, no. I want you to tell me

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1 first what happened at the closing? Was there any
2 mention of underground storage tanks?

3 A. At the time I never know underground
4 tanks. He never told me. We didn't know nothing

5 then when I buy that property. So after it passed
6 that way, then when I going to selling the
7 property, that time is we found that, you know,
8 like boating and testing, we found that it
9 contaminated the tank and, you know, gasoline and
10 whatever is buried underground. There is a
11 problem we found at that time, 1995, something
12 like that.

13 Q. What did you do?

14 A. So, you know, actually we hired a
15 company, Gabriel Company, and they found the
16 contamination underground. They found the tankers
17 contaminated everything. So we can -- we tell to
18 the Hydrodynamics, the EPA company. So they also
19 -- R.W. Collins, that company also. They pick up
20 from the underground, the two tanks, there was
21 10,000 big tanker and the 1,000-gallon tanker.
22 And also we found the underground is the
23 contaminated that dry soil so we knew that there
24 was a problem.

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1 Q. Do you recall what the ground was
2 contaminated with?

3 A. Pardon?

4 Q. Do you remember what the ground was

5 contaminated with? What was the contamination?

6 A. When I buy it, I never know. But they
7 -- when we contracted the times, the North Park
8 College, they contract us, they found that they
9 themselves did the hiring the company found that.
10 So they noticed to us to that we know that dry
11 soil.

12 After clean-up, found the tanker and
13 the clean-up, we spent the money. And also buried
14 -- postponing the contract and everything. Then
15 they took three years. Three years we losing
16 money because we cannot continue this contract.

17 Q. All right. In 1995 you attempted to
18 sell the property to North Park College?

19 A. Yes, North Park. Now the North Park
20 University.

21 Q. Now it is North Park University. And
22 that is when the contamination began to show?

23 A. Yes, that's right.

24 Q. Okay. Because of your need to do a

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1 Phase I and later a Phase II report, correct?

2 A. Yes. We -- you know, the Phase I,
3 Phase II made that. But still they cannot believe
4 that kept the college university or so, when we
5 closing time or so --

6 Q. Before we can get to that, was there
7 anything, pipes, anything, showing that, in fact,
8 there was a tank on the site when you owned the
9 property or was it all missing?

10 A. When I was buying?

11 Q. There was no indication of a pump?

12 A. No indication, nobody tell me and
13 nothing -- he never pipe and everything, we don't
14 know that. We didn't know that, nothing at that
15 time. We -- if we knew that, then different way.
16 My lawyer and the bank and everything, they are
17 not going to contract that type of property. So
18 we didn't know that. Kikon Suh never told me that
19 kind of problem, so we didn't know that.

20 Q. Okay. Go on. You were talking about
21 the closing now.

22 A. Uh-huh.

23 Q. You were talking about the closing?

24 A. So then closing time, you know, you got

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1 to catch -- the Illinois EPA cannot believe that.
2 But still North Park University cannot believe
3 that. So when we contract at closing time, it was
4 that day \$15,000 that escrow money because they
5 suffered because of these conditions. They were

6 going to buy because they needed the land.

7 So I think that they continuing to
8 clean up the ground, the land. So we -- 15,000
9 deposit is gone. We never returned the money to
10 the escrow. The more I spend the money -- I think
11 North Park University must spend the money to
12 clean up the ground for the EPA, new soil and
13 everything.

14 So when we found the tanker, 1995,
15 after the Hydrodynamics, the whole soil is
16 underground, removal to the far away and the new
17 soil to clean that. But still North Park College
18 not enough to believe that. So that is why it
19 took -- three years passed away continuing
20 postponing the contract. So we got damage, more
21 interest and taxes and everything. We do nothing.
22 Stopping the contract, cannot keep going. So we
23 just patiently waiting for -- but North Park
24 University, they suggested to me that much

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1 discount money and \$15,000 deposit and buy it as
2 conditions. That is why I say we closing that
3 property. So I lost money. It is a total
4 \$120,000 and spend the monies, \$105,000. And plus
5 when we closing time, \$15,000 that bank escrow for
6 the North Park University, but North Park

7 University never returned to me because still
8 contamination, I think it spent the money to --
9 the underground soil change, I think so.

10 Q. Okay. I would like to submit
11 exhibit B. Mr. Nam, could you please tell us what
12 Exhibit B is?

13 A. Yes.

14 Q. Tell us.

15 A. Yes. Hydrodynamics regarding \$44,999.
16 Continuing?

17 Q. Yes. How would you characterize what
18 you are looking at, first of all? How would you
19 characterize?

20 A. First of all, they found that the
21 boating tested, the Gabriel Company, the North
22 Park University hired that company. So we hired
23 Hydrodynamics. Then also they hiring R.W.
24 Collins, the tanker storage -- the tanker removal

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1 company. And also we hiring the Hydrodynamics.
2 They cleaned up the new soil and removed the
3 contaminated soil. They did that.

4 Q. Okay.

5 A. So we paid R.W. Collins \$3,325. And
6 Hydrodynamics also we paid the money, \$44,990.

7 Midwest Wrecking \$404,064.50; Illinois State --

8 Q. Fire Marshall?

9 A. -- Fire Marshall we paid \$1,100. Also
10 -- so R.W. Collins is the tanker removal company
11 \$3,695; Midwest -- R.W. Collins also \$475, \$250,
12 \$500; Midwest Wrecking \$4,064.50.

13 Q. That is the City of Chicago for
14 permits?

15 A. Chicago \$5,260.48. This is Illinois
16 State Fire Marshall. Gabriel, Gabriel is the
17 environmental EPA company, \$6,752.40. Also
18 statement of -- also another pay, December 27,
19 \$6,375 to Gabriel.

20 Q. I think to save time, maybe what we can
21 do is why don't you just flip through that to make
22 sure these are all bills that were submitted to
23 you and paid, and then we can -- let's go off.

24 (Discussion had off the record.)

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1 HEARING OFFICER KNITTLE: We are back on
2 record after a short recess. Mr. Annunzio, you
3 can continue your direct examination.

4 BY MR. ANNUNZIO:

5 Q. Okay. Could you please look at the
6 rest of these bills. You can just look at them
7 one at a time. You don't have to read them to us.

8 And then you can tell us whether after looking at
9 these bills are these the bills submitted to you
10 and paid by you through the checks that are in the
11 exhibit?

12 A. The company invoice, the lawyer -- the
13 lawyers, this is for the Gabriel \$4,644.75. There
14 is \$2,541. There is Midwest Wrecking \$39,900.
15 City of Chicago --

16 Q. That is another permit.

17 A. -- \$478.

18 Q. That is a check to Mid -- I am sorry.

19 A. This is Midwest Wrecking. This is
20 including.

21 Q. Yes.

22 A. This is including.

23 Q. Uh-huh.

24 A. November 20, '95, \$35,000 to Midwest

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1 Wrecking. This is the same thing. Then also --

2 Q. We are not there yet. I would like to
3 submit this as Exhibit B.

4 HEARING OFFICER KNITTLE: Mr. Nam, you
5 stated that these are bills that were sent to you
6 and that you have paid?

7 MR. ANNUNZIO: Yes.

8 THE WITNESS: Yes.

9 HEARING OFFICER KNITTLE: I just wasn't
10 clear if we ever get that out. I just want to
11 make sure we had that in the record. That is
12 correct, isn't that, Mr. Nam?

13 THE WITNESS: Yes.

14 HEARING OFFICER KNITTLE: This will be
15 admitted then as Exhibit B.

16 (Whereupon document so offered
17 was received in evidence as
18 Claimant Exhibit B.)

19 BY MR. ANNUNZIO:

20 Q. Exhibit B and the testimony just given
21 is the amount of money spent on soil contamination
22 up until the time of closing; is that correct?

23 A. Uh-huh.

24 HEARING OFFICER KNITTLE: You have to say

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1 yes or no for the court reporter.

2 THE WITNESS: Yes.

3 BY MR. ANNUNZIO:

4 Q. And that amount comes to \$105,016.90;
5 is that correct?

6 A. Yes.

7 Q. Okay. And at the time of closing,
8 could you tell us what you needed to negotiate in

9 order to close on the day you wanted to?

10 A. Yes. North Park University, they still
11 concerned the underground contaminated, the dry
12 soil. They looking for attempts -- they wanted
13 disease conditioning at closing, but they want to
14 still investigate for the underground
15 contamination situation. So they are going to
16 hold the \$15,000, our money, closing money escrow
17 to escrow.

18 So after closing, they then continue
19 the investigation and hire a different company.
20 So we got the security deposit escrow money,
21 \$15,000, that they holding, but they are going to
22 spend, as I know that, they are going to spend
23 that money. They never return \$15,000.

24 Q. Could you take a look at what we have

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1 here? Can you tell us what that is?

2 A. Chicago Title and Trust Company closing
3 document, deposit \$15,000. But that contract
4 we --

5 Q. Did you sign that contract?

6 A. Yes, with North Park. We sign it with
7 -- we have the North Park College Agreement here.
8 So we have the document here.

9 Q. And then this document, \$15,000 is set
10 aside in escrow for?

11 A. North Park College.

12 Q. For North Park College for
13 environmental reasons.

14 A. Yes, this is the contaminated
15 underground. Still they concerning themselves
16 with hiring the company. So they spend the money,
17 they worry about that. So we agreed that \$15,000,
18 the escrow money for the removal of the
19 underground soil, everything, which I say they
20 never returned this money. This is money gone,
21 \$15,000. We got the document here.

22 MR. ANNUNZIO: I would like to submit
23 Chicago Title and Trust closing documents as
24 Exhibit C.

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1 HEARING OFFICER KNITTLE: Those will be
2 admitted. Thank you, Mr. Annunzio.

3 (Whereupon document so offered
4 was received in evidence as
5 Claimant Exhibit C.)

6 BY MR. ANNUNZIO:

7 Q. Just to give the Pollution Control
8 Board the type of anguish you have gone through
9 through this entire process from the beginning,

10 can you explain all the problems that you had, the
11 intangibles that were lost? I just want to give
12 the Board a flavor of what you have gone through
13 because this is more than just money.

14 A. I cannot understand that.

15 Q. Tell us how you felt during the time
16 you went through this.

17 A. You know, I honestly tell the truth.
18 When I bought the building, the underground
19 problem we didn't know that, nothing. We didn't
20 know that. But still the damage we -- when I was
21 selling that property at that time, it was still
22 -- the money and the -- you know, mentally and
23 everything damage too. Also we lost money and
24 interest and everything, interest charge. So you

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1 know, it was terrible to happen, the situation.

2 Q. Before you filed the -- before you
3 filed the suit with the Pollution Control Board,
4 did you attempt to talk to Mr. Suh about the
5 environmental problems?

6 A. Yes. After I found at that time, I
7 told him, but he don't care. He told me I already
8 sold to you. So then I contacted Joseph Annunzio,
9 the lawyer.

10 MR. ANNUNZIO: Could we go off the record?

11 HEARING OFFICER KNITTLE: Yes.

12 (Discussion had off the record.)

13 THE WITNESS: So hopefully this testimony
14 and then, you know, that I -- hopefully -- I lost
15 money and everything, but this is -- I want the
16 return of my money, also spend the time. That is
17 it.

18 MR. ANNUNZIO: Okay. That is it.

19 THE WITNESS: I cannot remember anything.
20 Sorry about that.

21 HEARING OFFICER KNITTLE: Any further
22 questions, Mr. Annunzio?

23 MR. ANNUNZIO: No, I don't have any
24 further questions.

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1 HEARING OFFICER KNITTLE: All right.

2 MR. ANNUNZIO: Let's go off the record for
3 a second.

4 (Discussion had off the record.)

5 HEARING OFFICER KNITTLE: We are back on
6 the record after a short recess. Mr. Annunzio,
7 are you finished with your direct examination?

8 MR. ANNUNZIO: Yes, I am at this time.

9 HEARING OFFICER KNITTLE: I am going to
10 give you leave as well if you change your mind and

11 you want to reopen your direct examination on
12 February 6th, I think it is only fair --

13 MR. ANNUNZIO: Thank you.

14 HEARING OFFICER KNITTLE: -- since we are
15 stopping after this witness, you know, before his
16 cross-examination. If you at that point in time
17 decide you have further direct examination of
18 additional witnesses, I am going to give you leave
19 to call them on February 6th. I do want to state
20 -- and I forgot to mention this at the beginning
21 -- that Mr. Rees indicated he would file a written
22 motion to continue the hearing as required by the
23 Board's regulations. I have no way of knowing if
24 he has actually done that.

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1 MR. ANNUNZIO: If I could?

2 HEARING OFFICER KNITTLE: Please.

3 MR. ANNUNZIO: I received a fax this
4 morning.

5 HEARING OFFICER KNITTLE: I did grant him
6 permission to do this via facsimile. Since we
7 have the written motion, I am going to grant, as I
8 stated, that continuance. And I guess we are
9 going to go off the record until 1:00 o'clock.
10 But we are going to continue this proceeding until

11 February 6th at 10:00 a.m. and then proceed with
12 the cross-examination of Mr. Nam.

13 MR. ANNUNZIO: Thank you.

14 HEARING OFFICER KNITTLE: Also at that
15 time we are going to discuss briefing schedules.
16 I will also discuss witness credibility and go
17 over the exhibits that we have accepted at this
18 point in time. I don't want to do all that at
19 this point in time because we are not sure whether
20 or not there is to going to be cross-examination
21 or whether or not there will be any other
22 additional witnesses.

23 I also want to note for the record
24 right now there are still no members of the public

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1 wishing to provide public comment. We will go off
2 the record until 1:00 o'clock and resume then.

3 (Short recess taken.)

4 HEARING OFFICER KNITTLE: Hello. My name
5 is John Knittle, hearing officer with the Illinois
6 Pollution Control Board. We are back on the
7 record after a recess for lunch. It is
8 approximately 1:00 p.m. I want to note that there
9 are no members of the public here. Were they
10 here, they would be afforded the chance to speak.
11 Actually, there is one member of the public here

12 today named --

13 MISS SANDECKI: Katie Sandeck.

14 HEARING OFFICER KNITTLE: Do you want to
15 provide public comment today? The member of the
16 public is indicating no by shaking her head just
17 for the record.

18 That being the case, as I stated
19 earlier, this matter is going to be continued
20 until February. I will put out a hearing officer
21 order and renote this for the appropriate time
22 and place. Thank you very much.

23 (Proceedings adjourned until
24 February 6, 2000, at 10:00 a.m.)

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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF LAKE)

3 I, Cheryl L. Sandeck, a Notary Public
4 within and for the County of Lake and State of
5 Illinois, and a Certified Shorthand Reporter of
6 the State of Illinois, do hereby certify that I
7 reported in shorthand the proceedings had at the
8 taking of said hearing and that the foregoing is a
9 true, complete, and correct transcript of my
10 shorthand notes so taken as aforesaid, and
11 contains all the proceedings given at said

12 hearing.

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Notary Public, Cook County, Illinois
C.S.R. License No. 084-03710

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