

1 STATE OF MICHIGAN  
2 IN THE COURT OF CLAIMS  
3

4 PETER J. HAMMER,  
5 Plaintiff,

6 v

File No. 04-241-MK

7 HON. JAMES R. GIDDINGS

8 THE BOARD OF REGENTS OF THE  
9 UNIVERSITY OF MICHIGAN, a  
10 body politic,  
11 Defendant.

12 DEPOSITION OF PAUL N. COURANT

13 Taken by the Plaintiff on the 25th day of January, 2006, at  
14 900 Victors Way, Ann Arbor, Michigan, at 10:00 a.m.  
15

16 APPEARANCES:

17 For the Plaintiff: PHILIP GREEN (P14316)  
18 Green, Green & Adams, P.C.  
19 900 Victors Way  
Ann Arbor, Michigan 48108  
(734) 665-4036

20 For the Defendant: RICHARD J. SERYAK (P26152)  
21 Miller, Canfield, Paddock &  
22 Stone, P.L.C.  
150 West Jefferson Avenue  
Detroit, Michigan 48226  
(313) 496-7501

23 Also Present: Evan Caminker  
24  
25

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1-800-632-2720

DEPOSITION OF:  
Paul N.  
Courant



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1 Q Do you know how she was appointed to chair that?

2 A I don't recall.

3 Q And where was she located within the university at that

4 time?

5 A She was either -- she was either -- I don't know if she was

6 emerita yet. She was a distinguished professor of

7 psychology and either -- being emerita hasn't actually

8 changed her behavior at all, so she -- that's where she

9 was.

10 Q Did she hold an administrative position in this year, the

11 late fall of 2002, early winter?

12 A I don't think so.

13 Q Was it your understanding that the grievance was processed

14 under the law school's grievance policy as opposed to the

15 university's model?

16 MR. SERYAK: Objection for lack of foundation.

17 Q You can answer the question.

18 A My understanding is that it was processed under applicable

19 policy.

20 Q Well, in the letter that you sign and you say you take

21 credit for, you say in paragraph two:

22 "As I read the Law School grievance policy, with

23 due respect for the interpretations provided by both

24 the Grievance Review Board and Dean Lehman, I concur

25 that these claims (as well as grievances four and

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1 five) concern matters related to tenure and as such

2 lie outside the jurisdiction of the Law School's

3 procedures."

4 See that?

5 A Uh-huh (affirmative).

6 Q So you would agree with me, wouldn't you, that the

7 grievance that was filed was processed under the law

8 school's policy?

9 A That's right.

10 Q All right. And you are agreeing that the claims, including

11 grievances G-4 and G-5, were outside of the law school's

12 procedures; correct?

13 A That is what I seem to say.

14 Q And G-4 was the claim that he had been unlawfully

15 discriminated against, was it not?

16 A That is what this document says. It also says very clearly

17 that, "If you have any evidence in favor of the claim of

18 discrimination, please provide it and I will have the

19 matter reviewed."

20 Q And it doesn't say, however, that that is pursuant to any

21 process that's available to him, or policy?

22 A He could go to the Office of Institutional Equity -- I

23 think that's what it's called -- and request investigation

24 and such an investigation would have taken place. Whether

25 that's in the connection --

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1 Q How could --

2 A I don't know.

3 Q Wait. Let me finish. How come you did not in this letter

4 suggest that he do so?

5 A What I suggested was that he come to me, in which case I

6 would have asked them to do it.

7 Q Why didn't you ask him to go to them so that an

8 investigation would be conducted?

9 A I think implicit in this statement, "If you have such

10 evidence, please provide it, and I will have the matter

11 reviewed," was, in fact, an invitation for him to do so.

12 Q And, of course, you knew as of this point in time that he

13 did not know who the negative voters were against him;

14 correct?

15 A I did not know that -- I would have guessed that, if I'd

16 thought about it.

17 Q Well, you knew it because it was part of his grievance,

18 didn't you, that he had been denied access to information

19 that would have revealed who the negative voters were;

20 indeed who the negative outside reviewers were? You knew

21 that?

22 A Yes.

23 Q And yet you said you would only investigate it if he could

24 provide you with evidence that the process was tainted by

25 unlawful discrimination?

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1 A With respect to the second -- I said, "With respect to the

2 personnel information, please indicate exactly which

3 documents you feel you've been wrongly denied, and I will

4 have that reviewed as well." This is an invitation for him

5 to come to administration.

6 Q Were you aware that there were notes taken during the

7 course of the tenure committee meetings on February 11th of

8 2002 and February 20th of 2002?

9 A Not specifically.

10 Q Were you provided with copies of those notes?

11 A I don't believe so.

12 MR. GREEN: I have no further questions.

13 EXAMINATION

14 BY MR. SERYAK:

15 Q Sir, I'm going to ask that you look again at Exhibit 3.

16 A For some reason, my stack goes 1, 2, 4, 5. Are you sure

17 there's a 3?

18 Q Here. Take that one.

19 A Okay. All right.

20 (Counsel hands document to witness)

21 Q We're back in February of 2002. Was there any university

22 policy or anything in writing that dealt with review by the

23 office of the provost other than the paragraph in section

24 four of page five of this exhibit?

25 A No.

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1 Q And would there have been anything, either on the  
 2 university's web site or any other writing that you're  
 3 aware of, that would touch upon the subject of review by  
 4 the provost back in February of 2002, other than section  
 5 four on page five of Exhibit 3?  
 6 A **Perhaps on some faculty governor's web site, but not on**  
 7 **anything from the administration, no.**  
 8 Q Let me ask the question again, just so we're clear. Is  
 9 there anything that the University of Michigan issued on  
 10 its web site or in writing on the subject of review by the  
 11 provost, other than section four, page five of Exhibit 3  
 12 back in February of '02?  
 13 A **No.**  
 14 Q Is there anything in this exhibit that requires the provost  
 15 to have any formal communication with a tenure candidate,  
 16 whether they've been recommended for tenure or not  
 17 recommended for tenure?  
 18 A **No.**  
 19 Q Is there anything that requires the provost to have any  
 20 written communication or any communication with the dean of  
 21 a unit in cases where that unit has not recommended a  
 22 candidate for tenure?  
 23 A **No.**  
 24 Q In your earlier answers you made reference to a meeting of  
 25 the Board of Regents, I believe in May of a given academic

1 A **Yes.**  
 2 Q So any faculty member would know whether he or she had  
 3 tenure or was going to have tenure by May of 2002, if they  
 4 were a candidate?  
 5 A **Yes.**  
 6 Q From your review of the file, were you satisfied that the  
 7 law school complied with the principles -- the guiding  
 8 principles that are outlined in Exhibit 3 with respect to  
 9 Peter Hammer's tenure application?  
 10 A **Yes.**  
 11 Q Were you aware that as part of his tenure file Peter Hammer  
 12 wrote lengthy, detailed responses to the external reviews  
 13 that the tenure committee at the law school received in his  
 14 case?  
 15 A **Yes, they were in the file.**  
 16 Q And that would be consistent with all the points that you  
 17 have raised in Exhibit 3 in which the candidate is given an  
 18 opportunity to respond?  
 19 A **Yes, yes.**  
 20 Q You mentioned the Office of Institutional Equity -- or I  
 21 may not have the correct --  
 22 A **Institutional Equity and Diversity, I think it's called.**  
 23 Q And you mentioned also an Anthony Whalesby?  
 24 A **Anthony Whalesby is the current director of that office.**  
 25 Q And do you know who preceded him?

1 year, in which the board takes formal action on granting  
 2 tenure to candidates who have been recommended.  
 3 A **Yes.**  
 4 Q Since you have been either an associate provost or a  
 5 provost, has that Board of Regents meeting or decision on  
 6 tenure cases taken place in May of every year?  
 7 A **Yes. There may have been one year in which it got moved**  
 8 **for some crazy reason, but basically, yes.**  
 9 Q Well, all right. I mean if it -- would it be close to May?  
 10 A **It would be almost always May.**  
 11 Q Okay. Was it May of 2002?  
 12 A **Yes.**  
 13 Q And are minutes or agendas for the regent board meetings --  
 14 are those made available to faculty at the university?  
 15 A **Yes.**  
 16 Q I mean are proceedings of the board summarized or reported  
 17 in the campus newspaper?  
 18 A **In the University Record, yes.**  
 19 Q In the University Record? So there are publications? If a  
 20 faculty member wanted to know what the board was going to  
 21 be doing at its next meeting, the faculty member could find  
 22 that out?  
 23 A **Yes.**  
 24 Q And so the board in 2002 acted on positive tenure  
 25 recommendations?

1 A **I think Jenny Myers was in that position at this time.**  
 2 Q Does that office receive complaints -- discrimination  
 3 complaints from university employees?  
 4 A **Yes.**  
 5 Q And does it process and investigate those complaints?  
 6 A **Yes.**  
 7 Q To your knowledge, did Peter Hammer ever file a complaint  
 8 with that office?  
 9 A **I have no knowledge that he did.**  
 10 Q Did Peter Hammer ever file a written complaint with you  
 11 complaining that he had been denied tenure because he is  
 12 homosexual?  
 13 A **No.**  
 14 Q Did Peter Hammer ever give you any written response or any  
 15 written follow-up to your March 14 letter of 2003?  
 16 A **None to my recollection, no.**  
 17 MR. SERYAK: Thank you. That's all I have.  
 18 EXAMINATION  
 19 BY MR. GREEN:  
 20 Q Wasn't the response to the March 14th letter of 2003 this  
 21 lawsuit?  
 22 A **If so, it wasn't a response to me.**  
 23 Q Just two questions -- just two questions for you, Mr.  
 24 Courant. First, with regard to the letter that was sent to  
 25 you by Peter Hammer during the course of your provost

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1 MR. SERYAK: That would be good. Why don't we do  
 2 that? Sure. I'll wait.  
 3 (Off the record)  
 4 EXAMINATION  
 5 BY MR. SERYAK:  
 6 Q Sir, I'm going to show you Exhibit 1 from the Peter Hammer  
 7 deposition and just ask if you've seen that before?  
 8 A I saw it last week when we were talking about this -- this  
 9 deposition.  
 10 Q Okay. That's the first time you saw that letter?  
 11 A Yes, yes.  
 12 Q And are you familiar with the standard -- university  
 13 standard practice guide for notifying nontenured faculty of  
 14 nonrenewal?  
 15 A Yes.  
 16 Q And in your opinion does that letter from then Dean Lehman  
 17 to Peter Hammer satisfy that practice guide?  
 18 A Yes.  
 19 Q And why is that?  
 20 A Well, what the standard practice guide requires is that  
 21 people be given notice of a terminal year if they are not  
 22 receiving tenure. This document says:  
 23 "Your current employment contract expires May  
 24 31st, 2001. Because the faculty has deferred  
 25 consideration of your tenure, your contract will be

1 that though.  
 2 (Deposition Exhibit 14 marked)  
 3 Q Have you -- and you can take your time. But have you had  
 4 an opportunity to review this exhibit before today?  
 5 A Yes, last week, or the week before; whatever.  
 6 Q What's your understanding of what Peter Hammer is asking  
 7 for here?  
 8 A My understanding is that basically Professor Hammer is  
 9 asking for a terminal year beyond the terminal year that  
 10 Dean Lehman stated that he would get in the previous  
 11 document that we just -- that we just discussed. And, in  
 12 particular, should he -- he makes the case that should he  
 13 not get tenure, he'd like his benefits to continue and he'd  
 14 like time to find another job. And Dean Lehman says "yes"  
 15 to both -- to that request.  
 16 Q Thank you. And then, lastly, I'd like you to look at  
 17 Exhibit 15.  
 18 A Okay. This just -- what you're calling 15 --  
 19 MR. GREEN: Is 13.  
 20 MR. SERYAK: It's 13?  
 21 A -- you had marked as 13.  
 22 MR. GREEN: Yeah.  
 23 MR. SERYAK: So what is 13 then?  
 24 MR. GREEN: 13 is that document.  
 25 MR. SERYAK: And so the other e-mail -- what's --

1 extended to May 31st, 2002. If you are awarded  
 2 tenure, you will receive a new contract; if not, the  
 3 academic year 2001-2002 will be your terminal year."  
 4 That's notification of a terminal year in the event that  
 5 tenure is not awarded.  
 6 Q And I just have to wait for the other --  
 7 MR. GREEN: Can I cross him on that while we're  
 8 waiting?  
 9 MR. SERYAK: Well, let -- if I could -- if I  
 10 could just -- I'd like to wrap this up, and then -- that's  
 11 okay. We're almo- -- yeah, thanks.  
 12 MR. GREEN: Oh, here we go.  
 13 (Off the record interruption)  
 14 (Deposition Exhibit 13 marked)  
 15 Q And then I'm going to show you what will be marked as  
 16 Exhibit 14, or should be marked as 14, and ask if you --  
 17 it's an exchange of e-mails between --  
 18 MR. GREEN: Can I have a copy?  
 19 MR. CAMINKER: That's what I don't think  
 20 Kristy --  
 21 MR. GREEN: Yeah. You gave us the other, but you  
 22 didn't give us that.  
 23 MR. SERYAK: Yeah. Sorry.  
 24 (Counsel hands document to counsel)  
 25 MR. GREEN: Thanks. Let her put a sticker on

1 what exhibit is the February 28, 2000 letter?  
 2 MR. GREEN: This is 13. 13.  
 3 (Off the record)  
 4 Q So it's Exhibit 13 then. If you could, just identify this  
 5 for us.  
 6 A This was a document that I distributed widely among the  
 7 faculty and the rest of the community which was a cover  
 8 memo on the guidelines for tenure review that we talked  
 9 about earlier that was promulgated on February 7.  
 10 Q And that's all I have. Was there one item in response to  
 11 Mr. Green's questions or answers that you wanted to  
 12 correct?  
 13 A Oh, yes. You had asked me if all of the people who might  
 14 have reviewed the Hammer case -- casebook were still  
 15 employed at the university, and I had said "yes," and I was  
 16 incorrect. Earl Lewis, who was then the vice provost for  
 17 graduate affairs and dean of the graduate school, no longer  
 18 works for the university. He's now the provost at Emory  
 19 University.  
 20 MR. SERYAK: That's all I have.  
 21 MR. GREEN: I guess I just have one or two  
 22 questions, and I'll do them quick because we've got to get  
 23 across the street.  
 24 EXAMINATION  
 25 BY MR. GREEN:

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1 Q With respect to the requirement that the university provide  
 2 a notice of terminal year, it's your testimony then that  
 3 that notice can be given to an employee prior to the denial  
 4 of tenure?  
 5 **A This was an unusual case, but, yes, in this case, yes.**  
 6 Q In any case can it be given prior to the denial of tenure?  
 7 MR. SERYAK: Asked and answered.  
 8 MR. GREEN: No, it wasn't. He hasn't -- he  
 9 qualified his answer, and I want to know whether that's a  
 10 qualification that universally applies.  
 11 Q Are you saying -- let me give you an example. I'm a  
 12 professor. I come to work at the university. I'm  
 13 nontenured. I'm on tenure track. Can the university give  
 14 me a notice saying, "By the way, Mr. Green, in the year  
 15 2010 we're going to pass upon your tenure, and if you're  
 16 denied tenure at that time, your terminal year of  
 17 appointment will be the year 2010-2011"? Can the  
 18 university do that under their existing policy?  
 19 **A There would be no need to.**  
 20 Q You're begging the question. Can the university do that  
 21 under their existing policy?  
 22 **A The university can, under their existing policy, certainly**  
 23 **make it -- come to an agreement with a faculty member about**  
 24 **the details of notification for --**  
 25 Q You're changing my question. My question is can the

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1 university, under its existing policy, give a notice of  
 2 terminal year contingent upon the denial of tenure at some  
 3 point in time prior to the tenure issue being presented to  
 4 faculty for its vote?  
 5 **A And I'm going to say under certain circumstances, yes.**  
 6 Q What are the circumstances?  
 7 **A Circumstances such as this one.**  
 8 Q Is that contained in the policy?  
 9 **A The policy says that there has to be notification of a**  
 10 **terminal year, when the terminal year will be.**  
 11 Q Doesn't the policy say upon the denial of tenure there must  
 12 be a notice of terminal year?  
 13 **A In this case there had been a denial.**  
 14 Q I'm asking -- I'm asking about policy.  
 15 MR. SERYAK: Wait. Let him finish.  
 16 **A In this case there had been a denial of tenure and there**  
 17 **was such a notification.**  
 18 Q There was a denial of tenure in the year 2000?  
 19 **A That's my reading of what --**  
 20 Q Wasn't the tenure decision deferred?  
 21 **A It was -- tenure was not recommended on the usual schedule,**  
 22 **and there was an adjustment made.**  
 23 Q Was there a denial of tenure in 2000?  
 24 **A There was not a granting of tenure in 2000.**  
 25 Q Was there a denial of tenure in 2000? If we have to go to

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1 the judge for an order, I will. Was there a denial of  
 2 tenure in 2000?  
 3 **A Let me review again the -- do I have it? This is --**  
 4 MR. SERYAK: What --  
 5 MR. GREEN: Exhibit 1, from Hammer.  
 6 THE WITNESS: Exhibit 1.  
 7 MR. SERYAK: I thought I just handed it to you.  
 8 THE WITNESS: No, it's the other --  
 9 MR. SERYAK: I think you're arguing. I just want  
 10 to get on the record, I do think you're arguing with the  
 11 witness.  
 12 MR. GREEN: That's fine.  
 13 MR. SERYAK: I'm going to let him answer.  
 14 MR. GREEN: Yeah, I would say so.  
 15 (Witness reviews document)  
 16 **A There is a --**  
 17 Q I'm not asking --  
 18 **A -- agreement not to recommend tenure, so there's a**  
 19 **non-granting of tenure in the context of a tenure review.**  
 20 Q Is there a denial of tenure -- that is the question -- in  
 21 2000? Was his tenure application denied?  
 22 **A No one makes a tenure application.**  
 23 Q Was his request for tenure denied in 2000?  
 24 **A His review for tenure was unsuccessful in 2000.**  
 25 Q Was it denied in 2000?

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1 **A It was denied, with an agreement to --**  
 2 Q It was denied?  
 3 **A -- to re-examine it in two years.**  
 4 Q What do you rely on for the denial?  
 5 **A "The faculty has concluded that the research currently in**  
 6 **your file does not support a decision to grant tenure."**  
 7 Q Yeah?  
 8 **A So there is no decision to grant tenure.**  
 9 Q There's no decision not to grant tenure either, is there?  
 10 **A That's correct.**  
 11 Q Okay. And you interpret that as a denial? Do you?  
 12 **A I interpret it as had the faculty been forced to make a**  
 13 **"yes" or "no" decision, it would have decided "no"; in**  
 14 **fact, it did effectively decide "no" in the hope that**  
 15 **things would be better in two years.**  
 16 Q Your opinion today is that the faculty denied tenure in the  
 17 year 2000 and said, "We'll reconsider it in two years"? Is  
 18 that what you're testifying to?  
 19 **A The faculty did not recommend -- now -- so this is -- I**  
 20 **don't understand --**  
 21 Q Look. I'm not here for you to talk about it. I'm here for  
 22 you to answer my questions, and you're not doing it.  
 23 MR. SERYAK: Wait a minute.  
 24 **A There's something in the word "denial" that seems to mean**  
 25 **more to you than it does to me.**

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1 Q Well, whatever it means it means, and I'm asking you a very  
 2 straightforward question, and I expect you to answer it  
 3 either a, "yes, it does," or, "no, it doesn't."  
 4 MR. SERYAK: Keep your voice down, Counsel.  
 5 MR. GREEN: You should talk.  
 6 MR. SERYAK: You know, he has answered this a  
 7 number of times.  
 8 MR. GREEN: He hasn't answered it at all.  
 9 MR. SERYAK: Well, he has.  
 10 MR. GREEN: He hasn't.  
 11 MR. SERYAK: He said that tenure wasn't granted.  
 12 MR. GREEN: You know what? You know what? It's  
 13 a quarter to. We have to go over for the deposition. I'm  
 14 going to file a motion because there have been several  
 15 questions that he has not answered.  
 16 MR. SERYAK: Now, he --  
 17 MR. GREEN: You're not facilitating this at all,  
 18 Counsel, and I'm tired of it.  
 19 MR. SERYAK: He can answer your question.  
 20 MR. GREEN: No, he hasn't answered it yet, and  
 21 you keep objecting because he's answered questions when he  
 22 hasn't.  
 23 MR. SERYAK: No, no.  
 24 MR. GREEN: And I'm not going to argue with you  
 25 anymore. I'm going to have the judge decide it, and we'll

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1 come back and finish this another day, because we have a  
 2 video --  
 3 MR. SERYAK: I just -- no, we're going to finish  
 4 it today.  
 5 MR. GREEN: No, we're not going to finish it  
 6 today because --  
 7 MR. SERYAK: Well, we'll make it to the other  
 8 deposition. Answer --  
 9 MR. GREEN: No, we won't. He hasn't answered at  
 10 least two questions.  
 11 MR. SERYAK: You've -- Counsel, ask your  
 12 questions.  
 13 MR. GREEN: I've already done it. You keep  
 14 telling him he's answered it.  
 15 MR. SERYAK: No. Well, I've interjected when you  
 16 started to argue with him, and the transcript will reflect  
 17 that. Ask your question.  
 18 MR. GREEN: No, you've interjected when he starts  
 19 talking about other things and not answering the question.  
 20 MR. SERYAK: Ask your question. Ask your  
 21 question.  
 22 MR. GREEN: I want a "yes" or "no" answer to  
 23 these questions. If you can find that question and play it  
 24 back, I'd appreciate it. Well, let me do it. I'll do it.  
 25 Q Is it your testimony today that in the year 2000 Peter

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1 Hammer was denied tenure? "Yes" or "no"?  
 2 A Denied tenure at that time? Yes.  
 3 Q Denied tenure? I don't want any qualifications. Either he  
 4 was granted tenure or he was denied tenure --  
 5 MR. SERYAK: Asked and answered.  
 6 Q -- or it was deferred. See? Here we go again.  
 7 MR. SERYAK: Well, that's a different question.  
 8 MR. GREEN: He keeps qualifying his answers with  
 9 statements that I want to flesh out, and you keep  
 10 interfering with that process, and that's why I'm not going  
 11 to keep doing this.  
 12 MR. SERYAK: No. You just changed the question.  
 13 MR. GREEN: No. It's the same question. I'm  
 14 trying to find out whether it's his testimony that Peter  
 15 Hammer was denied tenure in the year 2000.  
 16 A Yes.  
 17 MR. GREEN: And I don't want the answer to be he  
 18 wasn't granted tenure, because that's a different question.  
 19 Q The answer is "yes"? Okay.  
 20 A Yes, and I don't see why that's a different question.  
 21 Q All right. Now, second question is, under the standard  
 22 practice guide can you give notice of terminal year before  
 23 the denial of tenure? "Yes" or "no"?  
 24 A The standard practice guide I do not think specifically  
 25 addresses that question in that form.

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1 Q There is a provision in the standard practice guide that  
 2 provides for notice of terminal year, is there not?  
 3 A Yes.  
 4 Q All right. And under the description of when that notice  
 5 is to be given, isn't it true that that notice is to be  
 6 given following the denial of tenure?  
 7 A Following an unsuccessful tenure review, I believe.  
 8 Q All right.  
 9 A Yes.  
 10 MR. GREEN: Very good. No further questions.  
 11 MR. SERYAK: Just the last one.  
 12 EXAMINATION  
 13 BY MR. SERYAK:  
 14 Q The e-mail from Peter Hammer, Exhibit 14, Peter Hammer was  
 15 asking -- he was requesting at that time in that e-mail  
 16 confirmation that the 2002-2003 year be his terminal year?  
 17 A Yes.  
 18 MR. SERYAK: That's it. That's all I have.  
 19 MR. GREEN: Nothing further.  
 20 MR. SERYAK: Thank you.  
 21 (Deposition concluded at 12:47 p.m.)  
 22 -0-0-0-  
 23  
 24  
 25