



**CERTIFICATE OF SERVICE**

***Johns Manville v. Illinois Department of Transportation, PCB 14-3 (Citizens)***

I, EVAN J. MCGINLEY, do hereby certify that, today, December 23, 2019, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of IDOT's response to Johns Manville's "Motion to Reschedule Hearing" on each of the parties listed below:

Bradley Halloran  
Hearing Officer  
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s/ Evan J. McGinley  
Evan J. McGinley

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation,	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**RESPONDENT’S MOTION TO RESCHEDULE HEARING**

NOW COMES RESPONDENT, the Illinois Department of Transportation (“IDOT”), through its attorney KWAME RAOUL, Attorney General of the State of Illinois, which moves the Pollution Control Board (“Board”), pursuant to Board Rule 101.502, 35 Ill. Adm. Code 101.502, to reschedule the hearing which is currently to begin on February 4, 2020, to a new date after February 18, 2020. IDOT states as follows in support of this motion:

**STATEMENT OF FACTS**

On December 15, 2016, the Board issued its Interim Opinion and Order in this case. As the Board noted at that time, Johns Manville had completed the cleanup of Sites 3 and 6. (Interim Opinion at 19.) With the cleanup of the sites completed, the Sites essentially no longer posed any harm to the environment or the public.

On September 24, 2019, the Hearing Officer set this matter for hearing on November 19 through November 22, 2019.

On November 1, 2019, Johns Manville filed its Motion to Cancel and Reschedule Hearing (“Motion to Cancel”), citing two reasons for their requested cancellation. First, cancellation was requested to allow sufficient time for the Board to rule on Johns Manville’s then forthcoming Motion for Interlocutory Appeal. Second, cancellation was requested because Johns Manville’s

witness, Dr. Tat Ebihara, needed to be out of the country during the week of November 19<sup>th</sup> for a work assignment.

On November 5, 2019, the Hearing Officer held a status for this matter. Johns Manville's Motion to Cancel was discussed by the parties at the status. IDOT did not oppose the motion, in part because it felt that the record for the hearing would be cleaner if all necessary witnesses were available to testify at hearing. (November 5, 2019 Hearing Officer Order, at 1.) The Hearing Officer determined that Johns Manville's motion was not being brought due to any lack of diligence on its part and granted the motion. (Id.)

On November 13, 2019, with the parties' agreement, the Hearing Officer tentatively set this matter for hearing on February 3 through 6, 2020.

Unbeknownst to IDOT's counsel, on November 10, 2019, IDOT's expert witness Steven Gobelman broke his right ankle. (Exhibit A, Affidavit of Steven Gobelman ("Gobelman Aff."), ¶ 1.)<sup>1</sup> On November 21, Mr. Gobelman had surgery for his broken ankle consisting of the installation of a surgical plate and screws. (Gobelman Aff. ¶ 7.) Following his surgery, Mr. Gobelman was placed on restricted mobility.

Mr. Gobelman was sent home after his surgery and advised to rest, elevate his leg, and to use ice. (Gobelman Aff. ¶9.) Mr. Gobleman's doctor also advised him not to put any weight on his right leg for three months, which was twice the amount of time that Mr. Gobelman had been lead to believe would be necessary to recover from his surgery. (Gobelman Aff. ¶ 9.)

Mr. Gobelman continues to follow his doctor's post-operative instructions about staying off of his right foot. (Gobelman Aff. ¶¶ 10-12.)

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<sup>1</sup> Owing to a paragraph number error, Mr. Gobelman's affidavit goes from Paragraph 1 to Paragraph 4.

Mr. Gobleman is concerned that due to his recovery, it would pose a potentially serious challenge for him to participate in a hearing in this matter in early February, as the parties had previously discussed with the Hearing Officer. (Gobelman Aff. ¶ 12.) Mr. Gobelman is particularly concerned that he might slip or reinjure himself trying to get around in Chicago on crutches during inclement weather. (*Id.*) As such, he requests that the Hearing Officer reschedule the hearings in this matter to a new date no earlier than February 18, 2020. (*Id.*)

IDOT has not previously sought to cancel or reschedule the hearing in this matter during the current phase of proceedings. (Exhibit B, Affidavit of Senior Assistant Attorney General Evan J. McGinley (“McGinley Aff.”) ¶ 2.)

### **ARGUMENT**

The Hearing Office should grant IDOT’s Motion to Cancel and Reschedule the hearings currently scheduled for the week of February 3, 2020. IDOT’s motion to should be granted because, as set forth in Mr. Gobelman’s affidavit, he has recently suffered a very substantial injury and is currently on mobility restrictions. (*See general*, Gobelman Aff. ¶¶ 1-12.) Moreover, since the Board issued its Interim Opinion and Order on December 15, 2019, IDOT has not previously sought to cancel any scheduled hearing until now. (McGinley Aff. ¶ 2.) (As the Hearing Officer is aware, Johns Manville recently made its first request to cancel and reschedule the hearing, which the Hearing Officer granted.)

Granting IDOT’s Motion would be in keeping with both the Board’s past regulations and past precedent. First, IDOT’s motion is being brought well in advance of the deadline set under Section 101.510(a) of the Board’s Regulations. Second, granting IDOT’s motion would be in keeping with precedent in other, prior Board cases. For example, the Board has previously upheld and affirmed a Hearing Officer’s cancellation of a previously scheduled hearing where there was

no “existing or immediate threat of harm to human health or the environment[.]” *People v. Community Landfill Co.*, PCBG 03-191, at 2 (October 19, 2006) \*3. But the even more relevant precedent of the Board’s *Community Landfill* decision was its finding that “where a named witness experiences serious and unexpected medical problems,” those problems rise to an “extraordinary” level, such that a motion to cancel a hearing is properly granted. *Id.* Additionally, Board Hearing Officers have previously rescheduled hearings when witnesses were “unavailable . . . due to surgery.” *People v. Gen. Waste Services, Inc.*, PCB 07-45 (Aug. 13, 2009), \*1.

As Johns Manville has completed removal activities at Sites 3 and 6, those sites no longer pose any danger to the environment or to public health. When this factor is considered with the very serious nature of Mr. Gobelman’s injury, it is apparent that the hearing can be rescheduled to accommodate Mr. Gobelman’s needs, without causing any harm to the environment or public health. As IDOT has timely raised this issue with the Hearing Officer, has presented compelling reasons for rescheduling the hearing and has not previously sought to reschedule this hearing, the Hearing Officer should grant IDOT’s motion to reschedule the hearing.

WHEREFORE, Respondent, IDOT, respectfully requests that the hearing officer issue an order:

- 1) Rescheduling the currently-scheduled February 3, 2020 start date for this hearing to a new start date commencing no earlier than February 18, 2020; and,
- 2) Granting such other relief as the hearing officer deems to be appropriate and just.

Respectfully Submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

s/ Evan J. McGinley  
EVAN J. MCGINLEY  
ELLEN O’LAUGHLIN

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation,	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO RESCHEDULE HEARING**

Exhibit A

Steven Gobelman Affidavit



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE, a Delaware corporation,	)	
	)	
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v:	)	PCB No. 14-3
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ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**AFFIDAVIT OF STEVEN GOBELMAN**

I, STEVEN GOBELMAN, certify under penalty of perjury that the statements set forth in this affidavit are true and correct, and hereby declare and state as follows:

1. On the night of November 10, 2019, while playing hockey, I suffered an injury to my right ankle. I was immediately taken to the emergency room at Memorial Medical Center in Springfield, Illinois for evaluation and treatment.

4. Once at the emergency room, my ankle was x-rayed. The x-ray showed that I had broken both my tibia and fibula at my ankle.

5. While I was in the emergency room, I was evaluated by Doctor Stephen Pineda, who was the on-call orthopedic specialist at the hospital that evening. He advised me that I would need surgery to correct the breaks to my tibia and fibula. My ankle was then placed in a cast as a temporary measure, in order to allow the swelling in my ankle to go down. This was a necessary pre-condition before my ankle could be operated on.

6. On November 18, 2019, I saw Dr. Pineda at his office in Springfield. He determined that at that time that the swelling around my ankle had gone down enough, such that I could now be scheduled for surgery. During this visit, he advised me that it would take approximately six weeks for me to recover from this surgery.

7. On November 21, 2019, Dr. Pineda operated on me at Memorial Medical Center in Springfield, Illinois. The operation lasted approximately two hours, during which time the

doctor inserted a plate into my bone, as well as surgical screws. Due to the severity of the break, however, Dr. Pineda also had to insert two long screws, in order to reattach the tibia and fibula.

8. Because my injuries proved to be more extensive than I had been lead to believe, I was advised that my recovery time would take upwards of three months, which was twice as a long of a recovery period long as I had originally been told. Following the surgery, I was sent home.

9. When I was sent home I was advised to elevate my leg, rest and use ice. I was also told that I could not put any weight on my right foot for three months, twice the amount of time that I had originally been advised I would need to recover from this surgery. This would place the end of my restrictions out to approximately mid-February 2020.

10. I saw Dr. Pineda for a post-surgery visit on December 3, 2019. He advised me that my ankle looked good and to continue to stay off of my right foot. I am scheduled to have another follow up appointment with Dr. Pineda on December 31, 2019.

11. I am currently following Dr. Pineda's instructions. I am only able to get around using crutches. In order to go to and from work, I need to be driven by my wife. I have attached a true and correct copy of my post-operative instructions from Doctor Pineda as Exhibit 1 to my affidavit.

12. Based on my current recuperation schedule, I will still need crutches to get around until approximately mid-February 2020. Given this prognosis, I am concerned that it would be extremely challenging for me to participate in the Board hearing for this matter, which is currently scheduled to begin on February 3, 2020. In particular, I am very concerned that if rainy, snowy, and/or icy conditions existed at the time of the hearing, I could suffer a potential injury or relapse if I were to slip while getting around. Accordingly, it is my preference that the Board reschedule the hearing in this matter until no earlier than the week of February 17, 2020.

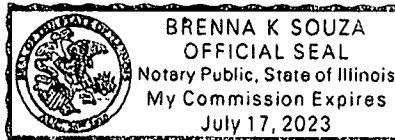
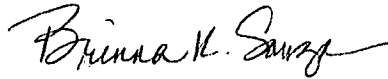
FURTHER, AFFIANT SAYETH NOT.



STEVEN GOBELMAN

SUBSCRIBED AND SWORN to before me

this 19<sup>th</sup> day of December, 2019.



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO RESCHEDULE HEARING**

Exhibit 1

Steven Gobelman Affidavit

# HEALTH STATUS FORM

Date:  Time In:  Time Out:   
 Name:  Date of birth:   
 Employer / School:

## STATUS

Return to work/school on   restrictions

No exposure to cold, heat, water dampness, chemicals, paint, dust welding (appropriate restrictions circled)  No lifting over  lbs.

Keep affected area clean and dry  No push or pull over  lbs. with  arm.

No climbing of stairs or ladders  No reaching above shoulder level

No work around high speed or moving machinery  No kneeling or squatting

No operating of mobile equipment  Should be considered permanent

Should be sitting  % of time  One-handed job with  arm

No work requiring repetitive bending of   No use of

Limited use of

Other:   
 Restrictions apply until

Unable to work/school

Excuse from Physical Education unit

Is pregnant with an expected date of confinement of  and may / may not work until

Required to take medication during active hours

Medication

Other:   
 Was in my office today  Physical Therapy on:

Return to physician PRN  Follow-up on:

Appt. with:  Date:

Please phone Springfield Clinic,  extension  to schedule follow-up appointment.

Diagnosis:

### Signature of Provider

You are hereby authorized to discuss with and send to:  
 Employer:   
 Street:   
 City:  State:  Zip:

or its representative, any and all information you may have regarding my condition when under observation or treatment of you, including past history obtained, findings, diagnosis, laboratory results, x-ray results and medical records.

Signed:

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ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**RESPONDENT'S MOTION TO RESCHEDULE HEARING**

Exhibit B

Affidavit of Evan McGinley

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

JOHNS MANVILLE,	)	
a Delaware corporation,	)	
Complainant,	)	
	)	
v.	)	PCB No. 14-3
	)	(Citizen Suit)
ILLINOIS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Respondent.	)	

**AFFIDAVIT OF EVAN J. McGINLEY IN SUPPORT OF IDOT'S MOTION TO CANCEL**

I, EVAN J. McGINLEY, certify under penalty of perjury that the statements set forth in this affidavit are true and correct, and hereby declare and state as follows:

1. I have been lead counsel for the Illinois Department of Transportation ("IDOT") in this matter since May of 2014 and represented IDOT during the Board's prior round of hearings in this matter during May and June of 2016.

2. IDOT's concurrently filed Motion to Cancel represents the first time that IDOT has sought to cancel the final set of hearings in this matter since the Board issued its Interim Opinion and Order on December 15, 2016.

3. I have known and worked with IDOT's expert witness, Steven Gobelman, for more than four and a half years. Mr. Gobelman recently suffered a very serious injury to his ankle and is recovering from surgery.

4. I have discussed the nature and extent of his injuries with Mr. Gobelman now on several occasions. Based on my longstanding working relationship with Mr. Gobelman, it is my belief that Mr. Gobelman is genuinely concerned about having to travel to Chicago to participate in the next round of hearings in this matter, while he is still required to use crutches and his mobility is limited.

5. IDOT was prepared to go to hearing, as originally scheduled, during the week of November 18, 2019. When Johns Manville moved to cancel and reschedule the hearing date, IDOT did not object.

6. IDOT's request to now cancel the hearing set to begin on February 3, 2020 to a date after February 18, 2020 should not be construed in any way as evidencing any lack of diligence on IDOT's part.

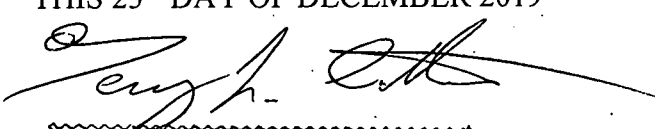
FURTHER AFFIANT SAYETH NOT



Evan J. McGinley

SIGNED AND SUBSCRIBED TO ME

THIS 23<sup>rd</sup> DAY OF DECEMBER 2019



OFFICIAL SEAL  
**TERRY L. COTTON**  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 01-19-2021