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

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2013CH23386

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	No. 13 CH 23386
Plaintiff and Counter-Defendant,	)	
	)	
v.	)	Hon. Thomas M. Mulroy
	)	
LYONS TOWNSHIP H.S. DISTRICT 204,	)	Calendar I
	)	
Defendant and Counter-Plaintiff.	)	(Transferred to Law)

6406694

**LT'S PRE-TRIAL MEMORANDUM**

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT"), pursuant to this Court's Order of 8-8-2019, provides this Pre-Trial Memorandum consisting of:

- (A) LT's Statement of the Case.
- (B) LT's Witness List.
- (C) LT's Exhibit List.
- (D) LT's Contested Motions in Limine.
- (E) LT's Rule 237(b) Notice to Produce at Trial.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
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## **LT'S STATEMENT OF THE CASE**

Prior to the Pre-Trial Conference with the Court on September 4, 2019, LT will file a detailed Trail Brief with citations to authorities and discussions of the contested facts. The Trial Brief also will serve as LT's opening statement. Here is a brief statement of the case:

### ***The Parties***

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT") is a large public high school in suburban Cook County. During the relevant time periods, LT has been an involuntary member of a township school treasurer's organization, Plaintiff and Counter-Defendant Lyons Township Trustees of Schools ("the TTO"). Pursuant to statute, the TTO serves as LT's fiscal agent and holds and invests all of LT's funds.

The township school treasurer's organizations were eliminated statewide many decades ago, except for suburban Cook County, where they were maintained for political reasons. LT and the TTO have long had a contentious relationship due to the inability of the TTO to competently perform services for LT, the refusal of the TTO to provide information and document to LT about LT's funds and the TTO's operations, the excessive amounts that the TTO charges LT for its operations, and the corruption at the TTO that led the imprisonment of its long-serving Treasurer.

In 2018, the State passed a law allowing LT to leave the TTO once the pending litigation (this case, and a 2018 case pending before Judge Reilly) is concluded.

### ***TTO Pro Rata Expenses Claim (to FY2012) & LT Setoff Counterclaim (Count I)***

Following the Court's ruling applying the 5-year statute of limitations, the TTO's Amended Complaint consists of two claims for relief contained in a single count. The TTO's first claim is the Pro Rata Expenses Claim, in which the TTO accuses LT of not paying certain annual invoices

that the TTO sent LT for LT's proportionate share of the Treasurer's compensation and his claimed expenses of office.

However, this dispute (other than one fiscal year) really concerns the decision of the TTO's new leadership, which took over in 2012-13, to refuse to acknowledge an agreement that the TTO reached with LT in 2000 and continued and reaffirmed in many subsequent years. This agreement recognized that the TTO provided business and accounting services for all of the member districts but LT, which performed its own, and that the TTO would have to hire additional personnel in order to perform LT's work. In the parties' agreement, the TTO paid for the business costs of LT (such as personnel costs for accounts payable, payroll, and computer recordkeeping), and the parties set off those costs against the TTO's annual pro rata expenses invoice. The agreement was approved by both parties' Boards in 2000, and reaffirmed in subsequent years (with an annual writing from LT to the TTO detailed the costs to be set off). This arrangement ended after the TTO's new leadership terminated the arrangement. The TTO's claim that this arrangement was the product of a "rogue treasurer," and that the TTO's Trustees were in the dark about this arrangement, is factually untrue.

In Count I of LT's Counterclaim, LT asks the Court to do just what the TTO and LT did for so many years – set off the agreed-upon LT's business costs against the TTO's Pro Rata Expenses Claim. LT does not seek any affirmative recovery of damages in Count I.

LT disputes the computation of the damages that the TTO seeks in the Pro Rata Expenses Claim. LT also raised several affirmative defenses relevant to this claim.

***TTO Pro Rata Expenses Claim (FY2013)***

There is one fiscal year, FY2013, that does not involve the setoff issue. LT proposed the transfer this claim to the parties' second case, which involves similar disputes over the content of

the TTO's annual pro rata invoices, but the TTO rejected this suggestion.

LT's paid for a majority of the TTO's FY2013 pro rata invoice, and explained why it was not paying the invoice in full. One of the several reasons was that LT objected to being charged for legal fees and other expenses related to the TTO's lawsuit against LT. The TTO's position is that LT must pay a proportionate share of the TTO's costs in this case (and the 2018 case), but this position violates Illinois law. The TTO also charged LT for costs that were not proper expenses of the Treasurer's office. The TTO never provided proper justifications for and documentation of the disputed expenses.

### ***TTO Audit Payments Claim***

In the TTO's second claim, the Audit Payments Claim, the TTO seeks to force LT to compensate the TTO for money that the TTO knowingly and deliberately sent to the Baker Tilly accounting firm for invoices relating to LT's annual audit. The TTO argues that this claim is supported by an Illinois statute requiring LT to have an audit done, but the TTO's position is incorrect.

LT also raised several affirmative defenses relevant to the Pro Rata Expenses Claim. In addition, LT anticipates bringing a motion for directed verdict against the Audit Payments Claim at the close of the TTO's case-in-chief.

### ***LT's Insurance Proceeds Claim (Count II)***

Count II of LT's Counterclaim seeks to recover its share (about 22%) of insurance proceeds totaling \$1,040,000 that the TTO recovered based claims it made against fidelity bonds. These claims were based on Healy's theft of money belonging to the school districts, including LT. The TTO failed to distribute a single dollar of these proceeds to the districts. LT will show that this

failure constituted a breach of the TTO's fiduciary duties to LT, and that the TTO's positions on how it spent the insurance proceeds are improper, inconsistent, and factually inaccurate.

## LT'S WITNESS LIST

LT will call the following lay witnesses at trial:

**1. Dr. Dennis Kelly**

Dr. Dennis Kelly was LT's Superintendent from 1992-2009. He will testify about LT's relationship with the TTO, the TTO's payment for the audits of LT and other districts, LT's performance of its own business services, LT's negotiations and agreement with the TTO on the payment of LT's business costs and the setoff against the pro rata invoice charges, the Board actions of LT on the agreement, the continuation and reaffirmation of the agreement in subsequent years, and his communications with the TTO.

**2. Todd Shapiro**

Todd Shapiro served on LT's Board of Education from 1995-2007 and 2009-15. He will testify about LT's relationship with the TTO, the TTO's payment for the audits of LT and other districts, LT's performance of its own business services, LT's negotiations and agreement with the TTO on the payment of LT's business costs and the setoff against the pro rata invoice charges, the Finance Committee considerations and Board actions of LT on the agreement, the continuation and reaffirmation of the agreement in subsequent years, and his communications with the TTO.

**3. Dr. Lisa Beckwith [evidence deposition]**

Dr. Lisa Beckwith was LT's Business Manager from 1996-2000. She will testify about the matters covered in her evidence deposition.

**4. Harold Huang [evidence deposition]**

Harold Huang was LT's Business Manager from 2000-03. He will testify about the matters covered in his evidence deposition.

**5. David Sellers**

David Sellers was LT's Business Manager from 2003-14. He will testify about LT's relationship with the TTO, the TTO's payment for the audits of LT and other districts, the TTO's termination of this arrangement, LT's performance of its own business services, LT's negotiations and agreement with the TTO on the payment of LT's business costs and the setoff against the pro rata invoice charges, the continuation and reaffirmation of the agreement on the TTO's payment of LT's business costs, the TTO's eventual termination of the agreement when a new group came in to run the TTO, and his communications with the TTO.

**6. Dr. Timothy Kilrea**

Dr. Timothy Kilrea has been LT's Superintendent from 2009 to the present. He will testify about LT's relationship with the TTO, the TTO's payment for the audits of LT and other districts, the impact of the TTO's selection and payment of LT's auditor for the relevant time period, the TTO's termination of that arrangement, LT's performance of its own business services, the continuation and reaffirmation of the agreement on the payment of LT's business costs, the TTO's eventual termination of the agreement when a new group came in to run the TTO, his communications with the TTO, Healy's thefts of the school districts' funds, the insurance claims that the TTO filed on fidelity bonds for the Treasurer, the insurance proceeds that the TTO received on those claims, the failure of the TTO to distribute any of those proceeds to the districts, the justifications for LT's partial payment of the FY2013 pro rata invoice of the TTO, LT's requests for information from the TTO, the lack of an intergovernmental agreement for the TTO's use of the districts' funds to collateralize a loan made to West 40, and the TTO's demands for payments from LT leading up the filing of this case.

**7. Judge Russell Hartigan, Ret.**

Judge Russell Hartigan served on the TTO's Board of Trustees from 1996-2004. He will testify about the TTO Trustees' knowledge and approval of the TTO paying for the audits of LT and the other districts, the Trustee's knowledge and approval of Robert Healy's negotiations with LT on the payment of LT's business costs, the Board action of the TTO to approve the agreement of the TTO to pay LT's business costs, the continuation and reaffirmation of the agreement on the payment of LT's business costs in subsequent years, his communications with Healy, the Trustees' responsibility to review and approve the records and expenses of the Treasurer, and the actions the Trustees took to meet those responsibilities.

**8. Robert Healy**

Robert Healy was the TTO's Treasurer from 1988-2012. He will testify about his and the TTO Trustees' knowledge and approval of the TTO paying for the audits of LT and the other districts, his and the Trustee's knowledge and approval of Robert Healy's negotiations with LT on the payment of LT's business costs, the Board action of the TTO to approve the agreement of the TTO to pay LT's business costs and set them off against the pro rata invoice charges, the continuation and reaffirmation of the agreement on the payment of LT's business costs in subsequent years, his communications with the Trustees and LT, the Trustees' responsibility to review and approve the records and expenses of the Treasurer, the actions the Trustees took to meet those responsibilities, his thefts of school districts' funds, his fidelity bonds covering his dishonesty, the obligation of the TTO to make distributions to LT, the current TTO's claim of improper invoicing of TTO expenses to the districts, and the TTO's use of intergovernmental agreements.

**9. Michael Thiessen**

Michael Thiessen has served on the TTO's Board of Trustees from 2012 to the present. He will testify about the TTO's knowledge of and investigation into the TTO's payment for the audits of LT and the other districts, the TTO's decision to terminate that arrangement, the TTO's knowledge of and investigation into the agreement on the payment of LT's business costs, the TTO's decision to terminate that arrangement, the TTO's pursuit of litigation against Healy and LT and the costs incurred in connection with those cases, Healy's thefts of the school districts' funds, the insurance claims that the TTO filed on fidelity bonds for the Treasurer, the insurance proceeds that the TTO received on those claims, the failure of the TTO to distribute any of those funds to the districts, the justifications that the TTO provided for this, the disputes over the charges in the TTO's FY2013 pro rata invoice to LT, the current TTO's claim of improper invoicing of TTO expenses to the districts, the TTO's use of intergovernmental agreements, and the lack of an intergovernmental agreement for the TTO's use of the districts' funds to collateralize a loan made to West 40.

**10. Dr. Susan Birkenmaier**

Dr. Susan Birkenmaier was the TTO's Treasurer from 2013-18. She will testify about the TTO's knowledge of and investigation into the TTO's payment for the audits of LT and the other districts, the TTO's decision to terminate that arrangement, the TTO's knowledge of and investigation into the agreement on the payment of LT's business costs, the TTO's decision to terminate that arrangement, the TTO's pursuit of litigation against Healy and LT and the costs incurred in connection with those cases, Healy's thefts of the school districts' funds, the insurance claims that the TTO filed on fidelity bonds for the Treasurer, the insurance proceeds that the TTO received on those claims, the failure of the TTO to distribute any of those funds to the districts, the justifications that the TTO provided for this, the disputes over the charges in the TTO's FY2013 pro rata invoice to LT, the current TTO's claim of improper invoicing of TTO expenses to the districts, and the TTO's use of intergovernmental agreements.

*LT reserves its right to call any witness listed on the TTO's witness list.*

## LT'S EXHIBIT LIST

<b>Ex.</b>	<b>Description</b>	<b>Reference</b>	<b>Objection</b>	<b>Admitted</b>
<b>A.</b>	<b><i>TTO Pro Rata Expenses Claim (to FY2012) &amp; LT Setoff Counterclaim (Count I)</i></b>			
1.	<b>11-6-1998 Coryell Memo</b>	<b>Healy 1 (portion)</b>	<b>YES - Hearsay</b>	
2.	5-26-1999 Beckwith Memo	Healy 1 (portion)	NO	
3.	5-28-1999 LT Fin Cmte Minutes	LT SJ Response 24	NO	
4.	6-4-1999 Kelly Memo	Healy 1 (portion)	NO	
5.	7-27-1999 TTO Board Agenda & Minutes	LT SJ Response 25	NO	
6.	9-29-1999 LT Fin Cmte Minutes	LT SJ Response 27	NO	
7.	2-29-2000+ LT Setoff Memos	LT SJ Response 28	NO	
8.	2-29-2000 Beckwith Memo	Huang Dep 2	NO	
9.	<b>5-2-2000 Cainkar Letter [Redacted]</b>	<b>LT Rule 237 Notice – <i>Need</i></b>	<b>YES - Relevance</b>	
10.	6-14-2000 Beckwith Memo	LT SJ Response 32	NO	
11.	7-5-2000 Huang Note	Huang Dep 3	NO	
12.	9-7-2000 Healy Letter	Huang Dep 4	NO	
13.	5-30-2001 Huang Memo	Huang Dep 5	NO	
14.	2-4-2002 Huang Memo	Huang Dep 6	NO	

<b>Ex.</b>	<b>Description</b>	<b>Reference</b>	<b>Objection</b>	<b>Admitted</b>
15.	1-22-2003 Resolution on ICA	Healy Dep 7	NO	
16.	3-10-2003 Huang Memo	Huang Dep 7	NO	
17.	6-5-2013 Kilrea Letter	TTO Doc Production 4	NO	
18.	<b>2-19-2016 Kubasiak Letter</b>	<b>LT SJ Response 38</b>	<b>YES - Relevance</b>	
19.	<b>6-19-2018 Popp Email</b>	<b>LT SJ Response 11</b>	<b>YES - Hearsay</b>	
20.	TTO Pro Rata Expenses Folders – Re: LT	TTO Doc Production 1	NO	
21.	FY2011 TTO Pro Rata Record (loose)	TTO Doc Production 4 REV0278	NO	
<b>B.</b>	<b><i>TTO Pro Rata Expenses Claim (FY2013)</i></b>			
22.	4-11-2014 Kilrea Letter	TTO Doc Production 4	NO	
23.	6-19-2014 Kilrea-Birkenmaier Emails	Kilrea Dep 9	NO	
24.	10-8-2014 Kilrea Letter	LT SJ Response 42	NO	
25.	11-21-2014 Birkenmaier Letter	TTO Dep 4	NO	
26.	5-11-2015 Jascula Invoicing Compilation	TTO Doc Production 2	NO	
27.	<b>11-30-2016 Kaltenbach Email - Legacy</b>	<b>LT SJ Response 44</b>	<b>YES - Relevance</b>	

<b>Ex.</b>	<b>Description</b>	<b>Reference</b>	<b>Objection</b>	<b>Admitted</b>
<b>C.</b>	<b><i>TTO Audit Payments Claim</i></b>			
28.	2-9-1994 Jackson Letter	Conway Dep 1	NO	
29.	8-28-2006 TTO Meeting Minutes	Healy Dep 6	NO	
30.	10-26-2011 Baker Tilly Invoice for 999	TTO 2d Rev SJ Motion 3	NO	
31.	12-27-2010 Baker Tilly Invoice for 999	TTO 2d Rev SJ Motion 3	NO	
<b>D.</b>	<b><i>LT's Insurance Proceeds Claim (Count II)</i></b>			
32.	6-6-2013 Proof of Claim	Thiessen Dep 3	NO	
33.	6-6-2013 Bradley Memo	TTO Doc Production 2	NO	
34.	8-4-2013 Settlement - Liberty Mutual	Thiessen Dep 1	NO	
35.	6-25-2014 Settlement - Hanover	Thiessen Dep 2	NO	
36.	<b>7-11-2014 Birkenmaier Email</b>	<b>LT Mtn Reconsid SOL 14</b>	<b>YES - Hearsay</b>	
37.	3-22-2017 Kilrea Letter	LT554-59	NO	
38.	4-21-2017 Kilrea Letter	LT561-62	NO	
39.	6-20-2017 Kilrea Letter	LT564	NO	
40.	9-26-2017 Kilrea Letter	LT566	NO	
41.	10-26-2017 Kubasiak Letter	LT568-74, 586-97	NO	

<b>Ex.</b>	<b>Description</b>	<b>Reference</b>	<b>Objection</b>	<b>Admitted</b>
42.	12-20-2017 Kilrea Letter	LT650	NO	
43.	1-9-2018 Birkenmaier Email +	LT669-71	NO	
44.	TTO FY2018 Financial Statements	TTO Website	NO	
<b>E.</b>	<b>General Materials</b>			
45.	TTO FY2013 Financial Statements	LT SJ Response 4	NO	

*Note: LT reserves its right to use pleadings, discovery responses, deposition transcripts, impeachment material, evidence to refresh recollection, rebuttal materials, admissions of the TTO, and exhibits of the TTO that LT did not object to during the trial.*

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

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	No. 13 CH 23386
Plaintiff and Counter-Defendant,	)	
	)	
v.	)	Hon. Thomas M. Mulroy
	)	
LYONS TOWNSHIP H.S. DISTRICT 204,	)	Calendar I
	)	
Defendant and Counter-Plaintiff.	)	(Transferred to Law)

**LT'S CONTESTED MOTIONS IN LIMINE**

Defendant and Counter-Plaintiff Lyons Township High School District 204 (“LT”) respectfully asks this Court to bar Plaintiff and Counter-Defendant Township Trustees of Schools (“the TTO”) from advancing certain arguments, testimony, evidence, and damage claims at the trial of this case. LT asks the Court to issue orders in limine on the following contested matters:

**1. Offer of Proof for Nancy Sylvester’s Opinion Testimony**

The TTO cannot offer opinion testimony of Nancy Sylvester at trial in the form of an offer of proof. Judge Hall previously barred Sylvester from testifying at trial. The record in this case already contains all of her opinions – which fully preserves the TTO’s appellate rights under controlling Illinois law. LT also offered to stipulate as to the opinions Sylvester would provide at trial, an offer that the TTO rejected. There is no need for an additional offer of evidence.

In 2017, the TTO disclosed Sylvester as a Rule 213(f)(3) opinion witness. She was to offer opinions about the minutes of the Boards of TTO and LT, and votes described in those minutes. These opinions were to be based on her supposed expertise in parliamentary procedure.

On 4-10-2018, LT moved to bar Sylvester as an expert witness. LT's motion attached Nancy Sylvester's affidavit that accompanied the TTO's summary judgment motion, as Ex. F, and the transcript of her discovery deposition, as Ex. G. On 5-1-2018, the TTO brought a motion for leave to file Sylvester's supplemental affidavit, which was attached as Ex. 1.

In the Order dated 5-16-2018, the Court ruled, "The Court grants LT's motion to bar TTO expert Nancy Sylvester for the reasons stated in LT's motion. The TTO is barred from presenting any testimony from Sylvester as an expert in summary judgment proceedings or at trial." Ex. 1.

Under Illinois law, "an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced." *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 26-27 (1st Dist. 2008). The *Torres* Court held that an offer of proof for trial is not needed where the record already contains all of the opinions that the expert would have testified to at trial had the testimony been allowed. *Id.*

In this case, the record contains all of Sylvester's proposed opinions, as detailed in her two summary judgment affidavits and her deposition transcript. Upon learning of the TTO's plan to make an offer of proof for Sylvester at trial, LT's counsel informed the TTO's counsel by email of the *Torres* case. Ex. 2. LT also offered to enter into the following stipulation for trial (*id.*):

In the Order dated 5-16-2018, the Court ruled, "The Court grants LT's motion to bar TTO expert Nancy Sylvester for the reasons stated in LT's motion. The TTO is barred from presenting any testimony from Sylvester as an expert in summary judgment proceedings or at trial." Notwithstanding, if Nancy Sylvester could testify at trial, the parties agree that she would testify consistently with her affidavit and discovery deposition testimony that already are part of the record in this case.

The TTO rejected this proposed stipulation and said it would present this Court with Sylvester's barred opinions as an offer of proof. Ex. 3. This is unnecessary, and LT is concerned that the purpose of the offer of proof is to unduly influence the trier of fact with inadmissible

evidence. LT therefore asks the Court to bar the TTO from making any offer of proof as to Sylvester's opinions.

**2. Damages Based on Expenses Incurred Prior to October 17, 2008**

On July 31, 2019, this Court entered an order granting LT's motion for reconsideration on the statute of limitations issue. The Court ruled "that the 5-year statute of limitations applies to the TTO's claims in this case per LT's motion." Ex. 4.

The TTO filed this case on 10-16-2013. Five years prior to that date is 10-17-2008. LT understands that at trial, the TTO will seek damages for its Pro Rata Expenses Claim based on expenses incurred prior to the limitations cutoff date.

The TTO's Pro Rata Expenses Claim is based on Section 8-4 of the School Code, 105 ILCS 5/8-4. Section 8-4 provides, in pertinent part:

Each elementary school district, community high school district and township high school 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 township treasurer's office, which compensation and expenses shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belongs to each such elementary school district or high school district.

Section 8-4 is silent on when or how frequently a treasurer should or may bill the districts for compensation and expenses. However, Section 8-4 plainly provides that a district's financial obligation arises when the expenses (and compensation) are incurred, and not at some future time.

Illinois law applies the statute of limitations cutoff to expenses based on when those expenses were incurred – and not when they were paid, when they were assigned, or when the payor sought to be compensated by another party for those expenses. The decision in *Reimers v. Honda Motor Co.*, 150 Ill. App. 3d 840, 843-44 (1st Dist. 1986), is very instructive. While the *Reimers* case concerns medical expenses, the holding is equally applicable in this case.

In *Reimers*, an accident victim sought to recover medical expenses incurred on the date of the accident. *Id.* The Court held that the claim was time-barred, because the limitations period ran from the date of the accident, when the medical expenses were incurred. *Id.* The Court rejected plaintiff's argument that the limitations period should be extended because plaintiff's parents – at a later date – assigned to him their derivative rights to recover medical expenses that they incurred on plaintiff's behalf:

In the instant case, the accident out of which the parents' derivative action arose occurred on June 26, 1982. Plaintiff's complaint was filed on July 5, 1984, 11 days after the expiration of the statute of limitations on the parents' derivative action. Plaintiff's derivative suit to recover for medical costs is thereby barred by the statute of limitations.... If the plaintiff here was allowed to proceed with the assigned cause of action, which would otherwise be time barred, the effect would be to allow assignment of any cause of action to a minor or to anyone under a legal disability, thereby circumventing the applicable statute of limitations. Accordingly, we hold that a derivative cause of action for recovery of medical expenses is barred by the statute of limitations if it is not filed within two years of the occurrence causing the injury.

*Id.*

LT understands that at trial, the TTO will seek damages based on expenses the TTO incurred prior to 10-17-2018 in two separate ways. First, the TTO will seek damages based on expenses incurred in the TTO's Fiscal Year 2018 ("FY2008"), which ran from 7-1-2007 to 6-30-2008. The TTO's damages claim for LT's share of the TTO's FY2018 expenses is \$245,177. TTO Trial Ex. 20.

All of the expenses that the TTO incurred in FY2008 pre-date the statute of limitations cutoff date of 10-17-2008. However, the TTO contends that it may seek to recover LT's share of the FY2008 expenses because the TTO did not bill for those expenses until 6-9-2009. The long delay of almost a year in billing LT and the other school districts was not an anomaly. For reasons that LT has never understood, the TTO always took (and still takes) almost a full year to add up its expenses and send an annual invoice to the districts.

Second, the TTO will seek damages based on expenses incurred in the TTO's FY2009, which ran from 7-1-2008 to 6-30-2009. The TTO did not bill LT for those expenses until 5-20-2010. The expenses that the TTO incurred in FY2009 from 7-1-2008 through 10-16-2018 pre-date the statute of limitations cutoff date of 10-17-2008. LT does not know what portion of the FY2009 expenses were incurred from 7-1-2008 to 10-16-2008, because the TTO's claim for FY2009 is based solely on a letter with a bottom-line figure for LT's share (which was \$289,560.14). TTO Trial Ex. 26.

Under Section 8-4 and the *Reimers* case, the TTO's rights under Section 8-4 to proportionate reimbursement from LT – if any – arose when the compensation and expenses were incurred, and not when the TTO got around, almost a year later, to billing the districts for those expenses.

Accordingly, all of the FY2008 expenses are time-barred. Furthermore, nothing in Section 8-4 required the TTO to bills the districts annually, and nothing in Section 8-4 delayed LT's obligation to pay its share of expenses until the end of a fiscal year, or any other subsequent date. Accordingly, the expenses that the TTO incurred in FY2009 from 7-1-2008 through 10-16-2018 are time-barred, as well. The TTO should be barred from seeking damages at trial based on compensation and expenses incurred prior to 10-17-2018, regardless of when the TTO invoiced LT for these costs. The TTO must prove, if it can, which of the FY2009 expenses are not time-barred.

### **3. The TTO's Interest Allocations Claim**

The Court's ruling on the applicable statute of limitations period eliminated the TTO's Interest Allocations Claim, and it should not be the subject of testimony, argument, or evidence at

trial. Also, the TTO should not be entitled to make offers of proof on this issue because the TTO's positions on this issue already are part of the record. LT attempted to enter into a stipulation on this point, without success, and therefore believes that it might be contested.

#### **4. The TTO's "Zero-Sum Office" Argument**

The TTO bases its two remaining claims in this case, the Audit Payments Claim and the Pro Rata Expenses Claim, on particular Illinois statutes. However, in prior proceedings in this case, the TTO tried to further justify its claims based on an argument that the TTO is a "zero-sum office." The outline of the TTO's argument is as follows: the TTO has no tax base of its own, and thus has no independent sources of revenue (other than taking the school districts' funds); the TTO is charged by statute with managing the school districts' funds; when one district receives allegedly special treatment, other school districts allegedly lose money; if the TTO is unable to recover funds improperly given to LT, the TTO's accounts allegedly will not "balance"; and that the TTO allegedly is pursuing this case on behalf of all the other school districts, who supposedly will benefit from this lawsuit.

LT is fully prepared to debunk the TTO's "zero-sum office" argument at trial. LT can show that the TTO never conducted a forensic audit to determine the full extent of Robert Healy's thefts; never balanced its books at the conclusion of the Healy era, or at any subsequent time; says that it represents the interests of the school districts, while actually serving its own interests; refuses to credit the school districts with all the funds that they should receive; takes money from the school districts' funds on its own decision and without the districts' authorizations; has spent more in attorneys' fees than it could possibly recover in damages in this case; and so on.

However, whether the TTO's "zero-sum" office argument is accurate or not, the argument is entirely irrelevant for purposes of the issues to be resolved at trial. The TTO either has valid legal grounds for seeking recoupment of the now-regretted payments to Baker Tilly, or it does not. The TTO either has valid legal grounds for denying the parties' agreement to offset the costs of LT's business functions against pro rata charges, or it does not. In either instance, whether the TTO "needs" to recover money to solve its alleged "zero-sum office" dilemma has no relationship to the legal grounds that the TTO asserted for its claims in this case.

Moreover, the Court's decision on the statute of limitations makes it clear that the TTO will not be able to claim over \$3.3 million in alleged damages from LT due to the TTO's long delay in changing its positions and filing this case. Accordingly, LT asks this Court to decide that the TTO's "zero-sum office" argument is irrelevant to the issues at trial, and to prohibit all attorney argument, evidence, and testimony concerning the "zero-sum office" argument. This will save considerable time at the trial with witnesses, exhibits, and argument.

### **Conclusion**

For all of the reasons stated herein and in Court, LT respectfully asks the Court to grant these motions in limine to ensure a fair and efficient trial.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Township Trustees

v.

Lynns Township

No.

13 at 23386

ORDER

This matter coming to be heard on Defendant LT's Motion to Bar TTO's Expert, the matter being fully briefed and argued in open Court, ~~IT IS ORDERED!~~

~~As stated in LT's reply brief, LT withdrew its motion to bar TTO expert Martin. IT IS ORDERED:~~

1. The Court grants LT's motion to bar TTO expert Nancy Sylvester for the reasons stated in LT's motion. The TTO is barred from presenting any testimony from Sylvester as an expert in Summary Judgment proceedings or at trial.

2. The TTO is given leave to (a) disclose Sylvester as a fact witness under Rule 2B(f)(1), and (b) ~~file~~ withdraw its pending motion for summary judgment and file a new summary judgment motion.

Attorney No.: 34710  
Name: Jay R Hoffman  
Atty. for: Det LT  
Address: 20 N Clark St 2500  
City/State/Zip: Chicago IL 60602  
Telephone: 312 899 0899

ENTERED:

Dated: [blank] for summary judgment and file a new summary judgment motion.

ENTERED JUDGE SOPHIA H. HALL-0162

EX 1

Judge

MAY 16 2018

Judge's No.

3. This case is set for status hearing on June 15, 2018, at 9:30 am. TTO's motion for leave to file amended affidavit of Sylvester is withdrawn as moot.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

FILED DATE: 8/30/2019 4:25 PM 2013CH23386

## Jay Hoffman

---

**From:** Jay Hoffman  
**Sent:** Wednesday, August 21, 2019 3:51 PM  
**To:** Kaltenbach, Barry P.  
**Cc:** Kubasiak, Gerald E.; William Quinlan  
**Subject:** TTO v. LT 1

Barry,

Thank you for your email. You wrote:

*With respect to witnesses, just to keep you updated, as of now we do not anticipate calling Nancy Sylvester. With respect to Ms. Sylvester, however, we intend to make an offer of proof of her opinion testimony that has been prohibited. I suggest the best way to do so this is to ask at the pretrial conference if we can submit her expert affidavit and designations of her deposition testimony, rather than calling her live to establish the offer of proof. I suspect Judge Mulroy would prefer this approach, too. If you agree, we can suggest that to the judge and I will let you know what we propose to designate in connection with the offer.*

LT does not agree with your proposal.

In the LT Motion to Bar Sylvester filed on 4-10-2018, LT attached as exhibits (a) Ex. F, the Affidavit of Nancy Sylvester that accompanied the TTO's summary judgment motion, and (b) Ex. G, the entire transcript of the Sylvester discovery deposition. In the Order dated 5-16-2018, the Court ruled, "The Court grants LT's motion to bar TTO expert Nancy Sylvester for the reasons stated in LT's motion. The TTO is barred from presenting any testimony from Sylvester as an expert in summary judgment proceedings or at trial."

Accordingly, the record in this case contains a complete record of the opinions and testimony that Sylvester would offer if she had been allowed to testify at trial. There is absolutely no need for an offer of proof for trial under these circumstances to preserve any appellate argument. Illinois law is very clear on this point:

Generally, HN2 when a trial court refuses evidence, no appealable issue remains [\*\*\*\*396] [\*\*661] unless a formal offer of proof is made. *Volvo of America Corp. v. Gibson*, 83 Ill. App. 3d 487, 491, 404 N.E.2d 406, 39 Ill. Dec. 22 (1980). The purpose of an offer of proof is to inform the trial court, opposing counsel, and a reviewing court of the nature and substance of the evidence sought to be introduced. *Volvo of America Corp.*, 83 Ill. App. 3d at 491. Where it is not clear what a witness would testify to, or what the basis for his testimony is, the offer of proof must be considerably detailed and specific, so that a reviewing court can thereby review whether the exclusion was proper. *Volvo of America Corp.*, 83 Ill. App. 3d at 491.

**However, an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced. *Volvo of America Corp.*, 83 Ill. App. 3d [\*27] at 491. Such is the case here. A review of the record demonstrates that the trial court had before it Eiben's written report and [\*\*\*15] lengthy deposition testimony, which contained within them all of the opinions that he would have provided at trial. The trial court also heard extensive argument from both parties regarding Eiben's qualifications, opinions and the lack of a factual basis for those opinions.**

*Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 26-27 (1st Dist. 2008).

If you wish, LT will include in our stipulations for trial the following stipulation:

In the Order dated 5-16-2018, the Court ruled, "The Court grants LT's motion to bar TTO expert Nancy Sylvester for the reasons stated in LT's motion. The TTO is barred from presenting any testimony from Sylvester as an expert in summary judgment proceedings or at trial." Notwithstanding, if Nancy Sylvester could testify at trial,

# EX 2

the parties agree that she would testify consistently with her summary judgment affidavit and discovery deposition testimony that already are part of the record in this case.

Presenting Judge Mulroy with either the Sylvester affidavit, or all or part of the Sylvester deposition, not only would violate the Order dated 5-16-2018, it also would constitute an improper attempt to prejudice the bench trial of this case by providing plainly inadmissible evidence to the trier of fact.

Sincerely,

Jay R. Hoffman  
Hoffman Legal  
20 N. Clark St., Suite 2500  
Chicago, IL 60602  
312.899.0899  
[jay@hoffmanlegal.com](mailto:jay@hoffmanlegal.com)  
[www.hoffmanlegal.com](http://www.hoffmanlegal.com)

---

**From:** Kaltenbach, Barry P. <[Kaltenbach@millercanfield.com](mailto:Kaltenbach@millercanfield.com)>  
**Sent:** Monday, August 19, 2019 5:17 PM  
**To:** Jay Hoffman <[jay@hoffmanlegal.com](mailto:jay@hoffmanlegal.com)>  
**Cc:** Gerald E. Kubasiak <[gekubasiak@quinlanfirm.com](mailto:gekubasiak@quinlanfirm.com)>; William Quinlan <[wjq@quinlanfirm.com](mailto:wjq@quinlanfirm.com)>  
**Subject:** Trial Misc.

Jay,

With respect to your recent Rule 237 notice to produce witnesses and documents at trial:

1. While we anticipate having Susan Birkenmaier testify at trial, the Rule 237 notice is ineffective to compel her appearance and we object to such request because she is not currently a director, officer or employee of the plaintiff.
2. With respect to your request to produce a redacted version of the letter in question, as you recognize the court sustained our claim of privilege with respect to this document. Your articulated purpose is that you want to question witnesses about the decision to seek a legal opinion – but the only point of doing so is an attempt to draw an adverse inference that the opinion must have been to our detriment. That is entirely inappropriate. Whether our client sought a legal opinion is not probative of the facts and not relevant. We decline to provide a redacted copy of the letter at trial, particularly given that we did not produce a redacted copy of the letter during discovery, but instead provided a privilege log.

If you concur with the above objections please let me know. Otherwise we will need to file a motion to quash.

With respect to deposition designations:

1. We anticipate designating Elise Grimes at 4:8-12; 6:6-24; 7:21-25; 32:14-25; 33:5-15.
2. For Harold Huang we object to your designation of 13:21-17:24 (not relevant). We counter-designate 36:10-23, 37:3-38:8, 39:13-17, 47:7-48:13, 50:6-51:11, and 56:12-16. We also will stipulate to any of the exhibits covered by the above testimony.
3. For Lisa Beckwith, your proposed designations are problematic and are an attempt to reach beyond what I think is fair testimony. For example, see 103:9-104:6, wherein the witness testified that she believes the Board of Trustees approved an agreement with LT because she read that in some meeting minutes while preparing for her deposition. This is little different than your objection that Ms. Sylvester should not opine that she read the same minutes and came to the conclusion that the Trustees did not approve an agreement. We can stipulate to the exhibits and the basic facts

## Jay Hoffman

---

**From:** Kaltenbach, Barry P. <Kaltenbach@millercanfield.com>  
**Sent:** Thursday, August 22, 2019 7:10 PM  
**To:** Jay Hoffman  
**Cc:** Kubasiak, Gerald E.; William Quinlan  
**Subject:** RE: TTO v. LT 1

Jay,

Given your position, I will advise Judge Mulroy at the pretrial conference that I wish to make an offer of proof with respect to Ms. Sylvester's testimony, and ask him how he would like me to proceed once trial commences. I am not going to risk having waived the issue by failing to make the offer of proof at trial. Making an offer of proof, or at the least tendering such an offer to the court, would not violate Judge Hall's order. Nowhere in the order does Judge Hall forbid an offer of proof, even by implication. Further, it is not prejudicial for the judge presiding over a bench trial to review tendered evidence that is not ultimately admitted – indeed, that happens all the time during the course of a bench trial.

Barry Kaltenbach

---

**From:** Jay Hoffman [mailto:jay@hoffmanlegal.com]  
**Sent:** Wednesday, August 21, 2019 3:51 PM  
**To:** Kaltenbach, Barry P.  
**Cc:** Kubasiak, Gerald E.; William Quinlan  
**Subject:** TTO v. LT 1

7J %

CAUTION EXTERNAL EMAIL: DO NOT open attachments or click links from unknown or unexpected emails.

Barry,

Thank you for your email. You wrote:

*With respect to witnesses, just to keep you updated, as of now we do not anticipate calling Nancy Sylvester. With respect to Ms. Sylvester, however, we intend to make an offer of proof of her opinion testimony that has been prohibited. I suggest the best way to do so this is to ask at the pretrial conference if we can submit her expert affidavit and designations of her deposition testimony, rather than calling her live to establish the offer of proof. I suspect Judge Mulroy would prefer this approach, too. If you agree, we can suggest that to the judge and I will let you know what we propose to designate in connection with the offer.*

LT does not agree with your proposal.

In the LT Motion to Bar Sylvester filed on 4-10-2018, LT attached as exhibits (a) Ex. F, the Affidavit of Nancy Sylvester that accompanied the TTO's summary judgment motion, and (b) Ex. G, the entire transcript of the Sylvester discovery deposition. In the Order dated 5-16-2018, the Court ruled, "The Court grants LT's motion to bar TTO expert Nancy Sylvester for the reasons stated in LT's motion. The TTO is barred from presenting any testimony from Sylvester as an expert in summary judgment proceedings or at trial."

Accordingly, the record in this case contains a complete record of the opinions and testimony that Sylvester would offer if she had been allowed to testify at trial. There is absolutely no need for an offer of proof for trial under these circumstances to preserve any appellate argument. Illinois law is very clear on this point:

Generally, HN2 when a trial court refuses evidence, no appealable issue remains [\*\*\*\*396] [\*\*661] unless a formal offer of proof is made. *Volvo of America Corp. v. Gibson*, 83 Ill. App. 3d 487, 491, 404 N.E.2d 406, 39 Ill.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Township Trustee

v.

Lyns Township H.S.

No. 13 CH 23386

ORDER

This matter coming to be heard on (1) LT's Motion for Reconsideration of LT's Motion for Partial Summary Judgment on the Statute of Limitations Issue; (2) TTO's motion for judgment as a matter of law on LT's Second Affirmative Defense, Statute of Limitations, and (3) TTO's Motion for Summary Judgment on LT's Claims and LT's Affirmative Defenses, IT IS ORDERED THAT:

1. LT's Motion for Reconsideration is granted; TTO's motion for judgment on statute of limitations defense is denied; and, the Court rules that the 5-year statute of limitations applies to the TTO's claims in this case per LT's motion.
2. TTO's motion for summary judgment on its claims and LT's affirmative defenses is denied without prejudice to proofs to be presented at trial.

Attorney No.: 34710  
 Name: Jay R. Hoffman  
 Atty. for: Defendant LT  
 Address: 20 N Clark St. Ste 2500  
 City/State/Zip: Chicago IL 60602  
 Telephone: 312-899-0899

3. The parties will appear in Court on August 8, 2019, 9:30 am for setting of trial.

ENTERED:

Judge

Judge Thomas R. Mulroy, Jr. Judge's No.

JUL 31 2019

Circuit Court-1941 7J &

FILED DATE: 8/30/2019 4:25 PM 2013CH23386

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

FILED  
8/16/2019 1:25 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2013CH23386

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	No. 13 CH 23386
Plaintiff and Counter-Defendant,	)	
	)	
v.	)	Hon. Thomas M. Mulroy
	)	
LYONS TOWNSHIP H.S. DISTRICT 204,	)	Calendar I
	)	
Defendant and Counter-Plaintiff.	)	(Transferred to Law)

6214782

**LT'S RULE 237(b) NOTICE TO PRODUCE AT TRIAL**

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT"), pursuant to Supreme Court Rule 237(b), provides this notice to Plaintiff and Counter-Defendant Township Trustees of Schools ("the TTO") requiring the attendance and production at the trial of this case of :

- (1) TTO Trustee Michael Thiessen on September 10, 2019, at 2:00 p.m., in Courtroom 1906 of the Richard J. Daley Center in Chicago, Illinois.
- (2) The TTO's designated representative Dr. Susan Birkenmaier on September 10, 2019, at 3:00 p.m., in Courtroom 1906 of the Richard J. Daley Center in Chicago, Illinois.
- (3) A redacted version of the Michael Cainkar letter dated 5-2-2000, and described in Gretchen Kubasiak's letter to LT's counsel dated 2-19-2016 (Ex. A). The redacted version should have visible only the sender, primary recipient, copied recipients, and subject line, and the entire text of the letter should be obscured. LT acknowledges, and does not contest at trial, the Court's Order dated 11-4-2016 (Ex. B) upholding the TTO's claim of attorney-client privilege over the legal advice given in this letter.

(4) Note: Should the TTO call Thiessen and Birkenmaier during its case-in-chief, LT will conduct its examination of these witnesses at the same time for their convenience, so long as the TTO waives all objections concerning the scope of cross-examination.

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*  
Attorney No. 34710

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on August 16, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

Barry P. Kaltenbach  
*kaltenbach@millercanfield.com*

Gerald E. Kubasiak  
*gekubasiak@quinlanfirm.com*

s/Jay R. Hoffman

Founded in 1852  
by Sidney Davy Miller

# MILLER CANFIELD

GRETCHEN M. KUBASIAK  
TEL (312) 460-4228  
FAX (312) 460-4201  
E-MAIL [kubasiakg@millercanfield.com](mailto:kubasiakg@millercanfield.com)

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Chicago, Illinois 60606  
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FAX (312) 460-4201  
[www.millercanfield.com](http://www.millercanfield.com)

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OHIO: Cincinnati

CANADA: Windsor

CHINA: Shanghai

MEXICO: Monterrey

POLAND: Gdynia

Warsaw • Wroclaw

February 19, 2016

**BY MESSENGER**

Charles A. Le Moine  
DYKEMA GOSSETT PLLC  
10 South Wacker Dr., Ste. 2300  
Chicago, IL 60606-7407

Re: *Township Trustees of Schools Township 38 North, Range 12 East v. Lyons Township High School District 204*  
Case No: 13 CH 23386

Dear Mr. LeMoine:

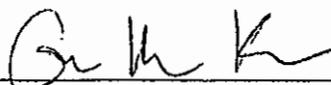
Enclosed please find Plaintiff's Fifth Production of Documents – Documents on Disk (see attached six pages for list of documents included on Disk). If you have any issues accessing the documents on the Disk, please let us know. Please be advised we are claiming privilege on the following document:

- Letter, dated May 2, 2000, from Michael G. Cainkar, Esq. at Louis F. Cainkar, Ltd. to Robert Healy regarding proposed agreement with Lyons Township High School. Mr. Cainkar was counsel to the Township Trustees during this period of time.

As Barry P. Kaltenbach indicated in his email to you on March 3, 2015, we intend to make a rolling production and this is the fifth production. We anticipate making one final production after this one.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By:   
Gretchen M. Kubasiak

cc: Gerald E. Kubasiak  
Barry P. Kaltenbach

DISCLOSURE UNDER TREASURY CIRCULAR 230: The United States Federal tax advice contained in this document and its attachments, if any, may not be used or referred to in the promoting, marketing or recommending of any entity, investment plan or arrangement, nor is such advice intended or written to be used, and may not be used, by a taxpayer for the purpose of avoiding Federal tax penalties. Advice that complies with Treasury Circular 230's "covered opinion" requirements (and thus, may be relied on to avoid tax penalties) may be obtained by contacting the author of this document.  
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7J: ;4;F 3

FILED DATE: 8/30/2019 4:25 PM 2013CH23386

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Township Trustees

v.

Lyons

No.

13 CH 23386

ORDER

This matter coming to be heard on that portion of Lyons's motion To Compel Production of Documents that concerns the May 2, 2000 letter from Camiker to Healy, the Court having received briefs and heard argument, IT IS ORDERED:

1. The Court upholds the TTO's claim of attorney-client privilege on the May 2, 2000 letter from Camiker to Healy, and upholds the TTO's refusal to produce this letter to Lyons. This portion of Lyons's motion to compel is denied.

2. Lyons's counsel voluntarily represents that he will not ask Healy, at his deposition, to reveal the substance of attorney-client privileged communications Healy had.

3. The parties shall appear 11/10/16 at

Attorney No.:

34710

Name:

Jay R Hiffman

Atty. for:

Defendant Lyons

Address:

20 W Clark Ste 2500

City/State/Zip:

Chicago IL 60602

Telephone:

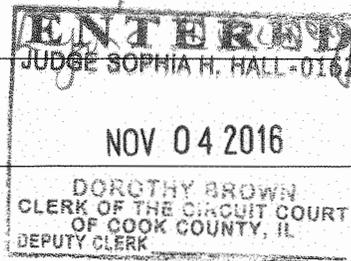
312 899 0899

ENTERED:

10:00 am.

for presentation of motions.

Dated:



Judge

Judge's No.

7J: ;4;F 4

FILED DATE: 8/30/2019 4:25 PM 2013CH23386

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on August 30, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

Barry P. Kaltenbach  
*kaltenbach@millercanfield.com*

Gerald E. Kubasiak  
*gekubasiak@quinlanfirm.com*

s/Jay R. Hoffman