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CITY OF MILWAUKEE

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UTILITIES & LICENSES COMMITTEE

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In the Matter of:

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A substitute ordinance prohibiting taxicab companies  
and cooperatives from adopting certain names

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File No.030792

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COMMITTEE MEMBERS

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ALD. JAMES BOHL - Chairman

11

ALD. JOE DAVIS, SR., - Vice Chairman

12

ALD. FREDERICK GORDON

ALD. JOSEPH A. DUDZIK

13

ALD. TERRY L. WITKOWSKI

14

LICENSING DIVISION by JAMES COPELAND

15

OFFICE OF THE CITY ATTORNEY by ATTORNEY BRUCE SCHRIMPF

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Item presented in the above-entitled  
matter, before the UTILITIES & LICENSES COMMITTEE  
OF THE CITY OF MILWAUKEE, on the 11th day of  
November, 2003.

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P R O C E E D I N G S

CHAIRMAN BOHL: This is Council's Utilities & Licenses Committee for Tuesday, November 11th, 2003 at approximately 8:17 a.m. I'm Committee Chairman Alderman Jim Bohl, the 5th District. I am joined this morning by Vice-Chairman of the committee, Alderman Joe Davis of the 2nd District. To my far left at the table is Alderman Joe Dudzik of the 11th District. To my immediate left is Staff Assistant Linda Elmer. We're also joined this morning by the Manager of the Licensing Division, Jim Copeland. Alderman Gordon and Witkowski will be joining us shortly. We have three legislative matters on our agenda before we take up our regularly license schedule business at approximately nine a.m.

The first item on our agenda this morning is File No. 030792, a substitute ordinance prohibiting taxicab companies and cooperatives from adopting certain names.

Joining us this morning is Jim Owczarski from the Legislative Reference Bureau. Mr. Ozarski.

MR. OWCZARSKI: Thank you, Mr. Chairman. This ordinance was drafted at the

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1 request of the city attorney's office and it  
2 followed on some research that we did looking  
3 around the country and trying to see what sorts  
4 of restrictions are used by other communities.  
5 And the concern particularly was in order to  
6 prevent confusion among certain individuals,  
7 particularly those who might have developmental  
8 disabilities, educational disabilities and their  
9 ability to comprehend the differences between  
10 cabs and cooperatives and the different  
11 organizations. One of the key pieces the city  
12 uses to establish that kind of clarity, is its  
13 color system. And the concern of the city  
14 attorney's office was that if there wasn't that  
15 kind of clarity that there could be that kind of  
16 confusion. And so, we created under the general  
17 requirement section as part two of the ordinance  
18 you have in front of you, an explanatory  
19 paragraph, really, that states explicitly the  
20 Common Council's intent, why it creates this sort  
21 of requirement and why we would have a  
22 prohibition of this type.

23 CHAIRMAN BOHL: We are also joined  
24 right now by Assistant City Attorney Bruce  
25 Schrimpf. Mr. Schrimpf, we're on item number one

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1 here. Is there anything that you would like to  
2 - - to address?

3 MR. SCHRIMPF: No, I think Mr.  
4 Owczarski covered it very well.

5 CHAIRMAN BOHL: Are there questions,  
6 comments by committee? Is there anyone from the  
7 general public who wishes to come forward and  
8 speak on this matter at this point?

9 MR. WHITCOMB: Yes, Mr. Chairman.

10 CHAIRMAN BOHL: Somehow I knew that was  
11 going to happen, Mr. Whitcomb. Good morning to  
12 you.

13 MR. WHITCOMB: Good morning, sir. Good  
14 afternoon, Mr. Chairman, members of the  
15 committee. My name is Michael Whitcomb. I'm an  
16 attorney, and I'm one of the attorneys who  
17 represents Yellow Cab of Milwaukee, Inc., which  
18 is before you on two matters this morning.

19 From a legal perspective and not  
20 necessarily from a policy perspective, because  
21 it's the Council that adopts policy not lawyers  
22 either for the city or on this side of the table,  
23 I would just present issues to the committee  
24 which are legal in nature which, if not resolved  
25 favorably before the Common Council, will be

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1 addressed by a Circuit Court.  
2 First and foremost, I respectfully  
3 submit that the Common Council of the City of  
4 Milwaukee has not been authorized by the State of  
5 Wisconsin to interfere in the use of names of any  
6 business for any purpose in the City of Milwaukee  
7 or the State of Wisconsin, and specifically has  
8 not been authorized to engage of such activity,  
9 either as a policy matter or as a legal matter on  
10 behalf of the cab companies. The authority under  
11 which the city may enact an ordinance regulating  
12 cab companies is derived from State Statute  
13 Section 349.24, which is entitled, "Licensing  
14 Powers, Authority to License Taxicab Operators  
15 and Taxicabs." You will notice that that  
16 statutory section does not authorize the City of  
17 Milwaukee to license business or regulate taxicab  
18 businesses. The authority granted by the State  
19 of Wisconsin to the City of Milwaukee  
20 specifically, and by way of limitation, only  
21 authorizes city to license cab operators, the  
22 drivers, not the business, the drivers, and also,  
23 authorizes them to license and regulate the  
24 vehicles themselves. There is no authority  
25 granted by the State of Wisconsin to the City of

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1 Milwaukee to regulate taxicab businesses, which  
2 is the field into which the city has interjected  
3 itself apparently upon the advice of the city  
4 attorney, a non-policy making entity in the City  
5 of Milwaukee, to regulate the use of a business  
6 name by a cab company.

7 It is to be noted that the purported  
8 superficial transparent justification for  
9 adopting this ordinance is because it is believed  
10 that the handicapped, the disadvantaged of the  
11 city would be confused if two cab companies had  
12 similar names. Well, we note to this committee  
13 that the name at issue is Yellow Cab, and there  
14 are cities throughout the country, most  
15 particularly Los Angeles, the larger cities,  
16 which have two, three, ten, some 15 different  
17 separate legal entities operating cab businesses  
18 with the name "Yellow" as part of the name. It  
19 has not created the confusion purportedly sought  
20 to be avoided by this particular ordinance.  
21 There is no evidentiary foundation to believe  
22 that the use of two companies of the name  
23 "Yellow" in their cab business will create any  
24 confusion, whatsoever.

25 First and foremost, and perhaps most

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1 particularly, the Circuit Court of Milwaukee  
2 County in a lawsuit between two cab companies,  
3 one, who uses - - who has the name, Yellow, one  
4 who seeks to - - or has the name for corporate  
5 purposes ruled quite explicitly that there is no  
6 legal confusion in the use of the name, Yellow.  
7 Thus, the basic premise of this particular  
8 ordinance that the use of the name, Yellow, will  
9 cause confusion has been ruled by the Circuit  
10 Court of Milwaukee County that that, indeed, will  
11 not exist. And the decision of the Circuit Court  
12 of Milwaukee County was founded upon factual  
13 evidence presented to the court by way of  
14 affidavits and experts regarding the use of the  
15 name, Yellow, in other cities throughout the  
16 country.

17 Finally, there - - this name, Yellow  
18 Cab of Milwaukee, Inc., has been authorized by  
19 the Department of Financial Institutions of the  
20 State of Wisconsin. It is a legal entity, is  
21 operating under that name, and there's nothing  
22 that this city can do by ordinance or otherwise  
23 to prohibit that use. The city is stepping  
24 beyond its bounds in attempting to regulate a  
25 name previously granted to a company by the State

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1 of Wisconsin. Also, the use of the business, of  
2 the operation of the business, a cab business  
3 under the name of Yellow Cab, has been sanctioned  
4 by the Secretary of State of the State of  
5 Wisconsin. It's a bit bold, presumptuous, and  
6 perhaps municipally arrogant to think that the  
7 City of Milwaukee or the recommendation of the  
8 City Attorney could interfere with designations  
9 previously approved by the State of Wisconsin  
10 because of some parochial interest concerning a  
11 competitor of one particular cab company.

12 I respectfully submit to this - - this  
13 committee that this matter be held for a full  
14 cycle, these issues will be briefed before the  
15 committee. It would save a great deal more time  
16 and expense to my client and also, to the City of  
17 Milwaukee, to have the legal issues resolved at  
18 this level, and I submit favorably on behalf of  
19 the position advanced by Yellow Cab of Milwaukee,  
20 rather than spending the time and expense of  
21 litigating it through the Circuit Court. At the  
22 last meeting of this honorable body in the Common  
23 Council chambers a number of weeks ago, a  
24 representative of the City Attorney's office said  
25 he would have provided within two or three day -



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1 - two or three days, an opinion concerning this  
2 particular ordinance and the legality of the city  
3 adopting it. To date I have not received the  
4 opinion, nor has litigation counsel for the  
5 Yellow Cab of Milwaukee, Inc. I would like the  
6 opportunity to see that opinion. I would like  
7 the opportunity, on behalf of Yellow Cab Company,  
8 to present a rebuttal or response to this  
9 particular committee, so this council does not -  
10 - this committee does not recommend to this  
11 council that - - recommend to the Common Council  
12 that the city tread in waters it was never  
13 intended - - for which it was never intended.  
14 This is particularly a matter of statewide  
15 concern, and the limited authority that this city  
16 has over cab companies relates exclusively to the  
17 licensure of drivers and the vehicles themselves.  
18 There is no authority of the City of Milwaukee to  
19 regulate businesses, for it is well understood  
20 that the regulation of businesses in this state  
21 is a matter of statewide concern and is conducted  
22 by the Department of Financial Institutions as  
23 well as the Secretary of State.  
24 So as not to put this matter to vote  
25 today and to allow my office and the lit - -

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1 litigation counsel for this particular company to  
2 present further legal arguments to this  
3 committee, we would ask that this particular  
4 matter be held for one cycle. Thank you.

5 CHAIRMAN BOHL: Thank you, Mr.  
6 Whitcomb. Mr. Schrimpf, anything you'd like to  
7 pursue?

8 MR. SCHRIMPF: Well, I - - I have two  
9 observations. First of all, it's my  
10 understanding that the name of the cab company  
11 is, in fact, required to be on every cab. Is  
12 that not correct, Mr. Copeland?

13 MR. COPELAND: That is correct.

14 MR. SCHRIMPF: I think counsel even  
15 agrees that the committee can regulate cabs. The  
16 second item is, I think Mr. Whitcomb and I may  
17 have a difference of opinion regarding the recent  
18 piece of litigation to which he alluded going on  
19 between the group called Yellow Cab Coop and  
20 Yellow Cab of Milwaukee, Inc. It's my  
21 understanding that that opinion dealt strictly  
22 with the question of whether or not under  
23 purposes of the Wisconsin Business Corporation  
24 Law, there was any kind of a protectable interest  
25 in Yellow Cab Coop using the name Yellow Cab as

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1       opposed to Yellow Cab of Milwaukee, Inc. when the  
2       group, Yellow Cab Coop, had never bothered to get  
3       that name registered. And I think that really  
4       was the issue in that other piece of litigation,  
5       so. I don't think the court opinion dealt at all  
6       with the power of the City of Milwaukee to - - to  
7       regulate the - - the names under which cabs can  
8       operate. In fact, there's a paragraph in that  
9       opinion where the court in a back-handed kind of  
10      way seems to even suggest that - - that that, in  
11      fact, should be going on, so, that's really all I  
12      have.

13               CHAIRMAN BOHL: Other questions,  
14      comments by committee at this point? Mr. San  
15      Felippo?

16               MR. SAN FELIPPO: Good morning. My  
17      name is Michael San Felippo. I'm the President  
18      and Founder of Yellow Cab for Milwaukee, Inc. I  
19      would just like to make a statement that I've  
20      been in this cab industry since the early '70s,  
21      okay. When I started, I was very young. There  
22      was an organization called Triple AAA Veteran  
23      Cab, City Veteran Cab, Milwaukee Veteran Cab. We  
24      had multiple veteran taxicab companies that used  
25      generically the name, "Veteran." Okay. Then as

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1 time went on, I want to say in the early '80s,  
2 Yellow Cab had what was called, now this was  
3 under the Boynton era, Independent Yellow Cabs,  
4 because my uncle had gotten mad at the Veteran  
5 Association and moved his cab from City Veteran,  
6 which was blue, to Yellow Cab. And it was called  
7 Inde - - Independent Yellow. Okay. His car  
8 wasn't even yellow back in them days. Okay.

9 I find that this here is a slam  
10 personally to - - that I have asked for the color  
11 white in May. Then the city come back and said  
12 can't have the color. Never saying anything  
13 about a name, and then later on down the line,  
14 trying to, after we get the Municipal Court's  
15 decision, I thought personally that they were  
16 holding back so that they wouldn't enter into  
17 this lawsuit, that they wanted that court's  
18 opinion. Okay. Or a decision. Now we got the  
19 court's decision, we went this far, and now they  
20 want to put an ordinance ahead of my request. I  
21 would like to know what city attorney, because  
22 there's multiple of them, who did this drafting  
23 this. Also, I would like to know what - - what  
24 brought this on, because we never had any - - any  
25 legislation like this with the city until this

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1 Yellow Cab issue.

2 MR. SCHRIMPF: Well, number one, the  
3 city attorney's office does not do drafting.  
4 That is always done by the Legislative Reference  
5 Bureau. So far as the - - the issue regarding  
6 how it came about, it's - - it's an option for  
7 the policy makers. If the policy makers want to  
8 adopt this as an ordinance, that's fine. If the  
9 policy makers don't want to adopt this as an  
10 ordinance, that's fine, too. It's policy  
11 decisions.

12 CHAIRMAN BOHL: And, Mr. San Felippo,  
13 there - - there are times when legislation is  
14 drafted at the request of aldermen. There are  
15 times when it would be forwarded by various  
16 departments as part of policy clarification and  
17 - - and whatnot. And that is the explicit  
18 purpose we have before us here.

19 MR. SAN FELIPPO: Well, I would - -  
20 Okay. I gave you all a copy of that Circuit  
21 decision from the judge. Alderman Bohl, you got  
22 a copy. Did you get a chance to read it?

23 CHAIRMAN BOHL: Absolutely.

24 MR. SAN FELIPPO: How did you interpret  
25 the judge's decision when he said the name,

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1 "Yellow Cab" in that - - after reading that? How  
2 - - How would you interpret that?

3 CHAIRMAN BOHL: Mr. San Felippo, I  
4 think we - - we can get to that, because we have  
5 two issues before us, and two different issues  
6 are - - are how I'm going to weigh this. There  
7 is - - There is an ordinance that would prevent  
8 confusion. There is another ordinance - - or  
9 there is another request for a color.

10 MR. SAN FELIPPO: Um-hnh.

11 CHAIRMAN BOHL: And the latter of the  
12 two is a request that you've made for Yellow Cab,  
13 and I will get to that when we get to the second  
14 matter.

15 MR. SAN FELIPPO: Okay.

16 CHAIRMAN BOHL: I think that - - that  
17 varies differently. At this point I just want to  
18 see any other questions or comments by committee.  
19 Mr. Whitcomb, I apologize if - - if you have not  
20 gotten a copy of this city attorney's opinion.  
21 You should have been forwarded that. We - - We  
22 will make certain that you get one here promptly.  
23 I - - I'm going to guess that it's the will of  
24 this committee to move forward on this matter,  
25 notwithstanding that, unless there's a request to

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1 hold.  
2 ALDERMAN DUDZIK: I would make that  
3 request.  
4 CHAIRMAN BOHL: To?  
5 ALDERMAN DUDZIK: Hold to the Call of  
6 the Chair.  
7 CHAIRMAN BOHL: Okay.  
8 ALDERMAN DUDZIK: I think it's only  
9 fair that counsel for Mr. San Felippo be allowed  
10 to review this, even if it's held just until the  
11 end of the day. We've done that before.  
12 CHAIRMAN BOHL: Well, I - - Alderman, I  
13 will tell you I would prefer to move forward on  
14 this matter. If you want to make a motion to  
15 hold and - - and that's the will of this  
16 committee, I mean, I will certainly be willing to  
17 abide by that.  
18 MR. WHITCOMB: Would - -  
19 CHAIRMAN BOHL: Go ahead, Mr. Whitcomb.  
20 MR. WHITCOMB: Quick ques - - You know,  
21 I guess it's a reply and a question. It's a  
22 response to a comment by Assistant City Attorney  
23 Mr. Schrimpf in response to a question to the  
24 representative from the Legislative Reference  
25 Bureau. The ordinance, indeed - - The ordinance

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1 regulating cabs and the drivers does state that  
2 every motor vehicle shall have clearly and  
3 permanently marked on the right and left sides of  
4 the vehicle, the word, "Milwaukee," as well as  
5 the permit number, the type of permit and the  
6 name of the owner of the vehicle or the trade  
7 name under which the vehicle is operated. Well,  
8 the - - the cabs that would be licensed by Yellow  
9 Cab of Milwaukee, Inc. is obligated to put on the  
10 side of its cab its trade name. How do we get  
11 around that, even if this ordinance were adopted.

12 CHAIRMAN BOHL: You wouldn't get around  
13 that.

14 MR. WHITCOMB: So by choice of the - -  
15 By the choice of a corporate name the City of  
16 Milwaukee is enacting an ordinance which is  
17 prohibiting a business from engaging in a lawful  
18 activity. Is that my understanding of the - -  
19 the - -

20 CHAIRMAN BOHL: I assume that that's  
21 your interpretation of it, Mr. Whitcomb.

22 MR. WHITCOMB: So by the - - the effect  
23 of the two ordinances, the one that's proposed  
24 and the one that stands - - or existing right  
25 now, 100-51-2, the City of Milwaukee is



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1 effectively prohibiting Yellow Cab of Milwaukee,  
2 Inc. from using its name as authorized by the  
3 State of Wisconsin, should it desire to engage in  
4 the business of operating cabs in Milwaukee.

5 CHAIRMAN BOHL: We haven't - - We  
6 haven't taken up the second matter yet, Mr.  
7 Whitcomb, and I don't know necessarily where  
8 that's going to go, although - -

9 MR. WHITCOMB: Well, if - - if this - -  
10 If the new ordinance before this committee has no  
11 effect on their request for the use of the color  
12 white, I don't know - - Then my argument is moot.  
13 Or ineffective or not ingenuous.

14 CHAIRMAN BOHL: Well, for - - for the  
15 color purple I would assume. You're talking  
16 about this color white.

17 MR. WHITCOMB: Excuse me. For the  
18 color purple. I mean, if - - if that's granted,  
19 that's fine. But it's my understanding that this  
20 ordinance, as proposed, was requested, enacted  
21 and presented to this committee solely for the  
22 purpose of keeping Yellow Cab of Milwaukee, Inc.  
23 from getting any designation of a color for the  
24 use of its cabs by the City of Milwaukee for as  
25 long as it has the name "Yellow" within its name.

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1 If that's not the motivation behind the  
2 legislation that appears before this committee  
3 today, I have no objection to it on behalf of my  
4 client.

5 CHAIRMAN BOHL: Okay. Thank you, Mr.  
6 Whitcomb. We are - - We are now in committee.  
7 There is a motion before us to hold this item to  
8 the Call of the Chair. I'm going to ask the - -  
9 the staff assistant to - - to do a roll call vote  
10 on that.

11 ASSISTANT ELMER: Alderman Davis?

12 ALDERMAN DAVIS: No.

13 ASSISTANT ELMER: Alderman Dudzik?

14 ALDERMAN DUDZIK: Aye.

15 ASSISTANT ELMER: Alderman Witkowski?

16 ALDERMAN WITKOWSKI: No.

17 ASSISTANT ELMER: Mr. Chair.

18 CHAIRMAN BOHL: Does it matter, I

19 guess? No.

20 ASSISTANT ELMER: Motion fails three to  
21 one.

22 CHAIRMAN BOHL: Three - one vote. This  
23 matter is still in committee.

24 ALDERMAN DAVIS: Mr. Chair?

25 CHAIRMAN BOHL: Alderman Davis.

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1 ALDERMAN DAVIS: Mr. Schrimpf, in the  
2 city attorney's opinion it mentions under  
3 Wisconsin Statute 349.24 subsection D, that this  
4 council may revoke any license mentioned in this  
5 section when in its judgment the public safety so  
6 requires. Does that give us the authority if we  
7 see that - - that the public that we serve may  
8 - - may be harmed by an action by two conflicting  
9 names, whereas the public safety may be at harm,  
10 it gives us the authority to move ahead with this  
11 particular ordinance, and I think that's the  
12 intent of the ordinance that was drafted, is  
13 because of the matter of public safety.

14 MR. SCHRIMPF: Could I see a copy of  
15 the opinion? Thank you.

16 CHAIRMAN BOHL: Mr. Schrimpf, would - -  
17 would this not fall more under the guise of - -  
18 of 100-2 of the Milwaukee Code of Ordinances?

19 MR. SCHRIMPF: Yeah, the - - the  
20 opinion letter references both. Three - - That's  
21 correct, Mr. Chairman. 349.24 sub C says,  
22 "Prohibit any person from operating any motor  
23 vehicle for taxicab purposes upon the highway of  
24 the city unless such person is licensed." We're  
25 not at a revocation at this point. I suppose if

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1 a cab operator did things that put the public  
2 health, safety and welfare at risk, then 349.24  
3 sub D of the statutes comes into play. Chapter  
4 100 is that part of the - - of the code of  
5 ordinances already existing, and item number six  
6 says, "Eliminate conflict and confusion among  
7 users between different types of services."  
8 Very, very broad language. And what the opinion  
9 says is that, well, between the grant of  
10 authority from the state under 349.24 and what  
11 already exists in Chapter 100, which, of course,  
12 the council is fully empowered to amend from time  
13 to time.

14 Two of the purposes are to regulate for  
15 the health, safety, welfare, convenience of the  
16 community and to eliminate confusion between  
17 different types of services.

18 CHAIRMAN BOHL: And what you will state  
19 here, and correct me if I'm incorrect, is that  
20 under the guise of 100-2 this is just simply  
21 redefining and making it more clear, clarifying  
22 that language.

23 MR. SCHRIMPF: That is correct.

24 CHAIRMAN BOHL: Alderman Davis?

25 ALDERMAN DAVIS: Move approval.

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CHAIRMAN BOHL: With that, Alderman  
Davis would move approval of this item. Are  
there any objections to that? Hearing none,  
seeing none, so ordered.

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1 STATE OF WISCONSIN)  
2 MILWAUKEE COUNTY )

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JEAN M. BARINA - COURT REPORTER

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Dated this            day of December, 2003.

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