

Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
12/13/2018 4:26 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08263

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**LYONS TOWNSHIP TRUSTEES OF )  
SCHOOLS, TOWNSHIP 38 NORTH, )  
RANGE 12 EAST, )**

**Plaintiff,** )

vs. )

**LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT 204, )**

**Defendant.** )

**No. 18 CH 8263  
Calendar 07  
Judge Diane J. Larsen**

**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO  
TRANSFER TO LAW DIVISION BASED ON JURY DEMAND**

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (the “Trustees”), by their undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for their Response to the Motion to Transfer to Law Division Based Upon Jury Demand (the “Motion”) filed by the Defendant, Lyons Township High School District 204, states as follows:

**I. Introduction**

Defendant’s Motion should be denied because the Motion contains no argument or analysis as to *whether* the Defendant is entitled to a jury. Rather, the Defendant assumes that because it has made a jury demand, this matter should be transferred to the Law Division. Defendant’s filing of a jury demand, however, does not create the right to a jury trial – that right is conferred by the Illinois Constitution and an analysis of whether Defendant is entitled to a jury must be undertaken in light of its language. Defendant omits such analysis in its Motion.

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## II. The Claims Raised in the Pleadings

The Trustees are elected officials who comprise a body politic and, as mandated by the Illinois School Code, appoint the Lyons Township School Treasurer (the “Treasurer”). The Treasurer services eleven (11) school districts and two (2) further educational bodies within Lyons Township, of which the Defendant is one. The Trustees and Treasurer do not have a tax base, but the School Code affords the Treasurer a salary and the Treasurer has expenses; and so the School Code mandates that, to pay for these items, the Treasurer shall invoice the school districts within Lyons Township for their proportionate share of those costs. The School Code also mandates that the districts “shall” pay for these costs. 105 ILCS 5/8-4.

At the end of each fiscal year, the Treasurer totals his costs and sends each district an invoice for that district’s proportionate share. The Defendant is the only district who refuses to pay the invoices in full and the shortfall for fiscal years 2014 through 2017 is \$636,740.08. The Trustees, therefore, filed this action seeking declaratory relief authorizing the Treasurer to debit \$636,740.08 from the nearly \$50,000,000 the Treasurer currently holds for the Defendant. A copy of the Complaint is attached as Exhibit 1.

The Defendant filed an Answer and an Affirmative Defense. (See Exhibit 2.) In gist, the Defendant contends that it does not have to pay the monies in question because they constitute legal fees incurred in connection with other litigation between the parties. The Defendant contends that the School Code (or perhaps some other aspect of Illinois law) does not permit the Treasurer to include these legal fees on its annual invoices; the Trustees contends otherwise. The issue of whether these legal fees are properly included on the invoices is purely a legal one that will require this Court to construe the School Code.

The Defendant also filed a Counterclaim in which the Defendant asserts various violations of the School Code. In Count I of the Counterclaim, Defendant seeks monetary damages for an alleged violation of the School Code; in Counts II and III the Defendant requests that this Court enter declaratory relief respecting the parties' rights under the School Code; and in Count IV the Defendant asserts a claim for breach of fiduciary duty based, at least in part, upon the School Code. The Counterclaim is part of Exhibit 2. The Trustees have filed a Motion to Dismiss the Counterclaim on the basis that the School Code does not afford the Defendant a private right of action. That Motion remains pending.

### **III. Defendant's Jury Demand**

The Defendant filed a jury demand. The Trustees have no issues with the Defendant *demanding* a jury – but the fact that the Defendant demanded a jury does not create the right to a jury. That right, rather, derives from the Illinois Constitution, which provides only the right to a jury trial “as it existed in common law actions when the constitution was adopted.” *Berk v. Will County*, 34 Ill. 2d 588, 591 (1966).

Defendant argues that “the [Trustees] did not raise any objection to [Defendant's] jury demand.” (Motion at 2.) It seems that Defendant is implying that by not (yet) objecting to the jury demand the Trustees have waived their right to do so. Defendant, however, cites to no provision in the Code of Civil Procedure, the Supreme Court Rules, this Court's Local Rules or General Orders, or any other source of law in support of its implicit argument that the Trustees were required to object to the jury demand in any particular manner or at any particular time.

In one of the few cases to address this issue, *St. George Chicago, Inc. v. George J. Murges & Assocs.*, the Appellate Court held that a party waived its right to object to a jury demand when the objection was not raised until “the day of trial, over three years after the

demand was filed, and after the court spent several weeks considering motions *in limine*.” 269 Ill. App. 3d 28\_, 294 (1st Dist. 1998). *See also Grant Park Commodities LLC v. Attefford*, 2017 IL App (1st) 161277-U, ¶¶ 36-38 (objection to jury demand must be made “in advance of trial”); *Hareas v. Herman*, No. 1-10-1439, 2010 WL 9115642, at \*4 (1st Dist. May 17, 2010) (objection untimely when not made until post-trial motions).<sup>1</sup> The Trustees are under no obligation to “object” to the Defendant’s jury demand within any particular timeframe, so long as they do so in advance of trial. Given the instant Motion, however, the Trustees hereby give notice that they object to the jury demand to the extent the Defendant asserts the right to a jury trial that is not permitted by the Constitution.

#### **IV. Defendant Does Not Have a Constitutional Right to a Jury Trial**

As a baseline, there is “no constitutional right of trial by jury in equity.” *Berk*, 34 Ill. 2d at 591. Declaratory judgment actions can present mixed issues of law and equity, of course, and so where a party seeks only declaratory relief – as the Trustees do here – the right to a jury trial “must be determined by an examination of the disputed issues and an appraisal of their predominant characteristics...” *Id.*

The Trustees’ Complaint presents a legal issue for this Court – whether under the School Code the legal fees in question are properly included on the Treasurer’s annual invoices. Defendant has not offered any other basis for refusing to pay the invoices and, even if some factual issue existed, the presence of a factual dispute would not automatically confer upon Defendant the right to a jury trial: “the mere fact that there is an issue of fact [does not] create a right to jury trial.” *Id.* at 591. The predominant nature of Plaintiff’s action is construction of the

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<sup>1</sup> *Grant Park Commodities* and *Hareas* are unpublished opinions. Because of the (perhaps unsurprising) dearth of case law on this subject, the Trustees bring them to this Court’s attention mindful of the fact that they are not considered as precedent.

Illinois School Code; on this basis Defendant has no right to a jury trial on the Complaint. *Id*; see also *Zurich Ins. Co. v. Raymark Indus., Inc.*, 118 Ill. 2d 23, 57-58 (1987) (affirming no right to jury trial where predominate nature of claim was to construe a contract).

Based on the claims Defendant currently asserts in the Counterclaim there is also no right to a jury trial. In Count I, Defendant seeks monetary damages for an alleged violation of the School Code and Defendant cites no legal authority to support a right to a jury on such a claim. Counts II and III request declaratory relief wherein the Defendant requests this Court construe the School Code – for the reasons stated above, no right to a jury trial would exist for such claims. Finally, in Count IV, the Defendant asserts a claim for breach of fiduciary duty, but there is no right to a jury trial for fiduciary claims. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 111.

Moreover, the Trustees have moved to dismiss the entirety of that Counterclaim on the basis that the School Code does not afford Defendants a private right of action. If the Motion to Dismiss is granted the issue of whether there is a right to a jury on the Counterclaim is moot. The judicially economic route is to wait until the Motion to Dismiss is decided before determining whether or not there exists a right to a jury trial on the issues raised by the Counterclaim. In the event this Court wishes to decide the matter now, however, this Court should then deny Defendant's Motion.

### III. CONCLUSION

For these reasons, the Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, respectfully requests that this Court deny the Motion to Transfer to Law Division Based on Jury Demand filed by the Defendant.

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Respectfully submitted,

LYONS TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: /s/ Barry P. Kaltenbach \_\_\_\_\_.  
One of its attorneys.

Gerald E. Kubasiak  
[kubasiak@millercanfield.com](mailto:kubasiak@millercanfield.com)  
Barry P. Kaltenbach  
[kaltenbach@millercanfield.com](mailto:kaltenbach@millercanfield.com)  
Gretchen M. Kubasiak  
[kubasiakg@millercanfield.com](mailto:kubasiakg@millercanfield.com)  
Miller, Canfield, Paddock & Stone, P.L.C.  
225 West Washington, Suite 2600  
Chicago, Illinois 60606  
(312) 460-4200  
Firm No. 44233

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# EXHIBIT

1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

LYONS TOWNSHIP TRUSTEES OF )  
SCHOOLS, TOWNSHIP 38 NORTH, )  
RANGE 12 EAST, )

Plaintiff, )

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT 204, )

Defendant. )

No.

2018CH08263  
CALENDAR/ROOM 07  
TIME 00:00  
Declaratory Judgment

COMPLAINT

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, by its undersigned counsel, MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., for its Complaint for Declaratory Relief against the defendant, Lyons Township High School District 204, states as follows:

Nature of the Case

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share – except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant's refusal.

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**Parties, Jurisdiction and Venue**

2. Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“Trustees”), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

3. Defendant, Lyons Township High School District 204 (“District 204”), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

4. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

5. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

**The Trustees and the Treasurer**

6. Pursuant to the School Code, Plaintiff is comprised of three Trustees who are elected by and responsible to the voters within Lyons Township. 105 ILCS 5/5-2.

7. One of the duties of the Trustees is to appoint the Lyons Township School Treasurer (“Treasurer”) to serve as the treasurer for the school districts and related educational bodies within Lyons Township. 105 ILCS 5/8-1.

8. Within Lyons Township, there are eleven school districts consisting of thirty-eight schools and educating approximately 20,000 students for whom the Trustees are responsible, and for whom the Treasurer provides financial services. The school districts include District 204 and also: Western Springs School District 101, LaGrange School District 102, Lyons School District 103, Cook County School District 104, LaGrange School District 105,

Highlands School District 106, Pleasantdale School District 107, Willow Springs School District 108, Indian Springs School District 109, and Argo Community High School District 217.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

#### **How the Treasurer's Office is Funded**

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, *e.g.*, leased offices, staff salaries, and office supplies. The School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office." 105 ILCS 5/8-4 (emphasis added).

11. Each district's proportionate share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such...district." 105 ILCS 5/8-4.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer's costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer's costs.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

14. In accordance with the School Code, on an annual basis the Treasurer calculates each district's proportionate share of the Treasurer's compensation and expense, and sends an invoice to each district.

15. If a district does not pay its proportionate share, in full or in part, this creates a deficit. The Plaintiff does not have a tax base or any source of revenue other than the payments received from the school districts. The Plaintiff cannot "make up" this deficit from its own funds. Ultimately, if left uncorrected, this will force each of the other school districts within Lyons Township to absorb the costs that such district refuses to pay.

**District 204's Failure to Pay its Proportionate Share for Fiscal Years 2014-2017**

16. The Treasurer uses a fiscal year commencing on July 1 and running through June 30 of the following year.

17. For fiscal year 2014, the Treasurer sent its annual invoice to all school districts in April 2015. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$252,053.43. District 204 paid only \$242,321.00, leaving an unpaid balance that year of \$9,732.43.

18. For fiscal year 2015, the Treasurer sent its annual invoice to all school districts in May 2016. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$395,094.69. District 204 paid only \$236,482, leaving an unpaid balance that year of \$158,612.69.

19. For fiscal year 2016, the Treasurer sent its annual invoice to all school districts in May 2017. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$322,352.21. District 204 paid only \$208,061, leaving an unpaid balance that year of \$114,291.21.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent. District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

**The Trustees Seek a Declaratory Judgment to Permit Payment**

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

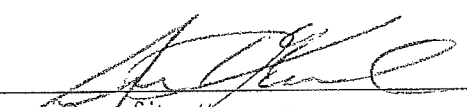
24. An actual controversy exists between the Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

WHEREFORE, Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East, respectfully prays that this Court enter a declaratory judgment in its favor and against the Defendant, Lyons Township High School District 204, on this Complaint and that this Court award Plaintiff its costs and make the following findings as a matter of law:

- A. Between fiscal years 2014 and 2017, inclusive, District 204 has failed to pay its proportionate share of the Treasurer's compensation and expenses of office, as required by Section 8-4 of the School Code, totaling \$636,740.08, or such other amount as may be proven;
- B. The Treasurer is authorized to debit from the funds it currently holds as custodian for District 204 the amount determined to be owed by District 204; and
- C. Such other findings as may be equitable and appropriate.

Respectfully submitted,

LYONS TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

By:   
One of its attorneys.

Gerald E. Kubasiak  
[kubasiak@millercanfield.com](mailto:kubasiak@millercanfield.com)  
Barry P. Kaltenbach  
[kaltenbach@millercanfield.com](mailto:kaltenbach@millercanfield.com)  
Gretchen M. Kubasiak  
[kubasiakg@millercanfield.com](mailto:kubasiakg@millercanfield.com)  
Miller, Canfield, Paddock & Stone, P.L.C.  
225 West Washington, Suite 2600  
Chicago, Illinois 60606  
(312) 460-4200  
Firm No. 44233

# EXHIBIT

2

Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
10/10/2018 1:27 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH08263

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff,	)	No. 2018 CH 08263
	)	
v.	)	Hon. Diane J. Larsen
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Calendar 7
DISTRICT 204,	)	
	)	
Defendant.	)	Jury Trial Demanded

**LT'S ANSWER, AFFIRMATIVE DEFENSE, AND COUNTERCLAIM**

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT"), by its attorney, responds to the Complaint of Plaintiff Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("the TTO") as follows:

**Answer**

1. Plaintiff brings this action to remedy Defendant's refusal to comply with the Illinois School Code. Plaintiff is charged by statute with providing financial services to school districts within Lyons Township. The School Code requires that the school districts pay their proportionate share for those services. Each year, all of the school districts pay their proportionate share — except for Defendant. Defendant refuses to pay its share, despite having more than ample funds to do so, forcing the Plaintiff to incur a deficit and creating the risk that all of the other school districts within Lyons Township will ultimately have to bear the cost of Defendant's refusal.

**RESPONSE:** LT denies the allegations of this paragraph.

2. Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("Trustees"), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

**RESPONSE:** LT admits the allegations of this paragraph.

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FILED DATE: 10/10/2018 1:27 PM 2018CH08263

3. Defendant, Lyons Township High School District 204 ("District 204"), is a body politic organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

**RESPONSE:** LT admits the allegations of this paragraph.

4. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

**RESPONSE:** LT admits the allegations of this paragraph.

5. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

**RESPONSE:** LT admits the allegations of this paragraph.

6. Pursuant to the School Code, Plaintiff is comprised of three Trustees who are elected by and responsible to the voters within Lyons Township. 105 ILCS 5/5-2.

**RESPONSE:** LT admits that 105 ILCS 5/5-2 provides that the "school business of all school townships having school trustees shall be transacted by three trustees, to be elected by the qualified voters of the township, as hereinafter provided." LT otherwise denies the allegations of this paragraph.

7. One of the duties of the Trustees is to appoint the Lyons Township School Treasurer ("Treasurer") to serve as the treasurer for the school districts and related educational bodies within Lyons Township. 105 ILCS 5/8-1.

**RESPONSE:** LT admits that 105 ILCS 5/8-1 provides that "the trustees of schools shall appoint a treasurer who shall be ex-officio clerk of the board." LT otherwise denies the allegations of this paragraph.

8. Within Lyons Township, there are eleven school districts consisting of thirty-eight schools and educating approximately 20,000 students for whom the Trustees are responsible, and for whom the Treasurer provides financial services. The school districts include District 204 and also: Western Springs School District 101, LaGrange School District 102, Lyons School District 103, Cook County School District 104, LaGrange School District 105, Highlands School District 106, Pleasantdale School District 107, Willow Springs School District .108, Indian Springs School District 109, and Argo Community High School District 217.



**RESPONSE:** LT admits that within Lyons Township, there are the 11 school districts listed in the paragraph. LT also admits that these 11 school districts contain 38 schools and about 20,000 students. LT also admits that the Treasurer provides financial services for some but not all of these districts. LT otherwise denies the allegations of this paragraph.

9. In addition, the Treasurer also provides financial services for two other educational bodies: the LaGrange Area Department of Special Education, which serves students from fifteen school districts, and West 40 Educational Services, which serves forty school districts.

**RESPONSE:** LT admits the allegations of this paragraph.

10. Under the School Code, the Treasurer is entitled to be compensated for his or her services, and the Treasurer also has expenses of office, e.g., leased offices, staff salaries, and office supplies. The School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office." 105 ILCS 5/8-4 (emphasis added).

**RESPONSE:** LT admits that the TTO correctly quoted from a portion of 105 ILCS 5/8-4. LT otherwise denies the allegations of this paragraph.

11. Each district's proportionate share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such...district." 105 ILCS 5/8-4.

**RESPONSE:** LT admits the allegations of this paragraph.

12. This statutory formula obligates the districts with the most money to pay the largest proportion of the Treasurer's costs. For example, on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. This means that, on average, District 204 is charged by the School Code with paying about twenty-five percent of the Treasurer's costs.

**RESPONSE:** LT admits on average in any given fiscal year, District 204 owns about twenty-five percent of all the funds the Treasurer handles. LT denies that the School Code requires LT to pay a share of "the Treasurer's costs." LT otherwise denies the allegations of this paragraph.

13. This statutory formula is mandatory. No district may unilaterally decide it does not wish to pay its proportionate share.

**RESPONSE:** LT admits the School Code, in 105 ILCS 5/8-4, provides that LT “shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the township treasurer’s office.” LT otherwise denies the allegations of this paragraph.

14. In accordance with the School Code, on an annual basis the Treasurer calculates each district's proportionate share of the Treasurer's compensation and expense, and sends an invoice to each district.

**RESPONSE:** LT admits that during the years relevant to this case, the Treasurer sent invoices to the districts for certain salaries and expenses. LT otherwise denies the allegations of this paragraph.

15. If a district does not pay its proportionate share, in full or in part, this creates a deficit. The Plaintiff does not have a tax base or any source of revenue other than the payments received from the school districts. The Plaintiff cannot "make up" this deficit from its own funds. Ultimately, if left uncorrected, this will force each of the other school districts within Lyons Township to absorb the costs that such district refuses to pay.

**RESPONSE:** LT admits that the TTO does not have a tax base, and that it does not have any legitimate source of revenue other than the payments received from the school districts. LT otherwise denies the allegations of this paragraph.

16. The Treasurer uses a fiscal year commencing on July 1 and running through June 30 of the following year.

**RESPONSE:** LT admits the allegations of this paragraph.

17. For fiscal year 2014, the Treasurer sent its annual invoice to all school districts in April 2015. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$252,053.43. District 204 paid only \$242,321.00, leaving an unpaid balance that year of \$9,732.43.

**RESPONSE:** LT admits that for fiscal year (“FY”) 2014, the Treasurer sent LT an invoice in April 2015 demanding payment of \$252,053.43. LT also admits that LT paid \$242,321.00 to the TTO for FY2014. LT otherwise denies the allegations of this paragraph.

18. For fiscal year 2015, the Treasurer sent its annual invoice to all school districts in May 2016. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$395,094.69. District 204 paid only \$236,482, leaving an unpaid balance that year of \$158,612.69.

**RESPONSE:** LT admits that for FY 2015, the Treasurer sent LT an invoice in May 2016 demanding payment of \$395,094.69. LT also admits that LT paid \$236,482.00 to the TTO for FY2015. LT otherwise denies the allegations of this paragraph.

19. For fiscal year 2016, the Treasurer sent its annual invoice to all school districts in May 2017. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$322,352.21. District 204 paid only \$208,061, leaving an unpaid balance that year of \$114,291.21.

**RESPONSE:** LT admits that for FY 2016, the Treasurer sent LT an invoice in May 2017 demanding payment of \$322,352.21. LT also admits that LT paid \$208,061.00 to the TTO for FY2016. LT otherwise denies the allegations of this paragraph.

20. For fiscal year 2017, the Treasurer sent its annual invoice to all school districts in May 2018. District 204's proportionate share of the Treasurer's costs, as reflected on its invoice, was \$354,103.75. District 204's payment was due on June 28, 2018. As of the time this Complaint is being filed, all of the districts except District 204 paid their invoice or have advised that payment in full is imminent, District 204 has not paid anything, and during a May 21, 2018 Board of Education meeting, District 204 indicated it would not be paying its invoice in full.

**RESPONSE:** LT admits that for FY 2017, the Treasurer sent LT an invoice in May 2018 demanding payment of \$354,103.75. LT also admits that LT paid \$218,150.11 to the TTO for FY2017. LT otherwise denies the allegations of this paragraph.

21. In total, for fiscal years 2014 through 2017, District 204 has failed to pay \$636,740.08. If left uncorrected, the other school districts within Lyons Township will ultimately have to absorb the amounts that District 204 refuses to pay.

**RESPONSE:** LT denies the allegations of this paragraph.

22. Because of its statutory obligations to serve all of the school districts within Lyons Township, the Plaintiff brings this action seeking declaratory relief.

**RESPONSE:** LT denies the allegations of this paragraph.

23. The Treasurer is holding, as custodian, approximately \$50,000,000 in funds that belong to District 204 and that District 204 could utilize to pay its invoices so that the other school districts do not have to absorb this amount. Plaintiff, therefore, seeks a judgment that it is authorized to debit from the funds it currently holds as custodian for District 204 such amounts as District 204 refuses to pay, presently calculated at \$636,740.08.

**RESPONSE:** LT admits that the Treasurer holds certain funds of LT in an agency account.

LT otherwise denies the allegations of this paragraph.

24. An actual controversy exists between the Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

**RESPONSE:** LT admits the allegations of this paragraph.

WHEREFORE, LT respectfully asks this Court to enter judgment in its favor, and against the TTO, on all claims set forth in the TTO's Complaint; to award LT its costs of suit; and to grant LT all other relief that is just and proper.

### **Affirmative Defense**

#### **First Affirmative Defense – American Rule Barring Recovery of Attorneys' Fees**

1. Illinois follows the American Rule regarding the award of attorneys' fees. Under that rule, each party to litigation must normally bear its own litigation expenses, regardless of who wins the case. The rule prohibits parties from recovering their attorney's fees from their opponents in the absence of express authorization contained either in a statute or in a contract between the parties.

2. In 2013, the TTO brought claims against LT in a Circuit Court of Cook County, Illinois case entitled *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*, 2013 CH 23386 ("the First TTO-LT Case").

3. The First TTO-LT Case currently is ongoing.

4. From fiscal year 2013 (“FY2013”) through FY2017, the TTO has attempted to recover a portion of its attorneys’ fees and related litigation costs associated with the First TTO-LT Case (“the TTO’s Attorney’s Fees”) by including the TTO’s Attorneys’ Fees in the annual pro rata expense bills that the Treasurer has sent to LT.

5. No Illinois statute expressly authorizes the TTO to recover any portion of the TTO’s Attorneys’ Fees from LT, either before or after the conclusion of the First TTO-LT Case.

6. No contract between the TTO and LT expressly authorizes the TTO to recover any portion of the TTO’s Attorneys’ Fees from LT, either before or after the conclusion of the First TTO-LT Case.

7. The TTO’s claim in this case relating to the recovery of a portion of the TTO’s Attorneys’ Fees through the annual pro rata expense bills sent to LT is barred by Illinois law adopting the American Rule on attorneys’ fees.

WHEREFORE, LT respectfully asks this Court to enforce the Illinois law adopting the American Rule regarding the award of attorneys’ fees in order to defeat that portion of the TTO’s claim in this case seeking to recover a portion of the TTO’s Attorney’s Fees; to award LT its costs of suit; and to grant LT all other relief that is just and proper.

**Counterclaim**

1. LT is a public school district organized under the laws of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

2. The TTO is a local public entity organized under the law of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.

3. The TTO has three elected Trustees. The TTO's Trustees select a salaried Treasurer ("the Treasurer") to operate an office that performs accounting and investment functions.

4. LT is a member district of the TTO. LT's membership in the TTO is mandated by state statute.

5. Under Illinois law, the TTO is charged with serving as the fiscal agent of LT and the other school districts and educational entities purportedly within the TTO's jurisdiction ("the Other Districts").

6. As the fiscal agent for LT, the TTO – including its Treasurer and other employees – had and has a duty to provide LT with truthful and complete information and documentation about financial matters involving LT.

7. From about June 2012 through the present, Michael Thiessen has been President of the TTO's Board of Trustees.

8. From about October 2013 to June 2018, Dr. Susan Birkenmaier was the Treasurer of the TTO.

9. From about July 2018 through the present, Kenneth Getty has been the Treasurer of the TTO.

**Count I: Violation of 105 ILCS 5/8-7**

10. LT incorporates by reference the allegations in paragraphs 1-9 above.

11. Section 8-7 of the School Code, 105 ILCS 5/8-7, provides, in part, as follows:

When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall be accounted for separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.

12. Accordingly, Section 8-7 requires the TTO to account to LT for all of LT's investment earnings, and to credit LT with the full amount of its investment earnings.

13. In 2013, the TTO informed LT and the Other Districts that it was holding interest income that the TTO had earned on behalf of the districts prior to July 1, 2013, but that it had failed to credit to the districts' agency accounts. The TTO further informed LT and the Other Districts that it would distribute these funds, and that it was making a distribution of \$500,000 to the districts.

14. At that time, however, the TTO failed to disclose to LT and the Other Districts that it was not crediting the districts with the full amount of the undistributed earnings that the TTO had located.

15. In 2017, LT learned that the TTO still was holding on to the balance of the undistributed earnings the TTO located in 2013.

16. Since at least fiscal year ("FY") 2013, the TTO has credited the agency accounts of LT and the Other Districts with investment income earnings that are less than the full amounts of the earnings the TTO actually received.

17. Since at least FY2013, LT has made repeated requests on the TTO to account for, and document, the investment interest earnings on the pooled investments that the TTO received, and LT's share of those earnings. LT has asked the TTO to explain and document, among other things, the total amount of quarterly and annual interest that the TTO has earned, the formula used to determine disbursement, the fees paid to various investment managers, and a breakdown of all earnings and disbursements to the member districts.

18. The TTO has repeatedly ignored and/or failed to cooperate in good faith with LT's requests for information and documentation about investment matters. Furthermore, the TTO

refuses to include in its annual audit reports the total annual investment earnings the TTO received, and the total annual investment earnings it distributed – critical figures that the TTO stopped disclosing in its audit reports beginning in FY2008.

19. Accordingly, since at least FY2013, the TTO has failed to comply with the requirements of Section 8-7 in at least the following ways:

- (a) Failing to credit LT with LT’s full share of investment income that the TTO earned on LT’s behalf prior to July 1, 2013 but failed to distribute to LT in those earlier years;
- (b) Failing to credit LT with LT’s full share of investment earnings since FY2013; and
- (c) Failing to fully account to LT for the TTO’s investments, earnings, distributions, and related financial information and documentation despite repeated requests from LT.

20. The TTO’s violations of Section 8-7 caused LT to suffer monetary damages. LT presently is unable to determine the amount of damages resulting from the TTO’s violations of Section 8-7 because the TTO has failed to provide sufficient information and documentation to LT, despite LT’s repeated requests.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count I; award LT compensatory damages in an amount to be determined at trial; prohibit the TTO from using funds that belong directly or indirectly to LT to pay the award; award LT its costs of suit; and award LT any other relief that is just and proper.

**Count II: Declaratory Judgment as to 105 ILCS 5/8-5 through -7**

21. LT incorporates by reference the allegations in paragraphs 1-20 above.

22. In this count, LT seeks a declaratory judgment concerning LT and the TTO’s respective rights and responsibilities under Sections 8-5, 8-6, and 8-7 of the School Code, 105 ILCS 5/8-5 through -7.



23. Section 8-5(a) of the School Code requires the Treasurer to maintain a “cash book” in which “he shall enter in separate accounts all moneys received and paid out, with the amount, date, from whom, to whom and on what account received or paid out ....” 105 ILCS 5/8-5(a).

24. Section 8-5(a) requires the Treasurer to maintain a “district account book” in which “he shall post from the cash book all receipts and expenditures on account of any district, with the amount, date, from or to whom, and from what sources and for what purposes.” 105 ILCS 5/8-5(a).

25. Section 8-5(a) gives school districts such as LT the right to inspect the Treasurer’s records of accounts, which “shall be subject at all times to the inspection of the ... school board members ....” 105 ILCS 5/8-5(a).

26. For the funds of an individual school district such as LT, Section 8-6 of the School Code requires the Treasurer to maintain a “cash book” with “separate balances” in which “he shall enter in separate accounts the balance, total of all moneys received in each fund, and the total of the orders countersigned or checks signed with respect to each fund and extend the balances and the aggregate cash balance for all funds balance at least monthly.” 105 ILCS 5/8-6.

27. Section 8-7 requires the TTO to account to LT for all of LT’s investment earnings, and to credit LT with the full amount of its investment earnings.

28. Since FY2013, the TTO has credited the agency accounts of LT and the Other Districts with investment income earnings that are less than the full amounts of the earnings the TTO actually received.

29. Since FY2013, LT has made repeated requests on the TTO to account for, and document, the investment interest earnings on the pooled investments, and LT’s share of those investments. LT has asked the TTO to explain and document, among other things, the total amount

of interest that the TTO has earned, the formula used to determine disbursement, the fees paid to various investment managers, and a breakdown of earnings and disbursements to the member districts.

30. The TTO has repeatedly ignored and/or failed to cooperate in good faith with LT's requests for information and documentation about investment matters. Furthermore, the TTO refuses to include in its annual audit reports the total annual investment earnings the TTO received, and the total annual investment earnings it distributed – critical figures that the TTO stopped disclosing in its audit reports beginning in FY2008.

31. An actual controversy exists between the TTO and LT concerning their respective rights, powers, and obligations under Sections 8-5, 8-6, and 8-7 of the School Code.

32. Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes this Court to make binding declarations of the parties' respective rights and obligations, having the force of final judgments, and to grant such further relief as this Court deems just and proper.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count II; to award LT its costs of suit; to grant LT such relief as is just and proper; and to enter a declaratory judgment declaring the rights and obligations of the parties as follows:

a. Section 8-5 and 8-6 of the School Code requires the Treasurer to maintain detailed records of all investment income the TTO receives, and all earnings belonging to LT, and to allow LT to inspect those records of those accounts.

b. Section 8-7 requires the Treasurer to fully account to LT for investment earnings on pooled investment funds of the school districts that include LT.

c. Section 8-7 requires the Treasurer to credit LT with the full amount of its investment earnings as those earnings are received.

**Count III: Declaratory Judgment as to 105 ILCS 5/8-4**

33. LT incorporates by reference the allegations in paragraphs 1-32 above.

34. In this count, LT seeks a declaratory judgment concerning LT and the TTO's respective rights and responsibilities under Section 8-4 of the School Code, 105 ILCS 5/8-4.

35. Section 8-4 requires each district to "pay a proportionate share of the compensation of the township treasurer ... and a proportionate share of the expenses of the township treasurer's office." 105 ILCS 5/8-4.

36. In 2013, the TTO brought claims against LT in a Circuit Court of Cook County, Illinois case entitled *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*, 2013 CH 23386 ("the First TTO-LT Case").

37. The First TTO-LT Case currently is ongoing.

38. In the First TTO-LT Case, the TTO alleged that the TTO brought claims against LT for the benefit of the Other Districts.

39. From FY2013 through the present, the TTO has attempted to recover its present and future attorneys' fees and related litigation costs associated with the First TTO-LT Case ("the TTO's Attorneys' Fees") by including the TTO's Attorneys' Fees in the annual pro rata expense bills that the Treasurer sent to LT. The TTO has indicated that these recovery attempts will continue into the future.

40. Since FY2013, the TTO has attempted to recover certain claimed expenses by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against those expenses, instead of crediting these funds to LT and the Other Districts.

41. Since FY2013, the TTO has attempted to recover for expenses incurred in several prior years, which expenses the TTO now claims it underbilled in those years, by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against the TTO's claimed past billing shortfalls, instead of crediting these funds to LT and the Other Districts.

42. Since FY2013, the TTO has attempted to reduce its ongoing deficits by offsetting recoveries and/or earnings that the TTO has made (such as recoveries of insurance proceeds) against the TTO's claimed deficits, instead of crediting these funds to LT and the Other Districts.

43. Section 8-4 only applies to (a) the office expenses of (b) the Treasurer.

44. The TTO has incurred and will incur the TTO's Attorneys' Fees, not the Treasurer. Furthermore, the TTO's Attorneys' Fees are not office expenses, as they are not expenses for accounting or investment functions.

45. Since FY2013, the TTO also has attempted to recover, through annual pro rata billings purportedly made pursuant to Section 8-4, for certain expenses that either are not, or do not appear to be, office expenses of the Treasurer, and have largely refused LT's repeated requests made to the TTO to explain and document those improper and/or questionable expenses.

46. LT does not dispute the TTO's authority under Illinois law to retain counsel ostensibly for the benefit of the Other Districts (although that is not what the TTO actually did in the First TTO-LT case). However, no provision of the School Code allows the TTO to charge LT for a proportionate share of the costs of the TTO's claimed representation of the Other Districts, which representation is to the detriment and disadvantage of LT.

47. Illinois follows the American Rule regarding the award of attorneys' fees. Under that rule, each party to litigation must normally bear its own litigation expenses, regardless of who

wins the case. The rule prohibits parties from recovering their attorney's fees from their opponents absent express authorization contained either in a statute or in a contract between the parties.

48. Section 8-4 only authorizes the TTO to bill LT for a proportionate share of the Treasurer's compensation and the expenses of the Treasurer's office. Nothing in Section 8-4, or other provisions of the School Code, authorizes the TTO to seize earnings and/or assets belonging to LT and the Other Districts and use those assets to pay the TTO's Attorneys' Fees, to offset against claimed underbillings of expenses in past years, or to reduce the TTO's claimed deficits.

49. An actual controversy exists between the TTO and LT concerning their respective rights, powers, and obligations under Section 8-4 of the School Code.

50. Section 2-701 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-701, authorizes this Court to make binding declarations of the parties' respective rights and obligations, having the force of final judgments, and to grant such further relief as this Court deems just and proper.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count III; to award LT its costs of suit; to grant LT such relief as is just and proper; and to enter a declaratory judgment declaring the rights of the parties as follows:

a. Section 8-4 of the School Code and Illinois law governing the recovery of attorneys' fees in litigation prohibits the TTO from attempting to recover from LT any portion of the TTO's Attorneys' Fees in the past, present, or future through either annual pro rata expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

b. Section 8-4 of the School Code is the only section of the School Code that authorizes the TTO to seek recovery of the expenses of the Treasurer's office from LT, and accordingly, the TTO could not and may not make recoveries of claimed expenses of the

Treasurer's office in current or past years, or reductions in the TTO's claimed deficits, through transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

c. Section 8-4 of the School Code permits the TTO to recover from LT, through pro rata expense billings, only the expenses of the Treasurer's office, and accordingly, the TTO could not and may not include in those billings any expenses that are not actual expenses of the Treasurer's office (*i.e.*, that are not for the Treasurer's accounting and investment functions), or for those expenses which the TTO refuses to provide sufficient information and documentation from which to confirm that the expenses are actual and legitimate expenses of the Treasurer's office.

d. Section 8-4 does not permit the TTO to issue invoices for expenses of the Treasurer's office, and then, in later years, decide that it underbilled those expenses in prior years and seek to recover those alleged underbillings through further expense billings, transfers of assets, misallocation of investment earnings, application of recoveries belonging to the member districts, or otherwise.

**Count IV: Breach of Fiduciary Duty**

51. LT incorporates by reference the allegations in paragraphs 1-50 above.

52. In this count, LT does not seek a recovery of damages that would duplicate any of the damages awarded under another count in this Counterclaim.

53. As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to manage the funds and investments of LT, distribute investment earnings to LT, and invoice LT for the expenses of the Treasurer's office in a fair, responsible, open, candid, and professional manner.

54. As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to respond to LT's reasonable inquiries for information and documentation concerning the funds and investments of LT, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing from the TTO to LT of the claimed expenses of the Treasurer's office.

55. Since at least FY2013, the TTO has operated with a deficit.

56. The TTO has financed its deficit by borrowing money from the funds of LT and the Other Districts.

57. No provision in the School Code or any other Illinois law authorizes the TTO to borrow money from the funds of LT and the Other Districts. LT and the Other Districts never authorized these uses of their funds.

58. West 40 Intermediate Service Center #2 ("West 40") is a regional education agency operating in the Western Cook County suburbs.

59. West 40's geographic area includes Lyons Township and additional areas outside of Lyons Township.

60. West 40's geographic area includes school districts that are both inside and outside of the jurisdictional boundaries of the TTO.

61. Since at least FY2013, the TTO has provided financial assistance to West 40 using the agency funds of LT and the Other Districts. LT and the Other Districts never authorized these uses of their funds.

62. Accordingly, since at least FY2013, the TTO has breached its fiduciary duty to LT in at least the following ways:

- (a) Failing to credit LT with LT's full share of investment interest that the TTO earned on LT's behalf prior to July 1, 2013, but failed to distribute to LT as required during those earlier years;
- (b) Failing to credit LT's agency account with LT's full share of investment earnings since FY2013;
- (c) Failing to fully account to LT for the TTO's investments, earnings, and distributions and related financial information and documentation despite repeated requests for information and documentation from LT;
- (d) Attempting to recover from LT through annual pro rata expense billings the TTO's Attorneys' Fees, rather than charging those fees solely to the Other Districts;
- (e) Attempting to recover from LT through annual pro rata expense billings other expenses that are not expenses of the Treasurer's office, and/or other expenses that the TTO has refused to explain and document in order to show that they are actual and legitimate expenses of the Treasurer's office;
- (f) Attempting to recover from LT through the misapplication of insurance recoveries for the TTO's alleged underbillings in the annual pro rata expense invoices sent to LT and the Other Districts in prior years;
- (g) Failing to promptly and candidly respond to communications from LT seeking information and documentation concerning the funds and investments of LT, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing of LT for the expenses of the Treasurer's office;



(h) Using the funds of LT, without its consent and without statutory authority, to finance the deficits of the TTO; and

(i) Using the funds of LT, without its consent and without statutory authority, to provide financial assistance to West 40.

63. The TTO's violations of its fiduciary duty to LT caused monetary damages to LT. LT presently is unable to determine the amount of damages resulting from the TTO's violations of fiduciary duty because the TTO has failed to provide sufficient information and documentation to LT, despite LT's repeated requests.

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count IV; award LT compensatory damages in an amount to be determined at trial; prohibit the TTO from using funds that belong directly or indirectly to LT to pay the award; award LT its costs of suit; and award LT any other relief that is just and proper.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

Jay R. Hoffman  
Hoffman Legal  
20 N. Clark St., Suite 2500  
Chicago, IL 60602  
(312) 899-0899  
[jay@hoffmanlegal.com](mailto:jay@hoffmanlegal.com)  
Attorney No. 34710

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on October 10, 2018, he caused the foregoing pleading to be served by email on the following attorney:

Barry P. Kaltenbach  
*kaltenbach@millercaanfield.com*

s/Jay R. Hoffman

FILED DATE: 12/13/2018 4:26 PM 2018CH08263  
FILED DATE: 10/10/2018 1:27 PM 2018CH08263