

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

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

Plaintiff,)
vs.) No. 13 CH 23386
LYONS TOWNSHIP SCHOOL)
DISTRICT 204,)
Defendant.)

REPORT OF PROCEEDINGS at the hearing of the
above-entitled cause before the Honorable Sophia Hall, Judge
of said Court, at the Richard J. Daley Center, Room 2301, on
the 22nd day of September, 2014, at the hour of 10:46 a.m.
(Proceedings concluded at 11:19 a.m.)

Reported By: Ronda L. Jones, CSR, RPR
License No: 084-002728.

1 MR. KALTENBACH: Good Morning, your Honor.

2 Barry Kaltenbach for the plaintiff.

3 MR. LeMOINE: Good morning, your Honor.

4 Charles LeMoine, L-e-M-o-i-n-e, here on behalf of the
5 defendant and also the movant.

6 THE COURT: Wait a second. Charles LeMoine is for the
7 defendant. And for plaintiff again? I'm sorry.

8 MR. KALTENBACH: Barry Kaltenbach, K-a-l-t-e-n-b-a-c-h.
9 My partner, Doug Hewitt, who had been handling this file has
10 made a lateral move.

11 THE COURT: All right. And then there was a Gerald.

12 MR. KALTENBACH: Gerald Kubasiak. He has another
13 hearing this morning, your Honor, at 11:00. So he's not
14 here.

15 THE COURT: All right. Goodness, I remember the pain I
16 was in in your first filing. This one was much better, much
17 better, but of course I learned a lot about this transaction,
18 statutory transaction. So it felt a little more familiar
19 than my first time through. I also noticed that I'm not
20 addressing latches at this time. This argument is focused on
21 statute of limitations and that, too, is a help. So you may
22 argue.

23 MR. LeMOINE: Thank you, your Honor. Judge, as you can
24 tell, and I think this refreshes your memory from before, but

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1 there's really three areas that we were being sued for. One

2 was audit expenses. One was interest overpayments. One was

3 this pro rata share of annual operating expenses for the

4 TTO's office. The time periods that are at issue are

5 somewhat different between those three. Audit expenses is

6 1993 through 2011. Interest overpayments is 1995 through

7 2012. The annual operating expenses is from 2000 to 2011.

8 The basis of the motion is really -- and I

9 hate to use the word the Court erred in applying the law

10 but --

11 THE COURT: Well, you know, I will say, and I think the

12 record reflects, that the Court also was confused by the

13 pleadings and everything that was previously filed. So I

14 truly invited an opportunity to be better educated in this,

15 and thank you.

16 MR. LeMOINE: And we did appreciate that because, you

17 know, as you know, most of the law in this case happened when

18 Abraham Lincoln I think was --

19 THE COURT: 1888?

20 MR. LeMOINE: Yeah.

21 THE COURT: That was the date of the case, if I

22 remember, the seminal case.

23 MR. LeMOINE: I don't know if he was or not.

24 THE COURT: 1890.

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<p>1 MR. KALTENBACH: School directors was a -- I think '83.</p> <p>2 MR. LeMOINE: It's an old case. So --</p> <p>3 THE COURT: Ancient would be another word you could use.</p> <p>4 MR. LeMOINE: Unfortunately, you know, as you can</p> <p>5 probably imagine there doesn't appear to be too many disputes</p> <p>6 that have occurred in this context which is why we have to go</p> <p>7 back so far in time. But when you look at the verified</p> <p>8 complaint, you know -- and that's really all you have in</p> <p>9 front of you for purposes of the motion to dismiss -- nowhere</p> <p>10 in this complaint do they either allege either generally or</p> <p>11 specifically that the money that they're seeking is in fact</p> <p>12 public funds. They make that argument in their response.</p> <p>13 They say, "This is public funds. This is public, public,</p> <p>14 public." But nowhere do they explain nor does the case law</p> <p>15 support the argument that it's public funds.</p> <p>16 THE COURT: Well, I thought they had shifted their</p> <p>17 argument really to another phrasing of the issue.</p> <p>18 MR. LeMOINE: Public trust, public funds, you know, they</p> <p>19 seem to be using them --</p> <p>20 THE COURT: Here's what I want you to do.</p> <p>21 MR. LeMOINE: -- interchangeably.</p> <p>22 THE COURT: Yeah. We have three pots of money, and</p> <p>23 there are also a lot of arguments being made about whether</p> <p>24 monies are being addressed because the trustees do a book</p>	<p>1 matters that were not alleged in the complaint, and there's</p> <p>2 no support for the facts that seem to be relied on. So that</p> <p>3 creates another difficulty the Court has in figuring out what</p> <p>4 to do with the statute of limitations argument.</p> <p>5 MR. LeMOINE: I get that, and I think if you look just</p> <p>6 at the complaint as they have pled it, they --</p> <p>7 THE COURT: As to the audit expenses.</p> <p>8 MR. LeMOINE: Yeah. And we can read exactly what they</p> <p>9 say about the audit expenses, and I'll read it into the</p> <p>10 record. This is Paragraph 16 on Page 4. "Between 1993 and</p> <p>11 2011 and at District 204's request the TTO paid Baker Tilly</p> <p>12 \$473,174.85 for audit services rendered to District 204 that</p> <p>13 was owed by District 204 and not the TTO." The rest of it</p> <p>14 talks about demand for payment, but that's irrelevant. That</p> <p>15 goes to the element of the claim. So those are the only</p> <p>16 facts --</p> <p>17 THE COURT: Yes.</p> <p>18 MR. LeMOINE: -- that they have alleged. And if you</p> <p>19 look at the case law, the case law says in that situation it</p> <p>20 cannot be a public trust. It cannot be public funds because</p> <p>21 the money left. It went from TTO to Baker Tilly. They paid</p> <p>22 it. They admit they paid it. They can't come back here and</p> <p>23 say it's different. Those are --</p> <p>24 THE COURT: Unless they amend their complaint.</p>
<p>1 accounting statement. Therefore, the argument is made that</p> <p>2 the trustees have not actually let money go. So I think</p> <p>3 talking specifically about what money it is, how that money</p> <p>4 was handled, because it's different --</p> <p>5 MR. LeMOINE: Okay.</p> <p>6 THE COURT: And when I reviewed it -- and let me just --</p> <p>7 MR. LeMOINE: Sure.</p> <p>8 THE COURT: -- say to you that when I went through</p> <p>9 trying to figure out again what you all were talking about,</p> <p>10 the categories of the monies became important, and so why</p> <p>11 don't you take it category by category.</p> <p>12 MR. LeMOINE: Okay. That certainly makes sense.</p> <p>13 THE COURT: And then array the legal arguments with</p> <p>14 respect to those categories.</p> <p>15 MR. LeMOINE: All right. The first category, they call</p> <p>16 it audit expenses, and as I understand how this worked -- and</p> <p>17 this was an extremely unusual set of circumstances --</p> <p>18 THE COURT: And reference what is alleged in the</p> <p>19 complaint because it may well be since this is a 2.615 rather</p> <p>20 than 2.619 -- it's a motion to reconsider, and then the</p> <p>21 question becomes whether you're addressing it as 2.615 or</p> <p>22 2.619 and do I have to consider evidence outside the four</p> <p>23 corners of the complaint or not. That, I think, is one of</p> <p>24 the problems here because there was a lot of addressing of</p>	<p>1 MR. LeMOINE: Unless they amend their complaint.</p> <p>2 THE COURT: All right. So insofar as Baker Tilly is</p> <p>3 concerned these monies are no longer as alleged in the</p> <p>4 complaint in the custody of the trustee. They have been paid</p> <p>5 out and thus -- and the last payment out was 2011.</p> <p>6 MR. LeMOINE: 2011, sometime in 2011.</p> <p>7 THE COURT: So insofar as a statute of limitations on</p> <p>8 the face of the complaint, the statute of limitations would</p> <p>9 prevent any arguments about payments to Baker Tilly prior</p> <p>10 to -- what's the date?</p> <p>11 MR. LeMOINE: October 17, 2008. That's five years to</p> <p>12 the date that they filed.</p> <p>13 THE COURT: All right. So anything paid out prior to</p> <p>14 October 17, 2008, based upon the allegations in the complaint</p> <p>15 could not be litigated.</p> <p>16 MR. LeMOINE: They cannot be.</p> <p>17 THE COURT: All right. Move to the next category.</p> <p>18 MR. LeMOINE: All right. Interest overpayments. All</p> <p>19 right.</p> <p>20 THE COURT: Now, these are payments that the trustee</p> <p>21 made to the district, correct?</p> <p>22 MR. LeMOINE: Yes. And here's what happens. The</p> <p>23 district places a --</p> <p>24 THE COURT: Allegations in the complaint now.</p>

1 MR. LeMOINE: I'll read it on point. Okay.
2 THE COURT: That's the problem with the complaint.
3 MR. LeMOINE: Yeah. They talk about the interest
4 investments, but there's very little in the way of any real
5 facts explaining the process.
6 THE COURT: No.
7 MR. LeMOINE: So I could elaborate --
8 THE COURT: No. But that would be outside the record.
9 MR. LeMOINE: Right.
10 THE COURT: And have you offered documents or evidence
11 or whatever to support that?
12 MR. LeMOINE: Okay. I don't have any documents yet, but
13 you can read the statute which is what they rely on in their
14 complaint. In fact, in their response they cite it. It's
15 105 ILCS --
16 THE COURT: All right. I want to -- the reason -- I
17 know this is a motion to reconsider. That's why I want to
18 tie the arguments first to the allegations in the complaint,
19 and then of course the Court can consider law. So the
20 interest payment is addressed where? Counsel, can you help?
21 I mean, it's either here or not here.
22 MR. KALTENBACH: Are we talking about the --
23 THE COURT: The interest payment.
24 MR. KALTENBACH: The interest. Okay.

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1 MR. LeMOINE: No, you're not. This is -- it takes time.
2 So, here, I will give you a copy of 8.7 just if you need to
3 follow along.
4 THE COURT: Oh, yeah.
5 MR. LeMOINE: Okay. All right. So if you go down about
6 midway on 8.7, you see where there's a citation to
7 Section 5-1? It's kind of in the middle.
8 THE COURT: Yes.
9 MR. LeMOINE: All right. So right after this -- this is
10 the language that follows: "Shall be --" And it's talking
11 about TTO. "Shall be the only lawful custodian of all school
12 funds and shall demand receipt for, safely keep according to
13 law all bonds, mortgages, notes, monies, effects, books and
14 papers belonging to any school district or township as the
15 case may be which he serves as treasurer." So all they are
16 -- this is no different than a school treasurer that works
17 for a school district. He's an agent. He's a person who has
18 authority, but it doesn't become his money, and it could
19 never become the TTO's money. It's never their money.
20 THE COURT: But they're the custodian of the money.
21 MR. LeMOINE: Okay. Let me -- we'll follow that thread.
22 So go down about five lines and see where the citation to 8-1
23 is, 105 ILCS 5/801.
24 THE COURT: Yes.

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1 THE COURT: Overpayment.
2 MR. KALTENBACH: I apologize, your Honor. I didn't
3 draft this complaint.
4 THE COURT: Well, I'm thinking that this complaint needs
5 to be drafted again if the Court and the parties are going to
6 try to do something in the interest of justice here.
7 MR. KALTENBACH: I'm happy to respond to that argument,
8 your Honor. I believe it's --
9 MR. LeMOINE: It's Paragraph 14 is the only one. It's
10 the only one in here that even talks about it.
11 MR. KALTENBACH: I'm sorry. Yeah, that's correct,
12 counsel.
13 MR. LeMOINE: And, Judge, if you look at it, it says,
14 "District 204 was allocated and paid --" Those are their
15 words. "-- \$1,380,496.53." That's what they allege.
16 THE COURT: Well, that is a conclusion, paid. So what
17 we don't have is whether a check was -- how the payment was
18 recorded. So that means that -- okay. So tell me about the
19 statute then.
20 MR. LeMOINE: Okay. Because I think --
21 THE COURT: Because that might explain what paid means.
22 MR. LeMOINE: Exactly. I think you have to understand
23 it, and that's where I was getting.
24 THE COURT: All right. I'm slow, but I'm following you.

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1 MR. LeMOINE: Okay. The language after that reads,
2 "Shall designate one or more banks, savings and loan
3 associations situated in the State of Illinois in which
4 school funds and monies in the custody of the township
5 treasurer or of the school treasurer shall be kept." So
6 basically they take our money, and they put it in the bank.
7 It's our money. It doesn't become their money.
8 THE COURT: But who has -- but who signs checks off the
9 bank? Apparently --
10 MR. LeMOINE: They can but that's --
11 THE COURT: But the district can't go and grab that
12 money without the trustee signing off on a check to give it
13 to them --
14 MR. LeMOINE: All the --
15 THE COURT: -- unless they are by statute a cosigner.
16 MR. LeMOINE: The district -- and I don't -- I can't
17 answer the exact way in which funds left because I don't have
18 that information yet, but what it does say -- here, if you go
19 down even to the bottom of the page, the last three lines --
20 THE COURT: All right. I'm going there.
21 MR. LeMOINE: We're still on it. "The township
22 treasurer or the school treasurer shall be discharged from
23 responsibility for such funds and monies which he deposits in
24 a depository so designated while such funds and monies are so

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1 deposited." So all he's doing is acting as an authority to
 2 sign a check just like a school treasurer has authority to
 3 sign checks. It's not the treasurer's money.
 4 THE COURT: Okay. Let's move to the next one which is
 5 the --
 6 MR. KALTENBACH: Operating expense.
 7 THE COURT: -- pro rata share of operating expenses.
 8 MR. LeMOINE: Okay. Can I just have one more -- I just
 9 want to add one more point. This is on the same concept.
 10 THE COURT: Okay.
 11 MR. LeMOINE: This is in Section 8-17. This is duties
 12 of the treasurer.
 13 THE COURT: Okay. Good.
 14 MR. LeMOINE: Here's a copy of that for the Court. In
 15 Section 2 it states --
 16 THE COURT: Wait, wait. 8-17?
 17 MR. LeMOINE: 8-17, Duties of Treasurer, Section 2, "Pay
 18 all lawful orders issued by the school board of any district
 19 in his township." So, once again, it's the authority to sign
 20 a check. When the school district says pay a bill, he has to
 21 cut a check and pay a bill. That's his duties and
 22 responsibilities, and it doesn't give them unlimited
 23 authority over the money. All it does is give them the right
 24 to, you know, accomplish a task.

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1 individual participating member is ascertained by dividing
 2 the total amount of school funds handled by the treasurer,
 3 not in their possession, handled by the amount of funds held
 4 by the treasurer that belong to the individual participating
 5 member," in quotes, "the pro rata billing." So, once again,
 6 they say, "It's our money. We can bill you for the money
 7 that we handle over a period of time." And, Judge, keep in
 8 mind a school district -- monies come in. Monies come out.
 9 That's what they do. Every year monies come in. Monies come
 10 out. And if you take their argument to its logical extreme,
 11 it means every dollar that ever went into their office in a
 12 20-year period somehow they have control over.
 13 THE COURT: Okay. Prior --
 14 MR. LeMOINE: It can't be.
 15 THE COURT: Hang on. Prior to fiscal year 1999 the
 16 trustee asked the District 204 to pay, and they paid. Money
 17 went from the district to the trustee to pay for the
 18 operating expenses.
 19 MR. LeMOINE: A check was written.
 20 THE COURT: By the district --
 21 MR. LeMOINE: Yes.
 22 THE COURT: -- payable to the trustee, and in each
 23 fiscal year 2000 through 2012 there was a determination of
 24 the amount on an annual basis, and I guess they asked for the

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1 THE COURT: Okay.
 2 MR. LeMOINE: That's what this is saying. All right.
 3 So you wanted me to talk about --
 4 THE COURT: The pro rata share.
 5 MR. LeMOINE: -- pro rata. Okay. So the --
 6 THE COURT: Now, this is money that the -- unlike the
 7 trustee paying it to the district this is money the district
 8 is to pay to the trustee which is a little different kind of
 9 a situation.
 10 MR. LeMOINE: It's different, but what's important about
 11 that is they have to ask us for the money. They can't just
 12 take the money out. That's what this is all about. They're
 13 saying, "We submit an invoice to you. You're supposed to
 14 pay, and if you don't pay, we have some legal right to get
 15 that money back." So it is the same as we're talking about
 16 with these other things. It's our money. It's in our
 17 account. We own it. We control it. They have to come to
 18 us.
 19 THE COURT: Just a second. Just a second. Just a
 20 second. Show me the allegation in the complaint about the
 21 share of operating expenses.
 22 MR. LeMOINE: Okay. I think you have to start with this
 23 paragraph which is 7. This is on Page 2. "In accordance
 24 with 5/8-4 of the Illinois School Code the amount owed by an

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1 money. Did they? I'm looking through the rest of the
 2 allegations to see if the trustee/treasurer asked for money
 3 from the district which the district did not pay. So where
 4 do they allege that the district did not pay a billing?
 5 MR. KALTENBACH: Your Honor --
 6 THE COURT: Yes, you can answer that.
 7 MR. LeMOINE: It's in Paragraph 12.
 8 MR. KALTENBACH: In Paragraph 9 we allege there were
 9 invoices; again, in 10 invoices, I believe in 11 invoices,
 10 and then in 12 is the failure.
 11 MR. LeMOINE: Yeah. 12, it says, "Between fiscal year
 12 June 30, 2003, and the present District 204 failed to pay any
 13 portion of its share of the pro rata billings."
 14 THE COURT: All right. So there's an allegation that
 15 the district was billed for its share between 2003 and the
 16 present and the district hasn't paid. So the statute of
 17 limitations there, it's apparent, that would run from what?
 18 Again October 17 --
 19 MR. LeMOINE: From October 17th.
 20 THE COURT: -- 2008?
 21 MR. LeMOINE: '8.
 22 THE COURT: To try to get that money from the district
 23 to go pay them.
 24 MR. LeMOINE: Correct.

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1 THE COURT: Okay. So, now, let's see the defenses to
2 the statute of limitations argument that are being made based
3 upon the complaint.
4 MR. KALTENBACH: Your Honor, thank you. I'm happy to
5 walk through those defenses.
6 I want to start for a minute though by saying
7 there is an awful lot of factual intensive analysis that the
8 Court is attempting to do and that the parties are talking
9 about. And, needless to say, I understand it's a motion to
10 dismiss. The Court doesn't have -- the parties haven't had a
11 chance to develop a full factual record. The cases that
12 counsel relies on, school directors Arnold and Brown, none of
13 those appear to have been decided on a motion to dismiss.
14 Arnold and Brown were decided on trial, and school directors
15 referenced that -- the Court had held a hearing. I don't
16 know what "hearing" meant back in the 1800s. I don't know if
17 it was an oral hearing. I don't know if it was an
18 evidentiary hearing. But in those cases the motions to
19 dismiss were decided at least after one hearing and after two
20 trials --
21 THE COURT: Let's just figure out what's going on here
22 in terms of the allegations because we know what the law is
23 now with respect to statute of limitations. We don't have
24 to --

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1 MR. KALTENBACH: Your Honor, this is their -- they have
2 the burden of proof, the burden of production, the burden of
3 persuasion. They have all three right now. This is their
4 affirmative defense. We are not required to anticipate and
5 aver around an affirmative defense. If there's a fact that's
6 not known, that's because they haven't put it in the record.
7 THE COURT: Let's look at each of these and see if
8 there's anything that you have alleged in your complaint
9 unless you want to amend your complaint --
10 MR. KALTENBACH: Your Honor --
11 THE COURT: -- to make it more specific.
12 MR. KALTENBACH: Your Honor, we'll start with the audit
13 expenses --
14 THE COURT: There we go.
15 MR. KALTENBACH: -- the same three buckets. The audit
16 expenses, your Honor, I think counsel may have a point if the
17 treasurer was suing Baker Tilly to get money back from Baker
18 Tilly because Baker Tilly and the treasurer would not have a
19 trust relationship. But District 204 and the treasurer do
20 have a trust relationship. We're not suing Baker Tilly to
21 get money back from them. We're not saying Baker Tilly
22 didn't do the audit. What we're saying is we wrote a check
23 on behalf of District 204. District 204 should have had --
24 we should have had that money from them, and they didn't pay

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1 us.
2 THE COURT: Well, where is the "should have" and under
3 what basis is the "should have" being alleged?
4 MR. KALTENBACH: Well, your Honor, we allege -- and I
5 think the fair inference is that they engaged Baker Tilly to
6 perform auditing services --
7 THE COURT: Let's see what you've alleged because my
8 concern is this complaint is so bare bones it does not
9 address exactly what was occurring so that there could be an
10 appropriate adjudication of whether the processes used here
11 complied and therefore whether -- and how to apply a statute
12 of limitations.
13 MR. KALTENBACH: Your Honor, I understand that concern,
14 and I think that's why the thing to do is if they win today,
15 your Honor, this case stays right here. They're not seeking
16 a dispositive ruling. They acknowledge the case is going to
17 stay right here where the parties are going to proceed into
18 discovery. The only issue is going to be are we going to go
19 back five years in discovery or are we going to go back
20 longer in discovery. Let's let the parties make their
21 factual record and then they -- we're not asking the statute
22 of limitations be decided today for all time. It's going to
23 be an interlocutory order no matter what the Court does
24 today. They can assert it as an affirmative defense just

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1 like they said they're going to do with latches. Then the
2 Court isn't going to be guessing what happened. The Court
3 will have all of the evidence of what actually happened.
4 THE COURT: So --
5 MR. KALTENBACH: Your Honor, we allege -- I think the
6 reasonable inference is District 204 engaged Baker Tilly and
7 that we did go ahead and pay Baker Tilly, and I do believe in
8 this case given that Baker Tilly is not a governmental entity
9 that I'm going to go ahead and assume that they did get a
10 check. I think Baker Tilly might have an excellent point if
11 we try to recover those funds, but that's not who we're suing
12 today. We're saying they owe us reimbursement, and we are
13 the custodian. We have the reimbursement funds in our hands.
14 We just want to credit them to our account.
15 THE COURT: All right. Part of the problem in trying to
16 address what's going on here is that the verified complaint
17 is too bare bones. So I am going to dismiss based on 2.615
18 without prejudice and require that an amended verified
19 complaint be filed addressing the bases for each of these
20 particulars in terms of reimbursement that you're seeking.
21 Based on that the Court will be in a better position to
22 determine the ultimate question of whether or not at this
23 time the Court can determine the statute of limitations or
24 whether there are some other arguments that would allow that

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1 statute of limitations not to stop at October 17, 2008, but
2 to go beyond October 17, 2008, which means I am not deciding
3 the issue of whether or not these are generally public funds
4 and how those funds are being used or not and whether you can
5 obtain those funds even though a statute of limitations has
6 run on them. I'll be in a better position to do that when I
7 have a better complaint. All right. So I'm going to require
8 that the complaint be amended without prejudice to the
9 arguments that are being made regarding statute of
10 limitations. Apparently latches is not before the Court. I
11 think that is truly fact dependent as statute of limitations
12 is ultimately also.

13 I think there was an argument made -- you
14 haven't had an opportunity to argue this yet -- about whether
15 these funds were locally used or should be construed to have
16 been used in the public interest, the general public
17 interest.

18 MR. KALTENBACH: It was a sufficient public interest.

19 THE COURT: Right. And that I think is factually
20 intense also which does not appear here.

21 MR. LeMOINE: Can I just address that very quickly --

22 THE COURT: Please.

23 MR. LeMOINE: -- here since you made that comment?
24 Under Illinois law a school district is defined as a local

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1 public entity. You know that.

2 THE COURT: Uh-huh.

3 MR. LeMOINE: And a township of trustees school is also
4 defined as a local public entity. So I believe, you know,
5 they can go ahead and amend their complaint, but I think that
6 issue is going to be decided by statute because by statute
7 these entities are by definition local. They're not
8 statewide.

9 THE COURT: But is there a factual question about
10 whether or not there's -- the impact is local as opposed to
11 not local because statewide it may not have to be, isn't
12 there a factual question on that?

13 MR. LeMOINE: I don't think it will be, but I think if
14 that's part of their burden, then they're going to have to
15 plead that because they've never pled these are truly public
16 funds. They've made the argument, you know, roundabout
17 through the pleading, I mean through the briefing, but
18 they've never pled that. So if they're going to plead that,
19 they have to plead it, and I think they have to plead it with
20 specificity. They can't just say it's public funds. That's
21 a conclusion. But state law statutory says these entities by
22 definition are local. That's what we're dealing with.

23 MR. KALTENBACH: Your Honor, we're apparently arguing
24 something that isn't part of today's ruling but --

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1 THE COURT: It is not part of today's ruling, but I
2 think it's part of the briefing in the case, and I had some
3 concerns about that too.

4 MR. KALTENBACH: It is, your Honor. So I would like to
5 respond to that. Statute may say school district is a local
6 entity. They're relying upon the Brown decision which I
7 think was 1908 which was a little piece of land that someone
8 had fenced off for a vegetable patch on. We'll go fast
9 forward 80 years to actually a more modern case which is the
10 AC & S case.

11 THE COURT: Yes.

12 MR. KALTENBACH: AC & S involved school districts, and
13 yet the Supreme Court said that was a sufficiently public
14 interest. Now, I know there's a lot of other factors that
15 are part of the AC & S analysis, and there's a three-factor
16 test. We can get into all of that but --

17 THE COURT: I think then part of the question is whether
18 in order to withstand a motion to dismiss, which he's going
19 to raise that one, whether you might want to include
20 something regarding those three factors. I'm not urging that
21 you do that. Again, the complaint is construed in the light
22 most favorable to the plaintiff based upon facts alleged as
23 opposed to simply conclusions, and I know there's that line.
24 But since the situation with respect to each of these

23

1 categories of funds are a little different I think it would
2 facilitate the management of this case if the complaint were
3 more focused. All right.

4 MR. KALTENBACH: Your Honor, in terms of timing, I am
5 closing on a new condominium this Friday --

6 THE COURT: Good luck.

7 MR. KALTENBACH: Thank you. And I'm relatively new to
8 this case. It sounds like we need to go back and probably
9 dig deeper than might be in a normal motion to --

10 THE COURT: I'll give you --

11 MR. KALTENBACH: I don't want to have the 14 days
12 that --

13 THE COURT: No. Your amended complaint would be on file
14 30 days or are you --

15 MR. KALTENBACH: I think that that should be sufficient,
16 your Honor.

17 THE COURT: So have your amended complaint on file by
18 October 24, and counsel will answer or otherwise plead which
19 means you may be resurrecting some of these arguments by the
20 middle of November. I'm going to set this for status to find
21 out where you are. Where are we now?

22 MR. KALTENBACH: September 22nd.

23 THE COURT: Okay. I want you back on November 14, and
24 at that time you will have responded or otherwise pled. So

24

1 divide up that time, and I'd like to see everything, courtesy
2 copies, at least by the 12th. That's the day after Veteran's
3 day.
4 MR. KALTENBACH: If I'm filing my amended pleading
5 October 24 and we're back on November 14 -- I mean, you may
6 have a motion to dismiss by then. I don't know that we'll --
7 MR. LeMOINE: Here's what I'm thinking will probably
8 happen. I mean --
9 THE COURT: Because he's right that the statute of
10 limitations certainly will mean the case will continue, but
11 the question is how far.
12 MR. LeMOINE: And you know what? That's a significant
13 point in this case for two reasons. One, the amount of time
14 and effort that we'll have to go back 20 years versus five is
15 huge. Number two, a lot of these people have left the
16 district.
17 THE COURT: Sure.
18 MR. LeMOINE: So trying to find people who even worked
19 there or could substantiate a lot of this -- so we're going
20 to have that issue. And then number three, I think what the
21 evidence will show in the last five years, they owe us money.
22 So if we limit this to five years, we're going to have a
23 counterclaim back against them for money we didn't get,
24 underpayments and such. So --

25

1 THE COURT: Sounds like a case that could be settled.
2 MR. LeMOINE: Yeah.
3 THE COURT: But I will put my oar in the water as to
4 what needs to be done. I'm going to extend that time and set
5 it for status on October 18. That will give at least a
6 little more time for you to get your --
7 MR. LeMOINE: You mean November 18.
8 THE COURT: I'm sorry. November 18 at 9:30.
9 MR. LeMOINE: Okay. Very good. Thank you, your Honor.
10 MR. KALTENBACH: Thank you, Judge.
11 THE COURT: You're welcome.
12 (Which were all the proceedings
13 had in the above cause this
14 date and time.)
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26

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF COOK)
3
4 RONDA L. JONES, being first duly sworn, on
5 oath says that she is a court reporter doing business in the
6 State of Illinois; and that she reported in shorthand the
7 proceedings of said hearing, and that the foregoing is a true
8 and correct transcript of her shorthand notes so taken as
9 aforesaid, and contains the proceedings given at said
10 hearing.
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Ronda L. Jones

Ronda L. Jones, CSR, RPR
License No. 084-002728



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

County Department, Chancery Division

Township Trustees of Schools, Township 38
North, Range 12 East

v.

No. 13 CH 23386Lyons Township High School District No. 204

ORDER

This cause coming to be heard on defendant's motion to reconsider the prior order of June 18, 2014, all parties receiving due notice, and the court being fully advised:

It is hereby ordered that:

1) defendant's motion to reconsider is granted, and defendant's motion to dismiss the complaint pursuant to 2-615 is granted, without prejudice;

2) Plaintiff is granted leave of court to file an amended verified complaint on or before October 24, 2014;

3) Defendant shall file its response to the amended verified complaint on or before November 17, 2014;

4) The case is continued for status to November 19, 2014 at 9:30 A.M. without further notice.

FIRM

Atty. No.: 42297Name: Charles A. LeMoine, Dykema Gossett PLLC ENTERED:Atty. for: DefendantAddress: 10 S. Wacker Drive, Suite 2300City/State/Zip: Chicago IL 60606Telephone: 312-627-2163

Dated: _____

SEP 22 2014

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Judge _____

EXHIBIT

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2

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

Vote To Decide Township School Trustees' Fate

November 05, 1995 | By Michael Martinez, Tribune Staff Writer.

Back in 1819, when Abe Lincoln was a mere 10-year-old boy, log cabins were commonplace and schoolhouses were only one room, the Illinois General Assembly created the offices of township school trustees and treasurer to handle school taxes.

The elected school trustees and their appointed treasurer monitored school funds and land holdings in each township, taking care of complicated finances, so local educators could concentrate on teaching.

In 1962, state lawmakers, thinking the township school positions were outmoded, abolished the offices throughout Illinois-except in suburban Cook County, where politics played a role in their preservation.

But now voters in two Cook County townships-Wheeling Township in the northwest suburbs and Leyden Township in the western suburbs-will have a chance to decide the issue on their own, as they will consider separate referendum proposals Tuesday to abolish their three-member boards of school trustees, which are volunteer posts, and their salaried treasurers.

In essence, they are being asked to cut out the middle man. Under state law, the 25 township school trustees in suburban Cook County hold the legal title to all school property located in the township, and they hire a treasurer to account for school funds, officials said.

Those urging voters to abolish the offices have the same general philosophy: Most suburban school districts now

Related Articles

Township School Post Is Facing A Ballot Test
(/1995-03-30
/news/9503300244_1_school-trustees-school-districts-school-funds)
March 30, 1995

Old School Treasurer Setup Hit (/1994-10-09
/news/9410090209_1_school-trustees-school-funds-school-treasurer)
October 9, 1994

Wheeling School Trustees Eliminated
(/news/9511050301_1_school-trustees-school-funds-school-treasurer)
November 5, 1995

EXHIBIT

3

have accountants and money managers to handle sophisticated financial matters on their own.

"This is very much like the buggy whip. At one time buggy whips were very useful, but they are no longer very useful," said John Ratliff, an accountant himself and a Township High School District 214 board member.

Though identical in philosophy, the two referendums are taking place under dramatically different circumstances. In Leyden Township, a treasurer was recently sent to prison for embezzlement, whereas in Wheeling Township, a cost-cutting reform effort is at work.

The Leyden Township referendum grew from a scandal in which the former school treasurer, James Schierhorn, and his wife, Jackie, were charged with stealing \$298,950 in school funds.

Last month, James Schierhorn pleaded guilty to theft and official misconduct and was sentenced to 4 years in prison. His wife pleaded guilty to theft by deception and was placed on probation for 3 years. They have returned \$250,000 of the money.

Tuesday's referendum in Leyden Township seems to face certain approval because an advisory referendum proposal on the same issue was overwhelmingly approved last April.

"I have no idea why it exists in this county, other than it is a political entity that handles millions and millions of dollars," said Jack Schoenholtz, superintendent of Leyden High School District 212.

districts)

November 9, 1995

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Cook County (/keyword
/cook-county)

"These township trustees have incredible amounts of money that they are dealing with, so they have some power Downstate (in Springfield). I'm sure they get invited to a lot of things by bankers," Schoenholtz said. "From what I can see, there is not a lot of close budgetary control, and there is not a lot of supervision."

The Leyden Township trustees and treasurer handle about \$65 million a year in tax collections, and the treasurer's office costs about \$350,000 a year to operate, said Carole Orze-Ellis of Franklin Park, a township school trustee who is not seeking re-election Tuesday. No candidate is running for her seat, she said.

"I think the office should stay for one simple reason," Orze-Ellis said. "I think there were some checks and balances in the office, because the trustees were able to catch the embezzlement."

"I feel the trustees are really aware of the situation, and it could help run the treasurer's office better," Orze-Ellis said.

In Wheeling Township, Ratliff, 43, of Mt. Prospect, contends the Wheeling Township trustees of schools and their treasurer are a costly, unnecessary layer of government.

But trustees and the treasurer, who handle a total of some \$150 million in school funds, strongly disagree and say a state law would require a far more expensive alternative in which each school district would have to hire its own school treasurer, if the proposal is approved.

In response, referendum supporters said District 214 and the four elementary schools systems-Wheeling-based District 21, Prospect Heights-based District 23, Arlington Heights-based District 25 and District 26 in the River Trails area of Mt. Prospect-already have personnel on staff or a school board member who would serve as treasurer.

Also, District 214 has said it would share its treasurer with the elementary districts, Ratliff said.

"At one time, school districts were very unsophisticated and couldn't handle their school affairs," Ratliff said. "Today they are very sophisticated. They all have professional business managers."

1 | 2 (/1995-11-05/news/9511050301_1_school-trustees-school-funds-

~~treasurer/2) | Next (/1995-11-05/news/9511050301_1_school-trustees-~~

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From the Web

(http://annuities.advisorworld.com/advisorworldtop10/?utm_source=taboola&utm_medium=referral&utm_campaign=top10)

2017's Top 10 Best Annuities Compare All Annuity Rates
AW top 10

(http://annuities.advisorworld.com/advisorworldtop10/?utm_source=taboola&utm_medium=referral&utm_campaign=top10)

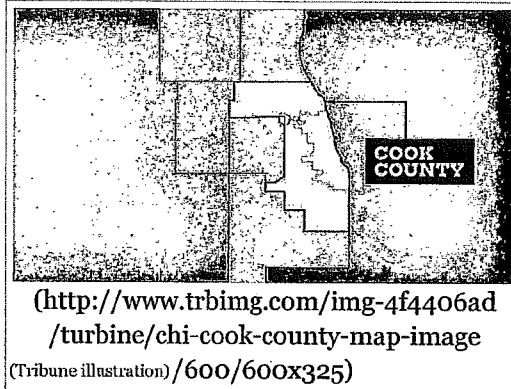
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Editorial: Who was watching in Lyons Township?

Asleep in a backwater office

September 08, 2013

Robert Healy held a government job that's a mystery to most taxpayers. He was the treasurer for the Lyons Township Trustees of Schools.



What does this office do? It collects tax money from several west suburban school districts and invests it for them.

Couldn't the school districts invest their own money? Of course they could.

So Robert Healy drew a paycheck from taxpayers for a job that's a mystery to taxpayers.

Oh, and, according to Cook County prosecutors, he robbed the taxpayers blind.

Healy has been charged with stealing more than \$1.5 million from the school districts over 23 years. Prosecutors say Healy started to pad his paychecks with unauthorized salary and benefits in 1989, not long after he got the job. They say he transferred money from school accounts to his personal bank account more than 100 times.

Related Articles

Alleged theft raises questions about little-known schools...
(/2013-08-29/news/ct-met-township-trustees-schools-20130829_1_school-districts-cheryl-witham-treasurer)
August 29, 2013

Ex-schools official charged with theft, misconduct
(/2013-08-16/news/ct-met-school-treasurer-20130816_1_districts-ex-schools-treasurer)
August 16, 2013

Township's Sch
Jeopardy (/1997

EXHIBIT

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Healy answered to a three-member board of trustees that was asleep at the switch for a long time. The trustees eventually caught on that something was wrong, investigated Healy and notified the state's attorney's office. Healy, who resigned last year, was charged in August with theft of government property and official misconduct.

One of the maddening things is that the students, parents and taxpayers in those school districts didn't need Robert Healy and don't need the township school trustees. The office is an anachronism. It has been abolished elsewhere in the state, but survives in Cook County, where there are 13 of them.

Lyons Township High School District 204 has begged state lawmakers to free it from the legal requirement to work through the township school trustees, but a bill to help District 204 went nowhere this year in Springfield.

Healy's innocence or guilt will be determined by the courts. But the issues of waste and obsolescence in local government, that's a matter for everyone else.

Illinois has nearly 7,000 units of government, more than any other state. We're awash in local lighting districts and mosquito-abatement districts ... and township schools trustees. These obscure entities nickel and dime taxpayers with unnecessary salaries and benefits and, sometimes, create the opportunity for corruption. As the Tribune's Wes Venteicher and Matthew Walberg reported, two township school treasurers have pleaded guilty to stealing since 1995.

State law makes it difficult to get rid of these layers, even when the public demands it. Last year, voters in Evanston overwhelmingly approved an advisory referendum to dissolve their township, which overlaps the city's boundaries. It was a 2-to-1 vote. No contest. Instead of taking the hint, government officials stalled. A consultant recommended half-measures. Nothing happened.

Gov. Pat Quinn signed a bill this year that will let the Evanston City Council place a binding resolution on a future ballot asking voters if they still want to do away with the township. That was welcome. So was the bill Quinn signed this year that will let the DuPage County Board dissolve some useless government units.

Start whacking. Nearly 7,000 units of government. Give taxpayers a break.

/news/9711040485_1_school-districts-school-treasurer-school-board)

November 4, 1997

Township School Job Is Questioned (/1995-02-10

/news/9502100384_1_treasurer-board-abolish)

February 10, 1995

Township School Post Is Facing A Ballot Test

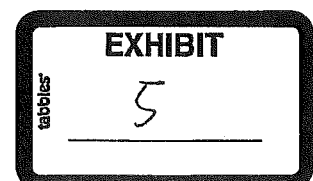
(/1995-03-30

/news/9503300244_1_school-trustees-school-districts-school-funds)

March 30, 1995

**Illinois State Board of Education
School Business Services Division
Cook County Districts not under jurisdiction of Township Trustees of Schools**

District Name	Township Trustees of Schools		Township
	Yes	No	
Palatine CCSD 15		X	
Wheeling CCSD 21		X	
Prospect Heights SD 23		X	
Arlington Heights SD 25		X	
River Trails SD 26		X	
Glencoe SD 35		X	
Winnetka SD 36		X	
Avoca SD 37		X	
Kenilworth SD 38		X	
Wilmette SD 39		X	
Schaumburg CCSD 54		X	
Evanston CCSD 65		X	
Rosemont Elementary SD 78		X	
Pennoyer SD 79		X	
Norridge SD 80		X	
Schiller Park SD 81		X	
Mannheim SD 83		X	
Franklin Park SD 84		X	
Rhodes SD 84-5		X	
River Grove SD 85-5		X	
Union Ridge SD 86		X	
Oak Park Elementary SD 97		X	
Berwyn North SD 98		X	
Cicero SD 99		X	
Berwyn South SD 100		X	
Lemont-Bromberek CSD 113A		X	
North Palos SD 117		X	
Palos CCSD 118		X	
Orland SD 135		X	
Kirby SD 140		X	
Tinley Park CCSD 146		X	
Elementary SD 159		X	
Matteson Elementary SD 162		X	
Oak Park & River Forest District 200		X	
J S Morton HSD 201		X	
Evanston Twp HSD 202		X	
New Trier Twp HSD 203		X	
Lemont Twp HSD 210		X	
Township HSD 211		X	
Leyden Community HSD 212		X	
Township HSD 214		X	
Consolidated HSD 230		X	
Ridgewood Community HSD 234		X	
Elmwood Park CUSD 401		X	



**Illinois State Board of Education
School Business Services Division
Cook County Districts and Township Trustees of Schools**

District Name	Township Trustees of Schools		Township
	Yes	No	
Northbrook Elementary SD 27	X		Northfield
Northbrook SD 28	X		Northfield
Sunset Ridge SD 29	X		Northfield
Northbrook/Glenview SD 30	X		Northfield
West Northfield SD 31	X		Northfield
Glenview CCSD 34	X		Maine
Mount Prospect SD 57	X		Elk Grove
Community Consolidated SD 59	X		Elk Grove
Community Consolidated SD 62	X		Maine
East Maine SD 63	X		Maine
Park Ridge CCSD 64	X		Maine
Golf Elementary SD 67	X		Niles
Skokie SD 68	X		Niles
Skokie SD 69	X		Niles
Morton Grove SD 70	X		Niles
Niles Elementary SD 71	X		Niles
Fairview SD 72	X		Niles
East Prairie SD 73	X		Niles
Skokie SD 73-5	X		Niles
Lincolnwood SD 74	X		Niles
Berkeley SD 87	X		Proviso
Bellwood SD 88	X		Proviso
Maywood-Melrose Park-Broadview SD 89	X		Proviso
River Forest SD 90	X		Proviso
Forest Park SD 91	X		Proviso
Lindop SD 92	X		Proviso
Westchester SD 92-5	X		Proviso
Hillside SD 93	X		Proviso
Komarek SD 94	X		Proviso
Brookfield LaGrange Park SD 95	X		Proviso
Riverside SD 96	X		Proviso
Western Springs SD 101	X		Lyons
LaGrange SD 102	X		Lyons
Lyons SD 103	X		Lyons
Summit SD 104	X		Lyons
LaGrange SD 105	X		Lyons
LaGrange Highlands SD 106	X		Lyons
Pleasantdale SD 107	X		Lyons
Willow Springs SD 108	X		Lyons
Indian Springs SD 109	X		Lyons
Central Stickney SD 110	X		Stickney
Burbank SD 111	X		Stickney
Ridgeland SD 122	X		Worth
Oak Lawn-Hometown SD 123	X		Worth
Evergreen Park Elementary SD 124	X		Worth
Atwood Heights District 125	X		Worth
Alsip-Hazelgreen-Oaklawn SD 126	X		Worth
Worth SD 127	X		Worth
Chicago Ridge SD 127-5	X		Worth
Palos Heights SD 128	X		Worth
Cook County SD 130	X		Worth
Calumet Public Schools District 132	X		Calumet

**Illinois State Board of Education
School Business Services Division
Cook County Districts and Township Trustees of Schools**

District Name	Township Trustees of Schools		Township
	Yes	No	
General George Patton SD 133	X		Calumet
Forest Ridge SD 142	X		Bremen
Midlothian SD 143	X		Bremen
Posen-Robbins Elementary SD 143-5	X		Bremen
Prairie-Hills Elementary SD 144	X		Bremen
Arbor Park SD 145	X		Bremen
West Harvey-Dixmoor Public SD 147	X		Thornton
Dolton SD 148	X		Thornton
Dolton SD 149	X		Thornton
South Holland SD 150	X		Thornton
South Holland SD 151	X		Thornton
Harvey SD 152	X		Thornton
Hazel Crest SD 152-5	X		Thornton
Homewood SD 153	X		Thornton
Thornton SD 154	X		Thornton
Burnham SD 154-5	X		Thornton Fractional
Calumet City SD 155	X		Thornton Fractional
Lincoln Elementary SD 156	X		Thornton Fractional
Hoover-Schrum Memorial SD 157	X		Thornton Fractional
Lansing SD 158	X		Thornton Fractional
Country Club Hills SD 160	X		Bremen
Flossmoor SD 161	X		Bloom
Park Forest SD 163	X		Bloom
Brookwood SD 167	X		Bloom
Community Consolidated SD 168	X		Bloom
Ford Heights SD 169	X		Bloom
Chicago Heights SD 170	X		Bloom
Sunnybrook SD 171	X		Bloom
Sandridge SD 172	X		Bloom
Steger SD 194	X		Bloom
Lyons Twp HSD 204	X		Lyons
Thornton Twp HSD 205	X		Thornton
Bloom Twp HSD 206	X		Bloom
Maine Twp HSD 207	X		Maine
Riverside Brookfield Twp District 208	X		Proviso
Proviso Twp HSD 209	X		Proviso
Thornton Fractional Twp HSD 215	X		Thornton Fractional
Argo Community HSD 217	X		Lyons
Community HSD 218	X		Worth
Niles Twp HSD 219	X		Niles
Reavis Twp HSD 220	X		Stickney
Northfield Twp HSD 225	X		Northfield
Rich Twp HSD 227	X		Bloom
Bremen Community HSD 228	X		Bremen
Oak Lawn Community HSD 229	X		Worth
Evergreen Park Community HSD 231	X		Worth
Homewood Flossmoor Community HSD 233	X		Bloom

**Illinois State Board of Education
School Business Services Division
Cook County Districts and Township Trustees of Schools**

District Name	Township Trustees of Schools		Township
	Yes	No	
Palatine CCSD 15		X	
Wheeling CCSD 21		X	
Prospect Heights SD 23		X	
Arlington Heights SD 25		X	
River Trails SD 26		X	
Northbrook Elementary SD 27	X		Northfield
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Glenview CCSD 34	X		Maine
Glencoe SD 35		X	
Winnetka SD 36		X	
Avoca SD 37		X	
Kenilworth SD 38		X	
Wilmette SD 39		X	
Schaumburg CCSD 54		X	
Mount Prospect SD 57	X		Elk Grove
Community Consolidated SD 59	X		Elk Grove
Community Consolidated SD 62	X		Maine
East Maine SD 63	X		Maine
Park Ridge CCSD 64	X		Maine
Evanston CCSD 65		X	
Golf Elementary SD 67	X		Niles
Skokie SD 68	X		Niles
Skokie SD 69	X		Niles
Morton Grove SD 70	X		Niles
Niles Elementary SD 71	X		Niles
Fairview SD 72	X		Niles
East Prairie SD 73	X		Niles
Skokie SD 73-5	X		Niles
Lincolnwood SD 74	X		Niles
Rosemont Elementary SD 78		X	
Pennoyer SD 79		X	
Norridge SD 80		X	
Schiller Park SD 81		X	
Mannheim SD 83		X	
Franklin Park SD 84		X	
Rhodes SD 84-5		X	
River Grove SD 85-5		X	
Union Ridge SD 86		X	
Berkeley SD 87	X		Proviso
Bellwood SD 88	X		Proviso
Maywood-Melrose Park-Broadview SD 89	X		Proviso
River Forest SD 90	X		Proviso
Forest Park SD 91	X		Proviso
Lindop SD 92	X		Proviso
Westchester SD 92-5	X		Proviso
Hillside SD 93	X		Proviso

**Illinois State Board of Education
School Business Services Division
Cook County Districts and Township Trustees of Schools**

District Name	Township Trustees of Schools		Township
	Yes	No	
Komarek SD 94	X		Proviso
Brookfield LaGrange Park SD 95	X		Proviso
Riverside SD 96	X		Proviso
Oak Park Elementary SD 97		X	
Berwyn North SD 98		X	
Cicero SD 99		X	
Berwyn South SD 100		X	
Western Springs SD 101	X		Lyons
LaGrange SD 102	X		Lyons
Lyons SD 103	X		Lyons
Summit SD 104	X		Lyons
LaGrange SD 105	X		Lyons
LaGrange Highlands SD 106	X		Lyons
Pleasantdale SD 107	X		Lyons
Willow Springs SD 108	X		Lyons
Indian Springs SD 109	X		Lyons
Central Stickney SD 110	X		Stickney
Burbank SD 111	X		Stickney
Lemont-Bromberek CSD 113A		X	
North Palos SD 117		X	
Palos CCSD 118		X	
Ridgeland SD 122	X		Worth
Oak Lawn-Hometown SD 123	X		Worth
Evergreen Park Elementary SD 124	X		Worth
Atwood Heights District 125	X		Worth
Alsip-Hazelgreen-Oaklawn SD 126	X		Worth
Worth SD 127	X		Worth
Chicago Ridge SD 127-5	X		Worth
Palos Heights SD 128	X		Worth
Cook County SD 130	X		Worth
Calumet Public Schools District 132	X		Calumet
General George Patton SD 133	X		Calumet
Orland SD 135		X	
Kirby SD 140		X	
Forest Ridge SD 142	X		Bremen
Midlothian SD 143	X		Bremen
Posen-Robbins Elementary SD 143-5	X		Bremen
Prairie-Hills Elementary SD 144	X		Bremen
Arbor Park SD 145	X		Bremen
Tinley Park CCSD 146		X	
West Harvey-Dixmoor Public SD 147	X		Thornton
Dolton SD 148	X		Thornton
Dolton SD 149	X		Thornton
South Holland SD 150	X		Thornton
South Holland SD 151	X		Thornton
Harvey SD 152	X		Thornton
Hazel Crest SD 152-5	X		Thornton
Homewood SD 153	X		Thornton
Thornton SD 154	X		Thornton

**Illinois State Board of Education
School Business Services Division
Cook County Districts and Township Trustees of Schools**

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	Yes	No	
Burnham SD 154-5	X		Thornton Fractional
Calumet City SD 155	X		Thornton Fractional
Lincoln Elementary SD 156	X		Thornton Fractional
Hoover-Schrum Memorial SD 157	X		Thornton Fractional
Lansing SD 158	X		Thornton Fractional
Elementary SD 159		X	
Country Club Hills SD 160	X		Bremen
Flossmoor SD 161	X		Bloom
Matteson Elementary SD 162		X	
Park Forest SD 163	X		Bloom
Brookwood SD 167	X		Bloom
Community Consolidated SD 168	X		Bloom
Ford Heights SD 169	X		Bloom
Chicago Heights SD 170	X		Bloom
Sunnybrook SD 171	X		Bloom
Sandridge SD 172	X		Bloom
Steger SD 194	X		Bloom
Oak Park & River Forest District 200		X	
J S Morton HSD 201		X	
Evanston Twp HSD 202		X	
New Trier Twp HSD 203		X	
Lyons Twp HSD 204	X		Lyons
Thornton Twp HSD 205	X		Thornton
Bloom Twp HSD 206	X		Bloom
Maine Twp HSD 207	X		Maine
Riverside Brookfield Twp District 208	X		Proviso
Proviso Twp HSD 209	X		Proviso
Lemont Twp HSD 210		X	
Township HSD 211		X	
Leyden Community HSD 212		X	
Township HSD 214		X	
Thornton Fractional Twp HSD 215	X		Thornton Fractional
Argo Community HSD 217	X		Lyons
Community HSD 218	X		Worth
Niles Twp HSD 219	X		Niles
Reavis Twp HSD 220	X		Stickney
Northfield Twp HSD 225	X		Northfield
Rich Twp HSD 227	X		Bloom
Bremen Community HSD 228	X		Bremen
Oak Lawn Community HSD 229	X		Worth
Consolidated HSD 230		X	
Evergreen Park Community HSD 231	X		Worth
Homewood Flossmoor Community HSD 233	X		Bloom
Ridgewood Community HSD 234		X	
Elmwood Park CUSD 401		X	
Totals:			
143	99	44	

[Press for Printer Friendly Version \(no graphics\)](#)**CHECK TO INCLUDE PHOTO** ☐**M51147 - HEALY, ROBERT**

Parent Institution: TAYLORVILLE CORRECTIONAL
CENTER
Offender Status: IN CUSTODY
Location: TAYLORVILLE

[Click here to register for notification on any changes to this offender's custody status.](#)**PHYSICAL PROFILE**

Date of Birth: 10/19/1958
Weight: 175 lbs.
Hair: Gray or Partially Gray
Sex: Male
Height: 5 ft. 05 in.
Race: White
Eyes: Green

MARKS, SCARS, & TATTOOS

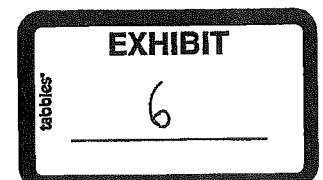
NONE RECORDED

ADMISSION / RELEASE / DISCHARGE INFO

Admission Date: 03/18/2015
Projected Parole Date: 09/16/2019
Last Paroled Date:
Projected Discharge Date: 09/16/2022

SENTENCING INFORMATION

MITTIMUS:	13CR1631201
CLASS:	X
COUNT:	1
OFFENSE:	THEFT/CONTROL/INTENT >\$1M
CUSTODY DATE:	03/16/2015
SENTENCE:	9 Years 0 Months 0 Days
COUNTY:	COOK
SENTENCE DISCHARGED?:	NO



STATE OF ILLINOIS)
) SS:
 COUNTY OF C O O K)

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

TOWNSHIP TRUSTEES OF SCHOOLS)
 TOWNSHIP 38 NORTH, RANGE 12 EAST)
)
 Plaintiff,)
)
 -vs-) No. 13 CH 23386
)
 LYONS TOWNSHIP HIGH SCHOOL,) Hon. Sophia H. Hall
 DISTRICT 204,)
)
 Defendants.)
)

The discovery deposition of
 DR. SUSAN BIRKENMAIER and the discovery deposition
 of the Plaintiff pursuant to a Rule 206(a)(1)
 Notice, taken before KELLY ANN POTTS, CSR, pursuant
 to the provisions of the Code of Civil Procedure of
 the State of Illinois and the Rules of the Supreme
 Court thereof pertaining to the taking of
 depositions at 20 North Clark Street, Suite 2500,
 Chicago, Illinois, commencing at the hour of
 10:13 a.m. on February 27, 2017.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MILLER CANFIELD, by</p> <p>4 MR. BARRY P. KALTENBACH</p> <p>5 225 West Washington Street, Suite 2600</p> <p>6 Chicago, Illinois 60606</p> <p>7 (312) 460-4251</p> <p>8 kalttenbach@millercanfield.com</p> <p>9</p> <p>10 Appeared on behalf of the</p> <p>11 Plaintiff;</p> <p>12</p> <p>13 HOFFMAN LEGAL, by</p> <p>14 MR. JAY R. HOFFMAN</p> <p>15 20 North Clark Street, Suite 2500</p> <p>16 Chicago, Illinois 60602</p> <p>17 (312) 899-0899</p> <p>18 jay@hoffmanlegal.com</p> <p>19</p> <p>20 Appeared on behalf of the</p> <p>21 Defendant.</p> <p>22</p> <p>23 * * * * *</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 Exhibit 13 Statement of Funds.....104</p> <p>2 Exhibit 14 Statement of Funds.....116</p> <p>3 Exhibit 15 Article.....119</p> <p>4 Exhibit 16 Pro Rata.....146</p> <p>5 Exhibit 17 Pro Rata Billing.....156</p> <p>6 Exhibit 18 Emails.....179</p> <p>7 Exhibit 19 Audit Reports.....200</p> <p>8 Exhibit 20 Summary of Loss.....224</p> <p>9</p> <p>10 Theissen Exhibit 4 Bradshaw Transcript.....31</p> <p>11 Theissen Exhibit 7 Hartigan Transcript.....131</p> <p>12 Theissen Exhibit 8 9-15-13 Memo.....44</p> <p>13 Theissen Exhibit 9 11-7-14 Letter.....45</p> <p>14 Theissen Exhibit 10 Journal Entries.....182</p> <p>15 Theissen Exhibit 12 8-18-99 Letter.....140</p> <p>16 Theissen Exhibit 13 3-8-13 Letter.....90</p> <p>17</p> <p>18 Conway Exhibit 2 1-12-01 Letter.....75</p> <p>19 Conway Exhibit 3 Memoranda.....162</p> <p>20</p> <p>21 Bradshaw Exhibit 3 Interest Allocation.....225</p> <p>22 Bradshaw Exhibit 4 Amended Complaint.....157</p> <p>23</p> <p>24 Healy Exhibit 4 Memo.....177</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX OF EXAMINATION</p> <p>2</p> <p>3 PAGE</p> <p>4</p> <p>5 Examination by Mr. Hoffman..... 6</p> <p>6 Examination by Mr. Kaltenbach.....235</p> <p>7</p> <p>8 INDEX TO EXHIBITS</p> <p>9</p> <p>10 EXHIBIT PAGE</p> <p>11 TTO</p> <p>12</p> <p>13 Exhibit 1 Notice of Deposition..... 6</p> <p>14 Exhibit 2 Month-End Report.....12</p> <p>15 Exhibit 3 Affidavit.....21</p> <p>16 Exhibit 4 11-21-14 Letter.....57</p> <p>17 Exhibit 5 4-29-99 Letter.....71</p> <p>18 Exhibit 6 Section 5/3-7 School Code.....79</p> <p>19 Exhibit 7 2-23-17 Letter.....82</p> <p>20 Exhibit 8 Statement of Funds.....85</p> <p>21 Exhibit 9 Statement of Funds.....87</p> <p>22 Exhibit 10 Vendor Detail.....94</p> <p>23 Exhibit 11 Vendor Detail.....96</p> <p>24 Exhibit 12 Vendor Detail.....96</p>	<p style="text-align: right;">Page 5</p> <p>1 (Witness sworn.)</p> <p>2 MR. HOFFMAN: Good morning.</p> <p>3 THE WITNESS: Good morning.</p> <p>4 MR. HOFFMAN: As you know, I am</p> <p>5 Jay Hoffman. I am the attorney for the defendant</p> <p>6 in this case. Sometimes we'll call it "LT," we may</p> <p>7 even call it "District 204" --</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. HOFFMAN: -- and you'll know who I</p> <p>10 mean, right?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MR. HOFFMAN: Have you had your</p> <p>13 deposition taken before?</p> <p>14 THE WITNESS: No.</p> <p>15 MR. HOFFMAN: Welcome to the party.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 MR. HOFFMAN: It's not as hard as it</p> <p>18 sounds because "I don't know" or "I don't remember"</p> <p>19 can be a correct answer; and so I just want you to</p> <p>20 tell me the information that's available to you as</p> <p>21 the representative of the plaintiff in this case</p> <p>22 which, if it's okay with you, I'll refer to as "the</p> <p>23 TTO."</p> <p>24 THE WITNESS: Absolutely.</p>

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1 MR. HOFFMAN: Would you mark this as
2 Exhibit 1, please?
3 (Whereupon, TTO Deposition
4 Exhibit No. 1 was marked for
5 identification.)
6 WHEREUPON:
7 DR. SUSAN BIRKENMAIER
8 called as a witness herein, having been first duly
9 sworn, was examined upon oral interrogatories and
10 testified as follows:
11 EXAMINATION
12 By Mr. Hoffman:
13
14 Q Doctor, I'm handing you what I've
15 marked as TTO Dep Exhibit 1.
16 (Whereupon, document
17 tendered.)
18 BY MR. HOFFMAN:
19 Q And you're familiar with this
20 document, am I correct?
21 (Whereupon, witness perusing
22 document.)
23 BY THE WITNESS:
24 A I am now.

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1 MR. KALTENBACH: Well, take a look at
2 it.
3 BY THE WITNESS:
4 A Yes. This part, I have.
5 BY MR. HOFFMAN:
6 Q Okay. So you've seen Exhibit A which
7 has the subject matters of the deposition that I'm
8 taking of the TTO entity, right?
9 A Yes.
10 Q And you understand that you are the
11 representative of the TTO designated to testify on
12 the eight subject matters of Exhibit A, correct?
13 A Yes.
14 Q And let's go through the ground rules
15 of the deposition real quickly even though you have
16 a very fine lawyer, and I'm sure he did the same
17 with you beforehand.
18 If at any time you want to take a
19 break, that's fine. We'll just answer the pending
20 question, and we can take a break for any reason
21 that you want.
22 Is your cellphone off?
23 A It's on silent.
24 Q Okay. If you don't understand the

Page 8

1 questions that I ask you, will you tell me that so
2 I can ask you a better question?
3 A Yes.
4 Q And what did you do to prepare for
5 your deposition today, please?
6 A I had an opportunity to meet with
7 Barry and Gerry Kubasiak just to have them explain
8 to me what would occur, show me the list of items
9 that I would be questioned about, and just general
10 conversation about what to expect.
11 Q Did you speak with anyone at the TTO
12 regarding the deposition in order to prepare to
13 testify?
14 A Not specifically for that purpose.
15 Q Did you talk to Mr. Theissen about his
16 deposition in this case?
17 A Very little.
18 Q What do you mean by "very little"?
19 A Just I knew that he was coming in to
20 be deposed. We didn't talk about the details of
21 it. We didn't talk about how it went or anything
22 like that.
23 Q Okay. Did you review any
24 documentation in order to prepare yourself to

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1 testify here today on behalf of the TTO?
2 A Some.
3 Q What documentation did you review?
4 A Basically anything that was related to
5 the eight topics that I was going to be asked
6 about.
7 Q Okay. So tell me what you looked at,
8 please.
9 MR. KALTENBACH: I can't give you the
10 answer.
11 THE WITNESS: Okay.
12 MR. KALTENBACH: I will tell you it's
13 not privileged, so you can -- If you recall what
14 was looked at, you can tell him.
15 BY THE WITNESS:
16 A Can I take a look at the exhibit
17 again --
18 BY MR. HOFFMAN:
19 Q Of course you may.
20 A -- to help prompt me?
21 Q Of course you may.
22 (Whereupon, witness perusing
23 document.)
24

3 (Pages 6 to 9)

1 BY THE WITNESS:

2 A I have seen information on the annual
3 audit costs and the payment of the audit costs; so
4 Item 1 and 2, I have seen that. TTO's payment of
5 certain costs of the business functions, I am
6 familiar with that paperwork, maybe not every
7 single one in every great detail.

8 I've seen the claim regarding the
9 LT pro rata payment. I've seen documentation on
10 investment income to LT, payment to LT. I'm
11 familiar with the section of the claim on the TTO's
12 payment of investment income. I'm familiar with
13 the Bob Healy lawsuit, although not in great
14 detail. That occurred before I started my
15 employment. And I am familiar with the surety bond
16 claims.

17 BY MR. HOFFMAN:

18 Q Okay. Thanks.
19 What's your educational
20 background, please?

21 A Going backwards?

22 Q Either way.

23 A Okay. I have a doctorate in
24 educational leadership with a minor in curriculum

1 from Indiana University. I have a Superintendency
2 License that was received through Western Illinois
3 University's superintendent training program.

4 I have a Chief School Business
5 Official Endorsement that I received through
6 Northern Illinois University's Chief School
7 Business Official program. I have a master's
8 degree in public affairs from Northern Illinois
9 University, and I have a bachelor's degree in
10 political science from Northern Illinois University
11 also.

12 Q Okay. And tell me about your
13 professional background prior to becoming the
14 treasurer of the TTO, please?

15 A Okay. Immediately prior to becoming
16 the treasurer, I was the superintendent for Lemont
17 Elementary School District 113A. Prior to that, I
18 was business manager for LaGrange Highlands
19 District 106 in LaGrange, Illinois.

20 Prior to that, I was the business
21 manager for the Lockport Area Special Education
22 Cooperative. Prior to that, I was the business
23 manager for the LaGrange Area Department of Special
24 Education. And prior to that, I spent ten years in

1 municipal government.

2 Do you want me to go through that
3 detail?

4 Q No.

5 A Okay.

6 Q When you say "the business manager for
7 LaGrange," was that LADSE?

8 A LADSE, yes.

9 Q And, in Lockport, did you work
10 under -- What was the position that you worked
11 under Dr. Elise Grimes?

12 A At LaGrange Highlands 106 and I worked
13 for Elise for eight months; after that, I worked
14 for Arlene Armanetti and then Bob Dyer.

15 Q All right. Let's start with an easy
16 one.

17 MR. HOFFMAN: Mark this.

18 (Whereupon, TTO Deposition
19 Exhibit No. 2 was marked for
20 identification.)

21 BY MR. HOFFMAN:

22 Q When did you become treasurer of the
23 TTO?

24 A October of 2013.

1 Q And you currently are treasurer of the
2 TTO, correct?

3 A Yes.

4 Q Have you been a full-time employee for
5 the entire time?

6 A No.

7 Q When did you -- Have you been a
8 part-time employee for the entire time?

9 A For a portion of the time.

10 Q Okay. When did you become a part-time
11 employee?

12 A July 1st of 2015.

13 Q Why did the TTO decide to have a
14 treasurer that was part-time?

15 A You're asking for my opinion on that?

16 Q No. I'm asking for the TTO's opinion
17 as an entity.

18 MR. KALTENBACH: I'll object to the
19 extent I don't think that was covered by the
20 notice, so I don't think she is the spokesperson on
21 that.

22 But she can answer. I have no
23 objection to her answering the question.
24

1 BY MR. HOFFMAN:

2 Q Do you know why the treasurer became
3 part-time in 2015?

4 A I can only tell you what I believe was
5 the expectation of the trustee, school trustee.
6 That was that I wanted to retire so that I could
7 take my pension before there were any changes or
8 pension reform that would adversely affect me.

9 Given the state of things that
10 were occurring at the TTO, we were going to be
11 going through -- well, in addition to the lawsuit,
12 we were also going to be going through a major
13 transition of the financial software program, and
14 we were going to be doing some staff transitioning.
15 And so it was in everybody's best interest, I
16 believe, to have continuity with my leadership.

17 Q The TTO's office currently manages
18 investment funds of about how much money?

19 A Let me unpack that for you. There's
20 about \$370 million that goes through the office
21 in any given year. Of that, there's probably
22 130 million that is in long-term investments, which
23 is anything that's over two years.

24 Other than that, the rest of it

1 is either in cash, which is immediately
2 distributed, or in a short-time investment that
3 would be less than two years.

4 Q How are you, as a part-time employee,
5 able to effectively manage all those
6 responsibilities?

7 A Okay. Well, the cash flow management,
8 we have people assigned in our office to manage the
9 money as it comes in. I make the decisions about
10 whether the money is going -- where it's going on a
11 short-term basis or if it's kept in a fluid
12 account.

13 We have a central depository,
14 Amalgamated Bank, that collects most of the funds.
15 Periodically, we do have some small amounts of
16 funds that come in through other deposit accounts.

17 In addition to that, we have a
18 custodial bank that maintains a list of all of our
19 investments, every investment, and they report that
20 out to us on a monthly basis.

21 In addition to that, with
22 long-term investments, we have two investment
23 advisor groups that manage our long-term
24 investments.

1 Q When you say you're a part-time
2 employee, what percentage of your time do you spend
3 as a treasurer?

4 A Well, I spend 100 percent of my time
5 as treasurer. But if you're asking about my work
6 schedule --

7 Q Yes.

8 A Okay. Under the Illinois Municipal
9 Retirement Fund, I'm allowed to work 599 -- up to
10 599 hours per year, and so that is distributed as
11 needed and tracked via timesheet.

12 Q And how many hours per year have you
13 found yourself working since July of 2015?

14 A Last year, I worked 597. This year,
15 I'm also on track for 599.

16 Q What's your primary state of
17 residence?

18 A Illinois; I'm required by School Code
19 to live within the Township, and I live in
20 Indian Head Park.

21 Q Do you have another residence?

22 A I have a retirement home.

23 Q Where is that?

24 A That's in Tennessee.

1 Q Let's take a look, please, at TTO
2 Exhibit No. 2.

3 (Whereupon, document
4 tendered.)

5 BY MR. HOFFMAN:

6 Q This came from the documents TTO
7 provided to us. It was in a file that was entitled
8 "Month-End Report."

9 So would you be kind enough to
10 tell me what this document is and what it tells us?

11 A I have never seen this document
12 before. I am not familiar with it.

13 Q Do you know what it is?

14 A No.

15 Q Do you know what month-end reports
16 are?

17 A I do.

18 Q And what are month-end reports?

19 A Month-end reports would be after you
20 close out the financial transactions of every
21 ending month, you would provide a monthly financial
22 report that captures all the transactions that
23 occurred in the month and the effect on the budget
24 and fund balances.

1 Q This appears to suggest that month-end
2 reports are missing for various months during 1993
3 and 2013 by having an "N" instead of a "Y" on the
4 adjacent column to the month name.

5 A Okay.

6 Q Is that consistent with your
7 understanding as to the state of the TTO's records
8 for month-end reports during the 1993 to 2013
9 period?

10 A I couldn't verify that since I've
11 never seen this before and I'm not familiar.

12 Q Well, putting -- Aside from this
13 document itself, does the TTO have missing
14 month-end reports for this time period: "yes,"
15 "no," "I don't know"?

16 A I don't know.

17 Q Okay. What type of information would
18 be on the month-end reports if they were in
19 existence?

20 A The month-end report would typically
21 indicate to me the current state of the fund
22 balance. It would show the transactions of any
23 revenues that were received during the month and
24 the year-to-date.

1 It would also do the same for
2 expenditures, month and year-to-date expenditures.
3 It would show the ending fund balance or the
4 current ending fund balance.

5 Talking about the specific
6 reports, it might have a summary page that shows
7 the amount of taxes that were received. I mean,
8 but that's going to be a packet of information
9 that's provided. That's about it.

10 Q Am I correct that there are a number
11 of areas within the TTO's files that there are
12 missing documents during the 1993 to 2013 period?

13 A I don't have firsthand knowledge of
14 that. My understanding is there may be, but I
15 don't know what they are or why.

16 Q Why haven't you made an effort to
17 determine how complete the records of the TTO are
18 for the 1993 to 2013 time period?

19 A When I was hired, I was told that my
20 job was to work on moving forward in the
21 organization and helping the organization to be
22 prepared for its future work, and so I did not
23 spend the time looking at the historical records.

24 Q Well, the historical records are very

1 important for this lawsuit.

2 So who did spend the time looking
3 at the historical records? Was it your lawyers?

4 A I imagine that they have, but I would
5 think that they were collected through a variety of
6 people in the office. I think some of the
7 documents were probably pulled before I was even
8 hired.

9 Q Let's talk about the lawsuit that the
10 TTO filed against Bob Healy.

11 You're generally familiar there
12 was a lawsuit, right?

13 A I am familiar that there was one.

14 Q And the TTO obtained a judgment
15 against Bob Healy in the amount of about \$900,000,
16 correct?

17 A Yes.

18 Q Okay. And how much in attorney's fees
19 did the TTO spend to get that judgment about,
20 approximately?

21 A I don't recall.

22 Q You have no idea?

23 A A lot of that was done before I
24 started. I would have to go back and take a look.

1 Q How much did the TTO recover on that
2 lawsuit?

3 A Well, what we recovered via --

4 From Healy.

5 A Oh, from Healy?

6 Q Yes.

7 A I think it was about \$497, but, again,
8 that occurred before I started.

9 Q Okay. Let's take a look at --

10 MR. HOFFMAN: Let's mark this one.

11 (Whereupon, TTO Deposition

12 Exhibit No. 3 was marked for
13 identification.)

14 BY MR. HOFFMAN:

15 Q All right. I've marked as TTO Exhibit
16 3 an affidavit that you executed in connection with
17 this case in 2015. I'd like you to take a look at
18 that affidavit and refresh yourself as to its
19 contents, please.

20 (Whereupon, document
21 tendered.)

22 (Whereupon, witness perusing
23 document.)
24

1 BY MR. HOFFMAN:

2 Q I'm not going to ask you any questions
3 about the exhibits.

4 A Oh, okay.

5 Q So how much money did Bob Healy steal
6 during his tenure at the TFO?

7 A I'm not certain of the exact amount,
8 but I -- And I want to make sure I understand.
9 When you say "steal," there were two incidents of
10 money taken from the Treasurer's Office. One was
11 interest income, and one was salary, a cash payout
12 for vacation and sick leave.

13 Q Okay. How much money in interest
14 income did Bob Healy steal?

15 A I believe about a million dollars, but
16 I'm not certain. It could have been 1.5. I'm
17 sorry. I don't recall specifically.

18 Q Who determined the amount of that
19 theft?

20 A That work was done before I got there,
21 and I believe Kelly Bradshaw, our contract
22 accountant, was the person who assembled those
23 numbers.

24 Q When you say that he stole money from

1 vacation and sick leave payout, correct?

2 A Yes.

3 Q Okay. How much money did Healy steal
4 in vacation and sick leave payouts?

5 A I'm sorry. I --

6 Q Approximately.

7 A I'm not certain about that.

8 Q You have no idea?

9 A I don't recall.

10 Q That's kind of an important point,
11 isn't it?

12 A Well --

13 MR. KALTENBACH: Objection.
14 Argumentative.

15 You can answer.

16 BY MR. HOFFMAN:

17 Q Maybe it is a little.

18 A It occurred before I started so, I
19 mean, the settlement I think was in place before I
20 even began at the TFO.

21 Q Isn't it important, though, for you to
22 understand, as the TFO's representative for this
23 case, what happened during the period of Healy's
24 tenure?

1 income interest, interest on what and who did it
2 belong to?

3 A Again, I'm not very familiar with the
4 details, but what I understand was that there was
5 interest income that was being sent -- being
6 directed by Bob into personal accounts when it was
7 being received from different investments, and I
8 don't know who those brokers or companies might
9 have been.

10 Q This was money that belonged to the
11 school districts, correct?

12 A Yes.

13 Q And did he make these transfers
14 through wire transfers?

15 A I don't know. I would assume that he
16 directed through wire transfers.

17 Q You also mentioned salary, theft
18 involving salary, correct?

19 A Yes.

20 Q Was that salary as well as vacation
21 and sick pay? Was that part of the same thing?

22 A Not to my knowledge; to my knowledge,
23 it was vacation and sick leave payout.

24 Q So when you say "salary," you mean

1 MR. KALTENBACH: Objection.
2 Argumentative.

3 You can answer, Dr. Birkenmaier.

4 BY THE WITNESS:

5 A I don't know that that's my
6 responsibility to know that.

7 BY MR. HOFFMAN:

8 Q Whose responsibility is it?

9 MR. KALTENBACH: Same objection.
10 BY THE WITNESS:

11 A I couldn't tell you. I mean, the man
12 intended to deceive. I don't know that -- I mean,
13 ultimately, the responsibility would be for, I
14 would assume, probably the trustees in an oversight
15 capacity. But Bob worked fairly independently as
16 the treasurer. I couldn't say with any certainty.

17 BY MR. HOFFMAN:

18 Q All right. And that's because your
19 focus from the trustees as the trustees directed
20 you was to have a forward-looking focus, correct?

21 A Absolutely.

22 Q Okay. So let's talk about the
23 recovery on the fidelity bonds and the amount, as
24 is stated in Paragraph 7, if you'll look at that,

1 of your --
 2 **A Sure.**
 3 **Q** And that's your signature on the
 4 affidavit?
 5 **A Yes.**
 6 **Q** So the TTO recovered \$1,040,000 from
 7 fidelity bonds, correct?
 8 **A Yes, correct.**
 9 **Q** And the money that was recovered,
 10 whose money was it that was stolen that the
 11 fidelity bond money was partially replacing?
 12 **A Collectively, that money would have**
 13 **been part of the investment pool for all of the**
 14 **entities that are served by the TTO.**
 15 **Q** When you say "the investment pool,"
 16 that's the money of all of the districts within the
 17 TTO, correct?
 18 **A The districts and some agencies, yes.**
 19 **Q** Okay. Including District 204?
 20 **A Yes.**
 21 **Q** And they have a roughly 25 percent
 22 share of that investment pool, correct?
 23 **A It depends on the day, yes.**
 24 **Q** Okay.

1 **A But that's generally in the area.**
 2 **Q** Okay. So it says in this affidavit
 3 from June of 2015 that the money you recovered on
 4 the fidelity bonds has been set aside.
 5 Do you see that?
 6 **A I'm sorry. You're --**
 7 **Q** Paragraph 8.
 8 **A Paragraph 8, okay.**
 9 **Q** Do you see the money has been set
 10 aside as of June of 2015?
 11 **A Yes.**
 12 **Q** Okay. Where is that money now?
 13 **A Okay. Part of the money -- Well, all**
 14 **the money has been used to offset the costs of the**
 15 **TTO and thereby reducing the bills to all of the**
 16 **districts and agencies that pay the fees for the**
 17 **TTO services.**
 18 **Q** What allowed the TTO to use the
 19 recoveries on the bonds to offset the TTO's costs?
 20 **MR. KALTENBACH:** Objection. It calls
 21 for a legal conclusion from the witness.
 22 But you can answer, if you have
 23 personal knowledge, Dr. Birkenmaier.
 24 **MR. HOFFMAN:** No. She can answer

1 based on the knowledge of the TTO.
 2 **BY MR. HOFFMAN:**
 3 **Q** Go ahead. What allowed the TTO to do
 4 what it did?
 5 **MR. KALTENBACH:** Same objection.
 6 **BY MR. HOFFMAN:**
 7 **Q** You're here to testify as a
 8 representative of the TTO. So why don't you tell
 9 me?
 10 **MR. KALTENBACH:** Hold on a minute,
 11 Jay. Don't argue with the witness. I stated my
 12 objection. You can answer your question and get
 13 answers, but -- ask your questions and get answers.
 14 Don't argue with the witness or imply that my
 15 objection isn't valid or is valid.
 16 **MR. HOFFMAN:** Your objection is not
 17 valid because --
 18 **MR. KALTENBACH:** I don't care if you
 19 think it's valid or not.
 20 **MR. HOFFMAN:** -- she's here as a
 21 representative on that issue, and you saying she
 22 can answer -- instructing the witness to answer
 23 based on her personal knowledge is defeating the
 24 purpose of the notice.

1 So you're coaching the witness in
 2 an inappropriate way, and I wish you would not do
 3 that.
 4 **MR. KALTENBACH:** I'm not coaching the
 5 witness. Please identify where on the topic list
 6 it said she should be prepared to testify as to the
 7 legal basis for the TTO's right to do something.
 8 **MR. HOFFMAN:** I'm not required to list
 9 every question that I intend to ask on the subject
 10 matter, just the subject matter itself, which is,
 11 in fact, listed.
 12 **BY MR. HOFFMAN:**
 13 **Q** Dr. Birkenmaier, what, in your view as
 14 a representative of the TTO, allowed the TTO to
 15 take the \$1,040,000 it recovered on the fidelity
 16 bonds and use it to pay the TTO's costs?
 17 **MR. KALTENBACH:** Same objection.
 18 **BY THE WITNESS:**
 19 **A In my opinion, the proceeds that we**
 20 **received were used to offset the costs to the**
 21 **school districts and agencies. So a portion of the**
 22 **proceeds went towards the payment of litigation**
 23 **fees, which were never billed to the districts and,**
 24 **in addition, anything above that was used in -- to**

1 offset the cost of the pro rata bills. And on each
2 pro rata bill that was sent out, it showed the
3 amount of revenue that was applied to reduce the
4 total cost of the pro rata billing to the districts
5 and agencies.

6 BY MR. HOFFMAN:

7 Q How much of the \$1,040,000 was used to
8 pay legal costs about?

9 A I'm sorry. I don't recall that at
10 this point. I would have to look that up. I mean,
11 I could tell you if I looked back to see what was
12 applied towards pro rata reduction.

13 Q Well, when you say "legal costs," do
14 you mean the fees of the lawyers who are
15 representing you in this case?

16 A Yes.

17 Q Okay. And there have been statements
18 made by you and Mr. Theissen in the press about the
19 expenses at certain points, and one of them stated
20 that you'd spent in excess of \$900,000 on legal
21 fees in this case.

22 Does that help you to remember
23 the amount of money?

24 A I'm sorry. I believe you were talking

1 Q Correct. We're not talking about the
2 monies --

3 A Okay. So to date --

4 Q -- spent on Bob Healy's case.

5 A -- currently the District 204 case is
6 over a million dollars.

7 Q Okay. And when you say the -- How
8 much over a million dollars is it?

9 A I don't know that right now.

10 Q And when you say that some or all of
11 the \$1,040,000 from the bond recoveries have been
12 spent on litigation costs, do you mean the costs of
13 the Bob Healy case, or do you mean the costs of the
14 District 204 case, or do you mean both?

15 A I mean the treasury bond proceeds were
16 applied to the losses incurred through Bob Healy's
17 actions. Nothing has been applied to the legal
18 fees for this case with District 204. Those costs
19 have been billed out to the districts.

20 Q Including District 204?

21 A Including District 204.

22 Q What is the justification of the TTO
23 for asking District 204 to pay a portion of the
24 legal fees that you've incurred in order to sue

1 about Bob Healy's case.

2 Q No. I don't mean Bob Healy's -- I
3 asked you -- There was a \$900,000, approximately,
4 award for the TTO against Bob Healy; yes? But I'm
5 talking about a different \$900,000 figure; and that
6 is, what we have seen in the press is an estimate
7 of the -- how much in legal fees has the TTO spent
8 in this case?

9 A I'm sorry. I need clarification.

10 Are we talking about the case
11 against Bob Healy?

12 Q Okay. When I say "this case" -- Let
13 me be clear.

14 When I say "this case," I mean
15 the case that involves 204. Bob Healy is not a
16 party to this. So the case that we're here on
17 today --

18 A Okay.

19 Q The 204 case --

20 A Uh-huh.

21 Q -- how much money has the TTO spent on
22 that?

23 A So moving away from Bob Healy's case
24 altogether --

1 District 204?

2 A School Code indicates that we bill to
3 each district based on a School Code-designated
4 formula any expenses incurred by the TTO.

5 Q So in your testimony, the \$1,040,000
6 recovery in the bonds is all gone, correct?

7 A Yes. That was applied to the losses
8 incurred through Bob Healy's actions, and it's
9 totally unrelated to this case.

10 Q So how much in -- So when you say "the
11 losses incurred through Bob Healy's actions," are
12 you talking about the legal fees that were spent to
13 chase Bob Healy for money?

14 A Yes.

15 Q And how much was that --

16 A Oh, that --

17 Q -- approximately?

18 A I'm sorry. That I'm not certain of.
19 Again, that occurred before I was hired.

20 Q So what legal fees --

21 A I'm assuming so.

22 Q So what legal fees are you talking
23 about --

24 A Only --

1 Q -- in terms of the 1,040,000 being
2 spent?

3 A Only in the recovery of losses because
4 of Bob Healy's actions.

5 Q Okay. And recovery from whom and in
6 what context?

7 A Recovery through the treasurer's
8 bonds, the surety bonds.

9 Q So the money that you spent on legal
10 fees from the bond recoveries were legal fees to
11 get the bond recoveries?

12 A Yes, some.

13 Q Okay. And what were the other legal
14 fees that you spent the bond recoveries on?

15 A Filing claim against Bob Healy to
16 recover fees and to get the -- get whatever
17 recovery we could of the claim that we were
18 authorized to recover fees.

19 Q Any other legal fees?

20 A Not to my knowledge; they were very
21 specific to Bob Healy's actions.

22 Q So the two sets of legal fees that
23 came out of the bond recoveries were for the
24 lawsuit against Healy and for the bond recovery --

1 A Yes.

2 Q Did you recover from anyone else?

3 A Not at this time, no.

4 Q Okay. The 1,040,000, how much of it
5 went to fees and how much of it went to offsets to
6 the districts, approximately?

7 A I'm sorry. I don't know that.

8 Q You have no idea?

9 A I would have to look that up. I don't
10 recall --

11 Q You couldn't even --

12 A -- that.

13 Q -- ballpark it?

14 A I couldn't. I'm sorry.

15 Q Okay. That's fine.

16 Now, in 2013, the TTO found money
17 that was undistributed in interest income on its
18 pooled investments, correct?

19 A I'm not sure what you mean we "found
20 money."

21 Q Okay. In 2013, the TTO became aware
22 that there were funds that were interest income
23 that had not been distributed to the districts,
24 correct?

1 A Yes, and any --

2 Q -- legal work?

3 A Any additional revenues that were
4 received were used to offset the annual TTO
5 operating costs to reduce the bills to the
6 district.

7 Q So how did you split the 1,040,000
8 between the legal fees and the offsets that you're
9 talking about, approximately?

10 A The million-forty was applied to the
11 legal fees, plus the recovery of lost income,
12 whether that would have been -- I mean, we didn't
13 break it down to any great detail about where it
14 was applied, but --

15 Q Well, that's what I'm asking you now.
16 In other words, give me your best recollection --
17 and I don't want specific numbers because I know
18 you can't have them, but you've got a -- you
19 recovered 1,040,000 --

20 A Yes.

21 Q -- on the bonds?

22 A Yes.

23 Q And you recovered about \$400 from
24 Healy?

1 A I think it's difficult to just
2 categorize it in that way because at the time that
3 there was undistributed funds that were identified,
4 we were uncertain as to why the funds were
5 undistributed, and that required auditor assistance
6 and accounting assistance to make a determination
7 of the undistributed funds.

8 Q Okay. How much --

9 A I don't think you can just assume that
10 that was an interest income specifically. There
11 was money in the investment pool that was
12 undistributed, but the purpose of that money or how
13 it needed to be applied was unclear at that time.

14 Q Okay. And when -- Did it become clear
15 at any future time?

16 A We believe that in this last audit
17 that we were able to make a determination of the
18 funds and, with greater clarity, have an
19 understanding now of how those funds needed to be
20 applied.

21 Q Okay. What did you learn, when did
22 you learn it? Start there.

23 A Probably somewhere in the timeframe of
24 about December of 2016, and, I'm sorry, because I

1 am not an accountant, I don't understand the
2 technical portions of it and I would have to refer
3 back to the income -- or back to the audit, but I
4 know that also with market variation that that
5 number can move.

6 Q Well, what did you -- So what did you
7 learn?

8 A We had a greater clarity that the
9 income that was there was not necessarily interest
10 income, and the question became what -- how was
11 that money intended to be used or what is the
12 purpose of that money or why do we have that kind
13 of an accumulation and, oftentimes, it's because of
14 movement in the market and the value of investments
15 and, again --

16 Q Well, how much money are we talking
17 about?

18 A Again, that would vary from day to
19 day, but I believe at the time, I think that number
20 varied, and I think it could have been anywhere
21 from a million seven up. And I'm sorry --

22 Q To what?

23 A I'm not certain and that's --
24 Technically, I don't feel prepared to answer that

1 issue with a large pool of money.

2 What is the amount of -- I
3 understand that money varies over time. I have
4 accounts myself. But what amount of money are we
5 talking about in terms of trying to figure out its
6 purpose and what to do with it, the historical
7 basis and what we do with it now? How much money
8 is it, roughly?

9 A I would have to look in the audit to
10 give you that number specifically.

11 Q I didn't ask for a specific number.

12 A Even a ballpark, I would have to --

13 Q I was very clear in my question that
14 I'm asking for an approximate number.

15 A I would have to look at the audit to
16 tell you that number.

17 Q Is it \$30 million?

18 A No.

19 Q Is it \$10 million?

20 A No.

21 Q Is it \$5 million?

22 A No.

23 Q Is it more like one to \$2 million?

24 A I don't know the answer.

1 question --

2 Q Well --

3 A -- because I don't understand --

4 Q You're the treasurer --

5 A -- the accounting of it.

6 Q Wait a second.

7 You're the treasurer of the TTO
8 and the one who's the point person for these
9 issues, and you're telling me that there's some
10 amount of money but you don't know how much it is
11 and you don't really know what it is, and I -- I'm
12 having difficulty understanding what your testimony
13 is and why you don't know.

14 A Right.

15 MR. KALTENBACH: Hold on. Objection.
16 I don't believe that's a question. I think it's a
17 statement. So I'm going to object on the basis
18 it's not a question.

19 And, Dr. Birkenmaier, you don't
20 need to respond to his statements.

21 I also object on the basis that
22 it's argumentative.

23 BY MR. HOFFMAN:

24 Q Here's my question: There's some

1 Q And where is this money physically?

2 A Any revenues that we have held are
3 either in our brokerage accounts, our depository
4 account, or in investments.

5 Q And what led the TTO to try to figure
6 out what the historical origin of this money was?
7 In other words, how did it come about that there
8 was a question about what is this money and where
9 did it come from?

10 A Through the audit process.

11 Q Okay. And what did you determine as
12 to where this money came from and what it is?

13 A The determination was made by our
14 auditors, and I would have to look that information
15 up. I am not that familiar with accounting
16 explanations to be able to explain to you why that
17 money was there.

18 Q So what's going to, then, happen to
19 this pool of money? What is the TTO going to do
20 with it?

21 A First of all, the reason that's a
22 difficult question to answer is, I don't know if
23 that has to be applied towards something. I don't
24 know if that will be distributed. Ultimately, at

1 the Treasurer's Office, we don't have a fund
 2 balance. We have a zero-based balance.
 3 And so the TTO is not keeping
 4 that money. If that money needs to be distributed,
 5 it will be distributed. If there needs to be
 6 accounting entries to account for that money, those
 7 accounting entries will be taken care of.
 8 Q Well, who's going to make that
 9 decision and when is that going to be made?
 10 A We would need the direction of our
 11 independent auditors to assist with that.
 12 Q And when is that decision going to be
 13 made?
 14 A I think that the decision to be made
 15 is -- you know, we just became familiar with this,
 16 and I think the question -- and, of course, keep in
 17 mind that this is a moving target. If we
 18 distribute and the market declines, then we may be
 19 in a position of attempting to recover funds.
 20 So there's always some money that
 21 is kept in a fluid situation so that we can meet
 22 whatever market conditions or cash flow needs or
 23 whatever we may have. So it's not a clean answer.
 24 I can't tell you that, and the answer could change

1 from day to day.
 2 Q So you have no idea what the TTO is
 3 going to do with this pool of money right now
 4 sitting here today?
 5 A Ultimately, any funds that we have
 6 that -- will be distributed. It's a question of --
 7 Q When?
 8 A I don't know when.
 9 Q Well, I understand --
 10 A I don't --
 11 Q -- the concept of reserving money to
 12 change in market conditions.
 13 A Sure.
 14 Q But assuming that you did that, when
 15 is this money going to get distributed?
 16 MR. KALTENBACH: I'm going to object
 17 to --
 18 BY THE WITNESS:
 19 A I can't tell you.
 20 MR. KALTENBACH: Hold on.
 21 I'm going to object.
 22 MR. HOFFMAN: There's no pending
 23 question.
 24 MR. KALTENBACH: I'm just stating my

1 objection which she gave -- she answered as I began
 2 speaking.
 3 I'm objecting that it is beyond
 4 the scope of this deposition.
 5 MR. HOFFMAN: Okay.
 6 BY MR. HOFFMAN:
 7 Q Please take a look at Theissen Exhibit
 8 No. 8.
 9 (Whereupon, Theissen Exhibit
 10 No. 8, previously marked,
 11 was tendered to the witness.)
 12 BY THE WITNESS:
 13 A Okay.
 14 BY MR. HOFFMAN:
 15 Q Now, this is a document that we marked
 16 in Mr. Theissen's deposition. It's a
 17 September 15th, 2013 memo, so it's just before you
 18 arrived.
 19 A Okay.
 20 Q And it says in the third paragraph,
 21 "... in reviewing prior year financial
 22 statements, there appears to be some undistributed
 23 funds. We have been actively communicating with
 24 our new auditors regarding the possibility of

1 distributing these funds to the School Districts.
 2 We want a better understanding and their signoff on
 3 the issue before distributing these funds."
 4 Do you see that?
 5 A I do.
 6 Q Are those the same types of funds that
 7 we're talking about in terms of the auditors making
 8 some kind of study of this as recently as
 9 December 2016?
 10 A Not being able to speak for the
 11 treasurer or the president of the trustees at the
 12 time, it would appear so.
 13 Q Well, here. I'll let you speak for
 14 yourself.
 15 A Okay.
 16 (Whereupon, Theissen Exhibit
 17 No. 9, previously marked,
 18 was tendered to the witness.)
 19 BY MR. HOFFMAN:
 20 Q We've got Theissen Exhibit No. 9.
 21 This is a letter you wrote --
 22 A Okay.
 23 Q -- November 7th of 2013.
 24 A Okay.

1 Q And it says in the third paragraph.
2 Once again, "As the Treasurer's Office" -- No. I'm
3 sorry.

4 In the second paragraph, it
5 talks about the audit process, and it says,
6 "... Miller Cooper determined that there is
7 undistributed investment income held over from
8 prior years."

9 Do you see that?
10 A I do.

11 Q So earlier, you said you didn't think
12 it was investment income.

13 Isn't that exactly what it says
14 here in your letter?

15 A Yes.

16 Q And so you've now, since writing this
17 letter, determined that it may not be investment
18 income?

19 A That's correct.

20 Q Okay. So --

21 MR. KALTENBACH: I'm going to
22 object --

23 BY MR. HOFFMAN:

24 Q -- what is your -- So what is your

1 therefore distributing \$500,000 in interest income
2 from previous years."

3 Do you see that?

4 A I do.

5 Q Is that what the TTO did?

6 A Yes, it is.

7 Q Okay. And it's \$500,000 of what
8 amount at that time that you believed was in
9 undistributed interest income?

10 A I believe at that time -- and, again,
11 I would have to verify this by looking it up --
12 that it might have been 1.3 million at that point,
13 1.2.

14 Q So why did the -- I understand about
15 the reserve for market changes.

16 But why did the TTO, in November
17 of 2013, decide to distribute only 500,000 out of
18 approximately 1.3 million?

19 A We distributed some of it. It was --
20 We didn't know exactly what it was, and so we
21 distributed what we felt that we could comfortably
22 distribute.

23 Q And what happened with the rest of the
24 money?

1 understanding of what it is?

2 MR. KALTENBACH: I'm going to object
3 to this line of questioning, unless you want me to
4 do it question by question, as being outside the
5 scope of the notice, but I'm not going to instruct
6 the witness not to answer.

7 MR. HOFFMAN: Fine.

8 BY THE WITNESS:

9 A I can't tell you. Since this was
10 written, there has been more work and more
11 involvement from the auditors to take a look at
12 this pool of undistributed funds and, I'm sorry,
13 technically, I don't understand or know. I will
14 take my direction from the auditors on that. I
15 know that we have exercised caution to make sure
16 that we don't distribute money prematurely that
17 shouldn't be distributed.

18 MR. HOFFMAN: Barry, the notice has to
19 do with claims of overpaid interest income to
20 District 204, and this is part and parcel of that.
21 This involves interest income, payments that
22 apparently were not made.

23 BY MR. HOFFMAN:

24 Q It says in your letter, "We are

1 A It's still sitting.

2 Q Okay. And why didn't you tell the
3 districts in your November 7, 2013 letter what the
4 total amount was, and why did you only tell them
5 what the amount was that you were distributing?

6 A At any given time, that number could
7 have changed.

8 Q Is that why you didn't tell them that,
9 because the number might have varied slightly based
10 on interest levels?

11 A Certainly, and another reason was
12 because we were uncertain what it was.

13 Q Well, where in this letter did you
14 express an uncertainty as to what the amount was?

15 A I think the only place I probably
16 would have said that is in Paragraph -- let's
17 see -- Paragraph 2 where it said, "Prior years
18 audits did not distinguish or identify the
19 undistributed interest income."

20 Q So you're aware that in the annual
21 audits of the TTO prior to 2007, there were line
22 items for the amounts of interest income
23 distributed to the districts and the amounts that
24 were not distributed?

1 A I'm sorry. Can you repeat that?
 2 Q Actually, you know what? I'll show
 3 you those audits later.
 4 A Okay.
 5 Q And it will be easier to --
 6 A Okay.
 7 Q -- talk about in the context of the
 8 actual audits.
 9 So I'm clear, this amount of
 10 money that we're talking about in your November
 11 2013 letter, this is the same account or the same
 12 pool of money that is still being discussed and
 13 debated at the TTO and at its auditors as to what
 14 to do with it, correct?
 15 A Yes.
 16 Q Okay. And why has that taken over
 17 three years to do?
 18 A I think it's just taken time to go
 19 that far back into the records and try to establish
 20 the links. The recordkeeping and auditing has
 21 evolved over the years, and so it's just taken time
 22 to get that done.
 23 Q But how come after three years, you're
 24 unable to tell me what the amount is, what it's

1 Are you talking about revenues? Are you talking
 2 about expenditures? Are you talking about
 3 month-ends?
 4 Q What do you think "reconciliation
 5 work" means?
 6 A It's -- It can be all of the above.
 7 So reconciliation would be an accounting of -- and
 8 verification to ensure that all financial
 9 transactions are recorded correctly and that
 10 there's supporting documentation for those
 11 transactions, and then reconciliation would be
 12 investigating any differences.
 13 Q In the context of 204, does that
 14 involve making sure that the TTO's records and
 15 District 204's records match up?
 16 A Yes.
 17 Q Okay. And whose responsibility is it
 18 to do the reconciliation work?
 19 A The TTO has assumed that
 20 responsibility. According to School Code, each
 21 quarter, school districts and the Treasurer's
 22 Office are expected to reconcile and make certain
 23 that if there's any differences in the records that
 24 those are worked through.

1 from, and what the TTO intends to do with it?
 2 MR. KALTENBACH: Argumentative.
 3 BY MR. HOFFMAN:
 4 Q That's my question.
 5 MR. KALTENBACH: Objection.
 6 Argumentative.
 7 BY MR. HOFFMAN:
 8 Q You can answer.
 9 A I think that I've tried to explain
 10 that to you, that that number can vary. And
 11 without any certainty of what the purpose of the
 12 funds were, we're not comfortable distributing that
 13 income.
 14 Q All right. We've been going about
 15 45 minutes.
 16 Do you want to keep rolling --
 17 A Sure.
 18 Q -- or do you want to take a break?
 19 You're okay?
 20 A Yes.
 21 Q All right. Tell me about the
 22 reconciliation work that the TTO does for the
 23 districts.
 24 A Can you be more specific about that?

1 Q Is this process also known as
 2 balancing?
 3 A Yes, it can be.
 4 Q During your tenure, have the outside
 5 auditors of the TTO ever been involved in
 6 reconciliation or balancing work?
 7 A Let me ask for clarification on that
 8 question.
 9 If there is a difference that is
 10 noted by the auditors, they will advise us that
 11 they need the supporting documentation, and we will
 12 go back and provide that to them.
 13 So on a monthly basis, the TTO
 14 would do the reconciliation work. When we turn
 15 that over to the auditors, if they find something
 16 that needs to be followed up on or some sort of
 17 discrepancy or something that needs to be
 18 explained, then they would work with us on that and
 19 collect that information.
 20 Q Is it the responsibility of the TTO to
 21 pay the auditors for the work the auditors do on
 22 reconciliation and balancing?
 23 MR. KALTENBACH: I'll object to the
 24 extent it might call for a legal conclusion.

1 You can answer.

2 BY THE WITNESS:

3 A If it's in conjunction with the annual
4 audit, yes; it would be part of the process, and
5 that is based on whatever their annual audit work
6 fee is.

7 BY MR. HOFFMAN:

8 Q Okay. So that's the -- Okay. Fair
9 enough.

10 And then prior to 2013 and your
11 arrival, is it correct that the TTO's -- Strike
12 that.

13 Are you aware from looking at
14 historical records prior to your arrival that
15 Baker Tilly performed reconciliation and balancing
16 work for the TTO during the time period that's
17 relevant to this lawsuit?

18 A Not specifically, no.

19 Q Okay. Your claim -- The TTO's claim
20 against District 204 in this case with respect to
21 Baker Tilly's fees are for the costs of the annual
22 audits, correct?

23 A So far as I know, yes.

24 Q Okay. And so that doesn't include any

1 invoices and the invoices of Baker Tilly's
2 predecessor firms, that's for annual audit work,
3 correct?

4 A Yes.

5 Q Okay. So that claim does not include
6 work that Baker Tilly did for reconciliation and
7 balancing work, correct, because that was the TTO's
8 responsibility, right?

9 A So far as I would expect, yes.

10 Q Okay.

11 A Could they have --

12 Q Let me --

13 A I want to make sure that I'm clear on
14 this, though. It's possible that they may have
15 assisted with reconciliation in some form that I'm
16 not familiar with. I mean, typically, an auditor
17 will sit down and ask you to explain why there's
18 differences in amounts or changes year over year,
19 so I want to make sure that we're talking about the
20 same thing.

21 Q Well, let me ask you this: Do you
22 have any knowledge as to what reconciliation or
23 balancing work Baker Tilly performed for the TTO?
24 Because that all comes before your time.

1 work that Baker Tilly did on reconciliation or
2 balancing, does it?

3 A You're talking about the period before
4 I started my employment?

5 Q Yes.

6 A I am not that familiar with the
7 details of the work that they did.

8 Q Well, this is the deposition of the
9 TTO, and the TTO has a claim for approximately a
10 half a million dollars against District 204 for the
11 Baker Tilly fees --

12 A Oh, okay.

13 Q -- that were incurred from 1993 to
14 2012, I believe.

15 Are you aware of that?

16 A I am.

17 Q Okay. And so that's why I'm asking
18 you questions about it even though it's before your
19 time.

20 A I'm sorry. I did not make that
21 connection.

22 Q Okay. So the claim in this case of
23 about a half a million dollars that the TTO has
24 against District 204 relating to Baker Tilly

1 A I can't speak specifically to the
2 TTO's audit work. I'm sorry. I can't.

3 Q During that time period?

4 A Correct.

5 Q Okay. Fair enough.

6 So you don't know from going back
7 and doing any sort of investigation exactly what
8 types of accounting work Baker Tilly did during
9 that time period, correct?

10 A Not in any great detail.

11 Q All right. Let's take a look at this
12 exhibit which we'll mark, please.

13 (Whereupon, TTO Deposition
14 Exhibit No. 4 was marked for
15 identification.)

16 (Whereupon, document
17 tendered.)

18 BY MR. HOFFMAN:

19 Q Doctor, would you look at TTO
20 Deposition Exhibit No. 4 and confirm this is a
21 letter that you sent to Dr. Kilrea on or about
22 November 21st, 2014, please?

23 (Whereupon, witness perusing
24 document.)

1 BY THE WITNESS:
 2 A That's my signature.
 3 BY MR. HOFFMAN:
 4 Q And this is a letter that you sent to
 5 Dr. Kilrea on or about November 21st of 2014?
 6 A Um-hmm.
 7 Q "Yes"?
 8 A Yes.
 9 Q Okay. Just as a -- I know you haven't
 10 been deposed before, so the "um-hmms" and "un-uns"
 11 are very --
 12 A It needs to be words.
 13 Q -- difficult for Kelly Ann here to
 14 write down. So "yes" or "no" is much more
 15 preferable.
 16 A Absolutely.
 17 Q All right. And you see in
 18 Paragraph 2, it says, "Reconciliation work is
 19 performed for all districts as required in School
 20 Code."
 21 A Um-hmm.
 22 Q Right?
 23 A Yes.
 24 Q And that's a correct statement of --

1 A That is a correct statement.
 2 Q -- how it works?
 3 A Um-hmm.
 4 Q Okay. "Yes"?
 5 A Yes.
 6 Q Okay. We are going to talk a little
 7 bit about the -- You understand that Baker Tilly
 8 used to be known as Virchow Krause and used to be
 9 known before that as William F. Gurrie, correct?
 10 A Yes.
 11 Q Okay. So when I call the firm "Baker
 12 Tilly," you'll understand that I mean the three
 13 iterations of the firm; yes?
 14 A Okay.
 15 Q Okay. Now, you're aware that during
 16 the time period relevant to this lawsuit, that
 17 Baker Tilly sent to the TTO the invoices for the
 18 annual audit for District 204, correct?
 19 A Yes.
 20 Q They were physically sent to the TTO,
 21 right?
 22 A Yes.
 23 Q And what is your understanding as to
 24 why Baker Tilly did that?

1 A I don't have an understanding of why
 2 they did that.
 3 Q Do you think that that's important?
 4 MR. KALTENBACH: Objection.
 5 Argumentative.
 6 BY MR. HOFFMAN:
 7 Q You can answer.
 8 A The only thing that I can tell you
 9 from personal experience, when I was at LaGrange
 10 106, I always had a copy of the -- the audit costs.
 11 Q But isn't it a fact that the TTO,
 12 during the time period relevant to this lawsuit,
 13 was knowingly and deliberately paying the audit
 14 costs for District 204?
 15 A That is my understanding.
 16 Q What is your understanding based on?
 17 A I have printed out the reports from
 18 our financial computer system that show how
 19 payments were posted for all of the school
 20 districts.
 21 Q What do you understand as to why the
 22 TTO was paying for these costs?
 23 A I don't have any understanding of why
 24 they would be paying for the cost of 204's audit

1 because every other districts' audit fees were
 2 charged to their district accounts.
 3 Q Did you think it was important for you
 4 to figure out why District 204, in your testimony,
 5 was being treated differently during this time
 6 period than the others?
 7 MR. KALTENBACH: Objection.
 8 Argumentative.
 9 BY MR. HOFFMAN:
 10 Q Than the other districts.
 11 A I would have no idea why.
 12 Q Did you talk to anybody at the TTO
 13 about this issue?
 14 A Not in any detail other than an
 15 awareness that the payments were being made out of
 16 TTO funds.
 17 Q Who did you talk to at the TTO about
 18 this issue?
 19 A My assistant, Lauralee Conway.
 20 Q Okay. And what did she tell you about
 21 why the TTO was paying for District 204's annual
 22 audits?
 23 A I don't believe she knows why they
 24 were paying for it either.

1 Q Did she tell you -- And you talked to
2 her back when about this? When did this
3 conversation take place, approximately?

4 A We've had conversations over the
5 years, probably when I got there and read the
6 lawsuit that was -- the claim that was being filed
7 against District 204, just as recently as a couple
8 of months ago when she and I were working on
9 looking through records to show that each district
10 had paid their own invoice with the exception of
11 204.

12 Q Okay. And how many months ago did you
13 go back to look at the payments to --

14 A November.

15 Q November of 2016?

16 A Yes.

17 Q Okay. And you and Lauralee
18 Connelly --

19 A Conway.

20 Q Excuse me. I'm sorry.

21 A Sure.

22 Q Let me start over.

23 In November of 2016, you and
24 Lauralee looked at the records of payments made for

1 A District 108, Willow Springs.

2 Q Okay. And how much of the
3 documentation in terms of your search that you did
4 in November of 2016 -- how much of the
5 documentation was available versus missing?

6 A The documentation that showed the
7 postings to each of the individual district's sets
8 of accounts was available in our computer system,
9 and I personally pulled that information out.

10 If you're asking about the
11 invoices, I'm not sure. We went down to
12 District 108. We received copies of the invoices
13 that they had. We received copies of any contracts
14 that they had for providing audit services
15 specifically with the auditors.

16 Q Okay. And did Lauralee tell you why
17 the TTO paid for District 204's audits?

18 A No.

19 Q Did you ask her?

20 A I don't specifically remember asking
21 her, but I can tell you that I do recall that she
22 did not know why.

23 Q Did you ask anybody else at the TTO as
24 to why the TTO was paying for District 204's

1 Baker Tilly audits for the other districts' audits,
2 correct?

3 A Yes.

4 Q Okay. And what did you find out?

5 A We found that the charges for annual
6 audit fees for all of the other districts were
7 charged against the district, the specific district
8 funds, the respective district funds.

9 Q Okay. And why did you conduct that
10 investigation in November of 2016?

11 A I believe that we were asked to find
12 supporting documentation about the origin of
13 payment.

14 Q Okay. And who asked you?

15 A I think that that was part of the
16 discovery items that were done. In addition to
17 that, one of the superintendents from one of the
18 districts advised that he had copies of the
19 invoices that he received and paid out of his
20 district funds --

21 Q Okay.

22 A -- that were available to us, if we
23 wanted them.

24 Q Which district was that?

1 audits?

2 A No, not that I can recall.

3 Q Did you ever contact Judge Russell
4 Hartigan, who was a trustee of the TTO during the
5 time period we're talking about?

6 A No.

7 Q Why not?

8 A I don't know him.

9 Q Why didn't you think it was -- And
10 there's another living trustee, Donna Milich.

11 Have you ever contacted her about
12 anything?

13 A No.

14 Q Why didn't you contact the two living
15 trustees to get their recollections on this or any
16 other issue in this case?

17 MR. KALTENBACH: Objection.
18 Argumentative, assumes facts.

19 You can answer.

20 BY THE WITNESS:

21 A I didn't feel that was my place.

22 BY MR. HOFFMAN:

23 Q Okay.

24 A I don't know these individuals.

1 Q Whose place do you think it was?
 2 MR. KALTENBACH: Objection.
 3 Argumentative.
 4 BY MR. HOFFMAN:
 5 Q Whose place do you think it was?
 6 A At that point, I believe that it would
 7 be something that would come up during the lawsuit.
 8 Q Okay. So it was your lawyer's
 9 responsibility, as far as you saw it?
 10 A I don't know that it was their
 11 responsibility, but I assumed that we would be
 12 required to provide some documentation about it.
 13 Q Well, I'm not talking just about
 14 documentation. I'm talking about why certain
 15 things happened 20 years ago, and it doesn't seem
 16 like you made any effort, as the treasurer, to go
 17 back and talk to either the prior treasurer or the
 18 trustees.
 19 So my question is why not?
 20 A My job is make sure that I take care
 21 of the current operations of the Township --
 22 Q Have you ever --
 23 A -- Treasurer's Office?
 24 Q -- spoken with Bob Healy about what he

1 did during his tenure in any respect?
 2 A Only when I was a business manager.
 3 Q Okay.
 4 A Not since he's left the TTO.
 5 Q And in your conversations with
 6 Bob Healy when you were business manager, did any
 7 of those conversations have to do with payment for
 8 District 204's audits?
 9 A No.
 10 Q Were you aware when you were a
 11 business manager at another district that the TTO
 12 was paying for District 204's audits?
 13 A No.
 14 Q Did Bob Healy tend to provide a lot of
 15 information or disclosures to the districts during
 16 the time he was treasurer?
 17 A No.
 18 Q What was your experience with
 19 Bob Healy's supplying of information or
 20 documentation from your perspective as a business
 21 manager?
 22 A Are you asking across the board?
 23 Q Across the board.
 24 A The information that we received out

1 of Bob's office was, we received our financial
 2 reports, any -- we would receive a pro rata bill
 3 from him annually that didn't necessarily have any
 4 supporting documentation. We would receive our
 5 interest income via journal entry.
 6 Q Did the interest income journal entry
 7 provide enough documentation for you to be able to
 8 determine whether the amount of money that was paid
 9 to your district in interest income was, in fact,
 10 the amount that you should have received?
 11 A No.
 12 Q Why not?
 13 A I don't know.
 14 Q I mean, what was missing? Why
 15 couldn't you tell if the interest income number was
 16 right when you got it from Healy?
 17 A Well, we didn't have access to the
 18 financial records or the amount of interest that
 19 was earned, market conditions. There was -- There
 20 was no documentation. That was his work to do.
 21 Q Did you ever express to Bob Healy at
 22 any time your concern about lack of information or
 23 documentation about your district's investments?
 24 A Not that I recall specifically.

1 Q Are you aware that 204 repeatedly
 2 tried to get more information on investments from
 3 Bob Healy?
 4 A I am now; but at the time that I was a
 5 business manager in another district, I was not.
 6 Q Did you ever have any discussions with
 7 Dr. Dennis Kelly when you were at LADSE about the
 8 issue of investment income and the information that
 9 the districts were getting from Healy on investment
 10 income?
 11 A None that I recall.
 12 MR. KALTENBACH: It's been a little
 13 over an hour. Do you want to take a --
 14 MR. HOFFMAN: Let's do it.
 15 MR. KALTENBACH: -- quick break?
 16 (Whereupon, a brief recess
 17 was had from 11:19 a.m. to
 18 11:27 a.m.)
 19 MR. HOFFMAN: Let's go back on the
 20 record.
 21 BY MR. HOFFMAN:
 22 Q One of the things that we should cover
 23 before we get too far in the deposition is that, as
 24 your lawyer probably already told you, it's

1 important for you not to guess or make assumptions
2 in the course of this deposition.

3 What I'm asking for is actual
4 knowledge of you and the TTO on the issues we're
5 discussing.

6 Do you understand that?

7 **A I do.**

8 **Q** Okay. Let's talk a little more about
9 the claim that the TTO has in this case for the
10 return of money related to payment of Baker Tilly
11 audit fees. All right?

12 **A Okay.**

13 **Q** So do you have any knowledge
14 whatsoever as to why the TTO paid for
15 District 204's audits for certain years?

16 **MR. KALTENBACH:** Objection. Asked and
17 answered.

18 You can answer.

19 **BY MR. HOFFMAN:**

20 **Q** You can answer again.

21 **A No.**

22 **Q** Okay. And you did see in the files of
23 the TTO a document showing that the TTO knew it was
24 getting bills for District 204's audits and paid

1 Bob Healy to Lisa Beckwith at District 204.

2 Do you see that?

3 **A I do.**

4 **Q** And you know who Lisa Beckwith is?

5 **A I do.**

6 **Q** Did you read her deposition testimony
7 in this case?

8 **A No.**

9 **Q** Did you read any of the deposition
10 transcripts of depositions taken in this case
11 before coming here today?

12 **A I have seen Bob Healy's.**

13 **Q** Did you read the whole --

14 **A I didn't read it.**

15 **Q** Why didn't you read all of Bob Healy's
16 testimony?

17 **A It wasn't offered to me to read.**

18 **Q** Okay. Let's turn to Page 6 of what
19 has been marked as TTO Deposition No. 5.

20 **A Okay.**

21 **Q** And it says under "Annual Audit," "The
22 trustees hire and pay for the audit of the school
23 districts" -- plural -- "and the Treasurer's office
24 in Lyons Township."

1 them knowing what they were for, right?

2 **A I have seen evidence of that, yes.**

3 **Q** Okay. And so there's no question here
4 that somehow the TTO accidentally paid these
5 invoices, right?

6 **A I don't think it was an accident.**

7 **Q** Okay. Well, then I won't bother
8 showing you the documentation --

9 **A Okay.**

10 **Q** -- that we're talking about.

11 Are you also aware from seeing
12 documentation in the TTO's files that Bob Healy
13 told District 204 that the TTO was paying for the
14 audits of all of the districts?

15 **A I don't know that.**

16 **Q** Okay. Let's take a look at a document
17 which we'll mark here.

18 (Whereupon, TTO Deposition
19 Exhibit No. 5 was marked for
20 identification.)

21 (Whereupon, document
22 tendered.)

23 **BY MR. HOFFMAN:**

24 **Q** This was an April 29, 1999 letter from

1 Do you see that?

2 **A I do.**

3 **Q** Do you know why Bob Healy made this
4 representation to District 204?

5 **A I do not.**

6 **Q** Do you believe that it was factually
7 inaccurate at the time he made it?

8 **A I would have no way to know.**

9 **Q** So it may or may not have been the
10 case in 1999 that the TTO hired and paid for the
11 audits of the school districts, plural?

12 **A I don't have firsthand knowledge of
13 that.**

14 **Q** And --

15 **A Because you're asking me in reference
16 to this statement. Is that correct?**

17 **Q** Well, the statement is a statement of
18 fact. It's saying the trustees -- meaning the
19 TTO --

20 **A Yes.**

21 **Q** -- hire and pay for the audit of the
22 school districts; yes? Do you see that?

23 **A Yes, I do.**

24 **Q** And my question is -- You've never

1 seen this letter before, right?
 2 **A I have seen this letter before --**
 3 **Q** Okay.
 4 **A -- but not at that time.**
 5 **Q** When did you see this letter?
 6 **A When we were pulling records for**
 7 **discovery.**
 8 **Q** Okay. And is the statement in this
 9 letter that Bob Healy wrote which says, "The
 10 trustees hire and pay for the audit of the school
 11 districts" a true or untrue statement, or you don't
 12 know?
 13 **A I can read what was written.**
 14 **Q** Yes.
 15 **A Do I have firsthand knowledge that**
 16 **this was an accurate statement? No.**
 17 **Q** Okay. Who would know?
 18 **A I would assume Bob Healy or Lisa**
 19 **Beckwith, who wrote the letter.**
 20 **Q** Okay. Now, I did tell you about three
 21 minutes ago not to make assumptions. Right?
 22 **A Yes.**
 23 **Q** Okay. So can you answer that question
 24 without making assumptions?

1 **A Can you repeat the question?**
 2 **Q** Who would know whether Healy's
 3 statement in this 1999 letter that says "The
 4 trustees hire and pay for the audit of the school
 5 districts" -- who would know whether or not that is
 6 true?
 7 **A I don't know.**
 8 **Q** Okay. I'm going to show you another
 9 letter. This was marked as Conway Exhibit No. 2
 10 already, and I'm just going to refer you to a
 11 specific portion of it. It's a January 12, 2001
 12 letter from Bob Healy to Dr. Dennis Kelly.
 13 (Whereupon, Conway Exhibit
 14 No. 2, previously marked,
 15 was tendered to the witness.)
 16 **BY MR. HOFFMAN:**
 17 **Q** On the page that's Bates numbered 189
 18 in the corner, it says under "Annual Audit," "The
 19 trustees hire and pay for the audit of the school
 20 districts and the Treasurer's office in Lyons
 21 Township."
 22 Do you see that?
 23 **A Yes.**
 24 **Q** Is your testimony about this statement

1 from 2001 the same as your testimony about Healy's
 2 statement that he made, which is identical, in the
 3 1999 letter? Then I won't have to ask you all the
 4 same questions.
 5 **A Can you repeat that question?**
 6 **Q** Okay. The statement that Healy made
 7 in this 2001 letter, which says --
 8 **A That we just --**
 9 **Q -- "The trustees" -- I'm sorry.**
 10 **A This letter (indicating)?**
 11 **Q** The 2001 letter that's in front of
 12 you --
 13 **A Okay.**
 14 **Q** -- in Conway Exhibit No. 2 --
 15 **A Okay.**
 16 **Q** -- it says, "The trustees hire and pay
 17 for the audit of the school districts and the
 18 Treasurer's office in Lyons Township."
 19 **A Okay.**
 20 **Q** Was that statement true as of
 21 January 12th, 2001?
 22 **A No.**
 23 **Q** Why do you say "no"?
 24 **A In 2001?**

1 **Q** Right, 2001, just like the Kubrick
 2 movie.
 3 **A Oh, January of 2001. I'm sorry. I**
 4 **could not answer that.**
 5 **Q** And why can't you answer that?
 6 **A I was not in the Township at that**
 7 **time.**
 8 **Q** Okay. And you don't have sufficient
 9 familiarity with the records of the TFO in 2001 to
 10 be able to answer that question, correct?
 11 **A Correct.**
 12 **MR. KALTENBACH:** I'm going to -- Hold
 13 on. I'm going to object.
 14 **MR. HOFFMAN:** Just a second. She just
 15 answered.
 16 **MR. KALTENBACH:** And I'm --
 17 **MR. HOFFMAN:** Did you get it?
 18 **THE REPORTER:** Yes.
 19 **MR. HOFFMAN:** Okay.
 20 **MR. KALTENBACH:** Great. And I'm
 21 getting my objection in.
 22 **MR. HOFFMAN:** That's fine. I just
 23 want to make sure we got the answer.
 24 **MR. KALTENBACH:** That's fine.

1 MR. HOFFMAN: Say what you want to
 2 say.
 3 MR. KALTENBACH: I object on the basis
 4 I believe this information was already asked of the
 5 witness, and she answered with respect to prior
 6 testimony.
 7 MR. HOFFMAN: Okay. Thanks. That's
 8 an interesting objection. I'm not sure what
 9 category that falls under other than coaching, but
 10 thanks so much.
 11 MR. KALTENBACH: Asked and answered; I
 12 don't --
 13 MR. HOFFMAN: It wasn't answered
 14 because I've never shown her this letter before.
 15 MR. KALTENBACH: That doesn't mean she
 16 didn't answer the subject matter.
 17 MR. HOFFMAN: All right. Nice try.
 18 BY MR. HOFFMAN:
 19 Q Okay. The complaint filed in this
 20 case in talking about the audit fees makes a
 21 reference to part of the School Code. Let me just
 22 get the right page in front of me.
 23 Okay. Paragraph 48 of the
 24 pending complaint of the TTO, which I'd be happy to

1 the amended complaint, and this is the part of the
 2 School Code, you believe, that requires
 3 District 204 and all of the other school districts
 4 to have an annual audit performed, correct?
 5 A That's what you're telling me, yes.
 6 Q Well, is --
 7 A Based on what I've seen, but I haven't
 8 read this.
 9 Q Okay. Well, you said you were
 10 familiar with the legal provision, and this is the
 11 legal provision, so --
 12 A I want to clarify. I'm familiar with
 13 the requirement that we do an annual audit.
 14 Q Right.
 15 A I would not say that I am familiar
 16 with the legal requirement --
 17 Q Okay.
 18 A -- in great detail.
 19 Q Fair enough.
 20 Is there any requirement in the
 21 School Code that requires District 204 to pay for
 22 its own audit?
 23 MR. KALTENBACH: I'm going to object
 24 to the extent it calls for the witness to make a

1 show you -- although you're familiar with the
 2 complaint, right?
 3 A The current complaint?
 4 Q Yes.
 5 A Yes.
 6 Q Okay. So Paragraph 48 talks about
 7 Article 3, Section 7 of the School Code, and it
 8 says that that legal provision, quote, "Requires
 9 that each school district have an audit of its
 10 accounts completed at least once a year," et
 11 cetera, et cetera.
 12 Are you familiar with that
 13 provision of the School Code?
 14 A Yes.
 15 MR. HOFFMAN: Okay. Let's mark it.
 16 (Whereupon, TTO Deposition
 17 Exhibit No. 6 was marked for
 18 identification.)
 19 (Whereupon, document
 20 tendered.)
 21 BY MR. HOFFMAN:
 22 Q Dr. Birkenmaier, I'm showing you TTO
 23 Exhibit No. 6. It's a copy of Section 5/3-7 of the
 24 School Code that's referred to in Paragraph 48 of

1 legal conclusion.
 2 BY MR. HOFFMAN:
 3 Q You can answer.
 4 A I would say based on my knowledge of
 5 what's in there, it has no indication of who pays
 6 for an audit, just that one must be completed.
 7 Q Okay. Fair enough.
 8 Is there any legal requirement
 9 that applies to the TTO or to you, as a treasurer,
 10 that prohibits the TTO from paying for
 11 District 204's audits?
 12 MR. KALTENBACH: Objection. Calls for
 13 a legal conclusion.
 14 You can answer.
 15 BY THE WITNESS:
 16 A I wouldn't understand what the legal
 17 requirement would be. My understanding -- I don't
 18 have that level of understanding about who pays.
 19 BY MR. HOFFMAN:
 20 Q Okay. So you're not aware sitting
 21 here today of any part of the School Code or other
 22 law that would, as far as you know, prohibit the
 23 TTO from paying for District 204's audits, correct?
 24 MR. KALTENBACH: Same objection.

1 BY THE WITNESS:

2 A I don't believe it's referred to or
3 discussed, so I will say no.

4 MR. HOFFMAN: All right. Let's mark
5 this.

6 (Whereupon, TTO Deposition
7 Exhibit No. 7 was marked for
8 identification.)

9 (Whereupon, document
10 tendered.)

11 BY MR. HOFFMAN:

12 Q All right. I've marked as exhibit --
13 TTO Deposition Exhibit 7 a letter that I got from
14 Gretchen Kubasiak at your law firm attaching a
15 series of printouts. This also came with a disk of
16 electronic documents.

17 And the letter says that "These
18 documents concern audit payments that we intend to
19 rely on. We requested these documents from our
20 client with respect to your client's assertion that
21 our client paid for all districts' audits.
22 Included in these documents are ones we received
23 voluntarily from District 108 regarding their audit
24 payments."

1 That's the file --

2 A Yes.

3 Q -- for District 108?

4 And let's look at the prior page,
5 one before the end, and this file is for "Audit GL
6 Detail Invoices."

7 Do you see that?

8 A I do.

9 Q And this is the TTO's general ledger,
10 correct? When it says "GL," that means "general
11 ledger," right?

12 A Is it appropriate to assume here?

13 MR. KALTENBACH: I'm going to object.
14 I think there's a compound question there, so I'm
15 not sure --

16 MR. HOFFMAN: Okay.

17 BY MR. HOFFMAN:

18 Q Do you have any understanding of what
19 the "Audit GL Detail Invoices" are?

20 A I understand what they are. There's
21 nothing that's referenced here that would indicate
22 to me whose they are.

23 Q Okay. Do you know why these files
24 only go back to 1998?

1 Do you see that?

2 A I do.

3 Q Is that the documentation you were
4 testifying about earlier that you pulled at your
5 lawyer's request?

6 A Yes.

7 Q And you pulled that in November
8 of 2016?

9 A Yes.

10 Q Okay. Do you know why it took until
11 the end of February 2017 to -- for the lawyers to
12 send these documents on to us?

13 MR. KALTENBACH: I object. It's
14 beyond the scope.

15 You can answer.

16 BY MR. HOFFMAN:

17 Q You can answer.

18 A I'm not familiar if this information
19 was requested earlier. The reason that we went in
20 and did such a detailed pulling of documents was
21 District 204 offered up that they had documentation
22 that showed that they paid their own fees.

23 Q Well, the last page of this document,
24 TTO 7, has the District 108 information, right?

1 A I don't.

2 Q Is there anyone other than you at the
3 TTO who sends documentation to your lawyers when
4 they request it, let's say, in the past six months,
5 or are you the point person for sending documents
6 to the lawyers?

7 A Kelly Bradshaw.

8 Q Kelly Bradshaw is the person who does
9 that?

10 A She would also. I would. I don't
11 know if Lauralee necessarily would be a frontline
12 for that. She might send something on my behalf.

13 Q Okay. The documents from the --

14 MR. HOFFMAN: Let's mark this.

15 (Whereupon, TTO Deposition
16 Exhibit No. 8 was marked for
17 identification.)

18 (Whereupon, document
19 tendered.)

20 BY MR. HOFFMAN:

21 Q Deposition Exhibit No. 8 is a printout
22 of the documents we just saw a hard copy of the
23 file and PDF listing of. It's for the Audit GL
24 Detail. This is what the actual documents are.

1 A Okay.
 2 Q And so it's TTO Exhibit No. 8.
 3 A Okay.
 4 Q Are these printouts for -- Well, what
 5 are these printouts?
 6 A Well, the --
 7 Q What are these? What are we looking
 8 at?
 9 A The first page would be the detail of
 10 all the transactions that were made by the
 11 Treasurer's Office. I can tell you from this that
 12 it's for the period of '97 through '98 made to
 13 William Gurrie as the vendor.
 14 Q Right.
 15 A These are the TTO expenditures.
 16 Q And why does this only go back to the
 17 1998 fiscal year?
 18 A This indicates to me that this is one
 19 fiscal year. I don't know --
 20 Q This is the first one, as you can see
 21 from the list of -- As you can see from the list
 22 that came with the production, this is the first
 23 one, and so I printed it out so you could see what
 24 they look like.

1 My question is, how come they
 2 start in the 1998 fiscal year and don't go back any
 3 further?
 4 A I don't know.
 5 Q Are the documents missing from the
 6 TTO's files for the 1997 and earlier fiscal years
 7 for the general ledger printouts?
 8 A I don't know that.
 9 MR. HOFFMAN: Let's mark this.
 10 (Whereupon, TTO Deposition
 11 Exhibit No. 9 was marked for
 12 identification.)
 13 (Whereupon, document
 14 tendered.)
 15 BY MR. HOFFMAN:
 16 Q I'm showing you TTO Exhibit No. 9.
 17 A All right.
 18 Q This is a printout from the document
 19 production we just referenced, and it's just a
 20 portion of it. These were all the printouts that
 21 had to do with 104.
 22 And so my question to you is,
 23 does the column in the middle on the first page
 24 that says "104" -- does that mean that it relates

1 to District 104?
 2 A Yes.
 3 Q Okay. And do you see over time that
 4 the look of these printouts -- there's a run from
 5 1993 through 2005. Then there's a run from 2005 to
 6 2006. Then there's a run from 2006 to 2012.
 7 Why are there three different
 8 sets of documents for this general ledger printout
 9 for District 204?
 10 A Probably based on the way that they're
 11 archived.
 12 Q They're archived differently, and so
 13 you need to go in the system and run different
 14 reports for different years?
 15 A Absolutely.
 16 Q And do you see in the last -- the
 17 third to last page, the final set of printouts,
 18 there is an account number for 1-2310-317-1-0?
 19 A Yes.
 20 Q What does that mean?
 21 A Well, "1" would indicate the fund that
 22 the bill is being paid out of, and that means
 23 education fund. And that's set up based on the tax
 24 levy structure, so we know that those are education

1 tax levy funds.
 2 "2310" would indicate the
 3 function, so 2310 -- And I have to refer back here
 4 to tell you. 2310 would indicate that it is the
 5 Board of Education function within the school
 6 District.
 7 "317" would be the object code
 8 number, and that would relate specifically to the
 9 fact that these are audit fees.
 10 Q What's "318"?
 11 A "318" is legal fees.
 12 Q Okay.
 13 A And you can see that --
 14 Q Why are there legal fees or anything
 15 from 318 included in this printout that was
 16 provided to us?
 17 A I think the reason that it was
 18 provided is that because William F. Gurrie is
 19 listed as a vendor, and it was charged to the
 20 "legal fee" line, which could indicate that it was
 21 something directly related to a legal service or
 22 that it was a misplaced payment that would have had
 23 to require a journal entry to collect later.
 24 Q Well, do you know?

<p style="text-align: right;">Page 90</p> <p>1 A I don't know for certain. I would</p> <p>2 have to look at the detail on the documentation to</p> <p>3 support it. Typically, if I could look through</p> <p>4 here, I might be able to explain it, but I can't</p> <p>5 just from looking at this alone.</p> <p>6 Q We're going to look at a document that</p> <p>7 was previously marked as Theissen Exhibit No. 13.</p> <p>8 (Whereupon, Theissen Exhibit</p> <p>9 No. 13, previously marked,</p> <p>10 was tendered to the witness.)</p> <p>11 BY THE WITNESS:</p> <p>12 A Okay.</p> <p>13 BY MR. HOFFMAN:</p> <p>14 Q It's from March 8, 2013.</p> <p>15 That's before your time as</p> <p>16 treasurer, correct?</p> <p>17 A Yes.</p> <p>18 Q Okay. And you see that there's a</p> <p>19 statement of audit and accounting fees for</p> <p>20 District 204 for the years 2006 to 2012, right?</p> <p>21 A Yes.</p> <p>22 Q Okay. And even though you weren't</p> <p>23 there at the time, I'm asking, as TTO's</p> <p>24 representative, why was the initial claim from the</p>	<p style="text-align: right;">Page 92</p> <p>1 BY THE WITNESS:</p> <p>2 A On Page 33?</p> <p>3 BY MR. HOFFMAN:</p> <p>4 Q Correct.</p> <p>5 A Okay.</p> <p>6 Q So Ms. Bradshaw testified that</p> <p>7 Baker Tilly had invoices from at least 2006 on and</p> <p>8 maybe sometime prior to that, but she did not know.</p> <p>9 A Can you help me understand where</p> <p>10 you're at in this document, what line?</p> <p>11 Q Sure. Page 33, Lines 2 through 15.</p> <p>12 A Oh, okay.</p> <p>13 Q Why don't you read that testimony?</p> <p>14 (Whereupon, witness perusing</p> <p>15 document.)</p> <p>16 BY MR. HOFFMAN:</p> <p>17 Q My question to you is, does that</p> <p>18 testimony of Ms. Bradshaw help refresh your memory</p> <p>19 as to how far back Baker Tilly's invoices were kept</p> <p>20 and provided to the TTO?</p> <p>21 A I'm sorry. Can you hold that question</p> <p>22 for a minute while I finish reading?</p> <p>23 Q Sure. Go ahead.</p> <p>24 A Thank you.</p>
<p style="text-align: right;">Page 91</p> <p>1 TTO to District 204 for these audits fees limited</p> <p>2 to the 2006 to 2012 time period?</p> <p>3 A I don't know.</p> <p>4 MR. KALTENBACH: I'm going to object</p> <p>5 as to vague. That's fine.</p> <p>6 BY THE WITNESS:</p> <p>7 A I don't know.</p> <p>8 BY MR. HOFFMAN:</p> <p>9 Q Isn't it correct that Baker Tilly's</p> <p>10 documents on its invoicing that the TTO asked for</p> <p>11 and got from Baker Tilly at some point only went</p> <p>12 back to 2006?</p> <p>13 A I don't know.</p> <p>14 MR. HOFFMAN: I'll be right back.</p> <p>15 (Whereupon, there was a</p> <p>16 brief interruption.)</p> <p>17 BY MR. HOFFMAN:</p> <p>18 Q Okay. Theissen Exhibit No. 4 is the</p> <p>19 deposition of Kelly Bradshaw taken in this case.</p> <p>20 I'm going to show you her testimony on Page 33.</p> <p>21 Your counsel can look over your shoulder.</p> <p>22 (Whereupon, Theissen Exhibit</p> <p>23 No. 4, previously marked,</p> <p>24 was tendered to the witness.)</p>	<p style="text-align: right;">Page 93</p> <p>1 Q I'll start over.</p> <p>2 A Okay. Thanks.</p> <p>3 (Whereupon, witness perusing</p> <p>4 document.)</p> <p>5 BY THE WITNESS:</p> <p>6 A Okay.</p> <p>7 BY MR. HOFFMAN:</p> <p>8 Q So does Ms. Bradshaw's testimony about</p> <p>9 how far back Baker Tilly's copies of invoices went</p> <p>10 help refresh your memory on the subject of how far</p> <p>11 back did Baker Tilly's invoices go when the TTO</p> <p>12 asked to get them?</p> <p>13 A That doesn't help me.</p> <p>14 Q Okay. So you have no idea how far</p> <p>15 back Baker Tilly's invoices go, right?</p> <p>16 A I did not look at the Baker Tilly</p> <p>17 invoices back that far. That would have been work</p> <p>18 she would have worked on.</p> <p>19 Q How far back did the TTO's copies of</p> <p>20 invoices go for its payments for District 204's</p> <p>21 audits?</p> <p>22 A I don't know.</p> <p>23 Q There were many years in which the TTO</p> <p>24 did not have copies of invoices for these costs,</p>

1 correct?

2 **A I don't know.**

3 **Q** So you have no idea why in Theissen's
4 letter, Exhibit No. 13, the claim only went back to
5 2006?

6 **A No.**

7 **MR. KALTENBACH:** I'll object as vague.

8 **BY MR. HOFFMAN:**

9 **Q** Let's take a look at --

10 **MR. KALTENBACH:** Hold on.

11 Can you pause for a minute so I
12 have a chance to state my objection?

13 **THE WITNESS:** I'm sorry.

14 **MR. KALTENBACH:** That's okay.

15 **MR. HOFFMAN:** Let's mark this.

16 (Whereupon, TTO Deposition
17 Exhibit No. 10 was marked for
18 identification.)

19 (Whereupon, document
20 tendered.)

21 **BY MR. HOFFMAN:**

22 **Q** The document that I marked as TTO
23 Deposition Exhibit No. 10 is a document that comes
24 from the files produced to us in this case. It

1 mind.

2 And you've never seen this in the
3 files of your --

4 **A I have not, no.**

5 **MR. HOFFMAN:** Let's mark this as 11
6 and this as 12.

7 (Whereupon, TTO Deposition

8 Exhibit No. 11 and TTO

9 Deposition Exhibit No. 12 were
10 marked for identification.)

11 (Whereupon, documents
12 tendered.)

13 **BY MR. HOFFMAN:**

14 **Q** All right. I'm going to provide you
15 with two tables of charts. These appear to be a
16 list of audit fees for which the TTO is making a
17 claim in this case. The first one, which has the
18 larger font and has a grand total of 473,000 and
19 change, is TTO Deposition Exhibit No. 11.

20 The second one with the smaller
21 font has a grand total of 511,068.60, which also
22 corresponds to the amount stated in the amended
23 complaint.

24 **A Okay.**

1 appears to be a printout that runs through
2 August 31st, 2013, that provides backup or at least
3 correlates with the amount --

4 **A Okay.**

5 **Q** -- that is in Mr. Theissen's letter,
6 Theissen Exhibit 13. I'll show that to you, so you
7 understand the same thing that I understand.

8 (Whereupon, document
9 tendered.)

10 **BY THE WITNESS:**

11 **A Okay.**

12 **BY MR. HOFFMAN:**

13 **Q** And you see that the amounts are the
14 same, yes?

15 **A Yes.**

16 **Q** Are you familiar with this document,
17 TTO Deposition Exhibit No. 10?

18 **A I don't recall seeing this before.**

19 **Q** Do you know why this is limited to the
20 2006 to 2012 period noting that this was created
21 during the time you were treasurer?

22 **A No. And I didn't begin as treasurer
23 until October of 2013.**

24 **Q** Oh, I'm sorry. My mistake. Never

1 **Q** I just want to make sure that you
2 understand what I understand, and there's no hiding
3 of the ball here.

4 **A Okay.**

5 **Q** So are you familiar with these
6 printouts?

7 **A I have not seen this before until you
8 just handed it to me.**

9 **Q** Is this Kelly Bradshaw's work, to the
10 best of your knowledge?

11 **A I don't know.**

12 **Q** Well, who did this? Who created these
13 charts?

14 **A I don't know.**

15 **Q** Are these charts the basis for the
16 claim that the TTO has made in this case for
17 repayment of audit fees from District 204?

18 **A I don't have firsthand knowledge of
19 that.**

20 **Q** You really don't know what that is?

21 **A I can understand what it is by looking
22 at it.**

23 **Q** Okay.

24 **A I know that the --**

1 Q That's good.
 2 A -- \$511,000 number is a number I am
 3 familiar with.
 4 Q Right. That's the amount of the
 5 claim, right?
 6 A Yes.
 7 Q Okay. So this is the backup which
 8 details all the invoices that add up to the 511,000
 9 number, correct? Yes?
 10 A Are you asking me if it appears that
 11 way?
 12 Q Yes.
 13 A Yes.
 14 Q I mean, you are the treasurer of the
 15 TTO and --
 16 A Yes.
 17 Q --you're the designated
 18 representative here, so --
 19 A It would appear that way.
 20 Q Okay. Great. Terrific.
 21 And you see in the -- Do you know
 22 why the claim amount increased in this case from
 23 473,000 to 511,000?
 24 A If I look through it, I might be able

1 to explain that.
 2 Q Well, presumably, there are a few more
 3 invoices that got thrown on that added up to a
 4 bigger number. I think I can figure that out.
 5 A Okay.
 6 Q What I'm asking is, do you know of
 7 any -- Why did the claim amount increase in this
 8 case? What happened to make it increase?
 9 A I believe your explanation would be
 10 the appropriate explanation.
 11 Q Well, who went back and looked through
 12 what records to find additional invoices to add on
 13 to your claim?
 14 A Kelly Bradshaw.
 15 Q And at whose direction?
 16 A I don't know.
 17 Q When did that take place?
 18 A I don't know.
 19 Q Okay. And you have no idea when these
 20 documents were created?
 21 A There is no reference date, no.
 22 Q Okay. Do you see on the bottom
 23 right-hand -- or excuse -- the far right-hand
 24 column of TTO Exhibit No. 11, it says, "Invoice

1 Copy." And for the first 20 or so entries, it says
 2 "No"?
 3 Do you see that?
 4 A I do.
 5 Q Does that correctly reflect that the
 6 TTO does not have the actual invoices from the
 7 Baker Tilly firm for District 204's audits for
 8 those time periods?
 9 A I don't know.
 10 Q Well, do they or don't they? With
 11 respect -- Without regard to this document, does
 12 the TTO have a copy of the invoices sent from
 13 Baker Tilly to the TTO for District 204's audits
 14 for the 1993 through 1995 time period?
 15 A If you're asking me --
 16 THE WITNESS: Okay.
 17 MR. KALTENBACH: If you want to
 18 consult with me on if it's privileged or not, we
 19 can discuss that.
 20 THE WITNESS: No.
 21 MR. KALTENBACH: But otherwise --
 22 Okay.
 23 BY THE WITNESS:
 24 A If you're asking me to speculate that

1 we have these or don't have these, I cannot
 2 speculate. I can only tell you, I don't know
 3 because I don't have firsthand knowledge of these
 4 documents.
 5 BY MR. HOFFMAN:
 6 Q Okay. And you see that the answer
 7 for -- Well, the answer for "No" for "Invoice Copy"
 8 went from "No" into the next document, it says
 9 "GL," which is "general ledger," correct?
 10 A Yes.
 11 Q And so is it true that the TTO is
 12 relying on general ledger entries for some of the
 13 audit costs that it's claiming in this case?
 14 A It would appear that they were
 15 recorded in the general ledger, yes.
 16 Q Do you know why the TTO appears to be
 17 missing records from its files?
 18 A No.
 19 Q Are you aware of a flood that occurred
 20 or that Bob Healy claimed occurred at the TTO's
 21 offices?
 22 A I have heard that, but I don't know
 23 anything about it.
 24 Q What have you heard about it?

1 **A I heard that there was a flood that**
2 **damaged records.**
3 **Q When was that?**
4 **A I don't know.**
5 **Q Who told you that?**
6 **A Lauralee.**
7 **Q When did she tell you that?**
8 **A When I first started.**
9 **Q Okay. And what did she say -- What**
10 **records were lost as a result of the flood?**
11 **A We didn't have a detailed conversation**
12 **about that.**
13 **Q Didn't you think it was important to**
14 **know what records were missing from your files --**
15 **MR. KALTENBACH: Object --**
16 **BY MR. HOFFMAN:**
17 **Q Didn't you think it was important to**
18 **know what records were missing from your files?**
19 **A Okay.**
20 **MR. KALTENBACH: Objection.**
21 **Argumentative.**
22 **BY MR. HOFFMAN:**
23 **Q Didn't you think it was important to**
24 **know what documents were missing from the TTO's**

1 **files?**
2 **MR. KALTENBACH: Objection.**
3 **Argumentative. You've asked it twice.**
4 **MR. HOFFMAN: I haven't gotten an**
5 **answer.**
6 **MR. KALTENBACH: Because I objected.**
7 **MR. HOFFMAN: Because you keep**
8 **interrupting.**
9 **MR. KALTENBACH: I'm objecting.**
10 **BY MR. HOFFMAN:**
11 **Q Go ahead. You can answer.**
12 **MR. KALTENBACH: You can answer based**
13 **on my objection. Go ahead.**
14 **BY THE WITNESS:**
15 **A No.**
16 **BY MR. HOFFMAN:**
17 **Q Why didn't you think it was important?**
18 **A Historical documents didn't have**
19 **relevance to the current operation.**
20 **Q Well, they do have relevance to this**
21 **lawsuit, don't they?**
22 **A Understood.**
23 **Q And you're seeking \$4.6 million from**
24 **District 204 based on things that happened in the**

1 past, some as far back as 20 years ago, aren't you?
2 **A Yes.**
3 **Q And so isn't it important to have an**
4 **understanding as to what documents the TTO does and**
5 **doesn't have from that relevant time period?**
6 **A I understand that when there was a**
7 **flood that they salvaged as much of the**
8 **documentation as they could by drying it out. If**
9 **the documents don't exist, I don't know why. And I**
10 **don't question why they were lost or what was lost**
11 **because they're historical documents, and they were**
12 **not relevant to the operations when I was there.**
13 **MR. HOFFMAN: Let's mark this, please.**
14 **(Whereupon, TTO Deposition**
15 **Exhibit No. 13 was marked for**
16 **identification.)**
17 **(Whereupon, document**
18 **tendered.)**
19 **BY MR. HOFFMAN:**
20 **Q TTO Exhibit No. 13 is another set of**
21 **documents that came from the production that we**
22 **received in this case from the TTO.**
23 **A Okay.**
24 **Q These appear to be a series of general**

1 ledger printouts or portions of general ledger
2 printouts that relate to amounts for your claim
3 against the TTO as to audits fees.
4 Is that what this looks like to
5 you?
6 **A Yes.**
7 **Q Okay. And who provided this -- who**
8 **provided this -- I'm sorry.**
9 Who was the person who selected
10 these particular items to capture in a report to
11 form the basis of the TTO's claim?
12 **A I'm not certain.**
13 **Q So you don't know who did this work**
14 **that's reflected in TTO Exhibit No. 13, do you?**
15 **A I'm not --**
16 **MR. KALTENBACH: Objection. Vague.**
17 **You can answer.**
18 **BY THE WITNESS:**
19 **A I'm not certain.**
20 **BY MR. HOFFMAN:**
21 **Q Okay. Do you know the parameters for**
22 **which -- Now, the work was done, it says in the**
23 **upper left-hand corner, on May 11th of 2015.**
24 Do you see that?

1 A I do.
 2 Q And that was during the time you were
 3 treasurer, right?
 4 A Yes.
 5 Q Okay. And so do you remember having
 6 any discussions with Kelly Bradshaw or anybody
 7 else, Laurelee, whoever it might have been, around
 8 that time about going back through the general
 9 ledger entries for the TTO and finding things that
 10 might be related to the annual audits of
 11 District 204?
 12 A I know that we've been pulling
 13 documents for a long time.
 14 Q Okay. But specific with respect to
 15 the District 204 annual audits and these general
 16 ledger entries, do you know who was assigned that
 17 job and what they were told to do with respect to
 18 that job?
 19 A I don't recall.
 20 Q Okay. And so when you look at the
 21 first page of TTO Deposition Exhibit No. 13, there
 22 is a listing for -- the first one says "Business
 23 Services" -- it says "S-e-r," but that's short for
 24 "Business Services," correct?

1 A Yes.
 2 Q And it says, "Annual Audi," A-u-d-i,
 3 but we can make sense of that and say it's "Annual
 4 Audit," right?
 5 A Yes.
 6 Q Okay. So that's something that the
 7 TTO believes was for the annual audit of
 8 District 204, correct?
 9 A Yes.
 10 Q Okay. And then you see the second --
 11 Now, that's an entry dated July 1 of 1993, correct?
 12 A Correct.
 13 Q And the second entry is basically the
 14 same, although the amount is different.
 15 The third entry is for July 15th
 16 of 1993.
 17 Do you see that?
 18 A I do.
 19 Q And then it also says "Business
 20 Services Annual Audit"; but unlike the last two
 21 entries, there's no reference to District 204 in
 22 the "Business Services" column, correct?
 23 A Correct.
 24 Q Okay. So how did somebody know that

1 that \$8,000 charge had to do with District 204 and
 2 not the TTO or some other entity's audit?
 3 A I don't know.
 4 Q We see from the chart that we looked
 5 at in TTO Deposition Exhibit No. 11 and 12 that the
 6 1993 general ledger entries didn't have supporting
 7 invoices.
 8 And so how does the TTO know that
 9 this \$8,000 charge was for District 204's audits in
 10 light of that fact?
 11 A I don't know.
 12 Q There's another listing on this for
 13 September 15th of 1993 and, like the last one we
 14 just looked at, there's no indication this has
 15 anything to do with District 204.
 16 How does the TTO know that this
 17 has to do with District 204's audits?
 18 A I don't know.
 19 Q There's another listing for
 20 November 15, 1993, the second entry, with that
 21 date, and instead of "District 204" in the prior
 22 entry, it says "All," and it's for \$800.
 23 Do you see that?
 24 A I do.

1 Q How does the TTO know that that entry
 2 has to do with District 204's annual audit?
 3 A I don't know.
 4 Q Why if this related to "all" something
 5 would this amount then be specific to District 204?
 6 A I could only answer that based on
 7 practice, not on certainty with my personal
 8 knowledge.
 9 Q Okay. Now, let's take a look at the
 10 entry for May 13th, 1994.
 11 A Okay.
 12 Q It says, "District 204 Balancing."
 13 A Okay.
 14 Q "Yes"?
 15 A Yes. I see that.
 16 Q Why does -- Why does the TTO take the
 17 position that this invoice for balancing work was
 18 actually for the District 204 annual audit?
 19 A You're asking me why the TTO has this
 20 listed as annual audit work?
 21 Q Right. And if you see, if you look at
 22 TTO Deposition Exhibit No. 12 which has the
 23 \$511,000 claim figure that adds up to --
 24 A Okay.

1 MR. KALTENBACH: Make sure that's
2 correct.
3 BY MR. HOFFMAN:
4 Q -- [continuing] that adds up to the
5 amount of the claim, do you see here -- just a
6 second -- do you see here where my thumb is
7 (indicating) that there's an entry for 5/13/1994
8 for District 204 balancing?
9 A Yes.
10 Q And that that is a part of the
11 ultimate claim for \$511,000 contained in the
12 complaint?
13 A Yes. I see that.
14 Q And my question is, why is an invoice
15 that's clearly marked as balancing part of your
16 claim for fees that you're seeking to recover for
17 District 204's annual audits?
18 A Are you asking for my opinion?
19 Q I'm asking for your testimony as the
20 designated representative of the TTO.
21 A Balancing would be part of the annual
22 audit.
23 Q Okay. We talked earlier about
24 balancing being part of the TTO's responsibilities

1 to what it might mean, what exactly is that charge
2 for \$2,343 that you're asking District 204 to pay
3 you back for?
4 A I would have to see the documents, and
5 I'd have to understand the work papers. I'm
6 telling you that, based on my experience, my
7 professional experience, that this could be part of
8 the annual audit.
9 Q It could be, but you're not sure?
10 A Unless I see the source documents, no.
11 Q And when you say "the source
12 documents," you mean the bill from Baker Tilly?
13 A Not necessarily; it might require
14 something more than that. I may have to see the
15 work papers.
16 Q Okay. Has anybody looked at the work
17 papers to make sure that this is a proper part of
18 your claim?
19 A I don't know that we'd have those work
20 papers. They may be the auditor's work papers. I
21 do not know what the source documents would be.
22 Q There is also a claim for -- There's
23 an entry on TTO Exhibit No. 13 dated March 3, 1994.
24 A Yes.

1 in connection with reconciliation work.
2 Why is your testimony different
3 now?
4 A I don't think my testimony is
5 different.
6 Q Explain why balancing work is not the
7 responsibility of the TTO. You said that -- You
8 said earlier that balancing work was the
9 responsibility of the TTO and that the auditors,
10 from time to time, helped out with that function.
11 A Yes.
12 Q So why would you seek in this case to
13 recover an amount of money that had to do with
14 balancing work?
15 A If balancing -- If there were numbers
16 that the auditors discovered that did not match and
17 they needed to do the research to understand why
18 they didn't match, that may be referred to as
19 balancing.
20 Q Well, you say "it may be," but you
21 don't have a copy of the invoice. All you have to
22 go on is the general ledger entry as reflected in
23 Exhibit No. 12.
24 So aside from your speculation as

1 Q And it says it's for audit, and it's
2 in the amount \$4,655, right?
3 A Yes.
4 Q How do you know that that's the audit
5 of District 204 that we're talking about here?
6 A I don't know.
7 Q And isn't it true that the entry --
8 Let me just make sure I've got my numbers right.
9 Give me one second.
10 A Sure.
11 (Whereupon, counsel perusing
12 document.)
13 BY MR. HOFFMAN:
14 Q I don't want to run through every page
15 of this document.
16 So is it fair to say if I asked
17 you the same sorts of questions with respect to
18 other years that are set forth in TTO Deposition
19 Exhibit No. 13, your answers would be the same,
20 which is that you don't have any information about
21 particular entries in this document?
22 MR. KALTENBACH: I'm going to object
23 as to vague and that it mischaracterizes.
24 You can answer, Dr. Birkenmaier.

1 BY THE WITNESS:

2 A Based on the description that's
3 provided and absent the source documents to
4 understand fully what the charges are, at this
5 time, in this room, I could not tell you.

6 BY MR. HOFFMAN:

7 Q Now, you also have printouts for the
8 318 category, which is Legal Fees, correct, if you
9 turn to Page 3 of Exhibit 13?

10 A Yes.

11 Q And you see that the very last entry
12 dated June 30, 1994, for William F. Gurrie --

13 A Yes?

14 Q -- has a reference for District 204,
15 and it says "Business Services, Legal Services."

16 Do you see that?

17 A I do.

18 Q Did William F. Gurrie provide legal
19 services, to your knowledge?

20 A Not to my knowledge.

21 Q Okay. Do you know why this entry and
22 there's a number of other entries like it for
23 William F. Gurrie are listed under Source Code 318?

24 A I do not.

1 (Whereupon, TTO Deposition
2 Exhibit No. 14 was marked for
3 identification.)

4 BY MR. HOFFMAN:

5 Q Dr. Birkenmaier, I'm handing you TTO
6 Exhibit No. 14.

7 (Whereupon, document
8 tendered.)

9 BY MR. HOFFMAN:

10 Q This is a document that came from the
11 files that were produced to us. I didn't print out
12 the whole series of printouts that date back to
13 March 9th of 2015 according to the date in the
14 upper left-hand column.

15 A Okay.

16 Q This is just the first set of
17 printouts for the first few years involved in the
18 TTO's claim.

19 A Okay.

20 Q Have you seen this document before,
21 please?

22 A Not that I recall.

23 Q Okay.

24 A It's possible.

1 Q Are those entries included in the
2 TTO's claim in this case or you don't know?

3 A I don't know.

4 Q Do you see on TTO Exhibit No. 12,
5 which contains the amount that TTO is seeking to
6 recover in this case on this issue -- do you see
7 that there are a number of descriptions for
8 "Business Services, Legal Services" listed in the
9 "Description" column?

10 A I do.

11 Q Do you know why those exist?

12 A I do not.

13 Q Do you know what type of work
14 William F. Gurrie was performing when the
15 description placed in the general ledger for the
16 TTO was listed as "Business Services, Legal
17 Services"?

18 A I do not.

19 Do you want that back?

20 Q You can place it right here
21 (indicating).

22 A Okay.

1 Q And do you see that somebody went
2 through and apparently made some -- Oh, what is
3 this document?

4 A This would be the Statement of Fund
5 Accounts.

6 Q Which I know it says that at the top.

7 A Right.

8 Q What does that mean?

9 A It would identify any expenditures
10 that were made.

11 Q From which fund and on what basis?

12 A I cannot specifically tell that this
13 was distributed among funds. The only thing that I
14 can tell you is that it appears to only be the
15 education fund based on the account number at the
16 top of this document.

17 Q When you say "the education fund,"
18 that's Fund No. 100?

19 A No. That's Fund 1. "2520" would be
20 the business services. "317" would be audit
21 services up on the very top line where it says
22 "Account."

23 Q Oh, I see. Thank you. Got it.

24 A In addition to that, if you flip to

1 the next page where it says the low and high
2 parameters --

3 Q Yes.

4 A -- it shows that it was run from
5 July 1st, '93, to 10/31 of 1996 with a single
6 account that would be audit services in fiscal
7 services in the education fund.

8 Q What does the column that says "100"
9 mean?

10 A That means that that is the general
11 ledger that the expenditure was posted to.

12 Q And what is 100?

13 A The TTO.

14 Q Okay. And who made the selections
15 indicated by the arrows on the right?

16 A I don't recall. I don't think I know.

17 Q Thank you.

18 MR. HOFFMAN: We're at 12:20. Why
19 don't we check and see if your food is here? And
20 we'll knock it out.

21 THE WITNESS. Thank you. I appreciate
22 that.

1 (Whereupon, a lunch recess
2 was had from 12:20 p.m. to
3 12:58 p.m.)

4 BY MR. HOFFMAN:

5 Q Let us shift gears to the issue
6 involving the TTO's claim in this case for what it
7 views as unpaid pro rata expenses --

8 A Okay.

9 Q -- and LT's response that the parties
10 had agreed to have the TTO funds for business
11 functions of LT.

12 You're familiar with that issue;
13 yes?

14 A I am familiar with their claim.

15 Q Okay. And you're here to testify for
16 the TTO on that issue, correct?

17 A All right. Terrific.

18 MR. HOFFMAN: Let's mark this, please.

19 (Whereupon, TTO Deposition
20 Exhibit No. 15 was marked for
21 identification.)

22 (Whereupon, document
23 tendered.)
24

1 BY MR. HOFFMAN:

2 Q All right. TTO Deposition Exhibit
3 No. 15, Dr. Birkenmaier --

4 A All right.

5 Q -- is a recent article in which you
6 are quoted.

7 A Yes.

8 Q Have you seen this before?

9 A I have.

10 Q And it says here on the second page,
11 "TTO officials argue that the March 21, 2000 vote
12 is inconclusive and that the meaning of the word
13 'accept' is unclear."

14 Is that a correct statement --

15 A I'm sorry. Where are you?

16 Q I'm sorry, in the middle of the page.

17 A Middle of the page.

18 Q Do you see at the top of the page,
19 there's a reference to the March 21, 2000 meeting
20 of the Lyons TTO Board?

21 A I do, yes. Okay. So you're going
22 down to my quote?

23 Q It says up above that the three-member
24 board voted two to nothing to, quote, "accept the

1 proposal given to the Lyons Township Trustees of
2 Schools by Cook County High School District 204,"
3 end quote, according to the minutes of the meeting.

4 Do you see that?

5 A I do see that.

6 Q Okay. And you're familiar with that
7 meeting and the minutes from that meeting, aren't
8 you?

9 A I am.

10 Q Okay. This case was filed in 2013,
11 and you became the treasurer in October of 2013.

12 When did you first review the
13 minutes of the TTO board meeting from March 21,
14 2000?

15 A I don't recall the specific date.

16 Q Was it back around the time the
17 lawsuit was filed, or was it more recently, like in
18 the last few months?

19 A It hasn't been in the last few months,
20 but it wasn't initially when I was hired either.

21 Q Okay. So was it more like 2016?

22 A If I was going to guess, I would say
23 it was somewhere in my tenure, maybe 2015. I don't
24 know.

1 Q Okay.
 2 A I can't be specific.
 3 Q Okay. And who at the TTO was charged
 4 with the task of trying to go back and look at the
 5 minutes and other documents of the TTO to get a
 6 handle on this issue?
 7 A There were a variety of people. I
 8 would do some of the work, and I believe Lauralee
 9 did some of the work. Kelly has done some of the
 10 work. More recently, we've had other staff.
 11 Q Now, it says, "TTO officials argue
 12 that the March 21, 2000 vote is inconclusive."
 13 Is that a correct statement of
 14 the TTO's position?
 15 A Yes.
 16 Q And it also says, "and that the
 17 meeting of the word 'accept' is unclear."
 18 Is that a correct statement of
 19 the --
 20 A Yes.
 21 Q -- TTO's position?
 22 "Yes"?
 23 A Yes.
 24 Q Okay. And what is it about the

1 BY THE WITNESS:
 2 A Can you ask that question again? I'm
 3 not sure I'm following you clearly.
 4 BY MR. HOFFMAN:
 5 Q Okay. You understand that from 2000
 6 to 2012, the parties, meaning the TTO and LT, had a
 7 course of dealing by which the TTO provided
 8 pro rata invoices, and LT responded with a
 9 memorandum setting forth the costs of their
 10 business services and any net payment that might be
 11 due offsetting the second against the first?
 12 A I am aware of those documents.
 13 Q Yes. And are you aware of any time
 14 between 2000 and 2012 that anybody associated with
 15 the TTO ever said in words or substance to LT, "We
 16 do not accept this statement of the cost of your
 17 business services, and we won't pay it"?
 18 A I have no knowledge of that.
 19 Q Does the course of dealing of the
 20 parties in any way influence how you look at the
 21 March 21st, 2000 minutes and attempt to decide what
 22 they mean?
 23 MR. KALTENBACH: Same objection.
 24 You can answer, Dr. Birkenmaier.

1 March 21, 2000 vote that the TTO believes to be
 2 inconclusive?
 3 A Okay. There's no documentation that
 4 is set forth in an intergovernmental agreement or
 5 any sort of formal agreement. There is no action
 6 that was taken by the LT Board of Education.
 7 The specific minutes say
 8 "accept," which can have multiple meanings as
 9 opposed to a more definitive use of the word
 10 "approve."
 11 In addition to that, the minutes
 12 also reflect that there were additional questions
 13 that needed to be answered and issues that had to
 14 be researched.
 15 Q Does the parties' 12-year course of
 16 dealing with respect to the payment for the
 17 TTO's -- the TTO's payment of LT's business
 18 expenses have any impact on your view as to the way
 19 in which the March 21, 2000 meeting minutes should
 20 be interpreted?
 21 MR. KALTENBACH: I'll object to the
 22 extent it may call for a legal conclusion.
 23 But you can answer,
 24 Dr. Birkenmaier.

1 BY THE WITNESS:
 2 A No.
 3 BY MR. HOFFMAN:
 4 Q Why not?
 5 A Again, the word "accept" doesn't
 6 indicate to me that it was a conclusive action.
 7 Q Okay. And it would have to use the
 8 word "approve" in order to be conclusive to you,
 9 correct?
 10 A That would be the appropriate
 11 practice, yes.
 12 Q Okay. Why would -- When I depose
 13 Mr. Theissen, he said it was his view that "accept"
 14 meant "acknowledge the receipt of."
 15 Are you aware of that testimony?
 16 A I'm not aware of his testimony.
 17 Q Are you aware that it is
 18 Mr. Theissen's position that the word "accept" as
 19 used in the March 21st, 2000 minutes means that the
 20 TTO was acknowledging the receipt of a proposal?
 21 A Yes. I'm aware of that.
 22 Q Is that the TTO's position or just
 23 Mr. Theissen's?
 24 A I believe it's the TTO's position.

1 Q Okay. And are you aware of any other
2 instance at any time between 2000 and 2012 that the
3 trustees of the TTO ever held a vote on whether or
4 not they should acknowledge the receipt of a
5 proposal?

6 A Not to my knowledge.

7 Q Wouldn't that seem a little strange to
8 vote two to nothing to acknowledge the receipt of
9 something that they already had?

10 A Are you asking for my opinion?

11 Q Yes.

12 A No.

13 Q Why do you think that's not unusual?

14 A I think that, oftentimes, you can take
15 a concept and you can follow through and realize
16 that it's not a good concept and just abandon the
17 pursuit.

18 Q Okay. And in this particular
19 instance, what evidence do you have, if any, that
20 the TTO decided not to pursue this agreement with
21 LT and abandoned it or didn't think it was a good
22 agreement, as you just said?

23 A Well, I think there's multiple things
24 that occurred. No. 1, the things that were

1 pro rata bills that went out to all of the
2 districts.

3 Q Was the amounts that the TTO paid for
4 LT's business services included within the TTO's
5 expenses?

6 A Not to my knowledge; there were no
7 payments to LT for services.

8 Q How do you know that they weren't
9 included?

10 A Because when you would receive the
11 pro rata bill, it wasn't -- every year, it was
12 consistent. There was no indication -- and since
13 I've been there, I've seen that there was no
14 evidence where those TTO costs would have been
15 added on top of.

16 Q You went back and looked at the
17 pro rata files, the files at the TTO relating to
18 receipt of payments for the pro rata expenses,
19 right?

20 A Yes.

21 Q And you saw that, in some instances,
22 the TTO had acknowledged receipt of partial payment
23 and checked off District 204's partial payment or
24 net payment in some of the years that we're talking

1 identified in that set of minutes, meaning
2 follow-up with the workers' comp issue, insurance
3 issues, employee evaluations, the fact that the
4 pro rata invoices to all of the districts on an
5 annual basis did not include any of the costs that
6 LT was proposing be absorbed into the TTO
7 operation; I think all of those factors --

8 Q What do you mean by the last one you
9 just said?

10 A The letter from Lisa Beckwith
11 indicated that they were proposing that they
12 would -- that the TTO would pay for the cost of
13 business service operations.

14 Q Right. And --

15 A And there's no evidence that that was
16 ever undertaken at the TTO.

17 Q What do you mean "undertaken," that
18 there never an actual --

19 A There was never any --

20 Q -- payment made?

21 A There was no payment made and the
22 cost, if it had been a cost to the TTO, would have
23 been reflected in the TTO expenditures and,
24 therefore, would have been reflected in the

1 about

2 You did see that, correct?

3 A I'm familiar with one year.

4 Q Okay.

5 A The very first year, I think I recall
6 that. I believe it was 1999.

7 Q Do you recall a year in which -- The
8 first year --

9 A Or maybe 2000.

10 Q -- of this agreement is 2000.

11 A Okay, perhaps.

12 Q And what did you see in that respect?

13 A I saw that there was a partial payment
14 of about \$59,000.

15 Q And you saw that it was checked off by
16 the TTO?

17 A As received?

18 Q Well, what do you -- There was a
19 checkmark next to it?

20 A I mean, it was listed that it was
21 received and that it was paid, and it was logged as
22 paid.

23 Q Do you see any year in which someone
24 wrote something like "Bob said it was okay" --

1 A **I have not.**
 2 Q -- where there was no payment?
 3 A **I have not.**
 4 Q If someone made a notation like that,
 5 what would that mean to you? I'll show it to you
 6 later.
 7 A **I don't know what it would mean.**
 8 Q Okay. Did you read the testimony
 9 taken in this case of Judge Hartigan, who was a
 10 trustee and who voted at the March 21st, 2000 board
 11 meeting?
 12 A **I think -- I believe I saw that.**
 13 Q Okay. And what did you -- What, to
 14 your understanding, did Mr. -- or actually, I
 15 should say "Judge Hartigan" say?
 16 A **That I would need to see the**
 17 **documentation. I don't recall that specifically.**
 18 Q Did it have any significance to you in
 19 terms of what the trustee who voted in favor of
 20 that said happened at the meeting?
 21 A **Based on my recollection of what I saw**
 22 **in the minutes, but not in the transcript, it**
 23 **indicated to me that there were follow-up things**
 24 **that needed to be taken care of and researched.**

1 Q Okay. But I'm talking about the
 2 transcript of his testimony.
 3 What did --
 4 A **You would have to show me that**
 5 **transcript. I'm sorry. I don't recall it.**
 6 Q Sure. It's Theissen Exhibit 7.
 7 (Whereupon, Theissen Exhibit
 8 No. 7, previously marked,
 9 was tendered to the witness.)
 10 BY THE WITNESS:
 11 A **Okay. Thank you.**
 12 BY MR. HOFFMAN:
 13 Q So would that -- So given that he was
 14 the trustee of the TTO and given that you read his
 15 testimony -- Right?
 16 A **I didn't read it. I kind of --**
 17 Q Did your lawyer show --
 18 A **-- have seen --**
 19 Q -- you part of it?
 20 A **Parts of it, yes.**
 21 Q So with that, what's your
 22 understanding based on your review of what your
 23 former trustee said about that meeting?
 24 A **I would need some help referring to**

1 that.
 2 Can you help me with where to
 3 find that?
 4 Q Go ahead. Do your best.
 5 You'd have to read the whole
 6 thing in order to see what he said?
 7 A **No, no, no. I'm looking for -- You're**
 8 **asking me about the March 20th action?**
 9 Q You are asserting a claim against --
 10 You, the TTO, is asserting a claim against LT for
 11 millions of dollars --
 12 A **Yes.**
 13 Q -- relating to this issue --
 14 A **Yes.**
 15 Q -- right?
 16 A **Yes.**
 17 Q And I'm asking you whether your
 18 position is in any way affected by the testimony of
 19 the trustee who voted at that meeting along with
 20 another trustee who's dead.
 21 So the sole living trustee who
 22 voted at that critical meeting, I'm asking you
 23 whether your position is impacted in any way by
 24 what he said at the deposition?

1 A **And I will be happy to answer that as**
 2 **soon as I can take a look and see what the**
 3 **deposition says because I do not recall the details**
 4 **of that.**
 5 Q So if you don't know what the details
 6 are, how can you -- how could this have any impact
 7 on your position?
 8 MR. KALTENBACH: Objection.
 9 Argumentative.
 10 BY THE WITNESS:
 11 A **You asked me based --**
 12 BY MR. HOFFMAN:
 13 Q No, no, no. I'm asking --
 14 A **-- on the testimony --**
 15 MR. HOFFMAN: Fine.
 16 BY MR. HOFFMAN:
 17 Q Go ahead.
 18 A **You asked me based on the testimony --**
 19 Q Yes.
 20 A **-- of Judge Hartigan, and I'm saying**
 21 **to you I --**
 22 Q No. That's not what I asked you.
 23 A **I'm sorry.**
 24 Q Let me ask you a better --

1 A **I must have misunderstood.**
 2 Q Let me ask you a better, clearer
 3 question.
 4 A **Okay.**
 5 Q We know that Judge Hartigan is the
 6 only living trustee who voted at that 2000 meeting.
 7 A **Okay.**
 8 Q Right?
 9 A **I don't know, but you told me. I**
 10 **believe you.**
 11 Q Well, Joseph Nekola is the other one,
 12 and he's dead.
 13 A **Okay.**
 14 Q You don't know that Joseph Nekola is
 15 dead?
 16 A **I never knew Joseph Nekola. I do know**
 17 **he's dead.**
 18 Q Well, I never knew Joseph Nekola
 19 either, but I did an internet search, and I found
 20 out that he's dead.
 21 A **Okay.**
 22 Q Are you telling me that you, until
 23 this moment, were not aware --
 24 A **I have heard that he --**

1 Q -- that Joseph Nekola was dead?
 2 A **I've heard that he has passed.**
 3 Q Okay. Well, those reports are
 4 accurate.
 5 A **Okay. Thank you.**
 6 Q So the only person at that meeting who
 7 voted who's alive is Russell Hartigan.
 8 A **Okay.**
 9 Q And he testified in this case.
 10 A **Okay.**
 11 Q And I'm asking you whether the TTO's
 12 position on what happened at that meeting is in any
 13 way impacted or affected by his testimony in this
 14 case? That's a "yes" or "no" question. I'm not
 15 asking what he's testified to.
 16 I'm asking whether your position
 17 is affected, guided, shaped, or in any way based on
 18 or impacted by his testimony?
 19 MR. KALTENBACH: I'm going to object.
 20 I think that level of detail may be beyond the
 21 scope.
 22 But you can answer the question,
 23 Dr. Birkenmaier.
 24

1 BY THE WITNESS:
 2 A **I am not driven by my perspective on**
 3 **this based on Judge Hartigan's testimony or**
 4 **interpretation.**
 5 BY MR. HOFFMAN:
 6 Q Why is that?
 7 A **Because the evidence that I've seen**
 8 **and the claim that we've put forward, I believe**
 9 **that there's enough substance to support the**
 10 **current interpretation of my trustees and myself.**
 11 Q So in your view, it doesn't matter
 12 what Judge Hartigan said about the meeting; you've
 13 got other facts and information that you view as
 14 critical?
 15 A **I don't know what Judge Hartigan said.**
 16 **That's why I asked to see the testimony.**
 17 Q Let me go back to TTO Exhibit No. 15,
 18 please, Dr. Birkenmaier.
 19 A **Okay.**
 20 Q And on Page 2 in the middle, you're
 21 quoted as saying, quote, "The language that our
 22 board has in their minutes says that the proposal
 23 they presented was accepted, so the interpretation
 24 of the word accept is what is at crux of the

1 disagreement, I believe," quote.
 2 Is that an accurate quotation
 3 from you? Did you say that?
 4 A **Yes.**
 5 Q Okay. And we've already said that the
 6 TTO believes that the meaning of word "accept" is
 7 unclear.
 8 So what are the two different
 9 interpretations, or maybe there are more than two
 10 interpretations, of what you believe the word
 11 "accept" could mean in this context?
 12 A **You're asking for my opinion on the**
 13 **word "accept," what I believe the meanings could**
 14 **be?**
 15 Q I'm not asking for your opinion. I'm
 16 not asking for a "could be."
 17 A **Okay.**
 18 Q I'm asking for the TTO's position as
 19 to the meaning of the word "accept," and you've
 20 testified that the TTO believes that the meaning of
 21 word "accept" is unclear and that the word
 22 "approved" would be --
 23 A **Sure.**
 24 Q -- clearer, but, because it's

1 "accept," it's unclear. And when I see "unclear,"
 2 I think that means it could be subject to different
 3 meanings --
 4 A Yes.
 5 Q -- right?
 6 MR. KALTENBACH: Okay. I was going to
 7 say I'm going to object. I think that was a long
 8 question, and I'm not sure if it was compound or
 9 not, but --
 10 BY MR. HOFFMAN:
 11 Q So yes?
 12 MR. KALTENBACH: -- I think the
 13 witness seemed to understand it.
 14 MR. HOFFMAN: Did she answer?
 15 THE REPORTER: Yes.
 16 MR. HOFFMAN: Okay.
 17 MR. KALTENBACH: That's fine.
 18 BY MR. HOFFMAN:
 19 Q Terrific.
 20 And so what are the different --
 21 A I'm sorry. I answered "yes" to the
 22 question of multiple meanings.
 23 Q Yes.
 24 A Yes. Okay.

1 Q And so what are those multiple
 2 meanings in the TTO's view as to the word "accept"
 3 as used in the 2000 minutes?
 4 A It means to receive. This is my
 5 personal understanding. The other meanings could
 6 be to be resigned to, to be tolerant. I mean, to
 7 accept, in this particular context, I would say it
 8 means to receive.
 9 If it was intended to say "I
 10 approve," we specifically, as a best practice, use
 11 the word "as approved" when there is an action that
 12 is endorsed and followed.
 13 Q So when you say "it's a best practice"
 14 and "we" using of the word "approved," what do you
 15 mean?
 16 A When I say "it's a best practice," I
 17 believe that across the board as an administrator,
 18 as a superintendant, as a business manager, if a
 19 board approves something, then I know I have their
 20 endorsement to move forward on it.
 21 If we accept something, that may
 22 just mean that we're taking it under consideration.
 23 We're receiving something.
 24 Q And you've never seen any instance in

1 any other minutes of the TTO board in which they
 2 used the word or phrase "accept" or some form of
 3 that word, correct?
 4 A Not that I recall.
 5 Q Okay. Let me show you a document that
 6 previously was marked as Theissen Exhibit No. 12.
 7 (Whereupon, Theissen Exhibit
 8 No. 12, previously marked,
 9 was tendered to the witness.)
 10 BY MR. HOFFMAN:
 11 Q It's an August 19th letter from Healy
 12 to Beckwith.
 13 Have you seen that document
 14 before?
 15 A Yes.
 16 Q Okay. And so you're familiar with the
 17 five proposals that Healy laid out in this letter?
 18 A Yes.
 19 Q What is your understanding as to why
 20 Healy was making these proposals?
 21 A I believe that he was laying out
 22 responses and options to the request from the high
 23 school.
 24 Q What is that belief based on?

1 A The way that they're laid out and the
 2 variety of options that are provided; and it also
 3 says based on the understanding of the board's
 4 concerns.
 5 Q Okay. You don't have any information
 6 about this letter other than what you read in the
 7 letter, correct?
 8 A Correct.
 9 Q You've never spoken with Lisa Beckwith
 10 or with Bob Healy about this letter, have you?
 11 A No.
 12 Q Did you read Dr. Beckwith's testimony
 13 given in this case?
 14 A No.
 15 Q And is there a reason you thought her
 16 testimony -- Is there a reason you didn't read her
 17 testimony? Did you think it wasn't important?
 18 A It wasn't given to me as an
 19 opportunity to read it.
 20 Q Okay. And you see there are five
 21 proposals laid out?
 22 A I do.
 23 Q Based on the information that's been
 24 produced in this case, do you have any

1 understanding as to which of the proposals the
2 parties focused their efforts on following the
3 issuance of this letter?

4 **A When you say "parties," I'm assuming**
5 **that there might be different focuses and**
6 **approaches on the information that's laid out.**

7 **Q Let me ask you a better question.**

8 **A Okay.**

9 **Q Based on the five proposals listed in**
10 **the August 18, 1999 letter, and all of the**
11 **information that's available to us in this case to**
12 **look at what happened in this time period, do**
13 **you -- what is your understanding as to which of**
14 **the five proposals the TTO and LT moved forward**
15 **with in some manner?**

16 **MR. KALTENBACH: I object as to**
17 **foundation and the form of the question.**

18 **You can answer.**

19 **BY MR. HOFFMAN:**

20 **Q You can answer.**

21 **A Okay. I would not indicate that any**
22 **of these were necessarily followed.**

23 **Q With respect to Proposal No. 2, isn't**
24 **that the proposal that led to the issuance of**

1 discussing Proposal No. 2, the funding by the TTO
2 of some of the district functions?

3 **A If you're asking what I believe --**

4 **Q Yes.**

5 **A -- I believe that 204 chose to pursue**
6 **Proposal No. 2. I don't know that that was**
7 **necessarily accepted by anybody else other than**
8 **204.**

9 **Q Okay. And when and how did 204 accept**
10 **that proposal?**

11 **A I have no idea. I haven't seen any**
12 **evidence that they did have any formal action to**
13 **accept that.**

14 **Q Is it your position on the June 2000**
15 **LT board minutes at which the LT board was**
16 **presented with a proposal of LT on this issue -- is**
17 **your position that that did not constitute an**
18 **acceptance by the LT board?**

19 **A I couldn't speak to that.**

20 **Q Why can't you speak to that?**

21 **A I don't know what they were thinking.**

22 **Q Okay. So would it be fair to say that**
23 **LT would be in a better position to tell you what**
24 **their board did in 2000 with respect to this issue?**

1 Dr. Beckwith's February 29th, 2000 memorandum
2 listing the positions involved and the business
3 functions that she proposed the TTO would assume?

4 **MR. KALTENBACH: Same objection.**

5 **BY THE WITNESS:**

6 **A I was going to say, can you ask me**
7 **that question again? I'm not sure I'm following**
8 **you.**

9 **BY MR. HOFFMAN:**

10 **Q Sure. You're familiar with the**
11 **subsequent -- You know that there were subsequent**
12 **meeting between LT and the TTO and that there was a**
13 **memorandum that Lisa Beckwith sent to Bob Healy in**
14 **February of 2000 listing various positions and a**
15 **cost associated with the business functions --**

16 **A Okay.**

17 **Q -- right?**

18 **A Yes.**

19 **Q "Yes"?**

20 **A Yes.**

21 **Q Okay. And so whether or not you feel**
22 **that there was a final agreement reached, and it**
23 **seems like you don't, will you agree that LT and**
24 **the TTO, after the date of this letter, were**

1 **A Ask me that question again, please.**

2 **Q So is it fair to say that LT and the**
3 **people who were there at the time, like Todd**
4 **Shapiro, who was the president of the board, and**
5 **Lisa Beckwith, who was the business manager, would**
6 **be in a better position to tell us what action LT's**
7 **board took in June of 2000 with respect to the**
8 **business functions agreement?**

9 **MR. KALTENBACH: Objection as to form**
10 **and foundation.**

11 **BY MR. HOFFMAN:**

12 **Q You can answer.**

13 **MR. KALTENBACH: You can answer.**

14 **BY THE WITNESS:**

15 **A I'm not really sure how to answer**
16 **that. I mean, I think that they could tell me that**
17 **they accepted, as you said, a proposal to provide**
18 **this cost information to the TTO. Whether that**
19 **constituted an approval of an agreement, I would**
20 **not draw that conclusion.**

21 **BY MR. HOFFMAN:**

22 **Q Why not?**

23 **A Because there's no formal**
24 **documentation that says that there was an agreement**

1 or that it had been approved by the LT board.
 2 Q Okay. Have you read the testimony of
 3 Todd Shapiro, the president of LT's board, that was
 4 taken in this case?
 5 A I have not.
 6 Q Was that because no one gave it to you
 7 to read?
 8 A Correct.
 9 Q Did you ever -- Even though nobody's
 10 given you the documents, given that you're the
 11 representative of the TTO, did you ever ask to get
 12 the testimony that was taken in this case by key
 13 witnesses?
 14 A No.
 15 Q Why not?
 16 A I don't believe that that's my place
 17 to be doing that. I think that that's the
 18 attorney's role.
 19 Q Okay.
 20 (Whereupon, TTO Deposition
 21 Exhibit No. 16 was marked for
 22 identification.)
 23 BY MR. HOFFMAN:
 24 Q Doctor, I'm handing you TTO Deposition

1 Exhibit No. 16.
 2 (Whereupon, document
 3 tendered.)
 4 BY THE WITNESS:
 5 A Okay.
 6 BY MR. HOFFMAN:
 7 Q This was part of the production we
 8 received from the TTO, and these contain excerpts
 9 from a series of what looks like manila files for
 10 pro rata --
 11 A Okay.
 12 Q -- for the various districts.
 13 Is that what this document is?
 14 A It looks like it to me.
 15 Q Okay.
 16 A The first two state that's what it is.
 17 Q Right. We talked about this a little
 18 bit earlier.
 19 You see that there are a series
 20 of checkmarks for the 1999 pro rata payments on the
 21 first page?
 22 A I see that.
 23 Q And then on the second page, you see
 24 there's a listing of the net payment of about

1 \$39,000 for District 204?
 2 A I do see that.
 3 Q Okay. And then also included in that
 4 file was the May 29th, 2001 letter from Healy to
 5 Dennis Kelly with the amount of pro rata, as well
 6 as the February 29th, 2000 memo from Lisa Beckwith
 7 to Bob Healy on the payment of LT's business
 8 functions.
 9 Do you see that?
 10 A I see that.
 11 Q Okay. Can you tell me why the 2001
 12 letter and the February 29th, 2000 letter were in
 13 the pro rata -- Strike that question.
 14 Can you tell me why
 15 Lisa Beckwith's February 29, 2000 memo was
 16 contained in the TTO's pro rata file for the year
 17 2000?
 18 A I cannot.
 19 Q Did you ever talk to anybody at the
 20 TTO regarding that issue?
 21 A Of why it was kept there?
 22 Q Correct.
 23 A No.
 24 Q Well, your position is that there was

1 no agreement to -- for the TTO to pay LT's business
 2 function costs, right?
 3 A Yes.
 4 Q Okay. And so why then would this
 5 written memorandum on that issue be included within
 6 the pro rata file, which also reflects a net
 7 payment to the TTO?
 8 A Not only do I not know why it would be
 9 there, I would not know when it would have been put
 10 in there.
 11 Q So are you testifying that this --
 12 that somebody might have snuck back into this file
 13 years later and put the February 29th, 2000 memo in
 14 the file?
 15 A No. I'm not indicating that at all.
 16 Somebody may have just included it in there as part
 17 of the evidence of what occurred that year.
 18 Q Okay. Are you aware of -- Have you
 19 ever seen a single shred of paper to suggest that
 20 anybody at the TTO ever contacted LT and said, "We
 21 didn't get full payment of the 2000 pro rata. You
 22 can't make a net payment. You have to give us the
 23 entire amount of the pro rata expense?"
 24 A I have not seen anything other than

1 this letter that you're showing me that says the
2 District's share is \$165,000.

3 Q Right. But --

4 A I haven't seen any other documentation
5 that says that --

6 Q Do you have any understanding as to
7 why, through the year 2012, the TTO never, ever
8 disputed the net payment or the netting out of the
9 two things we're talking about, the pro rata
10 expenses and the cost of business functions?

11 A No.

12 Q Is that in any way significant to you,
13 that that course of --

14 A That I don't have knowledge of why
15 that occurred?

16 Q Yes. I mean, don't you think that
17 12-year course of dealing has some significance
18 here?

19 A No, I don't. I mean, that's -- What
20 their operational practices are are not my current
21 concerns.

22 Q So the way in which the TTO did things
23 in 2000 and 2001 are not important for you in
24 deciding the way things should have been done in

1 A Okay.

2 Q -- that there was a memorandum for
3 that year, for 2010, from LT to the TTO for the
4 cost of business functions which wiped that out
5 through an offset, right? You understand that
6 that's what happened in 2010?

7 A I don't know that that's an offset.

8 Q Well, you're aware that -- you're
9 aware -- Let me start over. Let's see if we can
10 make this more understandable.

11 You're aware that, for 2010, the
12 TTO sent a pro rata expense bill to LT in the
13 amount of about \$215,000, right?

14 A Based on what you're showing me here,
15 yes.

16 Q Well, based on anything, isn't that
17 what happened? Don't you know what happened --

18 MR. KALTENBACH: Hold on. Compound --
19 BY MR. HOFFMAN:

20 Q --in 2010?

21 MR. KALTENBACH: Compound and
22 argumentative.

23 BY MR. HOFFMAN:

24 Q You know what the facts are in this

1 2000 and 2001, correct?

2 A What I am saying is that I think that
3 the people who were responsible for the operation
4 made the decisions about what was relevant and what
5 wasn't, and I'm not in a position to second-guess
6 their actions or intentions.

7 Q And those are people at the TTO we're
8 talking about, right?

9 A Yes.

10 Q Let's take a look at the second to
11 last page, and this is in the -- I'm sorry. Strike
12 that.

13 Let's take a look at the pro rata
14 folder -- Yeah. Let's look at the second to last
15 page, which has the pro rata billing folder for
16 2010.

17 A Okay.

18 Q And you see there's a statement or
19 there's a listing in a row for District 204.
20 There's amounts stated for \$215,973.48, correct?

21 A I see that.

22 Q And you know that there was a billing
23 in the amount of about 215,000 for pro rata from
24 the TTO and --

1 case, correct?

2 A I know --

3 MR. KALTENBACH: Argumentative.

4 BY MR. HOFFMAN:

5 Q Correct?

6 MR. KALTENBACH: Same objection.

7 BY THE WITNESS:

8 A Yes.

9 BY MR. HOFFMAN:

10 Q Yes. So in 2010, the TTO sent a
11 pro rata bill of about 215,000, and then LT sent
12 one of its series of memos saying what the costs of
13 their business functions were in an amount that
14 equaled or exceeded the 215,000 amount, correct?

15 A If that's what you're telling me, yes.
16 I have -- Yes. Okay.

17 Q Well, do you need me to tell you that,
18 or do you not know?

19 A You're asking me to draw a conclusion
20 from a piece of paper that you gave me here.

21 Q No, no, no. I'm not asking about the
22 piece of paper.

23 A Okay.

24 Q I'm asking you, do you know what

1 happened in 2010 with respect to the pro rata
 2 expense billing --
 3 **A I would --**
 4 **Q -- as a matter of fact?**
 5 **A -- assume that they sent a memo, but**
 6 **I'm not seeing evidence of that.**
 7 **Q Well, you've seen a memo in each and**
 8 **every year from 2000 to 2012, correct?**
 9 **A I believe so.**
 10 **Q Right. There is one for every year?**
 11 **A Okay.**
 12 **Q Yes?**
 13 **A Okay.**
 14 **Q Okay. And so do you know what it**
 15 **means when we see on this document, TTO Deposition**
 16 **Exhibit 16, where there's a checkmark next to the**
 17 **amount of the pro rata billing and it says, "Bob**
 18 **said okay"? Do you know what that means?**
 19 **A No.**
 20 **Q Okay. Do you know who wrote that?**
 21 **A No.**
 22 **Q Do you know who Bob is?**
 23 **A I do.**
 24 **Q Would that be Bob Healy?**

1 **A Yes.**
 2 **Q Okay. At the time, in 2010, do you**
 3 **have any knowledge as to whether the TTO believed**
 4 **that it was owed \$215,000 by LT and that that**
 5 **amount had not been properly accounted for?**
 6 **A I want to break that down. I am aware**
 7 **that they billed two hundred fifteen and believed**
 8 **that they were owed that amount. I cannot attest**
 9 **to the other part of the question.**
 10 **Q Okay. So in terms of what the TTO did**
 11 **in 2010, not today here in this lawsuit, but in**
 12 **2010 --**
 13 **A Okay.**
 14 **Q -- have you ever seen any evidence to**
 15 **suggest that the TTO, in 2010, believed that it was**
 16 **due and owing \$215,000 without any respect to, you**
 17 **know, setoffs or anything like that?**
 18 **A The only evidence I have is this**
 19 **amount here that said, "You owe" -- "204 owes**
 20 **\$215,000." That's the only evidence I would have.**
 21 **Q Okay. And it also says, "Bob said**
 22 **okay."**
 23 **Do you know what Bob was saying**
 24 **"okay" to there?**

1 **A I do not.**
 2 **MR. HOFFMAN: Let's mark this.**
 3 **(Whereupon, TTO Deposition**
 4 **Exhibit No. 17 was marked for**
 5 **identification.)**
 6 **(Whereupon, document**
 7 **tendered.)**
 8 **BY MR. HOFFMAN:**
 9 **Q All right. This should be an easy**
 10 **one.**
 11 **Tell me what TTO Exhibit No. 17**
 12 **is, please.**
 13 **A This is a listing of the history of**
 14 **the pro rata billing to District 204 from fiscal**
 15 **year '96 through fiscal year '13, the amount that**
 16 **was billed, the amount that was paid, and any**
 17 **amount that is unpaid to date.**
 18 **Q Okay. And who prepared this document?**
 19 **A Kelly Bradshaw.**
 20 **Q And the \$2,628,807 million figure**
 21 **that's at the bottom of the "Receivable" column is**
 22 **the amount of money that the TTO is claiming it's**
 23 **owed in this lawsuit for this particular issue,**
 24 **correct?**

1 **A Through FY3.**
 2 **Q Right, correct. Through FY13. Yes?**
 3 **A Through FY13, yes.**
 4 **Q Okay.**
 5 **A It's been amended, I believe, since**
 6 **then with additional bills.**
 7 **Q Let's see about that. We're going to**
 8 **look at Bradshaw Exhibit No. 4, which is the**
 9 **amended complaint.**
 10 **(Whereupon, Bradshaw Exhibit**
 11 **No. 4, previously marked,**
 12 **was tendered to the witness.)**
 13 **BY MR. HOFFMAN:**
 14 **Q So I want you to take a look at that,**
 15 **and you can tell me what amount in this complaint,**
 16 **which is the current complaint that's on file for**
 17 **the TTO, the TTO is seeking to recover with respect**
 18 **to its pro rata expense billing.**
 19 **(Whereupon, witness perusing**
 20 **document.)**
 21 **BY MR. HOFFMAN:**
 22 **Q If it helps you, I'm looking at**
 23 **Paragraph 35.**
 24 **A Thank you.**

<p style="text-align: right;">Page 158</p> <p>1 Q You're welcome.</p> <p>2 (Whereupon, witness perusing</p> <p>3 document.)</p> <p>4 BY THE WITNESS:</p> <p>5 A Okay.</p> <p>6 MR. KALTENBACH: Just for the record,</p> <p>7 I think you said this is the complaint. This is</p> <p>8 the answer to the complaint, but --</p> <p>9 MR. HOFFMAN: It contains the</p> <p>10 complaint.</p> <p>11 MR. KALTENBACH: Just so there's not</p> <p>12 confusion later and we're trying to piece it</p> <p>13 together.</p> <p>14 BY THE WITNESS:</p> <p>15 A Okay. This says the years 2000</p> <p>16 through 2013.</p> <p>17 BY MR. HOFFMAN:</p> <p>18 Q Yep.</p> <p>19 A The numbers are the same.</p> <p>20 Q Right.</p> <p>21 A What I am saying to you is that, in</p> <p>22 addition, FY14 and FY15 would have been added to</p> <p>23 this amount since this document.</p> <p>24 Q Well, you said "to your claim." This</p>	<p style="text-align: right;">Page 160</p> <p>1 of your claim in this case.</p> <p>2 MR. KALTENBACH: I --</p> <p>3 MR. HOFFMAN: Am I wrong?</p> <p>4 MR. KALTENBACH: I don't think -- You</p> <p>5 know, I'd have to go back and check. I think this</p> <p>6 is our most recent complaint.</p> <p>7 MR. HOFFMAN: It is.</p> <p>8 MR. KALTENBACH: I don't think --</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. KALTENBACH: -- there was another</p> <p>11 one, so I don't think we are seeking recovery of</p> <p>12 the deficit amount from 204 as part of this</p> <p>13 pleading.</p> <p>14 MR. HOFFMAN: Okay.</p> <p>15 BY MR. HOFFMAN:</p> <p>16 Q Does your counsel's statement help to</p> <p>17 clarify your view of --</p> <p>18 A Yes.</p> <p>19 Q -- what it is that you're seeking in</p> <p>20 this case?</p> <p>21 A Yes.</p> <p>22 Q So TTO Deposition Exhibit No. 17 is a</p> <p>23 complete statement of the amounts that the TTO is</p> <p>24 seeking with respect to pro rata expenses at this</p>
<p style="text-align: right;">Page 159</p> <p>1 is the document that -- This document we're looking</p> <p>2 at, Bradshaw Exhibit No. 4 --</p> <p>3 A Okay.</p> <p>4 Q -- this is the claim of the TTO which</p> <p>5 is set forth in the context of our answer to it.</p> <p>6 And where in here is there any reference to the</p> <p>7 fiscal year 2014 or 2015 pro rata invoices? I know</p> <p>8 there's --</p> <p>9 A There's nothing in here.</p> <p>10 Q Excuse me.</p> <p>11 A Um-hmm.</p> <p>12 Q I know it's an open issue between the</p> <p>13 parties.</p> <p>14 A Okay.</p> <p>15 Q But I don't see it as part of the</p> <p>16 claim you made in this case.</p> <p>17 A Okay.</p> <p>18 Q And I want you to tell me if I'm</p> <p>19 wrong.</p> <p>20 A I believe that there was a filing</p> <p>21 after December of 2014, but I may be mistaken.</p> <p>22 MR. HOFFMAN: Okay. Barry, because</p> <p>23 this is an issue that involves pleadings, I don't</p> <p>24 see the 2014 or 2015 pro rata billing expenses part</p>	<p style="text-align: right;">Page 161</p> <p>1 time in this case?</p> <p>2 A Okay.</p> <p>3 Q Yes?</p> <p>4 A Yes.</p> <p>5 Q Okay. Terrific.</p> <p>6 Let's take a look at the fiscal</p> <p>7 year 2006.</p> <p>8 A On this sheet?</p> <p>9 Q On Exhibit No. 17.</p> <p>10 A Okay.</p> <p>11 Q And what does it say there on the far</p> <p>12 right-hand corner under the column "Invoice Copy"?</p> <p>13 A "Missing our bill."</p> <p>14 Q Okay. And what does that mean?</p> <p>15 A It means they were not able to find</p> <p>16 the paper copy.</p> <p>17 Q Okay. Do you know why that is?</p> <p>18 A I do not.</p> <p>19 Q Is that typical of the challenges that</p> <p>20 you've faced in terms of going back and trying to</p> <p>21 get records from the old days?</p> <p>22 A I wouldn't say that it's typical but,</p> <p>23 occasionally, it will happen.</p> <p>24 Do you want this one back?</p>

1 (Whereupon, document
2 tendered.)
3 BY MR. HOFFMAN:
4 Q Thank you very much.
5 (Whereupon, Conway Exhibit
6 No. 3, previously marked,
7 was tendered to the witness.)
8 BY MR. HOFFMAN:
9 Q So Conway Exhibit No. 3 is a
10 collection of memoranda. I'm not going to ask you
11 a lot of detailed questions about it.
12 A Okay.
13 Q But these are -- Do you remember we
14 talked from memos going from LT to the TTO from
15 2000 to 2012 listing out the business functions
16 expenses?
17 A Yes.
18 Q Okay. Have you seen these memorandum
19 before, which are collected in Conway Exhibit
20 No. 3?
21 A I have seen many. I don't know that
22 I've seen all, but, yes; I am -- You're talking
23 about this cover (indicating)?
24 Q I'm not talking about the cover.

1 A Okay.
2 Q The cover is the first memorandum.
3 You've seen this before, February 29th of 2000.
4 A I have.
5 Q This is the document that was attached
6 to the TTO's minutes dated March 21st, 2000,
7 correct?
8 A Yes.
9 Q This is the proposal that was --
10 A Yes.
11 Q -- not only discussed at the meeting,
12 but actually in the hands of the trustees?
13 A Yes.
14 Q Okay. And this was also the
15 memorandum that was attached to the June 2000 board
16 minutes for LT, correct?
17 A I don't know about LT, but I would say
18 yes, that this is -- I know that this was part of
19 the TTO's minutes.
20 Q Okay. So you don't know whether or
21 not LT's board, in June of 2000, was presented with
22 a copy of this February 29th, 2000 memorandum?
23 A I haven't -- I have not seen the
24 minutes.

1 Q Oh, you haven't?
2 A I don't -- No.
3 Q Okay.
4 A I don't think I have.
5 MR. KALTENBACH: I can't help you.
6 BY THE WITNESS:
7 A I don't think I have. I may have. I
8 don't recall that.
9 BY MR. HOFFMAN:
10 Q And so what you have here is, if you
11 turn the page, there's a 2000 memo, there's a 2001
12 memo --
13 A Yes.
14 Q -- there's a 2002 memo --
15 A Yes.
16 Q -- and so on and so forth all the way
17 for each and every year --
18 A Okay.
19 Q -- through 2012? Yes?
20 A All right. Yes.
21 Q Have you seen these documents before?
22 A I have -- Like I said, I've seen some
23 of these. I don't necessarily recall seeing all of
24 these. I don't recall seeing, like, invoices. I'm

1 not sure that I've seen every memo --
2 Q Okay. But you --
3 A -- that's come through, but I'm
4 familiar with the format.
5 Q Have you ever seen any document in the
6 TTO's files through the 2012 year in which anyone
7 at the TTO ever took any issue with the memorandums
8 in Conway Exhibit No. 3?
9 A Have I ever seen any memos? Yes.
10 Have they taken issue with it? I'm not sure what
11 you mean.
12 Q What memos are you talking about?
13 A You asked me if I've seen these --
14 Q No, no. I didn't ask you that. Let
15 me ask you a better question --
16 A Okay.
17 Q -- because you weren't answering my
18 question.
19 A Okay.
20 Q In the files of the TTO --
21 A Yes?
22 Q -- through the year 2012 --
23 A Yes?
24 Q -- have you ever seen any documents in

1 which anyone at the TTO took issue with these LT
 2 memos which are collected in Conway Exhibit No. 3?
 3 A When you say "take issue with," are
 4 you saying refuting, accepting, or --
 5 Q Either claiming that they wouldn't pay
 6 these amounts, complaining about the amounts,
 7 anything -- anything responding to these
 8 memorandum?
 9 A No.
 10 Q Okay. Terrific.
 11 A Okay.
 12 MR. KALTENBACH: Do you need a --
 13 THE WITNESS: I'm sorry.
 14 BY MR. HOFFMAN:
 15 Q All right. I am moving on to another
 16 subject, so if you want to take a minute --
 17 A No. I'm fine. Thank you.
 18 MR. KALTENBACH: I'm fine too.
 19 MR. HOFFMAN: Are you good?
 20 MR. KALTENBACH: I didn't make a note
 21 of when we started after lunch.
 22 MR. HOFFMAN: I did. 12:58.
 23 MR. KALTENBACH: Okay. Fair enough.
 24 MR. HOFFMAN: So we've been --

1 THE WITNESS: I'm sorry.
 2 MR. HOFFMAN: -- going --
 3 THE WITNESS: 40 minutes, 50 minutes.
 4 MR. HOFFMAN: Okay. Let's roll.
 5 Sounds good.
 6 BY MR. HOFFMAN:
 7 Q Let's talk a little bit about the
 8 claims in the complaint, and I'm going to hand you
 9 back Bradshaw Exhibit No. 4, which is --
 10 A Okay.
 11 (Whereupon, document
 12 tendered.)
 13 BY MR. HOFFMAN:
 14 Q -- LT's answer and affirmative
 15 defenses to the claim. But as you can tell, the
 16 answers are set out in bold, and the claim that the
 17 TTO makes is in regular face. Yes?
 18 A I see that, yes.
 19 Q Okay. Terrific.
 20 The TTO asked for a declaratory
 21 judgment, as you can see on Page 16 where it says,
 22 "The Township Trustees seek a declaratory
 23 judgment." Yes?
 24 A I'm not quite --

1 (Whereupon, witness perusing
 2 document.)
 3 BY THE WITNESS:
 4 A Yes. Got it.
 5 BY MR. HOFFMAN:
 6 Q I do understand you're not a lawyer,
 7 and so I am not asking you for a legal conclusion,
 8 but I'm trying to get information about the claim
 9 that the TTO is asserting on several issues and
 10 what it's based on.
 11 A Okay.
 12 Q But it may be the answer is, "I don't
 13 know. Talk to my lawyer." And if that's the
 14 answer, you can give me that answer. Fair enough?
 15 A Sure.
 16 Q Okay. So what is the legal basis for
 17 the TTO's claim for the return of approximately
 18 \$500,000 of audit fee payments?
 19 MR. KALTENBACH: I will object as it's
 20 calling for a legal conclusion.
 21 Subject to that, Dr. Birkenmaier,
 22 you can answer.
 23 MR. HOFFMAN: It doesn't call for a
 24 legal conclusion. I asked her if she knows what

1 legal claim is being made. I mean, something like
 2 breach of contract or fraud or some legal theory
 3 that would support it because, to me, it's unclear.
 4 BY MR. HOFFMAN:
 5 Q So I'm asking you, do you know?
 6 A I --
 7 MR. KALTENBACH: Hold on.
 8 I think it's -- Objection.
 9 Compound question and calls for a legal conclusion.
 10 You can answer.
 11 MR. HOFFMAN: Fine.
 12 BY THE WITNESS:
 13 A I'm not aware of what legal theory
 14 would apply.
 15 BY MR. HOFFMAN:
 16 Q Okay. And if I asked you the same
 17 question for the \$1.5 million claim for repayment
 18 of interest income, would your answer be the same?
 19 A Yes, it would.
 20 Q And if I asked you the same question
 21 regarding the claim for the payment of \$2.6 million
 22 in pro rata expenses, would your answer be the
 23 same?
 24 A Yes. I have no idea what legal theory

1 would apply.

2 Q Okay. That makes two of us.

3 Let's turn to Paragraph 44 of
4 this complaint and answer. It says, "In fiscal
5 years 1995 through 2012, the Treasurer erroneously
6 allocated \$1,574,636.77 in interest on investments
7 to District 204."

8 Do you see that?

9 A I do.

10 Q Okay. How did that happen?

11 A Based on my understanding, there are
12 emails that indicate that additional funds were
13 given to District 204 outside of the regular
14 quarterly interest distribution.

15 Q What are the dates of those
16 invoices -- emails, rather?

17 A I'm sorry. I don't recall that
18 without referring to the emails.

19 Q Okay. Well, we can look at them.

20 A Sure.

21 Q Your lawyer has used with Bob Healy a
22 back-and-forth that took place in 2006 between
23 Healy and Sellers.

24 Does that help you to remember

1 there were journal entries that were outside of the
2 norm of the quarterly distribution that indicate
3 that that money would have been posted to their
4 account.

5 Q Do you have any understanding as to
6 how or why that took place?

7 A I don't.

8 Q Does the TTO have any understanding as
9 to how or why the treasurer erroneously allocated
10 one and a half million dollars plus in interest on
11 investments to District 204?

12 A Not to my knowledge.

13 MR. KALTENBACH: There's not a
14 question pending, so if you want to take a minute
15 to chat, we can do that.

16 THE WITNESS: Can I ask a question?

17 BY MR. HOFFMAN:

18 Q You want to step outside with your
19 lawyer?

20 A Yes, please.

21 (Whereupon, the witness and
22 her counsel exited the
23 conference room.)

24 (Brief pause.)

1 what emails you're talking about?

2 A I'm familiar generally with that, yes.

3 Q Okay. And those are the only emails
4 that we've seen in any of the productions that or
5 any of the depositions exhibits that your counsel
6 has used.

7 Are there any other emails you're
8 aware of?

9 A No.

10 Q Okay. And I'd be happy to show you
11 those documents, and I intend to do that --

12 A Okay.

13 Q -- but they're dated 2006.

14 And is it also correct that the
15 TTO's claim -- Well, as you can see on
16 Paragraph 44, the claim for alleged overpayment of
17 interest goes back to 1995, right?

18 A Yes. I see that.

19 Q So other than the 2006 emails that
20 you're talking about, how did the treasurer
21 erroneously allocate over a million and a half
22 dollars in interest on investments to District 204?

23 A I would -- Without seeing the actual
24 documentation, it would -- I would conclude that

1 (Whereupon, the witness and
2 her counsel entered the
3 conference room.)

4 BY MR. HOFFMAN:

5 Q After having spoken with your attorney
6 outside the room, is there anything else you want
7 to say?

8 A Yes. I was familiar with the fact
9 that in Bob Healy's testimony, he had indicated
10 that those payments to LT that shows excess
11 interest were advances, and I just recently learned
12 that.

13 Q Did you also see in Healy's testimony
14 that he said he never overpaid interest to any
15 district and that, if he ever advanced money to a
16 district, he would always take it back in a
17 subsequent year?

18 MR. KALTENBACH: Objection.

19 Mischaracterization.

20 MR. HOFFMAN: That's exactly what he
21 said.

22 BY MR. HOFFMAN:

23 Q Go ahead. You can answer.

24 A I've never seen anything like that.

1 Q And you have or have not read Healy's
2 testimony?
3 A I have not read it. I've seen
4 portions of it.
5 Q The portions that the lawyers showed
6 you?
7 A Yes.
8 Q So they showed you something in which
9 Bob Healy said that he made advances to districts?
10 Yes?
11 A To District 204.
12 Q Okay. And that from that testimony,
13 you conclude that District 204 got more money than
14 it should have because it got an advance or
15 advances from the TTO on interest, right?
16 A Can you ask that question again,
17 please?
18 Q Sure.
19 MR. HOFFMAN: Read it back.
20 (Whereupon, the record was
21 read as requested.)
22 BY THE WITNESS:
23 A Not from the testimony; the evidence
24 was that there were journal entries that show that

1 recall doing that.
2 "QUESTION: Was there ever a time when
3 there was an accidental overpayment to
4 all the districts possibly in 2007?
5 "ANSWER: Might have been; if I had my
6 income estimate was wrong, it would
7 have happened, but I would have had to
8 make up for it in the future."
9 Do you see that testimony?
10 A I do see that.
11 Q Have you seen it before today?
12 A No.
13 Q "QUESTION: And when you say 'made up
14 for it,' you mean by reducing the
15 interest payment in subsequent years?
16 "ANSWER: Right. In other words, they
17 got money early. That's how you look
18 at it.
19 "QUESTION: In that instance, would
20 that be an overpayment that would have
21 been made across the board to all of
22 the districts?
23 "ANSWER: Yes. I would assume so
24 because we paid out according to that

1 additional revenue was received by District 204 for
2 interest income.
3 BY MR. HOFFMAN:
4 Q What do you mean "not from the
5 testimony"? You just talked about the testimony,
6 and now you're saying "not from the testimony."
7 A What I said was that the testimony
8 provided new information to me that Bob considered
9 those advances on interest income, but I did not
10 draw the conclusion about interest payments from
11 his testimony. They were merely clarifying his
12 intent.
13 Q Let's take a look at Bob Healy's
14 testimony on Page 64.
15 A I need the testimony, please.
16 (Whereupon, document
17 tendered.)
18 BY MR. HOFFMAN:
19 Q If you see -- Beginning on Line 8:
20 "QUESTION: "Was there ever a time
21 when you paid either LT or any other
22 district more than they were entitled
23 to get of their investment income?
24 "ANSWER: I do not think -- I do not

1 distribution."
2 Have you seen that testimony
3 before today?
4 A Not before today.
5 Q Does that testimony have any impact on
6 your view of what happened here with respect to
7 interest?
8 A It just creates questions.
9 Q And what questions does it create?
10 A Was it ever recovered and the evidence
11 that I have would indicate that it was not.
12 Q And what evidence is that?
13 A Any income distributions that have
14 been posted.
15 MR. KALTENBACH: I'm going to use that
16 later, so ...
17 BY MR. HOFFMAN:
18 Q Okay. I'm showing you Healy Exhibit
19 No. 4.
20 (Whereupon, Healy Exhibit
21 No. 4, previously marked,
22 was tendered to the witness.)
23
24

1 BY THE WITNESS:
 2 A Okay.
 3 BY MR. HOFFMAN:
 4 Q Is this the -- This is the memo you
 5 were talking about earlier, the one that the TTO
 6 believes is significant with respect to payment of
 7 interest, right? It's two emails dated August 1st
 8 and August 2nd of 2006.
 9 A Let me read this, please.
 10 Q Sure. Take your time.
 11 (Whereupon, witness perusing
 12 document.)
 13 BY THE WITNESS:
 14 A Okay.
 15 BY MR. HOFFMAN:
 16 Q Okay. So this is the email that -- or
 17 emails that you were talking about earlier --
 18 A Yes.
 19 Q -- that the TTO finds significant with
 20 respect to interest payments, right?
 21 A Yes.
 22 Q Okay. And why do you -- having just
 23 read these, what do these -- how do these support
 24 the TTO's claim in your view?

1 A Okay. It indicates to me that
 2 additional funds were given to the high school.
 3 Q Okay. And how much in additional
 4 funds?
 5 A At that -- In this specific email --
 6 Q Yes.
 7 A -- it says an additional 280,000.
 8 Q Okay. And, in fact, do the records
 9 that the TTO has in its possession indicate a
 10 payment to LT in 2006 of an amount of interest that
 11 was excessive by 280,000?
 12 A I would have to go back and look at
 13 that specifically. I don't recall off the top of
 14 my head.
 15 Q So you feel that this memo supports
 16 the view that there was an overpayment of interest,
 17 but you don't know whether this amount you say was
 18 overpaid based on the emails correlates to the TTO
 19 records?
 20 A I'm saying I can't verify that without
 21 seeing the other documents.
 22 (Whereupon, TTO Deposition
 23 Exhibit No. 18 was marked for
 24 identification.)

1 (Whereupon, document
 2 tendered.)
 3 BY MR. HOFFMAN:
 4 Q Okay. I'm showing you what's been
 5 marked as TTO Deposition Exhibit No. 18 --
 6 A Do you want this one back
 7 (indicating)?
 8 Q Yes.
 9 (Whereupon, document
 10 tendered.)
 11 BY MR. HOFFMAN:
 12 Q Thank you very much.
 13 TTO Exhibit 18 are emails -- at
 14 the top, an email dated July 24th, 2006, from David
 15 Sellers to Bob Healy and a previous email that
 16 Healy forwarded dated July 20th of 2006.
 17 A Okay.
 18 Q Have you ever seen this document
 19 before?
 20 A I believe so.
 21 Q Okay. And is it fair to say -- And
 22 this email preceded the email we were just talking
 23 about by about a week --
 24 A Okay.

1 Q -- correct?
 2 A Yes.
 3 Q Okay. And in this email, am I correct
 4 that David Sellers is asking Bob Healy about the
 5 results that he's getting and comparing that to the
 6 ISDLAF results which are included in the materials
 7 he's forwarding to Bob?
 8 A Okay.
 9 Q Fair enough?
 10 A Yes.
 11 Q And do you know what the "ISDLAF"
 12 means?
 13 A I do.
 14 Q And what is it?
 15 A Illinois School District Liquid Asset
 16 Fund.
 17 Q Okay. And do you see anything in
 18 Mr. Sellers' email that we're looking at here in
 19 TTO Exhibit No. 18 in which Sellers is asking on
 20 behalf of LT for any special treatment or any
 21 advance of interest?
 22 A Let me read this, please.
 23 Q Sure. Take your time.
 24

1 (Whereupon, witness perusing
2 document.)
3 BY THE WITNESS:
4 A All right. Can you give me your
5 question again?
6 MR. HOFFMAN: Read it back, please.
7 (Whereupon, the following was
8 read from the record as
9 requested: "QUESTION: Okay.
10 And do you see anything in
11 Mr. Sellers' email that we're
12 looking at here in TTO Exhibit
13 No. 18 in which Sellers is
14 asking on behalf of LT for any
15 special treatment or any
16 advance of interest?")
17 BY THE WITNESS:
18 A No.
19 BY MR. HOFFMAN:
20 Q Let's take a look a Theissen Exhibit
21 No. 10.
22 (Whereupon, Theissen Exhibit
23 No. 10, previously marked,
24 was tendered to the witness.)

1 BY MR. HOFFMAN:
2 Q This is a document that I showed to
3 Mike Theissen which came from the TTO's files at
4 his deposition about ten days ago.
5 A Okay.
6 Q Have you seen this document before?
7 A I have.
8 Q Okay. What is your understanding of
9 what this document is?
10 A It appears to me that these would be
11 journal entries to make adjustments post-audit.
12 Q Okay. And because it says on the
13 second page "Audit Adjustment-Interest," correct?
14 A Yes.
15 Q Okay. And do you have any knowledge
16 other than this document and what it says as to the
17 transaction that's reflected in this document? Do
18 you know what I'm saying?
19 A No. I'm sorry.
20 Q Do you understand the question?
21 So I'm trying to figure out --
22 We're both looking at the same document?
23 A Yes.
24 Q My question is, do you know anything

1 about the transactions -- And you see on the second
2 page, there is a request for posting entry for the
3 Lyons Township School Treasurer, correct?
4 A Yes.
5 Q And that is -- This is a handwritten
6 document that then gets input into the computer
7 system at the TTO --
8 A Yes.
9 Q -- correct?
10 A Correct.
11 Q That's what an entry is; it's a
12 journal entry in the general ledger, correct?
13 A Yes.
14 Q Okay. And so other than what it says
15 in this document and the attached documents here,
16 have you spoken with the auditors from 2011, have
17 you spoken with anybody at the TTO, or have you
18 seen any records other than what are attached to
19 Theissen Exhibit No. 10 that bear upon this
20 transaction or this --
21 A No.
22 Q -- entry? Okay.
23 So all of the knowledge you have
24 about the transaction described in Theissen Exhibit

1 No. 10 is from what's in this document, correct?
2 A Yes.
3 Q Okay. And so having looked at this on
4 Page 2, you see that at the top, it says,
5 "one-sided"; yes?
6 A Yes.
7 Q Okay. And what does that mean?
8 A It means that there's not an
9 offsetting entry on another line.
10 Q All right. And you see that there's a
11 negative figure of \$1,512,451.00, correct?
12 A Yes.
13 Q And we know it's a negative because of
14 the brackets that appear on either side of the
15 number, right?
16 A Yes.
17 Q Okay. And the description here is
18 "Audit Adjustment." "ADJ," you think it means
19 "Audit Adjustment" -- yes --
20 A Yes.
21 Q -- dash "interest"?
22 A Yes.
23 Q And you believe that interest means
24 the investment income interest earned on pooled

1 investments, right?

2 A Yes.

3 Q And so what is the account listed up
4 above, which is 1-999999?

5 A The "1" would indicate that it's the
6 education funds. The "999" -- Now, see, this is a
7 different kind of an account number because it's
8 marked "AST," which signifies to me that it's an
9 asset account, so the naming is different than it
10 would be for a revenue or expenditure.

11 "999" typically would indicate
12 that it's a miscellaneous account. "1013" would
13 indicate specifically the revenue asset line that
14 it would be posted against.

15 Q So this indicates that the assets or
16 money held by District 204 was reduced in the
17 amount of just over a million and a half dollars at
18 this time, correct?

19 A No. And I'm not an accounting expert
20 but, typically, when it's a revenue, it's included
21 in brackets to indicate that it's a revenue as
22 opposed to an expenditure.

23 Q Well, what is this transaction then?

24 MR. KALTENBACH: I'll object as being

1 A I don't have enough accounting
2 expertise to be able to answer that question.

3 Q So you don't know?

4 A I don't know.

5 Q Okay. And having seen this prior to
6 your deposition, did you make any effort to look
7 back at the records of the TTO to try to figure out
8 why District 204's funds were being adjusted by a
9 million and a half dollars for interest in June
10 of 2011?

11 A No.

12 Q Why not?

13 MR. KALTENBACH: Objection.
14 Argumentative.

15 Go ahead.

16 BY MR. HOFFMAN:

17 Q Why didn't you look into this?

18 A Because that work would have been done
19 long before I was employed.

20 Q Well, your --

21 A And I would have no reason to go back
22 and check previous work.

23 Q Well, wouldn't your reason to go back
24 include the fact that the TTO is making a claim for

1 beyond the scope.

2 You can answer.

3 BY MR. HOFFMAN:

4 Q What is this transaction? It's a
5 million and a half dollar adjustment --

6 MR. KALTENBACH: Hold --

7 MR. HOFFMAN: Let me finish my
8 question before you jump all over it.

9 MR. KALTENBACH: I'm referring to her.

10 BY MR. HOFFMAN:

11 Q This document talks about a one-sided,
12 one and a half million dollar adjustment for
13 interest after an audit for District 204.

14 So what is this and why was it
15 done?

16 MR. KALTENBACH: Hold on.

17 I'm going to object to being a
18 compound question. I'm going to object as being
19 beyond the scope of the deposition given the level
20 of detail.

21 You can answer the question
22 subject to those objections, Dr. Birkenmaier.

23 BY MR. HOFFMAN:

24 Q What is this and why was it done?

1 what it believes to be excessive interest paid to
2 LT from 1995 through 2012 in the amount of about a
3 million and a half dollars?

4 A I don't think you can make the
5 assumption that the \$1.5 million is the total
6 amount. If I recall, you had indicated interest
7 income between a period of time, so you would not
8 necessarily find this in a single entry.

9 Q Well, I don't know what this was done
10 and why it was done. This is in the TTO's files.

11 Have you ever seen anything in
12 any of the TTO documentation indicating that, in
13 June of 2011, LT was informed that there was a one
14 and a half million dollar adjustment made to its
15 account for an audit adjustment relating to
16 interest?

17 A No.

18 Q Do you think that that might be
19 significant in some way in this case?

20 A I don't know.

21 Q Do you see on the first page of this
22 document -- That would be the first page
23 (indicating)?

24 A Uh-huh.

1 Q On the first page of this document,
2 there's a listing for various other districts?
3 A I do see that.
4 Q Well, the "100" is the TTO.
5 What's the "999" account?
6 A That would be the health insurance
7 cooperative.
8 Q Okay. And then you see there's a
9 reference to "Lo."
10 Is that Lauralee Conway?
11 A Yes.
12 Q Okay. And it says "talk to Bob"?
13 A Yes.
14 Q And on the right, it says, "Lo, adjust
15 balances, talk to Jim White."
16 Is that Jim White from Baker
17 Tilly?
18 A Yes.
19 Q Okay. And do you know what any of
20 that means, who is being told to do what on Page 1?
21 Other than what we're reading here -- you and I are
22 reading the same thing -- do you have any knowledge
23 as to what all that is discussing or who's supposed
24 to do what?

1 A I have no way to discern the order,
2 but, obviously, it indicates to me that Lauralee
3 would be the person who would be inputting these
4 changes, and so she needs to talk to the auditor
5 and to the treasurer to make sure that the
6 allocation is correct.
7 Q Well, Lauralee Conway is a current
8 employee of the TTO, correct?
9 A She is, yes.
10 Q And so is there any reason you didn't
11 ask her to explain this document to you?
12 A Yes, because it's historical data.
13 Q Well, it's historical data, but isn't
14 it significant to the historical period involved in
15 your claim in this case, meaning 1995 to 2012?
16 A Yes; but it's just reassigning funds.
17 Q How do you know that?
18 A Because the first line indicates that
19 you've got a debit of \$1.7 million, and it shows
20 that you also have a credit of 1.7, and it shows
21 where you're placing those funds.
22 Q So where did the funds go from and to?
23 A It appears that it came out of the TTO
24 account and went into the various accounts that are

1 listed below the health insurance, District 102,
2 District, 204, and LADSE.
3 Q Do you see on the far right side next
4 to the "District 204" row, it says "2010
5 adjustment, but self-corrected in 2011."
6 Do you know what that means?
7 A I would only be able to speculate that
8 it could have been --
9 Q I don't want you to speculate --
10 A Okay. Then I don't --
11 Q -- and I already told you not to do
12 that.
13 A Then I don't know specifically what
14 that note would mean.
15 Q Whose handwriting is that?
16 A I don't know.
17 Q Is that Bob's?
18 A I don't know.
19 Q Okay. Have you made any effort to ask
20 anybody at the TTO what that information might mean
21 there?
22 A No.
23 MR. KALTENBACH: Are you doing okay?
24 THE WITNESS: I am. Thank you.

1 BY MR. HOFFMAN:
2 Q All right. Between 1995 and 2012,
3 which is the time period involved in the TTO claim
4 with respect to interest in this case --
5 A Um-hmm.
6 Q "Yes"?
7 A Yes.
8 Q -- [continuing] did the TTO regularly
9 pay out to the districts either the entire amount
10 or nearly the amount of interest that the TTO
11 earned on the pooled investment fund?
12 A I don't know.
13 Q Why do you not know that?
14 A I don't know what the total amounts
15 were that were earned.
16 Q Well, you're claiming that in this
17 case that LT got overpaid interest, right?
18 A Yes.
19 Q And so isn't it important to know
20 whether the amount of interest that the TTO paid
21 out each year correlated to the amount of interest
22 that they actually earned in every year?
23 A No.
24 Q Why is that not important?

1 A What I have seen evidence of is a
2 listing that said this was how much money was
3 distributed.

4 Q And that evidence came from Healy's
5 handwritten notes, correct?

6 A Correct.

7 Q And isn't it a fact that that amount
8 of money to be distributed that was listed in
9 Healy's handwritten notes was always an even
10 number?

11 A Yes.

12 Q Okay. And isn't it also a fact that
13 Healy testified in his deposition that those
14 numbers in his handwritten notes were conservative
15 and preliminary numbers and that the accurate
16 numbers about the amounts to be paid were set forth
17 in the TTO's general ledger?

18 A Yes.

19 Q And do you have any reason to dispute
20 that testimony that Mr. Healy gave concerning the
21 meaning of his handwritten notes?

22 A I don't.

23 Q And, in fact, Kelly Bradshaw's
24 analysis, which I'm happy to show you and I intend

1 Q -- when she analyzed it?

2 A The amount of money that was posted as
3 interest income to the 204 account versus what was
4 written on Bob's sheets.

5 Q Okay. And what was written on Bob's
6 sheets was the what should have been paid; and then
7 what was in the general ledger postings was what
8 was paid?

9 A Correct.

10 Q The difference between that was either
11 an over or an underpayment, correct?

12 A Correct.

13 Q Okay. So Bradshaw did not look back
14 to see how much interest the TTO actually earned by
15 looking at statements from banks or financial
16 institutions that held investments for the TTO; am
17 I right?

18 A I don't know.

19 Q Does the TTO have source documents
20 that are sufficient for somebody to go back and
21 look at them and figure out that in 1997, for
22 example, here's how much the TTO actually earned in
23 investment income --

24 MR. KALTENBACH: I'm going to --

1 to show you -- and if you want to see it right now,
2 let me know -- but what she did, in part, was
3 compare the amount of money that Healy wrote in his
4 notes to be distributed and compared that to the
5 general ledger amount and viewed the first thing as
6 what should have been paid and the second thing as
7 what was actually paid --

8 A Okay.

9 Q -- correct? Is that her --

10 A I would assume so.

11 Q That's her -- Well, I don't want you
12 to assume anything. We had a little talk about
13 that.

14 A Yes.

15 Q So --

16 A It's true. You'll have to show me in
17 the document.

18 Q -- do you understand what Kelly
19 Bradshaw did?

20 A Yes.

21 Q Okay. What did Kelly Bradshaw do?
22 What did her analysis on \$1.5 million in overpaid
23 interest analyze --

24 A The amount --

1 BY MR. HOFFMAN:

2 Q -- on the pooled investments?

3 MR. KALTENBACH: I'm going to object
4 to the extent it calls for a legal conclusion and
5 it's beyond the scope also. That's going to be the
6 subject of expert testimony.

7 BY MR. HOFFMAN:

8 Q You know, you're getting a little
9 coaching here, but can you answer the question?

10 A We've turned over -- So far as I know,
11 we've turned over all the investment documents that
12 we had.

13 Q Yeah, and here's my question: Do
14 those investment documents provide enough
15 information, are they complete enough and accurate
16 enough and reliable enough so that somebody can
17 look at those documents and go back and confirm for
18 each year that's relevant here how much money the
19 TTO actually earned in investment income?

20 MR. KALTENBACH: Same objection and as
21 to form.

22 BY THE WITNESS:

23 A To the best of my knowledge, yes.

1 BY MR. HOFFMAN:

2 Q Yes?

3 A Yes.

4 Q Okay. Then why didn't you have Kelly
5 Bradshaw go back and look at those source documents
6 to figure out how much income was actually earned
7 on the investments instead of using a number that
8 was a round number that was written in Healy's
9 handwritten notes?

10 A I believe there's an assumption in the
11 question that you're asking that all of the income
12 that was received is interest income for
13 distribution, and the complexity of investments
14 would not necessarily indicate that all of that
15 money would be distributable.

16 Q Okay. So why was the amount of money
17 reflected in source documents not all
18 distributable?

19 A I'm not certain what Bob's approach to
20 distribution would be.

21 Q Well, why aren't you? That's a
22 critical part of this case.

23 A I think that that --

24 MR. KALTENBACH: Objection.

1 Q -- for the years that we're talking
2 about here?

3 A Yes.

4 MR. KALTENBACH: Will this be 19?

5 MR. HOFFMAN: Let's go ahead and mark
6 it, sure.

7 (Whereupon, TTO Deposition
8 Exhibit No. 19 was marked for
9 identification.)

10 (Whereupon, document
11 tendered.)

12 BY MR. HOFFMAN:

13 Q All right. We've marked as
14 Deposition -- TTO Deposition Exhibit 19 all of the
15 audit reports for the TTO from 1995 through 2013.

16 A Okay.

17 Q And these come from, not surprisingly,
18 the TTO's production to us in this case.

19 A Correct.

20 Q So let -- And you're familiar with
21 these documents, right?

22 A I am.

23 Q Okay. So let's just pick a year in
24 the middle here --

1 Argumentative.

2 MR. HOFFMAN: It's not argumentative.

3 BY MR. HOFFMAN:

4 Q Go ahead.

5 A I think that that's where the
6 discretion of the investor and the types of
7 investments and the movement of the marketplace
8 comes to bear.

9 Q Well, were Bob's -- Looking back on it
10 and having the knowledge of the historical record,
11 did Bob Healy essentially make arbitrary decisions
12 as to how much money to give to the district?

13 A I couldn't characterize it that way
14 because I don't know.

15 Q Well, in some years, isn't it true
16 that he gave the districts way more money than the
17 TTO earned and, in some years, he gave them way
18 less? And by "way," I mean, millions of dollars.

19 A I don't know.

20 Q Okay. Well, let's find out.

21 A Okay.

22 Q Are you familiar with the audit
23 reports of the TTO --

24 A Yes.

1 A Okay.

2 Q -- and go with 2003.

3 A Okay.

4 Q Would you tell me with respect to the
5 general fund at the TTO --

6 A Hold on a second. I'm not quite with
7 you yet. I'm still at 2002.

8 Q Okay. Take your time.

9 (Whereupon, witness perusing
10 document.)

11 BY THE WITNESS:

12 A Okay.

13 BY MR. HOFFMAN:

14 Q I can tell you, I'm looking at -- just
15 to -- I'm looking at Page 4 of Exhibit B of the
16 audit, but you can look at any page you want
17 because --

18 A Okay.

19 Q -- you're the treasurer, and I'm not.

20 A Okay.

21 Q I would ask only that you kind of keep
22 these documents straight (indicating).

23 A Sure. Happy to.

24 Q Thanks.

1 And so on Page 4, there is an
2 exhibit that relates to the general fund and a
3 statement of revenues, expenditures, and changes in
4 fund balance for the year-ended June 30, 2003.

5 Do you see that?

6 **A I do.**

7 **Q** And there is a line item here for
8 receipts which says "Interest on Investments-Net of
9 Distributions to School Districts," and there's an
10 amount stated of \$3,256,195.

11 Do you see that?

12 **A I do.**

13 **Q** Okay. And what does that number
14 represent?

15 **A I am not certain.**

16 **Q** Isn't it obvious that that means that
17 the TTO paid out interest on investments to school
18 districts in the 2000 year and, after doing so, had
19 just over \$3 million in interest income left?

20 **A I'm not certain.**

21 **Q** So are you telling me today that you
22 don't understand what the audit statements of the
23 TTO mean?

24 **A I'm telling you that I'm not certain**

1 **what this specific line captures.**

2 **Q** Well, okay.

3 Let's look at a different year,
4 which I think is even more obvious.

5 **A Okay.**

6 **Q** Maybe that would help you.

7 **A Okay.**

8 **Q** All right. Let's turn to the 2004
9 year --

10 **A Okay.**

11 **Q** -- if could you, please.

12 **A Sure. Same page?**

13 **Q** No. Let's look at Page 6 to start.

14 (Whereupon, witness perusing
15 document.)

16 **BY THE WITNESS:**

17 **A Okay.**

18 **BY MR. HOFFMAN:**

19 **Q** And you see when it talks about the
20 financial analysis of the TTO funds?

21 **A Yes.**

22 **Q** And it talks about the prior year the
23 fund balance at the TTO was about negative 95,000,
24 and then it decreased to negative 2.7 million?

1 **A Yes.**

2 **Q** Okay. And then right below it, it
3 says, quote, "The decrease was primarily attributed
4 to the larger amount of investment earnings paid
5 out to member districts."

6 Do you see that?

7 **A I do.**

8 **Q** And let's, then, just to quantify
9 that, turn to Page 12 of the financial
10 statements --

11 **A Okay.**

12 **Q** -- which, again, have the general fund
13 statement. And you see it says -- Under "Receipts"
14 for the general funds, it says "Earnings on
15 Investments" \$3.7 million, approximately?

16 **A I do see that.**

17 **Q** And it says "Earning on Investments
18 Paid Out to School Districts" --

19 **A Yes.**

20 **Q** -- just over 6 million?

21 **A Yes.**

22 **Q** So in the 2004 year, the TTO paid out
23 about \$2.3 million in interest more than it earned
24 in that year --

1 **A I see that --**

2 -- to school districts?

3 **A -- yes.**

4 **Q** Do you know how and why that happened?
5 **A I will be speculating if I give you an
6 answer to that.**

7 **Q** I don't want your speculation. I want
8 facts.

9 **A Then I'm going to say I don't have
10 enough detail to answer that question.**

11 **Q** Okay. And what detail would you need
12 in order to be able to answer that question?

13 **A I would need to know when the last
14 distribution of interest went out. I would need to
15 know what the timing of interest from the previous
16 year is and when that was received in.**

17 **I would need to basically
18 understand the timing of this, and I cannot draw
19 that conclusion from this -- these numbers.**

20 **Q** Wouldn't the TTO pay interest that it
21 earned and attribute those payments to the year in
22 which the interest was actually earned in terms of
23 the distributions?

24 Are you saying that the -- Are

1 you claiming that the money that was earned by the
2 TTO doesn't correlate with the payments that it
3 made?

4 A I'm saying that there is an overlap
5 between fiscal years that, typically, at least
6 currently, our practice is that the last
7 calculation of interest is based on the May and
8 April fund balances and that it doesn't take into
9 account the June balances. So it's possible that
10 there was something in transit at the end of the
11 fiscal year. It depends on how these records are
12 kept, if these are on an accrual basis, modified
13 accrual basis, or a cash basis of accounting.

14 Q But the bottom line is, you don't
15 know?

16 A I would not be certain without being
17 able to go back and consult with the auditors and
18 look at documents, no.

19 Q Well, you can't go back and consult
20 with the auditors because they're from Baker Tilly,
21 and the TTO threatened to sue Baker Tilly, right?

22 A Yes.

23 Q And so, currently, there is a
24 standstill agreement in place between the TTO and

1 BY THE WITNESS:

2 A I understand the payment. How the
3 money was received and recorded, I don't understand
4 the details of that.

5 BY MR. HOFFMAN:

6 Q So if I asked you about all of the
7 different entries in the TTO's annual audit
8 statements with respect to earnings on investments
9 and earnings paid out to school districts and why
10 the numbers are different, would your answer be "I
11 don't know"?

12 A My answer would be it would be based
13 on the assumptions that the work that was presented
14 was done correctly.

15 Q Well --

16 A So I don't know.

17 Q You're assuming that the work that
18 Baker Tilly did on these audits from 1995 through
19 2012 were done correctly?

20 A I have no reason not to believe that.

21 Q Well, then, why did the TTO threaten
22 to sue them and enter into a standstill agreement
23 with them?

24 A I don't --

1 Baker Tilly whereby any claims that the TTO has
2 against Baker Tilly are put on hold pending further
3 developments, right?

4 A Correct.

5 Q Okay. So there's no way for you to
6 pick up the phone and call somebody at Baker Tilly
7 and ask them questions about the work that they did
8 for the TTO, is there?

9 A No.

10 Q So how can you explain why or can you
11 even begin to explain why, in 2004, the TTO paid
12 out earnings on investments to school districts of
13 almost double what they recorded as earnings made
14 for that year? And I'm not talking about
15 speculation. I'm talking about actual knowledge.

16 A I cannot answer that.

17 Q Don't you think it's important to
18 understand how interest was paid out to the
19 districts when you're making a claim against the
20 TTO -- or excuse me -- a claim against LT for a
21 million and a half dollars during this same time
22 period?

23 MR. KALTENBACH: Objection.
24 Argumentative.

1 MR. KALTENBACH: Objection.
2 Argumentative.

3 MR. HOFFMAN: Why? It's a fair
4 question.

5 MR. KALTENBACH: You don't need to
6 comment on my objections. I just stated it.

7 BY MR. HOFFMAN:

8 Q Go ahead. You can answer.

9 If the position of the TTO is
10 that the audits were done right from 1995 through
11 2012 by Baker Tilly, why did the TTO threaten to
12 sue Baker Tilly?

13 A First --

14 MR. KALTENBACH: I'm going to object
15 as being beyond the scope of this notice. I'm also
16 going to object as being argumentative.

17 MR. HOFFMAN: Sure.

18 BY MR. HOFFMAN:

19 Q You can answer.

20 A Any conversations with Baker Tilly
21 regarding their work or how it's impacted in this
22 lawsuit were done before I was hired on as the
23 treasurer.

24 Q What does the TTO say that Baker Tilly

<p style="text-align: right;">Page 210</p> <p>1 did that was wrong in this case such that they</p> <p>2 threatened to sue them?</p> <p>3 MR. KALTENBACH: Same objections as</p> <p>4 before.</p> <p>5 BY MR. HOFFMAN:</p> <p>6 Q Maybe you don't know.</p> <p>7 A I'm not sure I understand the full</p> <p>8 scope, so I cannot answer that.</p> <p>9 Q Well, do you have any understanding</p> <p>10 whatsoever? Because these are documents prepared</p> <p>11 by Baker Tilly. They're important to the case.</p> <p>12 They talk about earnings on investments. They talk</p> <p>13 about investments paid out to the districts.</p> <p>14 They're directly relevant to your claim during this</p> <p>15 time period relating to interest payments.</p> <p>16 So my question to you is, is it</p> <p>17 the position of the TTO that all of the figures and</p> <p>18 all the information and everything associated with</p> <p>19 this -- these annual statements for audit in</p> <p>20 Exhibit TTO Deposition 19 were all accurate and</p> <p>21 correct?</p> <p>22 MR. KALTENBACH: Same objection as to</p> <p>23 scope.</p> <p>24</p>	<p style="text-align: right;">Page 212</p> <p>1 understand your testimony, I'm going to go back</p> <p>2 over this.</p> <p>3 I'm trying to figure out whether</p> <p>4 I can rely on the figures in these Baker Tilly</p> <p>5 audit statements as to earnings on investments and</p> <p>6 earnings on investments paid out to school</p> <p>7 districts or not.</p> <p>8 And my question to you is, do you</p> <p>9 have any reason to doubt the accuracy of those</p> <p>10 figures on those points in these audit statements?</p> <p>11 MR. KALTENBACH: Objection as to</p> <p>12 beyond the scope.</p> <p>13 You could answer.</p> <p>14 BY MR. HOFFMAN:</p> <p>15 Q Just answer the question.</p> <p>16 A I have no reason to doubt the</p> <p>17 accuracy.</p> <p>18 Q Fine.</p> <p>19 MR. HOFFMAN: By the way, Barry, you</p> <p>20 know, I know you feel it's your duty to help out</p> <p>21 here, but keep in mind that I'm also taking the</p> <p>22 individual deposition of Dr. Birkenmaier in</p> <p>23 addition to deposing her --</p> <p>24 MR. KALTENBACH: I understand.</p>
<p style="text-align: right;">Page 211</p> <p>1 BY THE WITNESS:</p> <p>2 A I don't know.</p> <p>3 BY MR. HOFFMAN:</p> <p>4 Q So given that the TTO has actually</p> <p>5 threatened to sue Baker Tilly, is it fair to say</p> <p>6 that the TTO has some concerns about whether these</p> <p>7 audit statements are accurate and reliable?</p> <p>8 MR. KALTENBACH: Same objection.</p> <p>9 Asked and answered.</p> <p>10 BY MR. HOFFMAN:</p> <p>11 Q "Yes," "No," either --</p> <p>12 MR. KALTENBACH: Argumentative.</p> <p>13 BY MR. HOFFMAN:</p> <p>14 Q -- these --</p> <p>15 MR. KALTENBACH: Jay, let me state my</p> <p>16 objection. Let me just state it, and then you can</p> <p>17 move on.</p> <p>18 Objection. Asked and answered,</p> <p>19 beyond the scope, and argumentative.</p> <p>20 BY THE WITNESS:</p> <p>21 A I don't know that your statement is</p> <p>22 accurate.</p> <p>23 BY MR. HOFFMAN:</p> <p>24 Q Okay. Let me -- Because I don't</p>	<p style="text-align: right;">Page 213</p> <p>1 MR. HOFFMAN: -- on behalf of the TTO,</p> <p>2 so enough with the constant objections, please.</p> <p>3 MR. KALTENBACH: Hold on a minute.</p> <p>4 BY MR. HOFFMAN:</p> <p>5 Q So --</p> <p>6 MR. KALTENBACH: No. Hold on a minute</p> <p>7 because you make a statement, Jay.</p> <p>8 MR. HOFFMAN: You're guiding the</p> <p>9 witness. It's enough already.</p> <p>10 MR. KALTENBACH: Jay --</p> <p>11 MR. HOFFMAN: Knock it off.</p> <p>12 MR. KALTENBACH: Jay, respectfully,</p> <p>13 you have cross-examined your witnesses I've been</p> <p>14 deposing while I'm still deposing them. Okay? So</p> <p>15 stating "Objection. Scope" is not guiding the</p> <p>16 witness, and it is a proper objection.</p> <p>17 MR. HOFFMAN: You're suggesting to the</p> <p>18 witness that she shouldn't know things and</p> <p>19 shouldn't testify to things, and it is not proper.</p> <p>20 And it's an individual deposition as well as -- and</p> <p>21 let the court reporter know -- that this is both</p> <p>22 the deposition of the TTO and of Dr. Birkenmaier,</p> <p>23 and the cover page should so reflect that.</p> <p>24 MR. KALTENBACH: It is. I agree.</p>

1 MR. HOFFMAN: Fine.
 2 MR. KALTENBACH: "Objection. Scope"
 3 is proper.
 4 Why don't we take a short break
 5 right now?
 6 MR. HOFFMAN: Fine
 7 (Whereupon, a brief recess
 8 was had from 2:28 p.m. to
 9 2:36 p.m.)
 10 MR. HOFFMAN: Back on the record.
 11 BY MR. HOFFMAN:
 12 Q Just one additional point on these
 13 annual audits, there are entries or a net entry
 14 relating to the amount of interest earned and the
 15 amount of interest paid to the districts in the
 16 years 1995 through 2007 and then, in the 2008 TTO
 17 audit report, that amount or that information
 18 completely disappears.
 19 A Okay.
 20 Q Do you want me to show you that or --
 21 A Sure.
 22 Q Okay.
 23 A Sure.
 24 Q All right. Well, here's 2007.

1 (Whereupon, document
 2 tendered.)
 3 MR. KALTENBACH: I mean, if you just
 4 want to put a page of yours in front of her, that's
 5 fine by me, rather than --
 6 BY MR. HOFFMAN:
 7 Q Here's 2007, the general fund
 8 statement (indicating).
 9 A Okay.
 10 Q And what does that tell you about the
 11 interest earned and interest paid out for the 2007
 12 year?
 13 A Well, it tells me 8.9 million was
 14 earned, 7.9 was distributed, and there was a
 15 million dollars that was undistributed.
 16 Q Do you know why there was a million
 17 dollars that was undistributed --
 18 A I don't.
 19 Q -- in that year, in 2007?
 20 A I don't.
 21 Q Well, we started this whole discussion
 22 today dealing with information that you became
 23 aware of in 2013 and are still grappling with now
 24 about unpaid interest.

1 And so have you gone back to
 2 these annual reports like the one we're looking at
 3 in 2007 and tried to make sense of why the amounts
 4 earned and the amounts paid out to the districts
 5 were different?
 6 A Say that again. I mean, I --
 7 MR. HOFFMAN: Read it back.
 8 BY THE WITNESS:
 9 A I understand the premise --
 10 MR. HOFFMAN: Read it back.
 11 BY THE WITNESS,
 12 A -- but what was the question?
 13 (Whereupon, the record was
 14 read as requested.)
 15 BY THE WITNESS:
 16 A No.
 17 BY MR. HOFFMAN:
 18 Q Why not?
 19 A The audit captures what occurred, not
 20 why.
 21 Q Okay. And how would you figure out
 22 the why?
 23 A You'd have to -- As I mentioned
 24 earlier, you'd have to go back to either the source

1 documents or understand the conditions that were in
 2 place at the time. It's possible the way that it's
 3 captured, there could have been a change to the
 4 Governmental Accounting Standards Board footnotes
 5 that required different ways of reporting.
 6 I would -- I don't know until I
 7 would have to immerse myself in going back and try
 8 to reconstruct, and that's why I said I would need
 9 to see work papers, if they're available.
 10 Q But wasn't there a need to go back and
 11 immerse yourself given that in 2013 and even still
 12 to this day, there is an open issue about
 13 undistributed investment income at the TTO?
 14 A The audits captured what occurred, not
 15 what's intended, not what might have occurred, not
 16 what not occurred in the future. This is a record
 17 of what occurred.
 18 Q Right. And if what occurred was that
 19 all of the districts were uniformly overpaid in one
 20 year or all the districts were uniformly overpaid
 21 in one year based on the information in the annual
 22 audit statements, wouldn't that be significant to
 23 you?
 24 A Not necessarily.

1 Q Why not?

2 A As I mentioned earlier, I would need
3 to understand the circumstances under what occurred
4 and why.

5 Q Well, how are you going to figure out
6 what occurred and why from 1995 to 2012 when
7 Healy's in prison and you can't talk to Baker
8 Tilly?

9 A I understand what you're saying. I'm
10 just saying to you that I could not come to a
11 conclusion merely by looking at the audit reports.
12 I would need additional information.

13 Q I don't think you answered my
14 question, with all due respect, Dr. Birkenheimer --
15 Birkenmaier. I don't think you answered --

16 A See, I told you. I get that all the
17 time, but that's okay. Go ahead. I'm sorry.

18 Q That was my only slipup in three and
19 half hours.

20 MR. KALTENBACH: On the way over,
21 she goes, "Sometimes people refer to me as "Dr.
22 Birkenheimer."

23 BY MR. HOFFMAN:

24 Q I apologize.

1 A I do.

2 Q Okay. Do you have any explanation as
3 to why that information stopped being included in
4 2008 and in all subsequent audits?

5 A No.

6 Q Mr. Theissen said it had something to
7 do with changes in accounting standards.

8 Do you have any knowledge as to
9 that?

10 A That is one possibility.

11 Q I didn't ask you whether it was
12 possible. I asked you if you had any knowledge
13 about that.

14 A Are you asking me do I know that that
15 is why?

16 Q Yes.

17 A I do not know that that is why.

18 Q Okay. To this day, the TTO's
19 financial statements do not state the amount of
20 interest that the TTO earned on the pooled
21 investments and the amount of distributions made to
22 the districts on those investments; am I correct?

23 A So as far as I know, that is correct.

24 Q And why is that information not

1 A No, no. It's okay. It's okay.

2 MR. HOFFMAN: Read the question back.

3 BY MR. HOFFMAN:

4 Q Because I don't believe you answered
5 the question.

6 A Okay.

7 (Whereupon, the following was
8 read from the record as
9 requested: "QUESTION: Well,
10 how are you going to figure out
11 what occurred and why from 1995
12 to 2012 when Healy's in prison
13 and you can't talk to Baker
14 Tilly?")

15 BY THE WITNESS:

16 A I'm not going to figure out why.

17 BY MR. HOFFMAN:

18 Q Now, let's take a look at the -- Let's
19 take a look at what now is called the "Governmental
20 Fund" in the 2008 audit, and there's a listing for
21 receipts and, unlike in past years, poof, the
22 amounts of investment earnings and the amounts of
23 investment distributions are miraculously gone.

24 Do you see that?

1 provided currently in the TTO's annual audit
2 reports?

3 MR. KALTENBACH: Objection. It's
4 beyond the scope and relevance.

5 You can answer.

6 BY THE WITNESS:

7 A First of all, I'm not certain about
8 your question. Your question -- Can you repeat
9 that question to me, please?

10 BY MR. HOFFMAN:

11 Q Sure. You said that current -- The
12 reports that we have here through 2013 and those
13 annual audit statements don't have information in
14 them about the interest earned on investments and
15 the interest paid out to the districts on
16 investments, right?

17 A Yes, yes.

18 Q Okay. And am I correct that that is
19 also the case with more recent audits or audit
20 statements for the TTO? Right?

21 A Yes.

22 Q Okay. And so my question is, why
23 doesn't the TTO ask its auditors to include that
24 information in its current audit statements?

1 Meaning -- When I say "this information," I mean
2 the amount of money that it earned on investments
3 and the amount of money paid from those earnings to
4 the districts.

5 **A I don't know.**

6 **Q** Don't you think that's important
7 information for the districts to have?

8 **A I believe that the auditors represent**
9 **the numbers that are recorded in accordance with**
10 **the governmental standard, Governmental Accounting**
11 **Board Standards.**

12 **Q** Well, is there any standard that would
13 prohibit the TTO's auditors from providing that
14 information?

15 **A I don't know. I know that the**
16 **Governmental Accounting Standards Board**
17 **establishing methods of reporting and criteria so**
18 **there is consistency from one governmental agency**
19 **to another.**

20 **Q** So I guess my question is still, why
21 don't the TTO's current audits tell -- why don't
22 they state the total amount of investment earnings
23 and the amounts paid out to districts?

24 **MR. KALTENBACH:** Objection. Asked and

1 I'm asking you why isn't this
2 information that you would want to include in the
3 audit statement for the benefit of everybody who
4 reads it so they can know what's going on at the
5 TTO?

6 **A I can't answer that because I'm not an**
7 **expert in accountancy.**

8 **MR. HOFFMAN:** Let's mark another
9 exhibit, please.

10 (Whereupon, TTO Deposition
11 Exhibit No. 20 was marked for
12 identification.)

13 **BY MR. HOFFMAN:**

14 **Q** We talked about Bradshaw's analysis
15 with respect to the 204 interest payments, correct?

16 **A Yes.**

17 **Q** What analysis, if you know, did the
18 TTO do with respect to interest payments made to
19 other districts during 1995 to 2012?

20 **A I believe it was the same activity,**
21 **comparing what was paid versus what was recorded to**
22 **be paid.**

23 **Q** So when I look at -- Let's take a look
24 at Bradshaw's analysis as it reflects the work she

1 answered.

2 **MR. HOFFMAN:** But I haven't gotten an
3 answer yet.

4 **BY THE WITNESS:**

5 **A I would have to refer to an expert in**
6 **accounting to answer that question.**

7 **BY MR. HOFFMAN:**

8 **Q** Well, you're the treasurer.

9 **A But I am not --**

10 **Q** You can --

11 **A -- an expert in accounting.**

12 **Q** Right. But are you telling me that
13 the -- it may be an improper piece of information
14 to be included in an audit statement?

15 **A No.**

16 **MR. KALTENBACH:** Objection.
17 Argumentative.

18 **THE WITNESS:** Sorry.

19 **BY MR. HOFFMAN:**

20 **Q** And I'm not saying -- You know, I'm
21 not saying I'm trying to figure out what the bare
22 minimum is because I'm not asking you whether the
23 audit report complies with any particular standards
24 or not.

1 did on District 204.

2 **A Okay.**

3 **Q** And this is Bradshaw Exhibit No. 3.
4 (Whereupon, Bradshaw Exhibit
5 No. 3, previously marked,
6 was tendered to the witness.)

7 **BY THE WITNESS:**

8 **A Okay.**

9 **BY MR. HOFFMAN:**

10 **Q** There's actually an earlier version of
11 this with different numbers that she made mistakes
12 on, and she said she went back and corrected this
13 and came out with something called an "interest
14 allocation to" --

15 **A Yes.**

16 **Q** -- "spreadsheet" which was produced to
17 us on February 19th of 2016, actually.

18 **A Okay.**

19 **MR. HOFFMAN:** It only took about a
20 year and half to get that.

21 **MR. KALTENBACH:** I think it took a
22 little bit longer to get documents from your own
23 client.
24

1 BY MR. HOFFMAN:
 2 Q Are you familiar with -- Are you
 3 familiar this document, Bradshaw Exhibit 3?
 4 A Yes.
 5 Q Okay. You've seen this before?
 6 A Yes.
 7 Q And did you work with Kelly when she
 8 was putting this together? Because her testimony
 9 was she worked with Mike Theissen and Clyde
 10 Bradshaw, so --
 11 A Clyde Bradley.
 12 Q Bradley, excuse me.
 13 A Yes.
 14 Q I don't have any reason to believe she
 15 worked with you on it; but if she did, I want to
 16 know that.
 17 A No.
 18 Q Okay. So you didn't work with Kelly
 19 at the time she created this, right?
 20 A No.
 21 Q So this was prepared already -- Was it
 22 prepared by the time you arrived at the TTO?
 23 A The original document, yes.
 24 Q Okay. Terrific.

1 And this compares the information
 2 in Healy's handwritten notes to the information in
 3 the general ledger of the TTO, correct?
 4 A That's my understanding.
 5 Q Okay. And there's also this
 6 additional third point which goes back and looks at
 7 allocation percentages and adjusts Healy's numbers
 8 to reflect a further set of adjustments, correct?
 9 Maybe you can state it better
 10 than I can. So there's a direct comparison between
 11 Healy's numbers and the general ledger numbers in
 12 the first column here (indicating), right?
 13 A Yes.
 14 Q Okay. And then what's your
 15 understanding as to that middle column, "Additional
 16 Differences related to System Reports versus RH
 17 Figures Used"?
 18 A I am not certain.
 19 Q You don't know what that is?
 20 A I don't.
 21 Q And there's a \$97,000 difference, and
 22 you can't tell me what the basis of that is, can
 23 you?
 24 A I cannot.

1 Q Okay. Let me ask you this question:
 2 I understand -- So this \$1.5 million figure at the
 3 bottom right corresponds to the amount that's set
 4 forth in your current complaint --
 5 A Okay.
 6 Q -- correct? I mean, I'll tell you
 7 that it does.
 8 A Okay.
 9 Q Yes?
 10 A Sure.
 11 Q Okay. So my question is, is this
 12 \$1.5 million figure in Bradshaw Exhibit No. 3 -- is
 13 that the current position of the TTO as to the
 14 amount of overpaid interest to LT during the
 15 relevant time period, or has the TTO changed its
 16 position in any way since producing that document?
 17 A I'm not aware of any changes.
 18 Q Okay. And the TTO has retained an
 19 accounting expert in this case, correct?
 20 A Correct.
 21 Q And we don't have the report yet and
 22 that's not due yet.
 23 Do you know who the accountants
 24 are?

1 MR. KALTENBACH: I'm going to object.
 2 I think -- I think that's privileged information
 3 unless and until such time as we actually
 4 disclose -- make a disclosure of them.
 5 MR. HOFFMAN: So she doesn't have to
 6 tell -- You're not going to let her tell me, even
 7 if she knows, who the accountants are. It's
 8 privileged?
 9 MR. KALTENBACH: I mean, it would
 10 seem --
 11 MR. HOFFMAN: Is that a fact?
 12 MR. KALTENBACH: I think --
 13 MR. HOFFMAN: Do you have a retainer
 14 agreement?
 15 MR. KALTENBACH: I'm sure that we do.
 16 MR. HOFFMAN: I bet you do.
 17 BY MR. HOFFMAN:
 18 Q Do you know who -- Don't answer who.
 19 Don't tell me who.
 20 Do you know who the accountants
 21 are that the TTO has retained to serve as their
 22 experts in this case?
 23 A Yes.
 24 MR. HOFFMAN: So, Barry, are you

1 instructing her not to answer if I ask who those
2 people are?
3 MR. KALTENBACH: It seems to me that
4 that --
5 MR. HOFFMAN: Just "yes" or "no";
6 don't beat around the bush.
7 MR. KALTENBACH: Jay, you know what?
8 I don't casually instruct a witness not to answer.
9 MR. HOFFMAN: Okay.
10 MR. KALTENBACH: And so I'd like to
11 flesh this out.
12 MR. HOFFMAN: Fair enough.
13 MR. KALTENBACH: It seems to me that
14 that would be privileged information until the time
15 comes that we disclose them.
16 So do you disagree that that's
17 privileged?
18 MR. HOFFMAN: I'm not here to debate
19 you. I just need a "yes" or "no."
20 MR. KALTENBACH: I will instruct the
21 witness not to answer on the basis that I think it
22 may well be privileged, and counsel is not going to
23 dispute me on that.
24 MR. HOFFMAN: I don't agree with your

1 position, but I'm not going to argue with you about
2 it. That's not what we're here for.
3 BY MR. HOFFMAN:
4 Q Okay. So do you know -- So I'm just
5 trying to get a feel for -- I've got a million and
6 a half dollar claim stated in this document, and
7 you've got an expert report coming.
8 Do you have any knowledge as to
9 whether the expert is engaged in any different type
10 of analysis that might produce some kind of
11 different number here such that I can ask you about
12 it today, or is the expert just going to verify and
13 support this?
14 MR. KALTENBACH: I'm going to --
15 Dr. Birkenmaier, I think that
16 intrudes upon what is now privileged information.
17 I think what the expert is doing and their
18 conclusions will be put forth in a report that
19 Mr. Hoffman will be served with.
20 So I'm going to instruct you not
21 to answer that question on the basis of privilege.
22 BY MR. HOFFMAN:
23 Q Okay. Are you aware that there
24 were -- that in the course of doing this interest

1 analysis that Ms. Bradshaw did that she encountered
2 periods of time for which there was missing data?
3 A Yes.
4 Q Okay. And what is your understanding
5 as to why the TTO's files were missing data
6 relating to interest payments?
7 A I don't know.
8 Q And how much missing data was there;
9 do you know?
10 A I don't know.
11 Q Okay. That's something Ms. Bradshaw
12 would know.
13 What did she do when she ran
14 across quarters with no data?
15 A I don't know.
16 Q So I asked you before about other
17 districts.
18 Are you telling me that there's
19 an analysis like the Bradshaw Exhibit No. 3
20 analysis for District 204 that exists for the other
21 districts there to check and make sure whether they
22 didn't get too much or too little interest?
23 A I don't know the level of detail for
24 other districts.

1 Q Okay. Because I've never seen
2 anything; so I'm asking you what documentation
3 exists with respect to any analyses the TTO
4 conducted as to other districts and the interest
5 amounts they received?
6 A I don't know.
7 (Whereupon, document
8 tendered.)
9 BY MR. HOFFMAN:
10 Q Okay. Have you seen TTO Deposition
11 Exhibit 20 before, please, Doctor?
12 A I don't recall this.
13 Q Okay. This was from the TTO files
14 produced to us in this case.
15 A Okay.
16 Q It appears to be an analysis of taking
17 the \$1.5 million that you claim LT got that was too
18 much and then spreading it out over the other
19 districts on a pro rata basis.
20 Is that what this looks like to
21 you?
22 A It appears that way.
23 Q Okay. And who did this? Who created
24 this document; do you know?

1 **A I don't know.**
 2 **Q** Okay. And doesn't this document
 3 assume that all of the other districts got paid the
 4 right amount of interest in all of the years at
 5 issue?
 6 **A I don't know what assumptions**
 7 **were used to create this.**
 8 **Q** Okay. Well, did all of the other
 9 districts get paid the right amount of interest
 10 from 1995 through 2012 other than District 204?
 11 **A To the best of my knowledge, but I**
 12 **cannot say that with 100 percent certainty.**
 13 **Q** And when you say they got the right
 14 amount, is that based on Healy's handwritten notes,
 15 or is it based on some other source for determining
 16 how much interest the district should have
 17 received?
 18 **A I don't know.**
 19 **Q** So you just -- Somebody at some point
 20 just told you that everything was fine with the
 21 other districts other than District 204 with
 22 respect to interest payments, right?
 23 **A Generally, yes.**
 24 **Q** Okay. And who told you that?

1 **A Kelly.**
 2 **Q** Okay. When?
 3 **A I couldn't tell you. It was early on**
 4 **in my time there, but I could not be specific about**
 5 **a date.**
 6 **Q** Somewhere in the 2013 to 2014 range?
 7 **A I would say probably yes.**
 8 **Q** Okay.
 9 **A More like 2014.**
 10 **Q** Okay. I have no more questions.
 11 MR. KALTENBACH: I just have a few.
 12 EXAMINATION
 13 By Mr. Kaltenbach:
 14
 15 **Q** Dr. Birkenmaier, do you recall --
 16 First of all, is it fair to say that part of your
 17 preparation for today's deposition also included
 18 knowledge you gained without necessarily being
 19 knowledge specifically to prepare yourself for
 20 today?
 21 MR. HOFFMAN: Objection. Leading.
 22 BY THE WITNESS:
 23 **A I was going to say you have to say**
 24 **that again.**

1 BY MR. KALTENBACH:
 2 **Q** You have a body of knowledge
 3 concerning a lot of the issues we've discussed,
 4 correct?
 5 **A Yes.**
 6 **Q** Is all of that derived solely from
 7 your preparation to testify today?
 8 **A No.**
 9 **Q** Okay. In connection with your
 10 preparation today, do you recall if you reviewed
 11 the complaint that the Township Trustees filed
 12 against Robert Healy?
 13 **A Yes.**
 14 **Q** Okay. Do you recall if you reviewed a
 15 copy of the judgment that was entered against
 16 Robert Healy?
 17 **A Yes.**
 18 **Q** Do you recall the document showing how
 19 much was recovered from Bob Healy's bank account?
 20 **A I didn't see a specific document other**
 21 **than what was in the -- in the claim.**
 22 **Q** Okay. Do you --
 23 MR. HOFFMAN: I'd like to see that. I
 24 haven't -- By the way, if you're going to talk

1 about money recovered from his bank account, I
 2 haven't -- I don't believe I've seen that.
 3 MR. KALTENBACH: That was the 497 she
 4 mentioned.
 5 MR. HOFFMAN: Yeah; I know. I haven't
 6 seen any documentation on that that I know of, if
 7 it was produced. I just went back through the
 8 documents.
 9 MR. KALTENBACH: I mean, it's in the
 10 court file somewhere.
 11 BY THE WITNESS:
 12 **A I haven't seen a document. I've just**
 13 **seen it referred to.**
 14 MR. HOFFMAN: I'm just saying, you're
 15 talking about it here. It wasn't produced in the
 16 case. It sounds like it's something you have at
 17 your fingertips. I'm asking you for it.
 18 BY MR. KALTENBACH:
 19 **Q** Dr. Birkenmaier, I believe you
 20 testified that you personally pulled and reviewed
 21 financial records regarding the TTO's payment of
 22 audits for member districts.
 23 Do you recall that?
 24 **A Yes.**

1 Q And was it your testimony that those
2 records reflected that the TTO paid for the audits
3 of District 204?

4 A Yes.

5 Q Okay. And by "paid for," I don't mean
6 processed checks. I mean, the money was actually
7 paid out of the TTO's operating account.

8 A Yes.

9 Q Okay. So with that knowledge, your
10 answer remains yes, correct?

11 A Yes, yes.

12 Q And I believe you also testified
13 regarding your review of financial records as to
14 whether or not the TTO paid for the audits of other
15 districts other than 204.

16 Do you recall that testimony?

17 A I do recall that, yes.

18 Q And the summary -- or your testimony
19 was that the TTO did not pay for the audits of
20 other districts, correct?

21 A Correct.

22 Q Okay. The TTO did process checks for
23 payment --

24 A Yes.

1 the audit of the school districts and the
2 Treasurer's office in Lyons Township."

3 Q Do you recall Mr. Hoffman asking you a
4 question about whether you had any reason to doubt
5 whether that sentence was accurate or not?

6 A I do.

7 Q Okay. And do you recall what your
8 response was?

9 A I believe I said I didn't.

10 Q Okay.

11 A Now that I'm looking at this again,
12 I'm concerned with the structure of the sentence.

13 Q Can you explain what your concern is?

14 A Sure. "The trustees hire and pay for
15 the audit of the school districts." Okay.

16 So the treasurer hired the
17 auditor, they processed the payment, but the actual
18 pay -- where they paid the cash for the audit would
19 apply only to LT, not the other districts.

20 So the second sentence, "This
21 office has assumed the cost of Lyons Township High
22 School's audit," that is correct, but this -- the
23 way this sentence, now that I see it, is packed
24 it's both true and not true.

1 Q -- of the audits --

2 A Yes.

3 Q -- of other districts, correct?

4 A Yes.

5 Q Okay. I'm going to show you what had
6 been marked as Exhibit No. 5, which is an
7 April 29th, 1999 letter to Dr. Beckwith from
8 Bob Healy.

9 Do you recall looking at this?

10 A I do.

11 Q And you've seen this both today, and
12 you've seen this before today --

13 A Yes.

14 Q -- correct?

15 A Yes.

16 Q Okay. And on the top of the sixth
17 page, Mr. Healy writes a couple sentences under the
18 heading "Annual Audit."

19 Do you recall looking at those
20 earlier today?

21 A I do.

22 Q Could you read that first sentence,
23 please, out loud?

24 A Sure. "The trustees hire and pay for

1 Q Okay. Because --

2 A Because the Township -- I'm sorry.

3 Q Because the Township did pay for the
4 cost of 204's audit, so it paid for one of the
5 districts, correct?

6 MR. HOFFMAN: Objection. Leading.
7 BY MR. KALTENBACH:

8 Q You can answer the question.

9 A Okay. Yes, based on -- The second
10 statement here in this paragraph is true; but the
11 first statement, the hiring of the auditors for for
12 the school districts collectively is correct. The
13 payment of the audit, we pay -- we process the
14 payment of all of the audits, but we actually paid
15 cash for LT's audit. I'm sorry I didn't catch that
16 before.

17 Q And you did not pay cash for the
18 payment of the other districts other than LT,
19 correct?

20 A No. And that was the documents that I
21 downloaded that we looked at earlier.

22 Q And that you testified you personally
23 reviewed those?

24 A Yes.

1 Q Okay. Thank you. I have no further
2 questions.
3 MR. HOFFMAN: Okay. We're done.
4 THE WITNESS: Okay.
5 THE REPORTER: Signature?
6 MR. KALTENBACH: We'll reserve.
7 I'll talk to you about what that
8 means.
9 THE WITNESS: Okay.
10 MR. HOFFMAN: It means you can read it
11 later and see whether your answers were written
12 down correctly by this young lady.
13 THE WITNESS: Okay.
14 THE REPORTER: Are you ordering the
15 transcript?
16 MR. HOFFMAN: Yes. I'm going to get a
17 ptx and a mini pdf.
18 MR. KALTENBACH: What's the -- I'll
19 do just a pdf.
20 What's the turnaround you're
21 going to do on that?
22 THE REPORTER: Regular delivery is in
23 ten business days.
24 MR. KALTENBACH: We'll expedite it.

1 THE REPORTER: When do you need it; a
2 week or sooner than that?
3 MR. KALTENBACH: If you can do a week
4 from today, that's fine.
5 THE REPORTER: Okay.
6
7 (FURTHER DEPONENT SAITH NOT.)
8
9 (Deposition concluded at
10 3:03 p.m.)
11
12
13
14
15
16 * * * * *
17
18
19
20
21
22
23
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CHANCERY DIVISION
6
7 TOWNSHIP TRUSTEES OF SCHOOLS)
8 TOWNSHIP 38 NORTH, RANGE 12 EAST)
9)
10 Plaintiff,)
11)
12 -vs-) No. 13 CH 23386
13)
14 LYONS TOWNSHIP HIGH SCHOOL,) Hon. Sophia H. Hall
15 DISTRICT 204,)
16)
17 Defendants.)
18)
19)
20)
21 I, DR. SUSAN BIRKENMAIER, being first
22 duly sworn, on oath, say that I am the deponent in
23 the aforesaid deposition, that I have read the
24 foregoing transcript of my deposition, consisting
of Pages 1 through 246, taken on February 27, 2017,
at the aforesaid place and that the foregoing is a
true and correct transcript of my testimony so
given.
DR. SUSAN BIRKENMAIER
SUBSCRIBED AND SWORN TO
before me this day
of , A.D., 2017.
Notary Public

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4 I, KELLY ANN POTTS, Certified Shorthand
5 Reporter in and for the County of Cook, State of
6 Illinois, do hereby certify that on
7 February 27, 2017, discovery deposition of DR.
8 SUSAN BIRKENMAIER and the discovery deposition of
9 the Plaintiff pursuant to a Rule 206(a)(1) Notice,
10 was taken before me, reported stenographically and
11 was thereafter reduced to typewriting under my
12 direction.
13 The said deposition was taken at
14 20 North Clark Street, Suite 2500, Chicago,
15 Illinois, and there were present counsel as
16 previously set forth.
17 The said witness, DR. SUSAN BIRKENMAIER,
18 was first duly sworn to tell the truth, the whole
19 truth, and nothing but the truth, and was then
20 examined upon oral interrogatories.
21 I further certify that the foregoing is
22 a true, accurate, and complete record of the
23 questions asked of and answers made by said
24 witness, DR. SUSAN BIRKENMAIER, at the time and
place hereinabove referred to.

Lyons Township School Treasurer's Office**INVOICE**

22 Calendar Ct., STE D
LaGrange, IL 60525
(708) 352-4480
(708) 352-4417 FAX

INVOICE: No. 1
DATE: May 10, 2017

TO: School District #204
100 S. Brainard Ave.
LaGrange, IL 60525
(708) 579-6300

Lyons TTO Fiscal Services	PAYMENT TERMS
Pro-Rata Billing FY 2016	Due upon receipt

DESCRIPTION	TOTAL
Pro-Rata Billing as of June 30, 2016	\$ 322,352.21
Pro-Rata FY15 Outstanding	\$ 158,612.69
Pro-Rata FY14 Outstanding	\$ 114,081.05
<i>Supporting Documentation is attached</i>	
TOTAL DUE	\$ 595,045.95

Make all checks payable to Lyons Township School Treasurer's Office

THANK YOU!

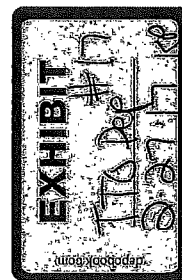
EXHIBIT

tabbles

8

Lyons Township School Treasurer
Pro Rata Billing
Fiscal Year Ending June 30, 2008

204 Pro Rata Billing History					
Fiscal Year	Billed To 204	204 Paid	Receivable	Payment Detail	Invoice copy
FY96	144,051	144,051	-	CHK#65458 6/13/97 AP STUB AVAILABLE	YES
FY97	144,004	144,004	-	CHK#73708 6/26/98 AP STUB AVAILABLE	YES
FY98	155,863	155,863	-	CHK#82377 6/99 AP STUB AVAILABLE	YES
FY99	165,476	165,476	-	JE PAYMENT GL DETAIL OF PAYMENT RECEIPT	YES
FY00	173,032	98,816	74,216	CHK#207283 7/00 AP STUB AVAILABLE; CHK#214346 6/27/01 AP STUB AVAILABLE	YES
FY01	178,897	40,498	138,399	CHK#223736 6/02 HANDWRITTEN NOTES	YES
FY02	186,502	17,948	168,554	CHK#, GL DETAIL OF PAYMENT RECEIPT	YES
FY03	171,265	-	171,265	CHK#230705 6/18/03 AP STUB AVAILABLE	YES
FY04	179,345	-	179,345		YES
FY05	180,684	-	180,684		YES
FY06	200,680	-	200,680		Missing our bill
FY07	190,328	-	190,328		YES
FY08	245,177	-	245,177		YES
FY09	289,560	-	289,560		YES
FY10	215,973	-	215,973		YES
FY11	216,348	-	216,348		YES
FY12	253,930	-	253,930		YES
FY13	253,900	149,551	104,349		YES
Total:	3,545,014	916,207	2,628,807		



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

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

Plaintiff-Counter Defendant,)

v.)

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,)

Defendant-Counter Plaintiff.)

Case No. 13 CH 23386

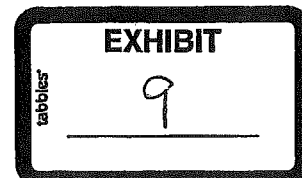
Hon. Sophia H. Hall

TOWNSHIP TRUSTEES' REPLY TO
DISTRICT 204'S FIRST AMENDED AFFIRMATIVE DEFENSES

Plaintiff and Counter-Defendant, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees" or "TTO"), by its undersigned counsel, MILLER, CANFIELD, PADDOCK & STONE, P.L.C., for its Reply to the First Amended Affirmative Defenses filed by Defendant and Counter-Plaintiff, Lyons Township High School Dist. 204 ("District 204" or "LT"), states as follows:

1. During the period of time relevant to this case, from 1992 through 2012, LT and the TTO had a difficult and, at times contentious, relationship. LT had little faith or trust in the competence and integrity of the TTO to perform its statutorily mandated functions. The TTO objected to providing meaningful information and supporting documentation to LT concerning the investment funds that the TTO managed, the expenses that the TTO incurred, and the many questions that LT and other member districts raised about the TTO's operations.

Reply: Township Trustees lacks sufficient knowledge with respect to the allegations in the first two sentences. Township Trustees does not know District 204's mindset. Township Trustees denies the last sentence.



2. During the relevant period, the TTO operated with no meaningful oversight. The TTO's Treasurer and Trustees lacked accounting and investment experience and assumed their positions based on their politics and not merit. This created an environment in which the Treasurer, over a period of years, was able to steal millions of dollars belonging to LT and the other member districts.

Reply: Township Trustees denies paragraph 2. Township Trustees affirmatively notes that the trustees are elected officials.

3. During the relevant period, LT performed its own business/accounting functions — essentially, accounts payable, payroll, accounting computer services, and check preparation — through the employment of its own skilled and trained personnel. LT refused the TTO's invitations to take the business functions at LT inside the TTO's office due to LT's legitimate concerns about the ability of the TTO's personnel and systems to handle the complex functions needed for LT's large high school operations.

Reply: Township Trustees admits that District 204 had personnel performing various business functions. Township Trustees denies the remaining allegations of paragraph 3.

4. LT's performance of its own business functions meant that the TTO did not have to hire and pay for additional employees in order to perform LT's business functions.

Reply: Township Trustees denies paragraph 4.

5. During the relevant period, the chief administrator for the TTO was Lyons Township School Treasurer Robert G. Healy ("Healy").

Reply: Township Trustees admits that Healy was the Treasurer during the relevant period, but denies the remaining allegations of paragraph 5.

6. During the relevant period, Healy sent LT an annual invoice for LT's *pro rata* share of the TTO's expenditures. These invoices were substantial, in the range of \$150,000 to \$200,000 for most of the relevant years (and, unfortunately, significantly higher in more recent years). This meant that in years that included the 1990's, LT paid the direct costs of its own business functions, plus an approximately 25 percent share of the TTO's services, which LT not want or need to use.

Reply: Township Trustees admits that Healy sent District 204 an annual invoice for District 204's *pro rata* share. Township Trustees admits that the invoices were frequently for amounts in the range of \$150,000 to \$200,000. Township Trustees affirmatively notes that the Treasurer's functions and calculation of District 204's *pro rata* share is set by statute and that District 204 does not have an option under the statute of declining to pay its *pro rata* share merely because it does not "want or need to use" the Treasurer's office for certain functions. Township Trustees denies the remaining allegations within paragraph 6.

7. This inequity was the subject of many communications in 1999 between LT and the TTO.

Reply: Township Trustees denies paragraph 7.

8. On May 28, 1999, Healy attended the meeting of the Finance Committee of the Board of Education for LT. According to the minutes, the Finance Committee "directed Mr.

Healy and Dr. Beckwith to work during the summer months to prepare options for the Board of Education to review that would provide more equity in the services provided the District.”

Reply: Township Trustees admits that Healy attended the referenced meeting and that the meeting minutes contain the quoted language. Township Trustees denies any remaining allegations with paragraph 8.

9. On July 27, 1999, the Board of Trustees for the TTO held a regular meeting. As reflected in the minutes, “There was a discussion regarding Lyons Township High School and the problems the district has with the Pro Rata billing system. The Trustees discussed with Treasurer Healy several options to improve relations with the high school. Some of the items discussed are for the Treasurer’s office to assume more duties, possibly fund certain business functions, computer sharing and legislation.”

Reply: Township Trustees admits that the Board of Trustees held a regular meeting on July 27, 1999 and that the quoted language is contained in the meeting minutes. Township Trustees denies any remaining allegations within paragraph 9.

10. On August 18, 1999, Healy sent Beckwith a long letter (“the 8/18/1999 Letter”, attached as Exhibit A) concerning the “Pro-Rata Billing System.” Healy said that the letter was “[i]n response to our most recent discussion regarding the possibility of instituting certain measures to balance the efforts of our respective staffs.” Healy said that he was presenting “proposed possible solutions.” The letter contains five distinct proposals from the TTO to LT.

Reply: Township Trustees admits that Healy sent the referenced letter to Dr. Beckwith, that it is entitled as regarding the "Pro-Rata Billing System, and that the quoted language appears in the letter. Township Trustees denies the remaining allegations within paragraph 10.

11. The first proposal in the 8/18/1999 Letter was entitled "Deviation from Pro-Rata Billing." Healy said that the first proposal would involve LT not paying its pro rata share of the TTO's expenses, and having the other eleven member districts absorb LT's share. Healy represented that this proposal would require all twelve member districts to sign an intergovernmental agreement, which Healy said was "highly unlikely."

Reply: Township Trustees admits that the first proposal was so entitled, that paragraph 11 summarizes this proposal and that Healy advised it was "highly unlikely" the other district would agree to an intergovernmental agreement excusing District 204 from paying its *pro rata* share. Township Trustees denies any remaining allegations within paragraph 11.

12. The second proposal in the 8/18/1999 Letter was entitled "Funding by Township School Treasurer of Some District Functions." This was the proposal that Healy recommended to LT. Healy explained, "If the responsibilities for the Accounts Payable and Payroll production were returned to the School Treasurer's office [*i.e.*, the TTO] it would mean higher operating costs for the Treasurer's office in the form of salaries and benefits for increased staff and higher related expenses to accommodate the increase in work load."

Reply: Township Trustees admits that the second proposal was so entitled and that the quoted language appears in the letter. Township Trustees denies that Healy recommended this proposal to District 204 and denies any remaining allegations within paragraph 12.

13. In the 8/18/1999 Letter, Healy explained why the TTO's Board of Trustees was likely to approve the second proposal: "I would expect that when the Trustees of Schools takes into consideration these necessary increases, they would logically conclude that a partial funding by the Treasurer's office to cover District 204's costs for the business functions District 204 now performs would be reasonable. Especially in light of the fact that the Treasurer's office is currently performing the same business functions for the eleven other districts."

Reply: Township Trustees admits that the quoted language appears in the letter. Township Trustees denies that Healy stated the Township Trustees was likely to approve the proposal, denies that the second proposal is materially different from the first proposal in its effect upon the other member districts, and denies any remaining allegations within paragraph 13. Township Trustees affirmatively notes that Healy advised that District 204 that the Trustees would need to approve any agreement, as opposed to Healy himself being able to approve any agreement.

14. In the 8/18/1999 Letter, Healy represented that unlike the first proposal, the second proposal would not require an intergovernmental agreement or the consent of the other member districts.

Reply: Township Trustees admits that Healy stated in general terms the concept alleged. Township Trustees denies that Healy was correct in his legal analysis and denies any remaining allegations within paragraph 14.

15. The 8/18/1999 Letter contained three more proposals, none of which Healy recommended. The third was for the TTO to take over LT's business functions. The fourth was

to change the pro-rata billing system through legislative action. The fifth was for the TTO to use LT's computer system.

Reply: Township Trustees admits that the letter discussed three more proposals which are summarized generally in paragraph 15 and that Healy did not recommend any of these proposals. Township Trustees denies the suggestion that Healy recommended any of the proposals and denies any remaining allegations within paragraph 15.

16. Healy sent copies of the 8/18/1999 Letter to the members of the TTO's Board of Trustees.

Reply: Township Trustees lack sufficient knowledge to either admit or deny that Healy actually sent a copy of this letter to the Trustees. Township Trustees note they are indicated as CC recipients and Township Trustees do not contend that they did not receive the letter.

17. On September 29, 1999, the Finance Committee of LT met and considered Healy's written proposals. Healy was present at the meeting. The Finance Committee decided to proceed with the second proposal spelled out in Healy's letter, and asked Beckwith and Healy to work on a definitive agreement: "The committee directed Dr. Beckwith to work with Mr. Healy to further define the costs of the business office that can be charged to the Treasurer's office. These charges could include salaries for the accounts payable, payroll and computer services staff. Also an amount for computer processing was discussed. In addition to salaries, costs associated with reconciliation, printing of checks, audit, legal fees and office costs could also be transferred to the Treasurer's office. These costs would be included in the Treasurer's pro rata billing. Mr. Healy indicated the Township Board of Trustees is supportive of this method."

Reply: Township Trustees admits that the referenced meeting occurred and that Healy was present. Township Trustees admits that the quoted language appears in the meeting minutes. Township Trustees denies the remaining allegations within paragraph 17. Township Trustees affirmatively notes again that the minutes indicate Healy advised that the Trustees (as opposed to Healy himself) would have to approve any agreement.

18. Healy and Beckwith negotiated the terms of a written agreement that fleshed out Healy's second option in the 8/18/1999 Letter. In the February 29, 2000 Memorandum that Beckwith sent to Healy ("the 2/29/2000 Memo," attached as Exhibit B), LT provided the TTO with the specific responsibilities that the TTO would pay LT to perform in-house during the 2000 fiscal year:

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest, and student activities.
- Annual salary and benefits costs for 3 employees as listed below:

[Three job positions listed, with salary and benefit costs specified for each, for a total cost for the 1999-2000 fiscal year of \$106,403.]

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the year.

Reply: Township Trustees admit that Dr. Beckwith sent the referenced memorandum to Healy and that paragraph 18 quotes from that document and summarizes part of it in a general sense. Township Trustees denies the remaining allegations within paragraph 18. Township Trustees affirmatively notes that the proposal is one being made by District 204, for one fiscal

year for a specific dollar amount, and that District 204 was proposing that Township Trustees would pay for the amount referenced.

19. On March 21, 2000, the Board of Trustees of the TTO conducted a regular meeting. The Agenda for the meeting included an item for "8. District 204 Business Office." The meeting packet that the TTO produced in this case show that the Trustees received a copy of the written agreement set forth in the 2/29/2000 Memo.

Reply: Township Trustees admits that the Trustees held a regular meeting on March 21, 2000 and that the Agenda for that meeting so indicates. The Township Trustees does not deny that the meeting packet contains a copy of the referenced memorandum, but denies that the memorandum set forth a written agreement. Township Trustees deny any remaining allegations within paragraph 19.

20. According to the meeting minutes for the March 21, 2000 meeting, Healy presented the written agreement to the Trustees for their approval. Healy explained to the Trustees the basis on which he recommended the approval of this agreement:

Healy submitted to the Trustees the proposal from District 204 stating that this office absorb certain payroll, accounts payable and computer processing expenditures by District 204. As these costs would be incurred by the Treasurer's office if Lyons Township High School were to totally utilize the facilities of the Treasurer's office.

Reply: Township Trustees admit that the quoted language appears in the meeting minutes. Township Trustees denies the remaining allegations within paragraph 20, including that Healy presented any "written agreement" to the Trustees, that the memorandum (which is not a

written agreement) was presented to the Trustees for their approval, and that Healy recommended the Trustees approve the proposal contained in the memorandum.

21. The Trustees of the TTO who attended the March 21, 2000 meeting then voted unanimously to approve the agreement between LT and the TTO:

A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the Lyons Township Trustees of Schools by Cook County High School District #204.

ROLL CALL: Ayes — Joseph Nekola, Russell Hartigan
 Nays — None

Reply: Township Trustees admit that the quoted language appears in the meeting minutes, but denies that this had the effect of approving the proposal from District 204. Township Trustees denies any remaining allegations within paragraph 21. Township Trustees affirmatively state that the minutes from this meeting additionally state that “A point to be clarified is to make sure that workman’s compensation is covered. A further recommendation by Trustee Hartigan is that the trustees be given an evaluation of the employee’s performance for those aforementioned personnel employed at the high school.” Township Trustees further affirmatively state that these additional points were never again discussed.

22. On March 22, 2000, the Finance Committee of LT met and discussed the agreement with the TTO. According to the minutes, “The Committee reviewed the recommended changes in the Township Treasurer billing. The billing will include transferring the cost of 3 business office staff salaries and benefits to the Township Treasurer.”

Reply: Township Trustees admits that the Finance Committee met on March 22, 2000 and that the quoted language appears in the meeting minutes. Township Trustees deny the remaining allegations within paragraph 22.

23. On June 14, 2000, Beckwith wrote a memorandum to the Board of Education of LT. Beckwith explained the details of the implementation of the agreement with the TTO and provided copies of the key documents — including the TTO's pro rata expense invoice and the 2/2⁹/2000 Memo setting forth the terms of the agreement. Beckwith explained that the TTO's invoice was for \$165,476, and that the Treasurer would pay \$106,403 for the business functions at LT. Beckwith asked the Board to approve the agreement by authorizing the net payment to the TTO.

Reply: Township Trustees admits that Dr. Beckwith wrote the referenced memorandum and set forth the amounts indicates. Township Trustees denies the remaining allegations within paragraph 23. Township Trustees affirmatively notes that the meeting minutes do not reflect that Dr. Beckwith asked the District 204 Board of Education to approve any agreement. Rather, they reflect that she asked the Board of Education to approve a payment.

24. On June 19, 2000, the Board of Education of LT held a regular meeting. The agenda includes a line item for "P. Township Treasurer's Invoice." The minutes state that the Board received the "Township Treasurer's Invoice Exhibit T," which was a copy of Beckwith's June 14, 2000 memorandum. The Board approved the recommended handling of the TTO's pro rata invoice and the offset for the TTO's agreement to pay the costs of LT's business functions by a unanimous vote of all present Board members on the consent agenda.

Reply: Township Trustees admits that on June 19, 2000 the District 204 Board of Education held a regular meeting, that the agenda included the referenced line item, that the meeting minutes indicate as alleged, and that the Board of Education approved payment of the invoice through a unanimous vote on the consent agenda. Township Trustees denies the remaining allegations of paragraph 24 and specifically denies that District 204 voted to approve any contract with Township Trustees, which such contract had not, in fact, been approved by Township Trustees.

25. On or about July 15, 2000, LT authorized payment to the TTO of \$59,073. The TTO accepted this amount as full payment of LT's pro rata share of the TTO's expenses as offset by the costs of LT's business functions.

Reply: Township Trustees lack sufficient knowledge to either admit or deny when District 204 authorized the payment, but Township Trustees does not dispute that this payment was made. Township Trustees denies the remaining allegations within paragraph 25.

26. In each year from 2001 through 2012, the TTO and LT took affirmative steps, with the approval of both boards, to reaffirm their agreement on the payment of LT's business functions and accept the specific financial terms applicable to each year.

Reply: Township Trustees denies paragraph 26.

27. On September 7, 2000, Healy sent a letter to LT that expressly recognized that the TTO, in the 2001 fiscal year, would continue to operate under the parties' agreement in the same manner as in 2000: "As was done last year the Trustees will continue funding certain business

functions. Funding last year totaled \$106,403.00 (which brought the district's net payment to \$59,073.00)."

Reply: Township Trustees admits that Healy sent the referenced letter and that the language quoted appears in the letter. Township Trustees deny the remaining allegations within paragraph 27, deny that Healy had authority to send the letter, and deny that the Trustees ever approved the letter or approved any agreement respecting the 2001 and subsequent fiscal years.

28. On January 12, 2001 — four months after writing to affirm the agreement for the 2001 fiscal year — Healy sent LT a letter detailing the duties and responsibilities of the TTO. Healy specifically noted that "105 ILCS 5/8-4 requires that all school districts pay there [sic] proportionate share of the expenses of the Treasurer's Office. The contribution formula is prescribed by statute and allows for no variation."

Reply: Township Trustees admits that Healy sent the referenced letter, that the language quoted appears in the letter, and that it is correct that the Illinois School code does not permit variation from its statutorily-mandated formula. Township Trustees denies the remaining allegations within paragraph 28.

29. Until 2013, the TTO viewed the agreement on the payment of LT's business functions as fully consistent with LT's obligations to pay its pro rata share of expenses under School Code Section 8-4.

Reply: Township Trustees denies paragraph 29.

30. Each year from 2001 through 2012, the TTO and LT followed the same procedure to reaffirm their agreement on the TTO's payment of the costs of LT's business functions: Healy

sent LT a written invoice under Section 8-4 for LT's pro rata share of the TTO's expenditures; LT sent Healy a written memorandum (all similar to the 2/29/2000 Memo, and attached as Exhibit C) detailing the exact costs of LT's business functions that LT proposed the TTO would pay; the TTO accepted the amount in LT's memorandum and any net payment it indicated; the Board of Education of LT considered and approved the TTO's pro rata invoice, LT's memorandum specifying the TTO's payment of LT's business functions, and any net payment due to the TTO; and the Board of Trustees of the TTO (several times during the year) approved the expenditures of the TTO, which included the payment of LT's business functions.

Reply: Township Trustees denies paragraph 30.

31. The parties' agreement on the TTO's payment of the costs of LT's business functions, and the parties' long course of dealing under the agreement, ended in 2013. On April 19, 2013, the TTO sent a letter to LT denying the existence of the agreement; accusing LT of violating School Code Section 8-4 in past years; and demanding payment from LT of over \$2 million.

Reply: Township Trustees denies the first sentence of paragraph 31. Township Trustees admits the second sentence of paragraph 31. Township Trustees affirmatively notes that in sending the letter, they were advising District 204 that to the extent any such agreement might lawfully exist it was being terminated. Township Trustees did not thereby agree that a lawful agreement had existed.

32. Since at least 1992 through 2012, the TTO paid for the annual audits of LT.

Reply: Township Trustees admits paragraph 32.

33. The TTO's payment for each of LT's annual audits, through its payment of the multiple invoices for each of the annual audits, was knowing and intentional.

Reply: Township Trustees admits that the payments were knowing and intentional, *i.e.*, payment was not accidentally made. Township Trustees denies that the parties ever reached an agreement whereby Township Trustees entered into an agreement to make the payments and denies that it authorized paying for District 204's annual audit. Township Trustees affirmatively notes that the Illinois School Code requires that District 204 pay for its own annual audit and that all of the other school districts paid for their own annual audits.

34. Each year from 1992 through 2012, the Trustees of the TTO voted several times during each year to approve the expenditures of the TTO, which expenditures included the TTO's payments for the annual audits of LT.

Reply: Township Trustees admits that the Trustees voted to approve expenditures, which such expenditures included payment of District 204's annual audits. Township Trustees deny that the Trustees ever voted specifically to approve payment of District 204's annual audits. Rather, the Trustees approved expenditures on a more generalized level. Township Trustees denies any remaining allegations within paragraph 34.

35. During the period 1992 through 2012, the TTO repeatedly represented to LT — both in writing and in oral communications — that the TTO was paying the annual audit costs not just for LT, but also for the other member districts of the TTO (“the Other Districts”).

Reply: Township Trustees denies the allegations of paragraph 35. Township Trustees does not deny that Healy stated this to District 204. Township Trustees affirmatively notes that Healy was incorrect.

36. During the period 1992 through 2012, LT accepted as true — and had no reason to doubt — the TTO's repeated representations that the TTO was paying the annual audit costs for LT and the Other Districts.

Reply: Township Trustees lacks sufficient knowledge to either admit or deny whether District 204 accepted any such statement as truthful.

37. At no time from 1992 to 2012 did the TTO ever refuse to pay for the costs of LT's annual audits, or reject an invoice relating to the work performed on LT's annual audits.

Reply: Township Trustees admits that it paid the cost of District 204's annual audit and that to its knowledge no such invoices were rejected for payment. Township Trustees denies any remaining allegations within paragraph 37.

38. During the relevant time, because the TTO was paying for the annual audits, LT let the TTO select the accounting firm to perform the annual audit for LT. That audit firm was the firm now known as Baker Tilly Virchow Krause, LLP, and its predecessor firms ("Baker Tilly").

Reply: Township Trustees admits the allegation respecting the identity of the accounting firm. Township Trustees denies the remaining allegations within paragraph 38.

39. No law or principal of equity prevented the TTO from paying for the annual audits of LT.

Reply: Paragraph 39 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 39 can be deemed as containing factual allegations, such allegations are denied.

40. No law or principal of equity prevented LT and the Other Districts from accepting the TTO's payment for the costs of its annual audits.

Reply: Paragraph 40 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 40 can be deemed as containing factual allegations, such allegations are denied.

41. From 1992 through 2012, LT was the largest member district in the TTO, accounting for about 25 percent of the district's pooled investment funds.

Reply: Township Trustees admits paragraph 41.

42. By paying for the annual audits of LT from 1992 through 2012, the TTO during this time period encouraged LT to continue to remain a member of the TTO, and to not seek to depart from this archaic, unprofessional, and unnecessary organization through a legislative act, as many other school districts have done successfully in order to save their taxpayers money.

Reply: Township Trustees denies paragraph 42.

43. From 1992 through 2012, LT relied on the TTO's payments of LT's annual audit costs in budgeting for and allocating LT's funds to teacher and staff salaries, educational

programs, building construction and maintenance, and other education-related responsibilities and programs in each fiscal year.

Reply: Township Trustees lacks sufficient knowledge of what District 204 relied upon when formulating its budgets and allocating funds. Township Trustees denies any implicit allegations contained within paragraph 43.

44. From 1992 through 2012, the payments that the TTO made for the annual audits of LT were part of the expenditures of the TTO. The TTO's expenditures, in turn, formed the basis of the TTO's pro rata expense invoices. During this period, LT's pro rata share was about 25 percent. Therefore, through the pro rata billing process, the TTO invoiced LT for about 25 percent of the costs of LT's own annual audit.

Reply: Township Trustees admits that its payment of District 204's annual audits were treated as an expenditure of the TTO and should have been included on the annual *pro rata* invoices sent to member districts. Township Trustees admits that during the time period alleged, District 204's *pro rata* share was about twenty-five percent. Township Trustees affirmatively states that Healy did not include all expenses of the Treasurer's office on the *pro rata* invoices. Township Trustees further states that during the time period in question, District 204 did not pay its annual *pro rata* invoices, but rather paid some or none of such invoices. Township Trustees denies any remaining allegations within paragraph 44.

45. From 1995 through 2012, the TTO held and invested the funds belonging to LT and the other school districts within the TTO's jurisdiction ("the Other Districts").

Reply: Township Trustees admits paragraph 45.

46. From 1995 through 2012, the TTO would make payments to LT and the Other Districts of funds that the TTO represented to be interest on the investments the TTO made with their pooled funds.

Reply: Township Trustees denies that it made “payments” to District 204 or other member districts and denies paragraph 46 on that basis. Township Trustees does not deny that it allocated investment interest to District 204 and the other member districts.

47. From 1995 through 2012, the TTO would make these interest payments on a periodic basis, which sometimes but not always was done quarterly.

Reply: Township Trustees denies that it made “payments” and on that basis denies paragraph 47. Township Trustees does not deny that it allocated interest on a periodic basis that was typically quarterly.

48. From 1995 through 2012, the TTO provided LT and the Other Districts with little or no information or supporting documentation about the specific investments that the TTO made of the members’ funds, the rates of return on these investments, the terms of these investments, the amount of interest that the TTO actually earned on the pooled investments, or the amount of interest that each school district was entitled to receive as its share of the investment earnings.

Reply: Township Trustees denies paragraph 48.

49. From 1995 through 2012, the TTO never provided LT with sufficient information or documentation to allow LT to calculate the amount of interest on investments it was entitled to receive from the TTO.

Reply: Township Trustees lacks sufficient knowledge to admit or deny what District 204 was capable of calculating based on the information or documentation provided to District 204.

50. From 1995 through 2012, the TTO never provided LT with sufficient information or documentation to allow LT to confirm that the amount of the interest earnings that it received from the TTO was correct.

Reply: Township Trustees lacks sufficient knowledge to admit or deny what District 204 was capable of confirming based on the information or documentation provided to District 204.

51. From 1992 through 2012, LT relied on the TTO's representations on the amounts of interest on investments due to LT in budgeting for and allocating LT's funds to teacher and staff salaries, educational programs, building construction and maintenance, and other education-related responsibilities and programs in each fiscal year.

Reply: Township Trustees lacks sufficient knowledge of what District 204 relied upon when formulating its budgets and allocating funds. Township Trustees denies any implicit allegations contained within paragraph 51.

First Affirmative Defense- Laches

52. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates by reference its replies to paragraphs 1-51.

53. This case presents extraordinary circumstances showing that the TTO unreasonably delayed in pursuing its claims in this case.

Reply: Township Trustees denies paragraph 53.

54. These extraordinary circumstances include (a) entering into an agreement in 2000 with LT for the payment of LT's annual business functions, reaffirming that agreement every year from 2001 through 2012 with the approval of both boards, knowingly and intentionally accepting the agreed setoff against the pro rata invoice, and then — in 2013 — terminating the agreement and only then denying its existence or validity and seeking to recover 12 years of past payments to LT exceeding \$2 million; (b) making interest payments on investments to LT from 1995 to 2012, failing to provide LT with information or documentation sufficient to allow LT to confirm the accuracy of the amount, failing to keep sufficient records at the TTO to document the interest earnings, and then — in 2013 — claiming that the TTO overpaid interest to LT over a 17 year period and demanding the return of over \$1.5 million; and (c) knowingly, and without coercion or duress, paying for the annual audits of LT from at least 1992 through 2012, representing repeatedly to LT that the TTO was paying for the audits of the Other Districts, selecting for LT the auditor that performed the annual audits (for LT, the TTO, and the Other Districts), and then — in 2013 — claiming that its own payments for the past 20 years to Baker Tilly were improper and seeking the return of over \$500,000.

Reply: Township Trustees denies paragraph 54.

55. During the relevant time period, LT relied on its financial arrangements with the TTO and its long course of dealings with the TTO in formulating budgets, allocating resources, and managing its public funds.

Reply: Township Trustees lacks sufficient knowledge of what District 204 relied upon when formulating its budgets, allocating resources and managing its public funds. Township Trustees denies any implicit allegations contained within paragraph 51.

56. Under these extraordinary circumstances, the TTO's claims are barred in whole or part by the doctrine of laches.

Reply: Paragraph 56 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 56 can be deemed as containing factual allegations, such allegations are denied.

Second Affirmative Defense – Statute of Limitations

57. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates by reference its replies to paragraphs 1-51.

58. The TTO's claims in the First Amended Complaint are subject to the five-year catch-all statute of limitations set forth in 735 ILCS 5/13-205.

Reply: Paragraph 58 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 58 can be deemed as containing factual allegations, such allegations are denied.

59. The application of this statute of limitations bars those claims and alleged damages of the TTO that occurred or arose five years before the filing date of this case.

Reply: Paragraph 59 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 59 can be deemed as containing factual allegations, such allegations are denied.

Third Affirmative Defense – Promissory Estoppel

60. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporate by reference its replies to paragraphs 1-51.

61. Promissory estoppel is an equitable device invoked to prevent a party from being injured by a change in position made in reasonable reliance on another's conduct. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

Reply: Paragraph 61 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 61 can be deemed as containing factual allegations, such allegations are denied.

62. From 1992 through 2012, the TTO agreed with LT to pay the TTO's chosen auditor Baker Tilly for the costs of LT's annual audit. The parties reaffirmed that agreement several times during each of these years as Baker Tilly sent periodic invoices to the TTO (or LT forwarded the invoices to the TTO), and the TTO paid them. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

Reply: Township Trustees admits that its position is that District 204 was legally required to pay for its own audit. Township Trustees denies the remaining allegations within paragraph 62.

63. In correspondence and communications between the TTO and LT that occurred over many years, the TTO repeatedly and unambiguously promised LT that it would pay for LT's annual audits, and in fact did so.

Reply: Township Trustees admits that it wrongfully paid for District 204's annual audits. Township Trustees denies the remaining allegations of paragraph 63.

64. LT reasonably relied on the promises that the TTO made with respect to the annual audits payments, and LT also relied on the TTO's annual audit payments themselves.

Reply: Township Trustees denies paragraph 64.

65. LT's reliance on the TTO's promises to pay LT's annual audit costs, and the TTO's actual payments themselves, was expected and foreseeable by the TTO.

Reply: Township Trustees denies paragraph 65.

66. During the relevant years, LT relied on TTO's promises to pay for LT's annual audit costs to its detriment — if the TTO actually is able to avoid this agreement and reverse the parties' 20 year course of dealing. This detriment was based on the annual budgeting that LT conducted over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its continued use of the audit firm that the TTO selected for the

use of LT; and the disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 20 years' worth of payments that exceed \$500,000.

Reply: Township Trustees denies paragraph 66.

67. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

Reply: Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 67.

68. In correspondence and communications between the TTO and LT from 1999 through 2012, the TTO repeatedly and unambiguously promised LT that it would pay for LT's business functions, and in fact did so.

Reply: Township Trustees denies paragraph 68.

69. LT reasonably relied on the promises that the TTO made with respect to the business functions payments, and LT also relied on the annual offsets for the business function payments themselves.

Reply: Township Trustees denies paragraph 69.

70. LT's reliance on the TTO's promises to pay for LT's business functions, and the annual offsets for the business function payments themselves, was expected and foreseeable by the TTO.

Reply: Township Trustees denies paragraph 70.

71. During the relevant years, LT relied on TTO's promises to pay for LT's business functions to its detriment — if the TTO actually is able to avoid this agreement and reverse the parties' 12 year course of dealing. This detriment was based on the annual budgeting that LT conducted over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its hiring, retention, and payment of the salaries and benefits of the many employees who performed LT's business functions during the relevant years; its decision not to use the business services of the TTO in light of the TTO's agreement with LT; and the disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 12 years' worth of offsets exceeding \$2 million.

Reply: Township Trustees denies paragraph 71.

72. Accordingly, the TTO's claims are barred in part by the doctrine of promissory estoppel.

Reply: Paragraph 72 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 72 can be deemed as containing factual allegations, such allegations are denied.

Fourth Affirmative Defense – Equitable Estoppel

73. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates its replies to paragraphs 1-51.

74. Equitable estoppel is a doctrine that is invoked to prevent fraud and injustice. It arises whenever a party, by its word or conduct, reasonably induces another to rely on its representations, leading the other party to change its position so as to be injured. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

Reply: Paragraph 74 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 74 can be deemed as containing factual allegations, such allegations are denied.

75. From 1992 through 2012, the TTO agreed with LT to pay its chosen auditor Baker Tilly for the costs of LT's annual audit. The parties reaffirmed that agreement several times during each of these years as Baker Tilly sent periodic invoices to the TTO (or LT forwarded the invoices to the TTO), and the TTO paid them. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

Reply: Township Trustees admits that its position is that it did not agree to pay for District 204's annual audits and that it would have been unlawful for Township Trustees to do so under the circumstances of this case, and that it paid for District 204's annual audit as a result of

invoices it received from the auditor. Township Trustees denies the remaining allegations within paragraph 75.

76. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

Reply: Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 76.

77. In this case, the TTO made periodic payments to LT for interest on investments, and represented to LT with each payment that the amount was correct and proper — while not supplying LT with documentation and information sufficient for LT to verify the amounts of the payments.

Reply: Township Trustees denies paragraph 77.

78. The TTO, as detailed above, engaged in a pattern of conduct and communications over 20 years that (based on the TTO's current claims and positions taken in this case, and not necessarily on LT's positions or the factual record in this case) amounted to misrepresentation or concealments of material facts — namely, that the TTO would not abide by its agreement with LT to pay the annual audit costs; that the TTO did not have the ability to agree to pay for the

annual audit costs of LT; that the TTO did not pay for the annual audits of the other districts; that the TTO could or would deny the existence of this agreement and seek to recover these payments many years later; that the TTO would not abide by its agreement to pay for LT's business functions; that the Board of Trustees of the TTO in 2000 did not accept the proposal of LT on the payment of LT's business functions, and did not approve the expenditures of the TTO that included those payments during each subsequent year from 2001 to 2012; that the TTO was not willing to accept LT's annual offset for the cost of its business functions against the annual pro rata expenses invoice; that the payment of LT's annual audits costs and costs of business functions were illusory and misleading incentives for LT to remain in the TTO's jurisdiction; that the TTO did not maintain complete and proper records of its investment income; that the TTO did not pay the investment income to LT and the other districts as required; and that the TTO made incorrect and arbitrary payments paid to LT and other districts.

Reply: Township Trustees denies paragraph 78.

79. Under the circumstances alleged above, the TTO had at least implied knowledge of these actions and communications amounting to misrepresentations and concealments, and intended that LT would act on these misrepresentations and concealments. LT had no knowledge of the true facts (as the TTO now alleges them to be) and was innocent in its dealings with the TTO.

Reply: Township Trustees denies paragraph 79.

80. LT reasonably and in good faith changed its position and relied on the TTO's misrepresentations and concealments to its detriment, in that LT relied on the TTO's conduct and statements with respect to the annual audit costs, costs of business functions, and interest

payments for investments in its preparation of annual budgets over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its hiring, retention, and payment of the salaries and benefits of the many employees who performed LT's business functions during the relevant years; its decision not to use the business services of the TTO in light of the TTO's agreement with LT; its continued use of the audit firm that the TTO selected for the use of LT and the Other Districts; its decisions not to pursue more aggressively its repeated requests for reasonable information and documentation of the TTO's statements and calculations about LT's investments, its earnings on those investments, and the payments of interest to LT by the TTO; and the disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 12 years' worth of offsets for LT's business functions exceeding \$2 million, 20 years of audit cost payments exceeding \$500,000, and 17 years of interest payments involving alleged overpayments of interest exceeding \$1.5 million.

Reply: Township Trustees denies paragraph 80.

81. Under the circumstances of this case, conscience and honest dealing require that the TTO be equitably estopped from pursuing all or some of its claims in this case.

Reply: Paragraph 81 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 81 can be deemed as containing factual allegations, such allegations are denied.

Fifth Affirmative Defense – Waiver

82. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates its replies to paragraphs 1-51.

83. The affirmative defense of waiver is based on a party's express or implied voluntary and intentional relinquishment of a known and existing right. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

Reply: Paragraph 83 contains an allegation of law to which it is not appropriate to respond.

84. From 2000 to 2012, the TTO had a statutory right to send invoices to LT seeking payment of LT's pro rata share of the TTO's expenditures authorized by statute, and to collect on those invoices.

Reply: Paragraph 84 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 84 can be deemed as containing factual allegations, such allegations are admitted.

85. From 2000 to 2012, LT never refused to pay its pro rata share of the TTO's annual expenditures. In each year, the Board of Education of LT received and approved the TTO's annual pro rata invoice through its approval of the consent agenda at Board meetings.

Reply: Township Trustees does not understand the allegation that District 204 "never refused to pay its pro rata share," and on that basis lacks knowledge to either admit or deny the same. Township Trustees admits that while the District 204 Board of Education received and approved the annual invoices, District 204 did not pay the invoices in full for some years and did not pay the invoices at all in other years. Township Trustees denies any remaining allegations within paragraph 85.

86. From 2000 to 2012, in accordance with LT's agreement with the TTO on the payment of LT's business expenses, LT annually offset against the annual pro rata expense payment the annual cost of its business functions, and informed the TTO in writing of the amount of the offset.

Reply: Township Trustees denies paragraph 86.

87. To the extent that the TTO alleges that it had a legal right to receive LT's pro rata expense payments separate from the offsets for the costs of LT's business functions, and to the extent that the offsets were in any way improper or illegal, the TTO knowingly, and without coercion or duress, relinquished this right through its course of dealings and communications conducted with LT over a 12 year period.

Reply: Township Trustees denies paragraph 87.

88. Accordingly, at least part of the TTO's claims in this case are barred by the doctrine of waiver.

Reply: Paragraph 88 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 88 can be deemed as containing factual allegations, such allegations are denied.

Sixth Affirmative Defense – Unlcean Hands

89. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates its replies to paragraphs 1-51.

90. In the First Amended Complaint, the TTO fails to provide any legal theory of recovery to support its claims for declaratory relief and an award of over \$4 million in compensatory damages.

Reply: Paragraph 90 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 90 can be deemed as containing factual allegations, such allegations are denied.

91. Nevertheless, it appears from the First Amended Complaint that the TTO is seeking equitable relief from this Court.

Reply: Township Trustees admits it is seeking equitable relief. Township Trustees denies any remaining allegations within paragraph 91.

92. The TTO intentionally engaged in bad faith conduct toward LT starting in 2013. This bad faith conduct includes the TTO denying the existence of the long-standing agreement on payment of LT's business expenses; the TTO's current claim that an intergovernmental agreement was required, despite its representations to LT to the contrary in 1999; the TTO's claims about the calculations of interest on investments that were made without regard for the absence of sufficient records at the TTO to support valid calculations of interest due; and the TTO's claims made about the payments for the annual audits of LT in spite of the intentional nature of these payments, the lack of any legal bar to these payments, and the TTO's repeated representations to LT that it made these payments for the Other Districts.

Reply: Township Trustees denies paragraph 92.

93. Due to this bad faith conduct, the TTO's claims in this case are barred in whole or part by the doctrine of unclean hands.

Reply: Paragraph 93 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 93 can be deemed as containing factual allegations, such allegations are denied.

Seventh Affirmative Defense – Unjust Enrichment

94. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates its replies to paragraphs 1-51.

95. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

Reply: Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 95.

96. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

Reply: Paragraph 96 contains an allegation of law to which it is not appropriate to respond.

97. The TTO represented to LT that it was willing to enter into the agreement with LT concerning the payment for LT's business functions because if LT personnel did not perform those functions, the TTO would have to provide its own personnel at the TTO's expense to perform those functions.

Reply: Township Trustees denies paragraph 97.

98. Accordingly, in the event that the TTO's agreement with LT on paying the costs of LT's business functions is unenforceable or illegal, the TTO retained the benefit of the performance of LT's business functions without paying LT for that benefit. The TTO's retention of the benefits of these services would be to the detriment of LT, which paid for the salaries and benefits of employees that the TTO otherwise would have had to pay itself.

Reply: Township Trustees denies paragraph 98.

99. The TTO's retention of the benefit of these services is unjustified, given that the TTO had a statutory obligation to perform these services and chose to outsource these services to LT — with the promise of fair compensation for these services in an amount to be agreed on in each year.

Reply: Township Trustees denies paragraph 99.

100. The fair value of these business services is set forth in the annual memoranda that LT sent to the TTO from 2000 through 2012 (attached as Exhibit C).

Reply: Township Trustees denies paragraph 100.

101. Because the TTO's retention of the value of LT's performance of business services without payment would violate fundamental principles of justice, equity, and good conscience, the TTO's claims are barred in part by the doctrine of unjust enrichment.

Reply: Paragraph 101 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 101 can be deemed as containing factual allegations, such allegations are denied.

Eighth Affirmative Defense – Quantum Meruit

102. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates its replies to paragraphs 1-51.

103. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

Reply: Township Trustees admits that its position is that any such agreement was not entered into in accordance with Illinois law and would have violated Illinois law to the extent such an agreement existed. Township Trustees denies the remaining allegations within paragraph 103.

104. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

Reply: Paragraph 104 contains an allegation of law to which it is not appropriate to respond.

105. From 2000 to 2012, LT provided business services to the TTO by having its personnel perform the accounts payable, payroll, and reconciliation work that the TTO was statutorily obligated to perform for LT.

Reply: Township Trustees denies paragraph 105.

106. LT did not perform these business services gratuitously, and instead performed them under the promise of compensation from the TTO.

Reply: Township Trustees denies paragraph 106.

107. The TTO received an annual statement of the nature and the cost of the business services from LT, which the TTO received and approved.

Reply: Township Trustees denies paragraph 107.

108. The TTO accepted the business services that LT's personnel provided and used the information generated from these services.

Reply: Township Trustees denies paragraph 108.

109. In the event that the TTO is able to reverse its 12 year history of promises to pay and of acceptance of offsets for these services, LT would be uncompensated for the value of these services.

Reply: Township Trustees denies paragraph 109.

110. The fair value of these services is set forth in the annual memoranda that LT sent to the TTO from 2000-12 (Exhibit C).

Reply: Township Trustees denies paragraph 110.

111. Accordingly, the TTO's claims in this case are barred in part by the doctrine of quantum meruit.

Reply: Paragraph 111 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 111 can be deemed as containing factual allegations, such allegations are denied.

Ninth Affirmative Defense – Voluntary Payment Doctrine

112. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

Reply: Township Trustees incorporates its replies to paragraphs 1-51.

113. In accordance with the voluntary payment doctrine, money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal. Absent fraud,

coercion, or mistake of fact, monies paid under a claim of right to payment but under a mistake of law are not recoverable.

Reply: Paragraph 113 contains an allegation of law to which it is not appropriate to respond.

114. During the period 2000 to 2012, LT annually submitted to the TTO a claim for reimbursement for the costs of LT's business functions. Those annual claims included a detailed description of the employees who performed the business functions, their salaries and benefits, and any ancillary expenses. With full knowledge of the relevant facts, the TTO each year during that period made payment on LT's claims by agreeing to offset the costs of LT's business functions against LT's annual pro rata expense invoices, and by its acceptance of any net payments that LT made to the TTO.

Reply: Township Trustees denies paragraph 114.

115. There was no fraud, coercion, or mistake of fact involved in the TTO's decisions to pay for the costs of LT's business functions.

Reply: Paragraph 115 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 115 can be deemed as containing factual allegations, Township Trustees denies that it decided "to pay for the costs of LT's business functions" and denies any remaining allegations of fact within paragraph 115.

116. During the period 1992 through 2012, LT made claims for payment several times a year in form of invoices that either LT or Baker Tilly submitted to the TTO for work on LT's annual audit. Those periodic claims included a description of the work that Baker Tilly

performed, and the fact that the work was for LT's annual audit. With full knowledge of the relevant facts, the TTO several times a year during that period made payment on LT's claims by sending payment in full to Baker Tilly on the invoices.

Reply: Township Trustees admits that it paid Baker Tilly's invoices, received from whatever source, for District 204's annual audit and that such invoices reflected it was for District 204's annual audit. Township Trustees denies any remaining allegations within paragraph 116.

117. There was no fraud, coercion, or mistake of fact involved in the TTO's decisions to pay for the costs of LT's annual audits.

Reply: Paragraph 117 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 117 can be deemed as containing factual allegations, Township Trustees denies that it decided "to pay for the costs of LT's annual audits" and denies any remaining allegations of fact within paragraph 117.

118. During the period 1995 through 2012, LT periodically made claims for payment of interest on the funds that the TTO held and invested for the benefit of LT. These periodic claims came in the form of discussions concerning the nature and sufficiency of the investments, requests for more information about the investments, and — according to the allegations of the TTO in this case, which LT expressly denies as false — alleged requests of LT for payments of interest beyond the amounts that LT was entitled to receive. With full knowledge of the relevant facts, the TTO several times a year during that period made payment on LT's claims by paying interest to LT's funds through journal entries made at the TTO that increased the balances of LT's funds.

Reply: Township Trustees admits that it created journal entries whereby interest income was allocated to District 204. Township Trustees admits that Healy and District 204 had communications regarding investments and interest earnings. Township Trustees admits that at times District 204 specifically requested that Healy allocate it additional interest and that Healy did so unlawfully. Township Trustees denies any remaining allegations within paragraph 118.

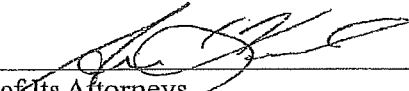
119. There was no fraud, coercion, or mistake of fact involved in the TTO's decisions to pay to LT periodic interest on invested funds.

Reply: Paragraph 119 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 119 can be deemed as containing factual allegations, Township Trustees denies that it "paid" interest to District 204, but does not deny it made journal entries allocation interest to District 204. Township Trustees denies any remaining allegations within paragraph 119.

120. Accordingly, the TTO's claims are barred in whole or part by the voluntary payment doctrine.

Reply: Paragraph 120 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 120 can be deemed as containing factual allegations, such allegations are denied.


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

By: 
One of Its Attorneys

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Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that (s)he verily believes the same to be true.

 4/27/17
Date

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

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

Plaintiff-Counter Defendant,)

v.)

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,)

Defendant-Counter Plaintiff.)

Case No. 13 CH 23386

Hon. Sophia H. Hall

NOTICE OF FILING

TO: Jay R. Hoffman/Hoffman Legal
20 N. Clark Street, Suite 2500
Chicago, IL 60602

PLEASE TAKE NOTICE that on April 28, 2017, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **Township Trustees' Reply to District 204's First Amended Affirmative Defenses**, a copy of which is hereby attached and served on you.

Respectfully,

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

By: 

One of Its Attorneys

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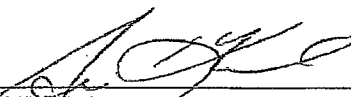
PROOF OF SERVICE

The undersigned, an attorney, certifies that a copy of the following document, **Township Trustees' Reply to District 204's First Amended Affirmative Defenses**, has been served upon:

Jay R. Hoffman
Hoffman Legal
20 N. Clark Street, Suite 2500
Chicago, IL 60602

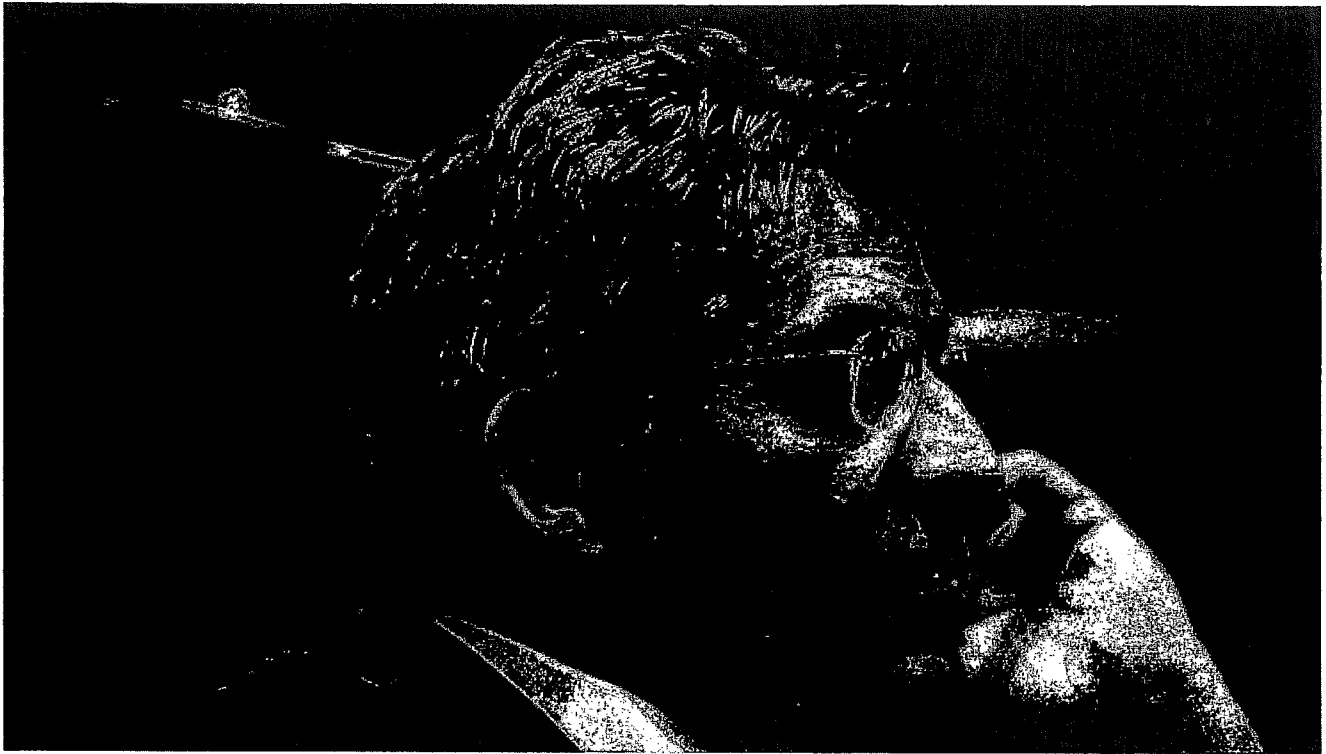
as follows:

	by personal service on April 28, 2017 before 4:00 p.m.
	by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 225 W. Washington Street, Chicago, Illinois, on April 28, 2017 before 4:00 p.m.
	by facsimile transmission from 225 W. Washington Street, Suite 2600, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 460-4201, consisting of ____ pages on April 28, 2017 before 4:00 p.m., the served [party/parties] having consented to such service.
	by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on April 28, 2017 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
X	by electronic mail, on April 28, 2017 before 5:00 p.m., the served [party/parties] having consented to such service.



Gerald E. Kubasiak, attorney

Editorial: Free the Lyons Township schools



Sen. Steve Landek chairs the Senate committee that controls the fate of a House-passed bill that would let local school districts separate from township school treasurers. Rather than protect political turf, he should let the bill proceed. (E. Jason Wambsgans, Chicago Tribune)

By Editorial Board

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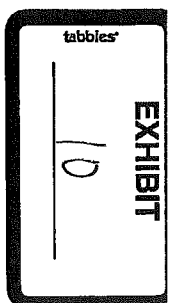
It's battle royal over an obscure township office.

APRIL 19, 2015, 10:23 PM

Robert Healy pleaded guilty last month to stealing more than \$1.5 million while he held the obscure post of Lyons Township school treasurer. He was sentenced to nine years in prison.

He stole that money from students, from taxpayers. Prosecutors say he grew so bold that he wired money from the township office to his own bank account — and once to a car dealership for a down payment on an Infiniti. He resigned in 2012.

The Lyons Township school trustees — more obscurity — were supposed to oversee Healy. They said



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Editorial Board

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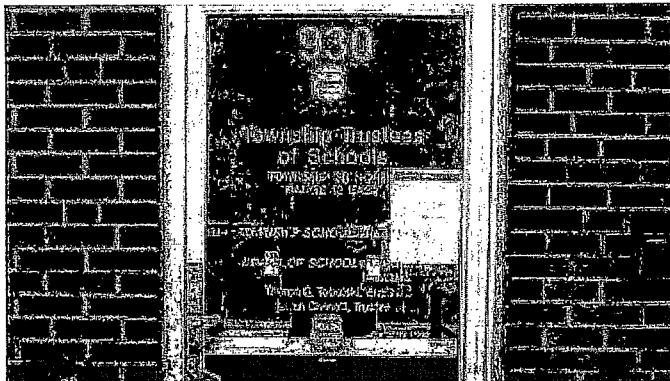
He stole that money from students, from taxpayers. Prosecutors say he grew so bold that he wired money from the township office to his own bank account — and once to a car dealership for a down payment on an Infiniti. He resigned in 2012.

The Lyons Township school trustees — more obscurity — were supposed to oversee Healy. They said they had no idea anything was amiss.

The trustees and treasurer are supposed to invest money for local school districts, including Lyons Township High School. LTHS and some of the other districts want to separate from the treasurer's office and handle their own investments.

This should breeze through the legislature. Here's a chance for lawmakers to be taxpayer heroes: rescue these schools from an obscure operation that has cost them — cost taxpayers — because of the failure to discover corruption.

Last month, the Illinois House voted 114-0 to pass a bill sponsored by GOP leader Jim Durkin that would allow LTHS to withdraw. It should sail through the Senate.



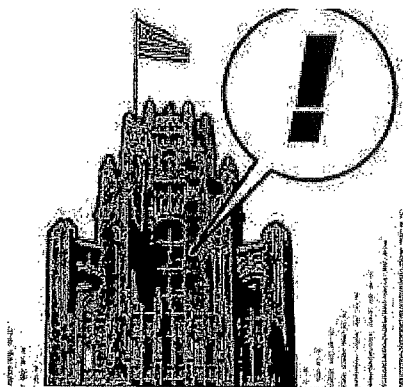
Former school treasurer sentenced to 9 years after guilty plea

But there's a catch. Democratic Sen. Steve Landek — who is also the mayor of Bridgeview and Democratic committeeman of Lyons Township — has picked up Senate sponsorship of the bill. The bill has been assigned to the State Government and Veterans Affairs Committee, which is chaired by Landek.

Will he hold it hostage?

The Lyons Township school trustees are his political allies. President Michael Thiessen was appointed by the board two years ago to fill a vacancy. Theron Tobolski is the brother of Jeff Tobolski, a Cook County commissioner and mayor of McCook. Karen Civinelli was tapped by Landek to lead a Bridgeview zoning committee. Civinelli decided not to seek another term as trustee and will be replaced by Michael Dickman, also a Landek supporter.

Landek told us he wants LTHS to settle a legal fight over \$4 million the treasurer's office says the school district owes it for service fees. He says that would protect other west suburban school districts that want to keep working with the treasurer.



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It's not Landek's role, though, to play judge. He should let the courts decide what, if anything, LTHS owes.

This sounds like old-fashioned political turf protection.

Landek and Senate President John Cullerton should move this bill through the Senate and onto the governor's desk. Don't throw up obstacles.

The bigger picture: The office of township school treasurer exists only in suburban Cook County. It was eliminated long ago elsewhere in the state. Here's a prime opportunity to eliminate one unneeded layer of government and let school districts control their own money.

Why do these offices survive? Because local pols can control the trustees and treasurers, and those people control millions of dollars in investments.

And you wonder why Illinois still has nearly 7,000 units of local government, more than any other state.

Prosecutors say Healy's theft went on for many years. Yet auditors and accountants and the *township school trustees* say they knew nothing.

Voters abolished the Leyden Township school treasurer's office after a treasurer pleaded guilty in 1995 to embezzling \$275,000. In 2002, the Calumet Township Schools treasurer pleaded guilty to stealing \$390,000.

Yet elsewhere taxpayers have to keep funding these corruption-prone layers of government?
Enough.

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

TOWNSHIP TRUTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST,

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

No. 13 CH 23386

Hon. Sophia H. Hall

**DEFENDANT'S VERIFIED ANSWER AND AFFIRMATIVE DEFENSES
TO AMENDED COMPLAINT FOR DECLARATORY RELIEF**

Defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204"), by and through its undersigned attorneys, states as follows for its answer to the Verified Amended Complaint for Declaratory Relief filed by plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST ("Township Trustees"):

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees"), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange Park, Cook County, Illinois.

ANSWER: Admit only that Township Trustees is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange Park, Cook County, Illinois.

2. Defendant, Lyons Township High School District No. 204 ("District 204"), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

ANSWER: Admit only that District 204 is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange, Cook County, Illinois.

EXHIBIT

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11

3. 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.

ANSWER: Admit.

4. 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.

ANSWER: Admit.

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

5. Pursuant to the Illinois School Code, 105 ILCS 5/1 et seq. (the "School Code"), and more particularly Section 8-1 thereof, the Township Trustees, who are elected by and responsible to the voters within Lyons Township, have appointed the Lyons Township School Treasurer (the "Treasurer") to serve as the statutorily-appointed treasurer for the school and other educational districts within Lyons Township for which the Township Trustees are responsible.

ANSWER: Admit that Township Trustees is comprised of board members who were elected by voters within Lyons Township, and that they are required to operate pursuant to the provisions of the Illinois School Code, including Section 8-1, and other applicable Illinois laws. Admit that Township Trustees appointed various individuals to serve as the Lyons Township School Treasurer (the "Treasurer"), and that the Treasurer is legally required to conduct his/her activities pursuant to the provisions of the Illinois School Code and other applicable Illinois laws. The provisions of the Illinois School Code are the best evidence of the duties, responsibilities, and limitations of the activities of Township Trustees and the Treasurer, and District 204 denies the allegations of Paragraph 5 to the extent they are inconsistent with the provisions of the Illinois School Code. Deny the remaining allegations, if any, of Paragraph 5.

6. These school and other educational districts for which the Township Trustees are responsible, and for which the Treasurer provides financial services, include District 204 and: 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; Argo Community High School District 217; LaGrange Area Department of Special

Education, which serves students from fifteen area school districts; Intermediate Service Center #2, which serves forty school districts in western Cook County; Lyons Township Elementary School District Employee Benefits Cooperative; and the Lyons Township Elementary School District Employee Benefits Cooperative.

ANSWER: Admit that Township Trustees has purported to provide limited financial services to District 204 and to the other specific school districts listed in Paragraph 6. District 204 lacks knowledge or information sufficient to form a belief as to the truth or falsity of Township Trustees' allegations that it actually "provides financial services" to those other specific school districts. Deny the remaining allegations, if any, of Paragraph 6.

7. The above school districts contain thirty-eight schools servicing almost 20,000 students.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 7.

8. The districts within Lyons Township comprise a Class II county school unit within the meaning of the School Code.

ANSWER: The allegations of Paragraph 8 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the various relevant Class types, and District 204 denies the allegations of Paragraph 8 to the extent they are inconsistent with the provisions of the Illinois School Code.

9. The duties of the Township Trustees and the Treasurer are set out in Articles 5 and 8 of the School Code, respectively.

ANSWER: The allegations of Paragraph 9 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois laws are the best evidence of Township Trustees' and the Treasurer's duties and responsibilities, and District 204 denies the allegations of Paragraph

9 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois laws.

10. As alleged more specifically herein, the obligation of the Treasurer is, in pertinent part, to take custody of public funds for the benefit of the districts it serves (with such funds coming from property taxes and other sources), invest those funds for the benefit of these districts, and pay such amounts to those persons and entities as it is lawfully instructed to pay by the districts it serves, whether such payments are for payroll or other purposes.

ANSWER: The allegations of Paragraph 10 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois laws are the best evidence of the Treasurer's obligations, and District 204 denies the allegations of Paragraph 10 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois laws.

11. The obligation of the Treasurer to serve the financial needs of these districts, including managing the public funds upon which they depend and paying their bills, enables the districts to fulfill one of the most important public obligations of government: the obligation to educate. It is the public policy of the State of Illinois, as expressed through Article X, Section I of its Constitution, that "[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capabilities."

ANSWER: Admit that Paragraph 11 partially quotes from Article X, Section I of the Illinois Constitution of 1970. The remaining allegations of Paragraph 11 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois laws are the best evidence of the Treasurer's obligations, and District 204 denies the allegations of Paragraph 11 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois laws. Answering further, the Illinois Constitution of 1970, Illinois statutes, and Illinois case law are the best evidence of the public policy of the State of Illinois, and District 204 denies the allegations of Paragraph 11 to the extent they are inconsistent with those sources of law.

12. Pursuant to Section 8-17 of the School Code, the Treasurer is to receive public funds, including property taxes, and hold those funds for the benefit of the school and other

educational districts it serves in furtherance of their obligation to provide for the education of students within Lyons Township.

ANSWER: The allegations of Paragraph 12 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 12 to the extent they are inconsistent with the provisions of the Illinois School Code.

13. Pursuant to Section 8-7 of the School Code, the Treasurer is, "the only lawful custodian of all school funds."

ANSWER: Admit that Paragraph 13 partially quotes from Section 8-7 of the Illinois School Code. The remaining allegations of Paragraph 13 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 13 to the extent they are inconsistent with the provisions of the Illinois School Code.

14. Section 8-6 of the School Code requires that the Treasurer "have custody of the school funds and shall keep in a cash book separate balances."

ANSWER: Admit that Paragraph 14 partially quotes from Section 8-6 of the Illinois School Code. The remaining allegations of Paragraph 14 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 14 to the extent they are inconsistent with the provisions of the Illinois School Code.

15. In accordance with Section 8-6, the Treasurer is required to maintain cash balances, by fund, for each district which it serves and the Treasurer is obligated to reconcile such balances with the respective cash balances shown by each district.

ANSWER: The allegations of Paragraph 15 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 15 to the extent they are inconsistent with the provisions of the Illinois School Code.

16. Section 8-17 of the School Code also imposes upon the Treasurer the responsibility for all receipts, disbursements, and investments arising out of the operation of all the school districts being served by the Treasurer.

ANSWER: The allegations of Paragraph 16 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 16 to the extent they are inconsistent with the provisions of the Illinois School Code.

17. With respect to paying such amounts as each district may owe, Section 8-16 of the School Code requires that the Treasurer make payment on behalf of the districts it serves out of the funds allocated to such districts, but "only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board"

ANSWER: Admit that Paragraph 17 partially quotes from Section 8-16 of the Illinois School Code. The remaining allegations of Paragraph 17 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 17 to the extent they are inconsistent with the provisions of the Illinois School Code.

18. Sections 10-18 and 10-20.19 of the School Code provide further detail as to the procedure to be followed in submitting the above orders for payment. The form of order is specifically provided for in Section 10-18.

ANSWER: The allegations of Paragraph 18 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 18 to the extent they are inconsistent with the provisions of the Illinois School Code.

19. Section 10-20.19 also allows a board to choose to substitute a certified copy of the portions of the board minutes, properly signed by the secretary and president, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the Treasurer, and to what budgetary item each payment shall be debited. That certified copy provides "full authority" to the Treasurer to make the payments. A voucher system may also be used so long as it provides the same information.

ANSWER: The allegations of Paragraph 19 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 19 to the extent they are inconsistent with the provisions of the Illinois School Code.

20. In order to make payments as lawfully instructed by the districts which it serves, the Treasurer utilizes what are called "Agency Accounts" at local banks.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 20.

21. When a district has provided lawful instruction to the Treasurer to issue payment, the Treasurer effectuates the payment drawing on the appropriate Agency Account.

ANSWER: The allegations of paragraph 21 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 21.

22. Agency Accounts are funded by transfer from other accounts in the custody of the Treasurer and maintained and utilized by the Treasurer to hold funds belonging to multiple districts and for which there is not an immediate need. The funds in the Agency Account, both before and after they arrive in the Agency Account, remain in the custody of the Treasurer.

ANSWER: The allegations of paragraph 22 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 22.

23. The districts do not have signatory power on the Agency Accounts, with the exception of certain revolving and flex-spending accounts not at issue in this litigation. The Treasurer has signatory power on the Agency Accounts.

ANSWER: The allegations of paragraph 23 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 23.

DISTRICT 204'S FAILURE TO PAY FOR ITS PRO RATA SHARE OF THE TREASURER'S OPERATIONAL EXPENSES

24. The Treasurer has its own costs to run its office and provide its financial services to the districts it serves, including the Treasurer's compensation and expenses of the Treasurer's office. The Treasurer pays these operating expenses from its General Fund, which is funded through each district's Agency Account as alleged more fully below.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 24.

25. Section 8-4 of 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."

ANSWER: Admit that Paragraph 25 partially quotes from Section 8-4 of the Illinois School Code. The remaining allegations of Paragraph 25 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of school districts' payment obligations, and

District 204 denies the allegations of Paragraph 25 to the extent they are inconsistent with the provisions of the Illinois School Code.

26. Pursuant to Section 8-4 of the School Code, each district's pro rata 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."

ANSWER: Admit that Paragraph 26 partially quotes from Section 8-4 of the Illinois School Code. The remaining allegations of Paragraph 26 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the proper manner in which to determine any pro rata share, and District 204 denies the allegations of Paragraph 26 to the extent they are inconsistent with the provisions of the Illinois School Code.

27. This statutory formula obligates the districts with the most money to pay the largest proportion of the costs. For example, if a district is allocated twenty-five percent of all public funds handled by the Treasurer, then it is required by the School Code to pay twenty-five percent of the Treasurer's operating expenses.

ANSWER: The allegations of Paragraph 27 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the proper manner in which to determine any pro rata share, and District 204 denies the allegations of Paragraph 27 to the extent they are inconsistent with the provisions of the Illinois School Code.

28. This statutory formula is mandatory and can only be changed by the General Assembly. No district may unilaterally decide it does not wish to pay its pro rata share, nor may any private agreements be made between public bodies in violation of the School Code. A district is required to pay the amount calculated and has no statutory authority to deduct any of its own expenses from its pro rata share it owes.

ANSWER: The allegations of Paragraph 28 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, District 204 denies the allegations of Paragraph 28.

29. In accordance with the statutory requirements of the School Code, on an annual basis the Treasurer determines District 204's pro rata share of the Treasurer's operation expenses and submits an invoice to District 204 for payment thereupon.

ANSWER: Admit that the Treasurer has submitted certain invoices to District 204 that purportedly related to District 204's pro rata share of the Treasurer's annual operating expenses. Deny the remaining allegations of Paragraph 29.

30. As alleged more particularly above, in order for District 204 to pay these invoices, District 204 would lawfully issue an order or voucher to the Treasurer for payment (or submit a certified copy of the school board minutes approving payments). The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund.

ANSWER: Admit District 204 paid certain invoices submitted by the Treasurer, including by issuing vouchers or checks to the Treasurer for payment. District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegation that "The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund." Deny the remaining allegations of Paragraph 30.

31. Prior to fiscal year 2000, District 204 paid the full amount of the invoices submitted for its pro rata share.

ANSWER: Admit that prior to fiscal year 1999, District 204 paid the Treasurer's invoices in full. Deny that the Treasurer's invoices prior to fiscal year 2000 reflected District 204's proper or lawful pro rata share of expenses. Deny the remaining allegations of Paragraph 31.

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices totaling \$538,431 to District 204 for its pro rata share. For these fiscal years, however, District 204 paid only \$157,262 for its pro rata share.

ANSWER: Admit District 204 received invoices from the Treasurer for fiscal years 2000, 2001, and 2002 totaling \$538,431.00 before agreed chargebacks for services District 204 supplied, which were applied and credited for the respective fiscal years. Admit District 204 mailed payments for the remaining balances to the Treasurer for fiscal years 2000,

2001, and 2002 in the total amount of \$98,188.75, consistent with the prior agreement between District 204 and the Township Trustees. Deny the remaining allegations of Paragraph 32.

33. In fiscal years 2003 through 2013, the Treasurer submitted invoices totaling \$2,397,189 to District 204 for its pro rata share. District 204, however, failed to pay any portion of the amount it owed, except for one payment of \$149,551.

ANSWER: Admit District 204 made a payment in the amount of \$149,551.00 toward fiscal year 2013. Deny the remaining allegations of Paragraph 33.

34. District 204's payment of \$149,551 was for fiscal year 2013 and was made on October 8, 2014, after Township Trustees filed its original Verified Complaint for Declaratory Relief and while Township Trustees were in the process of drafting this Verified Amended Complaint for Declaratory Relief. District 204's payment was drawn from an Agency Account at the First National Bank of La Grange.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the allegation that any payment was "drawn from an Agency Account." Admit the remaining allegations of Paragraph 34.

35. In total, for fiscal years 2000 through 2013, the amount of District 204's unpaid pro rata share totals \$2,628,807, taking into account the payment just received.

ANSWER: Deny.

36. District 204's failure to pay its pro rata share in full has created a deficit. As custodian for the districts, the Treasurer has not incurred a loss — the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

ANSWER: Deny.

37. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts the Treasurer serves will not suffer harm.

ANSWER: Deny.

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

38. Sections 8-7 and 8-8 of the School Code govern the depositing and investing of school funds.

ANSWER: The allegations of Paragraph 38 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code and other Illinois law are the best evidence of the proper manner of depositing and investing school funds, and District 204 denies the allegations of Paragraph 38 to the extent they are inconsistent with the provisions of the Illinois School Code or other Illinois law.

39. Pursuant to Section 8-7, the Treasurer is "permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds, and (ii) join with township and school treasurers, community college districts and educational service regions in investing school funds, community college funds and educational service region funds."

ANSWER: Admit that Paragraph 39 partially quotes from Section 8-7 of the Illinois School Code. The remaining allegations of Paragraph 39 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer's duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 39 to the extent they are inconsistent with the provisions of the Illinois School Code.

40. Section 8-7 of the School Code further provides, "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."

ANSWER: Admit that Paragraph 40 partially quotes from Section 8-7 of the Illinois School Code. Deny that Paragraph 40 includes the entire text of Section 8-7 of the Illinois

School Code, and deny the allegations of Paragraph 40 to the extent they are inconsistent with Section 8-7 of the Illinois School Code.

41. Pursuant to the authority of the School Code, the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegation that “the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.” The remaining allegations of Paragraph 41 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of the Treasurer’s duties, responsibilities, and obligations, and District 204 denies the allegations of Paragraph 41 to the extent they are inconsistent with the provisions of the Illinois School Code.

42. The Treasurer allocates interest on a quarterly basis or as more frequently as is appropriate.

ANSWER: Deny.

43. When the Treasurer allocates interest to a particular district (and when the Treasurer allocates the principal amongst the comingled funds) the Treasurer does so by making a journal entry. The Treasurer, in essence, makes an entry in its records that the district has been allocated a certain amount of interest generated by the comingled funds. The Treasurer does not write a check to the district, or otherwise physically turn custody of the interest over to the district. The interest stays in the custody of the Treasurer.

ANSWER: Deny.

44. In fiscal years 1995 through 2012, the Treasurer erroneously allocated \$1,574,636.77 in interest on investments to District 204.

ANSWER: Deny.

45. This over-allocation to District 204 necessarily means that the other districts which the Treasurer serves have been correspondingly under-allocated investment income. The Treasurer has not incurred a loss — the other fourteen districts it serves have incurred a loss to

the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

ANSWER: Deny. District 204 further moves this Court to strike the inaccurate, self-serving, and politically-motivated allegations of Paragraph 46 regarding the supposed "loss" of allocations of interest to other school districts.

46. To the extent District 204 has been over-allocated this interest, it means the other districts have necessarily been under-allocated interest. The Treasurer anticipates that once this interest is able to be properly reallocated among the districts, as examples, LaGrange School District 102 would get allocated approximately \$265,626 in interest and Argo Community High School District 217 would get allocated approximately \$319,077 in interest.

ANSWER: Deny. District 204 further moves this Court to strike the inaccurate, self-serving, and politically-motivated allegations of Paragraph 46 regarding supposed allocations of interest to other school districts.

47. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of reallocating interest so that the other districts it serves will not suffer harm.

ANSWER: Deny.

DISTRICT 204'S NON-PAYMENT OF ITS OWN AUDIT EXPENSES

48. Article 3, Section 7 of the School Code requires that each school district have an audit of its accounts completed at least once a year by a person who is lawfully qualified to practice public accounting in Illinois. Further requirements regarding a school district's obligation to undertake annual audits are included in the Illinois Administrative Code.

ANSWER: The allegations of Paragraph 48 state a legal conclusion to which no answer is required. To the extent an answer is deemed required, the provisions of the Illinois School Code are the best evidence of any audit requirement, and District 204 denies the allegations of Paragraph 48 to the extent they are inconsistent with the provisions of the Illinois School Code.

49. These audits are ordered by and undertaken for the benefit of each individual district. Each individual district is, therefore, obligated to pay for its own audit expenses. Typically, the auditing firm that each district elects to use submits an invoice to that district and

the district arranges for such invoice to be paid in the same way the district would arrange for any other account payable to be paid.

ANSWER: Deny.

50. Thus, the district would ordinarily issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the Treasurer would sign a check prepared by the district and drawn on that district's Agency Account.

ANSWER: Deny.

51. Between 1993 and 2012, District 204 engaged Baker Tilly and/or its predecessor-in-interest to provide these audit and other professional services, including, but not limited to, preparation of audited financial statements and independent auditor's reports.

ANSWER: Admit.

52. District 204's auditors sent their invoices to District 204.

ANSWER: Admit.

53. Between 1993 and 2012, each district except District 204 paid for its audit through their Agency Account. The Treasurer did not pay for the districts' audits from its General Fund.

ANSWER: District 204 lacks knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 53.

54. Between 1993 and 2012, however, the Treasurer improperly advanced money from its General Fund and paid \$511,068.60 for District 204's audit expenses.

ANSWER: Admit the Treasurer agreed to pay District 204's audit expenses for the years in question. Deny the remaining allegations of Paragraph 54.

55. The Treasurer has requested that District 204 reimburse the costs of District 204's audit expenses from 1993 to 2012, but District 204 has failed and refused to do so.

ANSWER: Admit that, in 2013, the Treasurer's office requested that District 204 reimburse the Treasurer for certain audit expenses the Treasurer previously paid, by agreement, and that District 204 has no obligation to reimburse the Treasurer's office for said expenses. Deny the remaining allegations of paragraph 55.

56. Since 2012, District 204 has paid its own audit expenses.

ANSWER: Admit.

57. Because the Treasurer's General Fund is funded by the pro rata payment of all of the districts the Treasurer serves, the practical effect of District 204's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of District 204's audits.

ANSWER: Deny.

58. In order to reimburse the Treasurer, District 204 would need only issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the funds would be taken from District 204's Agency Account. The funds at issue remain and have always been within the Treasurer's custody.

ANSWER: Deny.

59. The Treasurer has not incurred a loss through District 204's failure and refusal to pay for its own audit expenses — the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

ANSWER: Deny.

60. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts it serves will not suffer harm.

ANSWER: Deny.

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

61. An actual controversy exists between Township 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.

ANSWER: District 204 asserts that it is entitled to a trial by jury on all contested facts at issue in this litigation. Subject to and without waiving that right, District 204 admits the remaining allegations of Paragraph 61.

WHEREFORE, defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Honorable Court: (1) enter judgment in favor of District 204 and against plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) award District 204 its costs; and (3) grant such further relief as the Court deems just and reasonable.

AFFIRMATIVE DEFENSES

Defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204"), states as follows for its affirmative defenses to the Verified Amended Complaint for Declaratory Relief filed by plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST ("Township Trustees"):

FACTS COMMON TO ALL AFFIRMATIVE DEFENSES

1. District 204 is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange, Cook County, Illinois.
2. Township Trustees is a local public entity organized under the laws of the State of Illinois with its principal office located in LaGrange Park, Cook County, Illinois.
3. Township Trustees provides certain required, financial-related services to a limited number of school districts in Township 38 North, Range 12 East, including District 204.
4. District 204 and Township Trustees entered into an agreement in or around 1999 whereby District 204 agreed to perform certain financial-related services Township Trustees otherwise would have been obligated to perform on District 204's behalf.
5. By virtue of District 204 performing certain financial-related services Township Trustees was otherwise obligated to perform on District 204's behalf, Township Trustees saved millions of dollars in expenses it otherwise would have been obligated to incur in performing said services.

6. Through District 204 and Township Trustees' course of dealing, Township Trustees would first submit an invoice to District 204 setting forth District 204's purported *pro rata* share of Township Trustees' treasurer's expenses. District 204 would then provide Township Trustees with an invoice detailing the services District 204 performed that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

7. During the parties' course of dealing from fiscal years 1999 through 2012, Township Trustees agreed that District 204 could properly offset the expenses it undertook in performing services Township Trustees otherwise would have been obligated to perform on District 204's behalf against any amount it owed to Township Trustees for District 204's purported *pro rata* share of annual expenses.

8. During the fiscal years of 1999 through 2012, the value of the services District 204 performed that Township Trustees otherwise would have been obligated to perform on District 204's behalf exceeded the value of District 204's purported *pro rata* share of annual expenses by over \$285,000.00.

9. During the fiscal years of 1993 to 2012, it was necessary for an auditor to examine District 204's books and records relating to financial services it was performing that Township Trustees otherwise would have been obligated to perform on District 204's behalf. As such, Township Trustees agreed to cover the expense of those audits.

10. Any auditing expense payment Township Trustees made on behalf of District 204 involved the release of funds to a third-party auditing firm. Township Trustees does not hold those funds in trust.

11. In addition, on information and belief, for the fiscal years of 1999 through 2012, Township Trustees included all such auditing expenses in its invoices to District 204 and to other

school district members for their purported *pro rata* shares of the Township Trustees' annual expenses.

12. During the fiscal years of 1995 to present, Township Trustees has been obligated to pay member school districts, including District 204, their share of pooled investment interest income. Notwithstanding that obligation, Township Trustees has substantially underpaid District 204 the interest it is owed on hundreds of millions of dollars in investments.

13. Any interest payments Township Trustees made to member school districts, including District 204, involved the release of those funds by Township Trustees to each member school district for its discretionary use. Such funds did not remain in Township Trustees' custody.

14. Neither District 204, nor any other member district, had any control over Township Trustees' calculation and allocation of annual investment interest.

15. On information and belief, Township Trustees allocated interest payments to member school districts without regard for the amounts actually owed, resulting in overpayments to certain districts and underpayments to other districts.

16. On information and belief, Township Trustees made interest payment allocations to members school districts other than District 204 based on political concerns and not any proper mathematical formula.

17. Township Trustees has, to date, refused to provide District 204 and other member districts with documents and information necessary to examine Township Trustees' financial activities generally and its interest payments to member school districts specifically.

18. Township Trustees were statutorily obligated to oversee the Township Trustees' treasurer's office, including by receiving reports and examining financial books and records.

Notwithstanding that obligation, Township Trustees failed to oversee its treasurer's office, and instead permitted its former treasurer to steal or improperly spend nearly one million dollars in member school districts' funds.

19. The funds Township Trustees collected, or attempted to collect, from member school district, including District 204, to fund the expenses of Township Trustees' treasurer's office were not public funds. Such expenses did not involve any general public interest.

20. On information and belief, Township Trustees have recovered substantial insurance proceeds based on its former treasurer's misconduct. Township Trustees have refused to disclose the amount of those proceeds, and has further failed to distribute the proceeds to member school districts, including District 204.

21. Township Trustees has also frivolously expended, or attempted to expend, significant funds owned by member school districts on unnecessary public relations firm services, duplicative and wasteful financial advisor services, and unnecessary and hugely expensive computer software. On information and belief, Township Trustees' actions in this regard are consistent with its practice of billing member school districts for their "*pro rata* share" of Township Trustees' excessive and improper expenses that were not permitted by law.

FIRST AFFIRMATIVE DEFENSE - LACHES

22. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 22 of its First Affirmative Defense as though fully set forth herein.

23. Township Trustees was aware of, and repeatedly consented to, the foregoing facts for more than a decade.

24. Township Trustees showed a complete lack of diligence by affirmatively deciding not to challenge any payment owed by, made by, or made to District 204 until filing suit in this action in October of 2013.

25. During that same time period, District 204 has passed annual budgets affecting thousands of students, hundreds of staff members, and many thousands of community members.

26. Township Trustees' inexplicable delay in bringing any claim has caused District 204 to suffer severe prejudice.

27. Had Township Trustees raised any challenge or objection to the parties' course of action described above, District 204 would have taken action to adjust its annual budgets and to shift directly to Township Trustees all services Township Trustees otherwise would have been obligated to perform on District 204's behalf, or District 204 would have pursued a separation from Township Trustees at that time.

28. Due to Township Trustees' lack of diligence, the students, staff, and community of District 204 face potentially devastating budget cuts and a corresponding loss of staff, extracurricular activities, and other vital services.

29. Laches may be imputed upon a governmental entity serving one public constituency that is suing another governmental entity serving a different public constituency.

30. Applying laches to Township Trustees' claims is proper and bars Township Trustees from obtaining any relief against District 204.

SECOND AFFIRMATIVE DEFENSE – STATUTE OF LIMITATIONS

31. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above, and paragraphs 22 through 30 of its First Affirmative Defense, as this paragraph 31 of its Second Affirmative Defense as though fully set forth herein.

32. All of Township Trustees' claims against District 204 are subject to the five-year catchall statute of limitations set forth in 735 ILCS 5/13-205.

33. Township Trustees failed to bring its claims against District 204 within the applicable limitations period. Applying the statute of limitations is proper and bars Township Trustees from obtaining any relief against District 204.

THIRD AFFIRMATIVE DEFENSE – ACCORD AND SATISFACTION

34. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 34 of its Third Affirmative Defense as though fully set forth herein.

35. Township Trustees and District 204 entered into a valid agreement in or around 1999 that supplanted any prior course of dealing.

36. Township Trustees accepted payments or setoffs from District 204 in accordance with the parties' agreement for more than a decade.

37. Township Trustees is legally barred from enforcing any right that is inconsistent with the parties' agreement.

38. Accord and satisfaction applies and bars Township Trustees from obtaining any relief against District 204.

FOURTH AFFIRMATIVE DEFENSE – RATIFICATION

39. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 39 of its Fourth Affirmative Defense as though fully set forth herein.

40. Township Trustees had complete knowledge of all material facts surrounding the agreement with District 204 described above.

41. Armed with that knowledge, Township Trustees engaged in a course of conduct over a period of more than a decade by which Township Trustees repeatedly demonstrated it had ratified the agreement with District 204. That ratification bars Township Trustees from obtaining any relief against District 204.

FIFTH AFFIRMATIVE DEFENSE – PROMISSORY ESTOPPEL

42. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 42 of its Fifth Affirmative Defense as though fully set forth herein.

43. By entering into the agreement with District 204 described above, Township Trustees made an unequivocal promise by its words and actions to proceed in accordance with the parties' agreement.

44. District 204 materially changed its position to its detriment as a result of Township Trustees' promise, including by modifying its annual budgets to reflect the parties' agreement. Those budgets affected thousands of students, hundreds of staff members, and many thousands of community members.

45. Had Township Trustees raised any challenge or objection to the parties' course of action described above, District 204 would have taken action to adjust its annual budgets and to shift directly to Township Trustees all services Township Trustees otherwise would have been obligated to perform on District 204's behalf, or District 204 would have pursued a separation from Township Trustees at that time.

46. Not requiring Township Trustees to abide by the parties' agreement would result in severe inequity and prejudice to District 204.

47. Promissory estoppel applies to bar Township Trustees from obtaining any relief against District 204.

SIXTH AFFIRMATIVE DEFENSE – EQUITABLE ESTOPPEL

48. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 48 of its Sixth Affirmative Defense as though fully set forth herein.

49. Township Trustees, through its words and actions, represented to District 204 that Township Trustees would abide by the terms of the parties' agreement discussed above.

50. Township Trustees was aware of all material facts surrounding the parties' agreement at the time the parties entered into the agreement.

51. Township Trustees concealed from District 204 the fact that Township Trustees intended to accept the value of District 204's services for more than a decade and later to attempt to bar District 204 from offsetting the value of its services against its purported share of Township Trustees' *pro rata* expenses and the auditing expenses discussed above.

52. Township Trustees also concealed from District 204 the fact that Township Trustees was knowingly making incorrect interest payments to member districts, including District 204.

53. Township Trustees acted intentionally and with the expectation that District 204 would act upon Township Trustees' representations.

54. District 204 acted upon Township Trustees' representations to District 204's detriment, including by modifying its annual budgets to reflect the parties' agreement.

55. Equitable estoppel applies to bar Township Trustees from obtaining any relief against District 204.

SEVENTH AFFIRMATIVE DEFENSE – WAIVER

56. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 56 of its Seventh Affirmative Defense as though fully set forth herein.

57. Township Trustees and District 204 had equal bargaining power.

58. By entering into the agreement with District 204 described above, and through the parties' course of conduct of more than a decade, Township Trustees knowingly and voluntarily relinquished its known rights to recovery against District 204.

59. Waiver applies to bar Township Trustees from obtaining any relief against District 204.

EIGHTH AFFIRMATIVE DEFENSE – UNCLEAN HANDS

60. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 60 of its Eighth Affirmative Defense as though fully set forth herein.

61. Township Trustees pray in part for equitable relief in this action.

62. Township Trustees, through its actions described above, is guilty of misconduct and bad faith toward District 204.

63. Township Trustees' misconduct and bad faith relates to the parties' disputes in this action.

64. Township Trustees' unclean hands bar it from receiving any equitable relief against District 204.

NINTH AFFIRMATIVE DEFENSE – SETOFF

65. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 65 of its Ninth Affirmative Defense as though fully set forth herein.

66. District 204 is entitled to a setoff against any judgment entered in this action in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

67. District 204 is also entitled to a setoff against any judgment entered in this action in the amount of Township Trustees' underpayment of investment interest to District 204. District 204 is also entitled to a judgment against Township Trustees for the value of the services District 204 provided that exceeded its share of *pro rata* expenses.

TENTH AFFIRMATIVE DEFENSE – UNJUST ENRICHMENT

68. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 68 of its Tenth Affirmative Defense as though fully set forth herein.

69. Township Trustees' retention of the services District 204 provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf is not legally justifiable.

70. District 204 reasonably expected to receive compensation for the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

71. Township Trustees had complete knowledge of the benefits District 204 was conferring on Township Trustees in the form of services District 204 provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

72. Township Trustees would be unjustly enriched to District 204's detriment if Township Trustees were permitted accept District 204's services without providing any compensation or offset.

73. Equity and good conscience require Township Trustees to make restitution to District 204 in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

ELEVENTH AFFIRMATIVE DEFENSE – QUANTUM MERUIT

74. District 204 adopts and incorporates by reference paragraphs 1 through 21 of its Facts Common to All Affirmative Defenses above as this paragraph 74 of its Eleventh Affirmative Defense as though fully set forth herein.

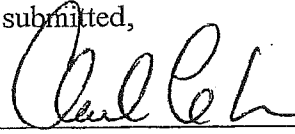
75. In the alternative, should Township Trustees contend the parties did not enter into an express contract or agreement as discussed above, Township Trustees made an implied promise to District 204 that it would compensate District 204 in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

76. Township Trustees is legally obligated to reimburse District 204 in the amount of the value of the services it provided that Township Trustees otherwise would have been obligated to perform on District 204's behalf.

WHEREFORE, defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Honorable Court: (1) enter judgment in favor of District 204 and against plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) award District 204 its costs; and (3) grant such further relief as the Court deems just and reasonable, or as otherwise permitted by law.

Respectfully submitted,

By:



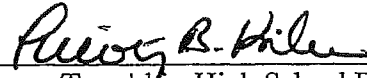
One of the Attorneys for Defendant,
LYONS TOWNSHIP HIGH SCHOOL DISTRICT
204

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DRAFT; SUBJECT TO ATTORNEY-CLIENT AND WORK-PRODUCT PRIVILEGES

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing answer are true and correct except as to matters stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that verily believes the same to be true.



Lyons Township High School District 204

By: Dr. Timothy Kilrea

Its: Superintendent

Dated: 12/18/2014

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

TOWNSHIP TRUTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST,

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

2014 DEC 18 AM 11:46

CLERK
DOROTHY BROWN
Case No. 13 CH 23386

Hon. Sophia H. Hall

NOTICE OF FILING

TO: Gerald E. Kubasiak
Douglas G. Hewitt
Kubasiak Fylstra Thorpe & Rotunno, PC
Two First National Plaza, 29th Floor
20 South Clark Street
Chicago, IL 60603
Fax: 312-630-7939

PLEASE TAKE NOTICE that on **December 18, 2014**, we filed with the Clerk of the Circuit Court of Cook County, Chancery Division, **Defendant's Verified Answer and Affirmative Defenses to Amended Complaint for Declaratory Relief**, a copy of which is served upon you.

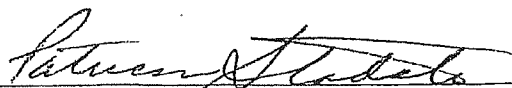
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Address: 10 South Wacker Drive
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Attorney for: Defendant
City: Chicago, Illinois 60606

PROOF OF SERVICE

The undersigned, a non-attorney, states on oath that she served a copy of the foregoing Notice of Filing and Verified Answer and Affirmative Defenses to Amended Complaint for Declaratory Relief to the above counsel of record at the above mailing address by depositing a copy of same in the U.S. mail at 10 South Wacker Drive, Chicago, Illinois 60606, postage prepaid, before 5:00 p.m. on December 18, 2014.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.



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

TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12)	
EAST,)	
)	
Plaintiff,)	
)	
v.)	No. 13 CH 23386
)	
LYONS TOWNSHIP HIGH SCHOOL)	
DISTRICT 204,)	
)	
Defendant.)	

The deposition of MICHAEL THEISSEN taken before Loretta A. Tyska, Certified Shorthand Reporter, taken pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 20 North Clark Street, Suite 2500, Chicago, Illinois, commencing at 1:04 p.m. on the 16th day of February, 2017.

APPEARANCES:

MILLER, CANFIELD, PADDOCK and STONE, P.L.C.
MR. BARRY P. KALTENBACH
225 West Washington Street, Suite 2600
Chicago, Illinois 60606
Phone: (312) 460-4251
Email: Kaltbach@millercanfield.com

Appeared on behalf of the Plaintiff;

HOFFMAN LEGAL
MR. JAY R. HOFFMAN
20 North Clark Street, Suite 2500
Chicago, Illinois 60602
Phone: (312) 899-0899
Email: Jay@hoffmanlegal.com
Appeared on behalf of the Defendant.

* * * * *

MICHAEL THEISSEN,

a witness, having been first administered an oath,
was examined and testified as follows:

EXAMINATION

BY MR. HOFFMAN:

Q. Sir, can you provide me with your highest
legal of education?

A. I have a master's in management with an
emphasis on finance and marketing.

Q. Where did you get that from?

A. Willamette University in Salem, Oregon.

Q. I am very familiar with that area. My
best friends lived in Salem for many years.

A. That, of course, means you know how to
pronounce wine.

Q. Pinot noir.

A. Exactly.

Q. I think I like the craft beers better.

(Discussion off the record.)

BY MR. HOFFMAN:

Q. What, sir, is your professional
background?

A. How far back do you want to go? From my
paperboy days or lawn mowing?

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(EXHIBITS RETAINED BY MR. HOFFMAN)

Q. Let's work backwards from now.

A. Okay. So right now I'm an independent
consultant and investor in a number of businesses.
Prior to that -- that's been about 18 years. At
that point before I left I was at Mesirow Financial.
I was an investment banker.

Q. How long were you at Mesirow for?

A. Well, I was at Mesirow and Mesirow Stein,
so I was at Stein & Company doing financial
structuring and program management for sports
facilities and large public-private partnerships.

Q. Did you have a hand in Toyota Park?

A. I did not have a hand in Toyota Park, no.
I worked on Toyota Park as an independent consultant
related to a possible naming rights deal, but not in
the structuring and development of it.

Q. Okay. And then when did you become an
independent consultant, approximately?

A. Probably 18 years ago, 20 years ago. When
I was at Mesirow, I had both a Series 7 and 63,
which would allow me to buy, sell, and trade stocks,
bonds, provide investment advice for my clients, as
we would do financial structuring both on the debt
and equity side.

1 Q. Did you ever do any audit work in your
2 career?

3 A. Not audit work, no.

4 Q. All right. Let's talk about the claims --
5 is it okay if you call your -- you're a trustee of
6 the TTO, correct?

7 A. Yes, I am an elected board member of the
8 TTO.

9 Q. Are the elected board members of the TTO
10 sometimes referred to as trustees?

11 A. Yes.

12 Q. When did you first become an elected board
13 member of the TTO?

14 A. It was probably five years ago, maybe five
15 and a half years ago. I fulfilled the term of a
16 gentleman that resigned, I believe, to become a
17 judge; then I was elected in the next municipal
18 election.

19 Q. Was that Russell Hartigan?

20 A. I believe so.

21 Q. What year do you believe the switch from
22 Judge Hartigan to you took place? When did you take
23 over as a board member from Judge Hartigan?

24 A. I'd say it's maybe '12 or '13. It was

1 which we manage on their behalf. You know, for a
2 nonaccounting people, we may be our -- not one of
3 those, but for me, those would be like rainy day
4 funds or surplus funds. And we have operational
5 funds. So I don't know. If you want to ask me that
6 again, I'll try to answer it.

7 Q. The TTO doesn't have any revenue sources
8 of its own, does it, other than its billings from
9 the other districts? Where does the TTO get its
10 money?

11 A. We bill the other districts, correct. We
12 don't have tax --

13 Q. You don't get tax money, right?

14 A. No, we do not. We get tax money
15 indirectly via what we bill the other districts.

16 Q. Okay. So the money that the TTO has is
17 money that it holds in trust for other districts,
18 and sometimes it uses that money for the operation
19 of the TTO, correct?

20 A. Well, that's a function of -- the money
21 that comes in is a delay because of cash flow and
22 billing, so, again, I'm not --

23 Q. Let me ask you a better question.

24 A. Okay.

1 roughly June of one of those two years, if I
2 remember correctly.

3 Q. Was it before or after Bob Healy resigned
4 as treasurer?

5 A. It was before, probably six weeks before,
6 six to seven weeks before. Bob Healy resigned on
7 Labor Day weekend. I remember that.

8 Q. If I tell you that Bob Healy resigned in
9 2012, does that mean he started in the middle of
10 2012 as a board member?

11 A. Yes, that would be correct.

12 Q. You're aware that Bob Healy stole from --
13 Well, you're aware that Bob Healy stole in excess of
14 a million dollars in his position as treasurer,
15 correct?

16 A. Yes.

17 Q. And were the funds that he stole funds
18 that TTO held for the districts that are members of
19 the TTO?

20 A. I'm not really sure what you're asking
21 because we have operational funds and then we have
22 funds that we manage on their behalf, so are you
23 asking me to make a differentiation or are you going
24 to make a differentiation? We have agency funds

1 Q. The million dollars plus that Bob Healy
2 stole that we know of, did he steal that from the
3 TTO's funds or did he steal that from funds of the
4 districts? And I mean whether it's held directly or
5 indirectly for the districts.

6 A. The money that I believe Bob stole, from
7 what we can tell on the wire transfers, were
8 transferred out of our operating account. They were
9 not transferred out of any of the trust or surplus
10 accounts.

11 Q. Where does the money from the TTO's
12 operating account come from?

13 A. It comes from the districts, as we talked
14 about previously.

15 Q. Okay. So you helped the TTO make a claim
16 against bonds that the TTO had for the malfeasance
17 of the treasurer or others, correct?

18 A. Uh-huh.

19 Q. Yes?

20 A. Yes.

21 Q. Okay. You have to answer yes or no.
22 Uh-huh or uh-huh is hard for the court reporter to
23 understand what you mean.

24 I'm going to show you three documents that

1 will -- just to have you confirm what they are. I
 2 don't want you to look at them in any detail. All
 3 right?
 4 (Exhibits 1 - 3 were marked.)
 5 BY MR. HOFFMAN:
 6 Q. The document Theissen Exhibit Number 1, am
 7 I correct that this is a release that you signed
 8 whereby the TTO received \$165,000 for its claim on a
 9 bond issued by Liberty Mutual Insurance Company?

10 A. That looks correct, yes.

11 Q. And that's your signature on the release,
 12 sir?

13 A. Yes, it is.

14 Q. And I'm showing you Theissen Exhibit
 15 Number 2. Am I correct?

16 THE WITNESS: Do I get to keep these and take
 17 these home? Are these mine?

18 MR. KALTENBACH: Those are official. I can
 19 give you copies of everything afterwards.

20 BY MR. HOFFMAN:

21 Q. Is it correct that Theissen Exhibit
 22 Number 2 is a document you signed whereby the TTO
 23 entered into a settlement and received \$875,000 for
 24 its claim on a bond issued by the Hanover Insurance

1 Company?

2 A. That looks correct, yes.

3 Q. And the TTO actually received both of
 4 those payments called for in Exhibits 1 and 2,
 5 correct?

6 A. Yes.

7 Q. And, sir, is Theissen Exhibit Number 3 a
 8 copy of the proof of claim that the TTO submitted
 9 to -- in connection with this loss to the Hanover
 10 Insurance Group as you see on page 2?

11 A. Yes, that looks correct.

12 Q. Is it correct that the claims that the TTO
 13 made on these two bonds arose out of wire transfers
 14 that Bob Healy had that were improper and vacation
 15 sick pay that Bob Healy caused to be paid that were
 16 also improper? Is that the basis of the claim?

17 A. I know the basis is -- I do not know about
 18 the sick -- I don't remember the details with the
 19 sick and the overpayment. I do remember that they
 20 were related to the wire transfers.

21 Q. Take a look at -- let's see if I can
 22 refresh your memory -- on the first page in the
 23 middle on Theissen Exhibit Number 2 where it says --

24 A. Oh, okay. I see it, yeah. If that was

1 the case, then that was the case. Yes. They were
 2 for sick and vacation days, yes.

3 Q. As well as wire transfers?

4 A. Yes.

5 Q. Okay. I understand that the TTO has
 6 different accounts that it manages, both operating
 7 accounts for the TTO and investment accounts of
 8 money held in trust for the other districts, but I'm
 9 asking a more fundamental question here. Whose
 10 money did Healy steal that formed the basis of these
 11 claims on the bonds?

12 A. Well, this would be the TTO's money.

13 Q. And is it your position that all of the
 14 money that the TTO recovered on its bond claims
 15 belongs to the TTO and not the districts?

16 A. I did not say that.

17 Q. Well, what is your position? Who
 18 rightfully is entitled to receive the proceeds of
 19 the \$1,040,000 that the TTO recovered on the two
 20 bond claims?

21 MR. KALTENBACH: I'm going to object to the
 22 extent that it's asking the witness to make a legal
 23 opinion. But you can answer.
 24

1 BY MR. HOFFMAN:

2 Q. From your understanding, whose money does
 3 that belong to?

4 A. Well, we were in a structural deficit
 5 that's been primarily caused by the fact that school
 6 districts have not paid the amount of money they're
 7 required to by school code. So within the
 8 structural deficit, each school district has a
 9 pro-rata allocation or pro-rata liability to that
 10 structural deficit. So as it relates to this
 11 million dollars in question, I think first and
 12 foremost we would probably apply it to the
 13 structural deficit, which would then cause each
 14 school district to then have lesser of a liability
 15 to the structural deficit.

16 The structural deficit started about
 17 15 years ago. Primarily, as I mentioned, we have
 18 issues related to cash flow. And 204 chose to not
 19 pay, even though they're mandated by school code to
 20 do that. So the million dollars, that I think is
 21 what you're asking in the question, will be applied
 22 to that structural deficit first so that it would
 23 help reduce the liability of each school district
 24 that's a member of the TTO.

1 Q. So your position is because the TTO is
2 short on cash, that it's entitled to keep the \$1
3 million recovery on the bonds and apply it to its
4 deficit, yes?

5 A. When you say "short on cash," I don't know
6 what you -- we're short on cash because people don't
7 pay. We're not short on cash because we've
8 overspent.

9 Q. So your position is that the \$1 million
10 that the TTO recovered on the bonds, the TTO can
11 apply that to its structural deficit which you
12 attribute to District 204's nonpayment of pro-rata
13 funds, right? Am I correctly summarizing what you
14 said? Yes or no?

15 MR. KALTENBACH: I'll object in that it does
16 mischaracterize. But you can answer the question,
17 Mike.

18 THE WITNESS: Okay. So give me the question
19 one more time.

20 BY MR. HOFFMAN:

21 Q. As I understand your testimony -- correct
22 me if I'm wrong -- the TTO can apply the \$1 million
23 that it received in bond payments to its structural
24 deficit, correct? Regardless of the source of the

1 of money that Healy had taken from the funds that
2 the TTO was holding for the various school
3 districts?"

4 Answer: "That's what it appeared to be."

5 Do you disagree with Ms. Bradshaw's
6 testimony in that regard?

7 MR. KALTENBACH: Do you want him to read?

8 BY THE WITNESS:

9 A. Can I see it?

10 Q. You're welcome to. Sure.

11 A. The circle?

12 Q. Yes, sir.

13 A. Okay.

14 (Peruses document.)

15 I wouldn't necessarily agree with that.

16 Q. What does that mean? It sounds a little
17 vague. Do you disagree with it? When someone
18 doesn't necessarily agree with something, I don't
19 really know what that means.

20 A. Well, I guess, define to me what you
21 mean -- what she means by "holding" there. I mean,
22 we hold everybody's money. Is it being held in the
23 surplus fund? Is it being held in the agency fund?
24 Is it being held in the administrative fund? Tell

1 structural deficit, it has the ability and can and
2 should do that; is what you're saying?

3 A. I think the key word there is we have the
4 ability to. I mean, as an elected board, we
5 obviously have to act in what's best fiduciary for
6 the other districts, yes.

7 Q. Has the TTO made a decision as to what to
8 do with this \$1,040,000 recovery?

9 A. No.

10 Q. Where is it sitting?

11 A. From an accounting perspective, I would
12 not know that. It's not in a separate account, if
13 that's what you're asking.

14 Q. In Kelly Bradshaw's testimony, which I'll
15 refer to -- here's a copy of it -- do you know who
16 Kelly Bradshaw is?

17 A. Yes.

18 Q. Kelly Bradshaw on page 14 of her testimony
19 in this case testified as follows:

20 "And this \$1 million discrepancy" -- and
21 we'd been talking about a million dollars missing
22 due to Healy's misconduct.

23 "And this \$1 million discrepancy, was it
24 your belief that that was \$1 million approximately

1 me where that's being held, and I can make a
2 better --

3 Q. Sir, you see the testimony. Do you agree
4 or disagree with --

5 A. Okay. Then I do not agree with it.

6 Q. You do not agree with it?

7 A. I don't agree with it, but I don't
8 disagree with it. I think her interpretation and my
9 interpretation would be different.

10 MR. HOFFMAN: Can you mark this as Theissen 4,
11 please.

12 (Exhibit 4 was marked.)

13 BY MR. HOFFMAN:

14 Q. You're aware that the TTO sued Bob Healy
15 in a lawsuit in 2012, correct?

16 A. Yes.

17 MR. HOFFMAN: Mark this.

18 (Exhibits 5 - 6 were marked.)

19 BY MR. HOFFMAN:

20 Q. Theissen Exhibit Number 5, would you
21 confirm that this is an order on a summary judgment
22 motion by which the TTO received a judgment against
23 Healy in excess of \$904,000?

24 THE WITNESS: Is it a summary judgment?

1 MR. KALTENBACH: I can stipulate to it.
 2 MR. HOFFMAN: I mean, it seems obvious.
 3 MR. KALTENBACH: I'll stipulate that this is
 4 laid -- and I don't know if there was any other
 5 document. But this certainly is what I think is the
 6 -- I wasn't involved in the case, but -- it's a
 7 judgment, yeah.
 8 MR. HOFFMAN: It's the judgment.
 9 MR. KALTENBACH: The judgment, yeah.
 10 THE WITNESS: My name is spelled
 11 T-h-i-e-s-s-e-n.
 12 MR. HOFFMAN: As anyone who speaks German
 13 should know.
 14 BY MR. HOFFMAN:
 15 Q. Also, how much did the TTO collect on this
 16 judgment?
 17 A. It was insignificant.
 18 Q. How much?
 19 A. \$33,000, if my memory serves me.
 20 MR. HOFFMAN: If you want to correct that, you
 21 can.
 22 MR. KALTENBACH: I'm not here to correct or not
 23 correct his testimony. I don't think that's
 24 appropriate.

1 MR. HOFFMAN: I don't care. I want to get to
 2 the truth, so help yourself.
 3 BY MR. HOFFMAN:
 4 Q. So \$33,000. And where did the \$33,000
 5 come from? Do you know?
 6 A. I believe it came from a series of bank
 7 accounts and maybe a brokerage account.
 8 Q. And how much did the TTO spend in
 9 attorneys' fees and other costs in connection with
 10 this case against Healy?
 11 A. I do not know.
 12 Q. Was it several hundred thousand dollars?
 13 A. I do not know.
 14 Q. You have no idea?
 15 A. It could be a dollar. It could be a
 16 million. I do not know.
 17 Q. Do you think it was a dollar?
 18 A. It was probably more than a dollar. It
 19 was probably less than a million.
 20 Q. So somewhere between a dollar and a
 21 million; you're not sure?
 22 A. I would give you that, yeah. Those
 23 parameters are probably correct.
 24 Q. What's your best estimate?

1 A. I literally have no idea --
 2 Q. Okay. Fine.
 3 A. -- on this particular piece of the case.
 4 Q. Now, Theissen Exhibit Number 6, this is an
 5 article in the Pioneer Press. And at the very last
 6 paragraph on the page 2 is all I'm going to ask you
 7 about. You're quoted as saying: "We haven't been
 8 able to find any assets." And this is as of
 9 March 19th of 2015. Do you see that?
 10 A. Uh-huh.
 11 Q. Yes?
 12 A. Yes.
 13 Q. Okay. Did the \$33,000 you said you found,
 14 did that come after March 19th of 2015?
 15 A. I would not remember the timing.
 16 Q. Okay. What did the TTO do with the
 17 \$33,000 it recovered from bank accounts belonging to
 18 Healy?
 19 A. I do not know specifically.
 20 Q. What is your belief as to the proposition
 21 of that? Is that money that belongs and should be
 22 given to the districts, or is that money that
 23 belongs to the TTO?
 24 MR. KALTENBACH: I'll object to the extent it

1 calls for the witness to make a legal opinion. But
 2 you can answer, Mike.
 3 BY MR. HOFFMAN:
 4 Q. I'm asking for your view.
 5 A. I guess my view would be --
 6 MR. KALTENBACH: And I'm going to object on the
 7 basis of relevance. Sorry. You can answer.
 8 MR. HOFFMAN: To your view. And it is
 9 relevant.
 10 Go ahead.
 11 THE WITNESS: Ask me the question again.
 12 BY MR. HOFFMAN:
 13 Q. What is your understanding as to who the
 14 \$33,000 the TTO recovered from Healy belongs to?
 15 Does it belong to the TTO or does it belong to the
 16 districts?
 17 MR. KALTENBACH: Same objections.
 18 BY THE WITNESS:
 19 A. I'm not sure -- when you ask me "does it
 20 belong to the TTO," I don't understand what you mean
 21 by that.
 22 Q. Well, what happened to the \$33,000? You
 23 say you don't know. Is that an amount that should
 24 be distributed to the districts?

1 A. I don't know what you mean by "distributed
2 to the districts." Like, me handing them a check?
3 I don't know what you mean when you say "distributed
4 to the districts."

5 Q. Well, you don't know what it means to have
6 the TTO apply money to the accounts of the member
7 districts in the TTO?

8 A. I do know that, yes.

9 Q. So that's what I mean when I say --

10 A. So when you ask me is it the TTO's money
11 or the districts' money --

12 Q. I'm talking about you don't need to cut a
13 check because you hold all the districts' funds,
14 correct?

15 A. Correct.

16 Q. So it's done via line items or journal
17 entries in the general ledger, correct?

18 A. Yes.

19 Q. Right. So what I'm saying --

20 A. Except for -- well, let's -- that's
21 not entirely true. School districts have taken the
22 position to write us checks. We have, for the sake
23 of efficiency, taken the position to give them a
24 journal entry or do it via accounting records versus

1 Q. Okay. Do you have any disagreements with
2 any of the criticisms that the BGA made in this
3 document?

4 A. Let me take a look.

5 So you're talking about the criticisms or
6 you're talking about the suggestions?

7 Q. Both.

8 MR. KALTENBACH: I'm going to object. I don't
9 think it's relevant.

10 BY THE WITNESS:

11 A. As it relates to the solution, two
12 trustees are on the board -- "now former
13 treasurer" -- questionable -- "should resign" -- I
14 don't think that's appropriate.

15 Q. Okay. Anything else?

16 A. "Trustee should consider" --

17 THE REPORTER: I'm not looking at it.

18 MR. HOFFMAN: She needs to write it down.

19 BY THE WITNESS:

20 A. (As read): "Trustee should consider
21 replacing and all legal financial consultants who
22 were the agency's payroll during the now former
23 trustee was there."

24 That's probably good business. Yes, I

1 a physical check. So we don't typically cut them a
2 check for their distribution. They typically do cut
3 us a check for a program payment.

4 Q. Why hasn't the TTO credited each of the
5 various districts on the pro-rata basis with the
6 \$33,000 recovery?

7 A. Well, again, the TTO runs at a structural
8 deficit, so it would probably be in our best sense
9 to get the structural deficit down to zero before we
10 would continue to have a bigger structural deficit,
11 which then ultimately shifts to the school districts
12 at some point. So our goal would be -- and I speak
13 on behalf of the board -- would be to get our
14 structural deficit to zero so if there were
15 additional funds that came in, we would then
16 distribute those to the school districts, as you
17 asked.

18 Q. I'm showing you Hartigan Exhibit 4. I
19 don't have a third copy of it. I'm not going to ask
20 you a lot of questions about it. But do you
21 remember this Better Government Association report
22 on the TTO which contained its reform suggestions?

23 A. Well, I guess I do remember this now,
24 yeah.

1 would agree with that. And that's been done.

2 Q. Is there anything to disagree with?

3 A. I'm not there yet. Oh, disagreement.

4 Q. Disagreement. So the first two points are
5 points you agree with; yes?

6 A. Yes.

7 Q. That you gave me?

8 A. Yes.

9 Q. Okay. My point is, is there anything in
10 here you disagree with?

11 MR. KALTENBACH: I'll again object on
12 relevance, to the extent I need to renew that
13 objection. But you can answer, Mike.

14 BY THE WITNESS:

15 A. I don't disagree with any of this.

16 Q. Okay. Thank you.

17 Who is Steven Landek?

18 A. I believe he's a state senator.

19 Q. What's your relationship with Mr. Landek?

20 MR. KALTENBACH: I'm going to object on the
21 basis of relevance.

22 MR. HOFFMAN: You can have a standing relevance
23 objection the whole deposition.

24 MR. KALTENBACH: I'd rather not. I'm assuming

1 at some point you're going to ask what I consider to
2 be relevant, but --
3 MR. HOFFMAN: Yeah. You can have a standing
4 objection as to any relevance. You can later object
5 to any question I ask based on relevance.
6 MR. KALTENBACH: If you want to agree to that,
7 that's fine.
8 MR. HOFFMAN: I do.
9 MR. KALTENBACH: Then I won't have to say it
10 each time.
11 MR. HOFFMAN: Exactly. So standing.
12 BY MR. HOFFMAN:
13 Q. Sir, what is your relationship to Senator
14 Landek?
15 A. He's a client of mine.
16 Q. Okay. And you have made campaign
17 contributions to him individually and through your
18 company, correct?
19 A. Yeah, no doubt I have.
20 Q. Any idea as to how much?
21 A. Let's see. I made campaign contributions
22 on a pretty regular basis. Maybe \$3,000, \$3,500.
23 Q. And have you spoken with Mr. Landek about
24 this case?

1 A. About this case?
2 Q. Yes.
3 A. Yes, I've spoken to him about this case.
4 Q. And just describe to me the timeframe in
5 which you've talked to him and the nature of your
6 communications with him about the case.
7 A. A lot of the conversations we've had have
8 been related to legislation that's being looked at
9 in Springfield. He was asking me questions related
10 to the timing of the case, related to the amounts
11 outstanding of the case, related to where we were in
12 the process; ideally, either with settlement or
13 court hearings. So mostly that's been the gist of
14 our conversations.
15 Q. Okay. Let's talk about your claim in this
16 case -- or strike that.
17 Let's talk about the TTO's claims made in
18 this case that relevant to the TTO's payment of
19 annual audit costs for LT.
20 A. Okay.
21 Q. And you understand when I say "LT," I'm
22 talking about Lyons Township High School District
23 204, yes?
24 A. Yes.

1 Q. And when I say District 204, I'm referring
2 to the same thing, right?
3 A. I understand.
4 Q. Okay. So did -- do you know whether the
5 TTO paid for the annual audit costs of any district
6 other than LT at any point before 2012?
7 A. I do not know that.
8 Q. Are you -- did you ever speak with anybody
9 at the TTO on that subject?
10 A. Prior to 2012?
11 Q. At any time. Have you ever asked anybody
12 from the old days who was at the TTO or had retired
13 from the TTO or otherwise was associated with the
14 TTO whether they knew about the TTO paying for other
15 districts' audits at any point before 2012?
16 A. No, I have not spoken to anybody about
17 that.
18 Q. Did you ever ask Judge Hartigan that
19 question?
20 A. No. I don't think I've ever met Judge
21 Hartigan.
22 Q. Did you ever talk to Bob Healy about that
23 subject?
24 A. No.

1 Q. Have you ever spoken with Bob Healy?
2 A. Yes.
3 Q. Other than -- I'm sorry. Let me strike
4 that.
5 Have you ever spoken with Bob Healy after
6 the date on which he resigned from the TTO?
7 A. Yes. I spoke with him twice in the
8 courtroom at 26th and California.
9 Q. What were the nature of those --
10 A. Pleasantries.
11 Q. Nothing specific?
12 A. Nothing specific. It's not really a place
13 where you have deep conversations.
14 Q. The TTO has claimed in this case that it
15 paid the annual audit costs of LT but not for the
16 other districts, correct?
17 A. Correct.
18 Q. And how do you know that's true?
19 A. Because as we went back and looked within
20 the books and our records, we can see that we paid
21 the audit costs related to 204 out of our
22 operational budget, which is not typically how bills
23 are paid within our system. So it came out of the
24 TTO's bank account versus 204's bank account.

1 Q. And what was the situation with respect to
2 the other districts that you found?

3 A. Well, we processed their checks, and the
4 money comes out of their bank accounts.

5 Q. Did you actually go look at those records?
6 And if not, who did?

7 A. I think I was exposed to those records.
8 They were probably done within our staff. I don't
9 know if I could say directly. Could have been
10 Kelly. Could have been Lauralee. It could have
11 been our accounting firm. It could have been Baker
12 Tilly at the time. It could have been Miller
13 Cooper, who is our current auditor. I couldn't say
14 this particular person found that.

15 Q. So when you say you were exposed to them,
16 I'm not sure what that means. Does that mean that
17 you personally reviewed them?

18 A. Yes.

19 Q. Are you aware that the TTO repeatedly
20 represented to LT in years prior to 2012 that the
21 TTO was paying for the audit costs of all districts?

22 A. I was not aware of that.

23 Q. Are you now aware of that today, given the
24 information that's been learned through the course

1 that's a proper question, Jay. You're asking the
2 witness what he discussed with his attorneys.

3 MR. HOFFMAN: No. I'm able to find out --
4 You're wrong. I'm able to find out --

5 MR. KALTENBACH: Thank you for the commentary.

6 MR. HOFFMAN: -- if he learned facts through
7 anybody as to what people have said in their
8 depositions.

9 BY MR. HOFFMAN:

10 Q. You didn't read the depositions, right?

11 A. No, I do not.

12 Q. Okay. Did anyone tell you what was
13 testified to in the depositions? Yes or no?

14 MR. HOFFMAN: If you want to instruct him not
15 to answer, that's fine; we'll deal with it later.
16 Let's get this show on the road, though, please.
17 Make a short objection and then instruct him not to
18 answer. Or object. Let's go.

19 MR. KALTENBACH: We're delving into privileged
20 matters, so I don't mind pausing a minute. You just
21 spent time showing the man BGA recommendations that
22 have nothing to do with the case.

23 So if -- you can answer the question "Has
24 anyone told you what depositions have been set."

1 of this lawsuit?

2 A. I don't know the question, but I think I
3 disagree with it.

4 Q. What I mean is, sitting here today, are
5 you aware that the TTO -- let me ask you a question
6 before this.

7 Have you read any of the deposition
8 transcripts of depositions taken in this case?

9 A. No.

10 Q. Have you spoken with your attorneys about
11 the content of any depositions, the factual content
12 of the depositions of witnesses who testified in
13 this case?

14 MR. KALTENBACH: I'm going to -- Mike, I'm just
15 going to instruct you -- you can answer that. When
16 we start getting into questions relating to
17 discussions with attorneys, I want you to be very
18 careful to just answer the question asked and not
19 kind of anticipate where he's going, because that's
20 going to give me a chance to see if it's
21 objectionable.

22 The question "Have you spoken with your
23 attorneys about" -- I'm sorry, think it was the
24 factual content of depositions. I don't think

1 That's an acceptable question, so you can answer
2 that.

3 THE WITNESS: What depositions have taken place
4 or -- I don't know what was said in them.

5 BY MR. HOFFMAN:

6 Q. Has anybody related to you the content of
7 the deposition transcripts taken in this case, or
8 any of them? That's the question. Very specific.

9 A. Has anybody related to me transcripts --

10 Q. The content of the transcripts of
11 testimony taken in this case, what people said in
12 their depositions?

13 A. Oh, I think I'm aware of some items, yes.

14 Q. Great. Terrific. Are you aware that Bob
15 Healy testified in his deposition that during the
16 relevant time period, the TTO paid for the audits of
17 all of its member districts?

18 A. I was not aware of that.

19 Q. I'll show it to you.

20 A. Okay.

21 Q. This is Hartigan Exhibit 3 already marked.
22 Turn to page 19, sir, please.

23 MR. KALTENBACH: Page 19 on the transcript?

24 MR. HOFFMAN: Yes, page 19 of the testimony.

1 BY MR. HOFFMAN:

2 Q. Do you see on line 12 it says:
3 "And so the trustees paid for the audits
4 for not just LT but the other school districts?"
5 Answer: "Right"?

6 A. I see that.

7 Q. Okay. And you're saying that that
8 testimony of Mr. Healy is incorrect?

9 A. To my knowledge, that's incorrect.

10 Q. And why is that?

11 A. We don't have a record of that. We have
12 processed payments for school districts for audit
13 fees. I am not aware that we have paid for audit
14 fees out of the TTO funds.

15 Q. Do you have any understanding as to why
16 Healy testified the way he did?

17 A. I have no understanding, no.

18 Q. You're aware that Judge Hartigan was
19 deposed in this case?

20 A. Yes.

21 (Exhibit 7 was marked.)

22 BY MR. HOFFMAN:

23 Q. Theissen Exhibit Number 7 is Judge
24 Hartigan's testimony taken in this case. On

1 Q. Are you aware that Bob Healy wrote letters
2 to LT both in 1999 and 2001 in which he represented
3 to LT, writing that the TTO was paying for the audit
4 costs of all of the districts?

5 A. I'm not aware of the content of the
6 letter. I'm aware that there was numerous
7 correspondence between Bob and LT. So if you
8 have --

9 Q. Would you like me to show you those
10 letters?

11 A. I'd be happy to look at them.

12 Q. Let me -- I'm going to represent to you,
13 because I have the letters -- I mean, if you want to
14 see them, that's fine. I'll show them to you.

15 MR. HOFFMAN: I'm showing Healy 1 to the
16 witness.

17 Q. This is the April 29, 1999 letter that
18 Mr. Healy wrote to Lisa Beckwith at LT. Let me show
19 you the section -- it's a long letter. I'll show
20 you what I'm referring to.

21 It says on page 6 of the letter:

22 "The trustees hire and pay for the audits
23 of the school districts and the treasurer's office
24 in Lyons Township."

1 page 25 --

2 A. Page 25 or little page 25?

3 Q. Little page 25.

4 A. Okay.

5 Q. You see starting on line 20, there's a
6 reference to a letter that Bob Healy wrote on
7 April 29, 1999 to LT? Do you see that?

8 A. Does it start "And it says this letter"?

9 Q. Yeah.

10 A. Okay.

11 Q. It says, "The trustees hire and pay for
12 the audit of the school districts and the
13 treasurer's office of Lyons Township." That's a
14 quote from an April 29, 1999 Healy letter to LT. Do
15 you know why -- Have you ever seen that letter?

16 A. No. No.

17 Q. Fine. And then the question to Judge
18 Hartigan is:

19 "Is that consistent with your
20 understanding of what the trustees did?"

21 Answer: "I believe so."

22 Is it your testimony that Judge Hartigan
23 is incorrect?

24 A. Yes, it is. To my knowledge, yes.

1 Do you see that?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes, I do.

5 Q. And you disagree with Mr. Healy's
6 statement there, right? You think that's factually
7 inaccurate, right?

8 A. I think I'm confused by this.

9 Q. It says --

10 A. I can read. Let me look at this.

11 (Reading document.)

12 Well, that would not be -- I disagree with
13 this.

14 Q. Okay. And I'm going to show you an
15 additional letter where Healy says the same thing in
16 2001. There's a January 1, 2001 letter to Dennis
17 Kelly of LT from Mr. Healy.

18 As shown on the last page. And there is a
19 section again -- because it's the same letter, in
20 essence -- in which it says under Annual Audit:

21 "The trustees hire and pay for the audit
22 of these school districts and the treasurer's office
23 in Lyons Township."

24 Do you see that?

1 A. Yes.
 2 Q. And you're saying that those written
 3 representations to LT in 1999 and 2001 are
 4 incorrect?
 5 A. I am saying that. To my knowledge, I'm
 6 saying those are incorrect.
 7 Q. Do you know why Healy made those
 8 representations to LT?
 9 A. I have no idea.
 10 Q. Do you have any concerns about LT being
 11 misled by those statements of Mr. Healy?
 12 A. Do I have any concerns?
 13 Q. Yes. That's the question.
 14 A. No. I think I probably have more concerns
 15 that those were done to mask the fact that LT didn't
 16 pay their own audits.
 17 Q. So you think the reason that Mr. Healy
 18 wrote that is to hide the fact that it was paying
 19 audit costs only for LT?
 20 A. Yes.
 21 Q. You want to explain to me what you mean by
 22 that, how you get to that point?
 23 A. Well, we've got a number of emails and
 24 meetings and different memos that we have kind of

1 unfortunately come across where it appears that LT
 2 was, I would say, exerting influence or pressure on
 3 Bob within the office for interest allocations;
 4 probably, I would say, special treatment.
 5 Q. Okay. Describe those for me as best you
 6 can. Give me your full knowledge of those
 7 documents.
 8 A. Well, I know there was a follow-up email
 9 or a memo talking about a "pleasant lunch we had,"
 10 and Bob, in fact, then did find more interest
 11 allocation that he was going to contribute to --
 12 Q. Was this in 2006?
 13 A. I don't know the date.
 14 Q. Okay. And how much was involved in the
 15 document you're talking about?
 16 A. I don't know the document that you're
 17 talking about. I think I would approximate over the
 18 years, I would believe it's about \$1.5 to
 19 \$1.8 million that was over-allocated or contributed
 20 to LT's fund that they were not entitled to.
 21 Q. Okay. And the complaint says that there
 22 was a \$1.5 million over-allocation of interest. How
 23 do you come up with the \$1.8 million figure?
 24 A. I said "approximately."

1 Q. Okay. What does that claim that you have
 2 about overpayment of interest have to do with
 3 Mr. Healy's representations to LT in writing about
 4 the payments of annual audits of the other
 5 districts?
 6 A. I think that he was justifying -- This is
 7 my opinion. I think that he was justifying to LT in
 8 writing that he would do that, even though he knew
 9 that that's not the process that took place in the
 10 office.
 11 Q. Do you have any reason to believe that LT
 12 before this lawsuit was ever aware that Mr. Healy's
 13 representations in the letters we just looked at
 14 were wrong?
 15 A. Do I have reason to believe?
 16 Q. Yeah.
 17 A. Yes, I do.
 18 Q. On what basis do you believe that?
 19 A. I believe that, number one, their auditor
 20 should have known the code, that we had a shared
 21 auditor. I believe that their legal counsel should
 22 have known the code and whose allocations were what.
 23 And I think that if the other districts knew that LT
 24 was being -- their audit fees were being paid for,

1 that they would have been besides themselves as
 2 well.
 3 Q. That wasn't my question.
 4 A. They would have gotten LT's --
 5 Q. That wasn't my question. It's not that
 6 they should have -- I'm not asking whether they
 7 should have known; I was asking a very specific
 8 question which is: Do you have any facts or are you
 9 aware of any facts to indicate that LT actually knew
 10 that Healy's written letters we just looked at were
 11 lies and that the TTO wasn't paying for the annual
 12 audit costs of the other districts? That's my
 13 question.
 14 A. Can you ask it to me one time?
 15 MR. HOFFMAN: Repeat it.
 16 THE WITNESS: Do I have any facts?
 17 MR. HOFFMAN: Yes.
 18 You can read it back.
 19 (Record read as: "Do you have
 20 any facts" --)
 21 MR. HOFFMAN: Stop. You wrote it down wrong.
 22 I'm not asking whether they should have knowledge.
 23 Let me just restate the question because
 24 you didn't get it down.

1 MR. KALTENBACH: I think she may have got the
2 one before that correct.
3 MR. HOFFMAN: Well -- well, let me just
4 restate.
5 BY MR. HOFFMAN:
6 Q. Sir, I'm not asking whether you think LT
7 should have known that the TTO was not paying for
8 the annual audits of the other districts. I'm
9 asking you whether you have any facts showing that
10 LT had actual knowledge that Healy's representations
11 on payment for all the districts' audits was untrue.
12 That's my question.
13 A. I don't know if this is a fact or not.
14 But a business manager at one of the other districts
15 made us aware that we were paying for Lyons Township
16 High School's audit. When he asked Bob how come
17 we're not paying for their audit, and he said that's
18 an arrangement that I have with LT.
19 Q. Who is that business manager?
20 THE WITNESS: Do I have to say that?
21 MR. HOFFMAN: In what district? Yes, you do.
22 MR. KALTENBACH: Yeah, I don't know. If you
23 think -- if you think it might -- I don't know
24 what -- I can't imagine why it would be privileged.

1 MR. HOFFMAN: Please don't coach. You have to
2 say it.
3 MR. KALTENBACH: I'm not. I'm trying to
4 explain why --
5 BY THE WITNESS:
6 A. It was the business manager of the LADSE
7 School District.
8 Q. Who was that?
9 A. I'm going to say it was Don -- I don't
10 remember his last name. He's since retired. I
11 can --
12 Q. Don?
13 A. I think so. I can get that name for you.
14 Q. So Don complained to who about?
15 A. He brought it aware to me that -- he had
16 asked --
17 Q. He had asked Healy?
18 A. No, he had asked me, "You're aware that
19 you're paying for Lyons Township High School's
20 audit; how come you won't pay for our audit?"
21 That's what I --
22 Q. When did this conversation take place?
23 A. It would have sometime probably in the
24 summer of '12 or early '13 after Bob had left.

1 Q. And how did that conversation with Don
2 lead you to believe that LT knew?
3 A. I don't know what LT knew. I don't know
4 what they didn't know.
5 Q. You don't know what they knew?
6 A. Right.
7 Q. That was my question. Thank you. You've
8 answered it. Do you know --
9 A. I do know -- I do know, having met with
10 LT, that it's a board of extremely intelligent,
11 well-qualified, highly intellectual members that is
12 composed of doctors, lawyers, and CPAs, of which I
13 can't believe over a period of time that this was an
14 oversight.
15 Q. Now, you agree that Baker Tilly and its
16 predecessor firms did a wide range of professional
17 accounting work for the TTO and all the member
18 districts, correct?
19 Do I need to clarify that?
20 A. Yeah, yeah.
21 Q. So Baker Tilly and its predecessors, I'm
22 just going to call Baker Tilly and make it easier.
23 A. Yeah, I'm with you.
24 Q. So Baker Tilly did work for the districts

1 beyond the annual audits, correct?
2 A. Multiple districts.
3 Q. Right. Okay.
4 A. So you're talking about multiple districts
5 within the township proper?
6 Q. Here is my point. Are you aware -- you
7 may or may not be -- that the -- that Baker Tilly
8 did work in addition to its work on the annual
9 audits for the various member districts? If you
10 don't know, then tell me you don't know.
11 A. Yeah, I don't know. I think this is what
12 you're asking me -- I'll see if I can help you with
13 this -- is I do know that Baker Tilly and previous
14 firms or firms prior to being Baker Tilly did a lot
15 of accounting and financial work for a vast majority
16 of the districts within the township. You know,
17 Lyons Township.
18 Q. That is not what I was asking you, so
19 you're incorrect. Let me ask you a better question.
20 Are you aware of the need for the
21 performance of reconciliation or balancing work as
22 between the books of LT and the TTO?
23 A. Yeah.
24 Q. And the reconciliation or balancing work,

1 that's a responsibility of the TTO, correct?
 2 **A. It's the responsibility of both parties.**
 3 **Both parties have to report that on their audit or**
 4 **their financial statement. So if one doesn't agree**
 5 **with the other one, it's the responsibility of both**
 6 **parties to come to the number that they agree with.**
 7 Q. So if -- does your claim in this case
 8 for -- in the payment or for recovery -- Let me
 9 start over.
 10 Do you know whether the TTO's claim in
 11 this case relating to annual audit payments for LT's
 12 annual audits, does that include work that Baker
 13 Tilly did on reconciliation and balancing?
 14 **A. Ask me that again.**
 15 Q. You've made a claim in this case for the
 16 repayment of about a half million dollars --
 17 **A. I think it's 511,000.**
 18 Q. -- of the money that the TTO paid over
 19 many years to --
 20 **A. I think it was three years, wasn't it?**
 21 Q. No. It was from 1995 through 2012.
 22 **A. Not related to the audits, no. It's a**
 23 **much tighter window than that.**
 24 Q. You're wrong. I'll show you --

1 **A. I have the letter that I wrote to them.**
 2 **Do you have the letter that I wrote to them?**
 3 Q. I saw the letter. It's 2006 to '12. But
 4 you want me to show you a copy of the complaint in
 5 this case?
 6 **A. No. I want to see the letter that I wrote**
 7 **because those are the facts that I can state to.**
 8 Q. Okay. Well, the letter that you wrote,
 9 which we'll look at, starts in 2006. Right?
 10 **A. Okay.**
 11 Q. Here is my question. Are you just trying
 12 to get back invoices of Baker Tilly that related to
 13 annual audit work or are you trying to get back
 14 invoices that TTO paid to Baker Tilly for any work
 15 that Baker Tilly performed with respect to LT?
 16 That's my question. Or you don't know. You can
 17 tell me you don't know too.
 18 **A. Well, I don't know if I understand your**
 19 **question. I can give you an answer if I think I**
 20 **understand the question. I'm looking to get back**
 21 **the money that we paid, the TTO paid on behalf of**
 22 **the audit fees for Lyons Township.**
 23 Q. So if Baker Tilly did any work relating to
 24 reconciliation and balancing, that's not one of the

1 invoices that you're trying to recover on, correct?
 2 **A. On behalf of which side?**
 3 Q. Well --
 4 **A. And I'm not entitled to bill my audit fees**
 5 **to Lyons Township. That's part of our pro-rata**
 6 **billing. So it would not be in addition to that.**
 7 Q. We've been provided with general ledger
 8 statements, and we've been provided with invoices
 9 that don't have a tremendous amount of detail on
 10 them.
 11 **A. From who? From who? From Baker Tilly?**
 12 Q. You. You've got invoices from Baker Tilly
 13 going back some years, and then you sent the whole
 14 package to us.
 15 **A. Okay.**
 16 Q. Okay? So my question is if there's an
 17 invoice that -- There are a number of invoices that
 18 relate to annual audit work. There are also some
 19 invoices that relate to unspecified services or that
 20 relate to balancing work or something of the like.
 21 So I'm trying to figure out from you if you can tell
 22 me how broad your net is with respect to the Baker
 23 Tilly invoices.
 24 **A. I think my net, as I stated before, is**

1 **related just to the audit work.**
 2 Q. Okay.
 3 **A. And I'd have to see those invoices and who**
 4 **they were made out to, and there's a job code on it.**
 5 **Is it specific to 204? Is it just related to the**
 6 **TTO? There's 13 different entities that we have to**
 7 **try to balance and get accounts right for, so I'd**
 8 **have to see the detail before I could give you more**
 9 **detail.**
 10 Q. You're aware that the TTO itself is
 11 missing many of the invoices of Baker Tilly for
 12 which they're seeking repayment, correct?
 13 **A. I'm not aware of that.**
 14 Q. So in your understanding, the TTO's claim
 15 for repayment of Baker Tilly invoices for annual
 16 audit work is supported by an invoice for every
 17 charge, correct? Yes or no?
 18 **A. No, I'm not stating that.**
 19 Q. Are there missing invoices of the TTO?
 20 **A. I don't know.**
 21 Q. You don't know one way or the other?
 22 **A. I don't know.**
 23 Q. Okay. And are you aware of the TTO asking
 24 Baker Tilly for invoices?

1 A. I would have assumed we did; I have not
2 asked for them personally.

3 Q. I'm asking whether you know that Bradshaw
4 requested them from --

5 A. I don't know that.

6 Q. Okay. That's fine. And you shouldn't
7 make any assumptions; you should only tell me what
8 it is you know.

9 A. Okay.

10 Q. Unless you asked her to and assumed she
11 did what you asked her to.

12 What is it that you believe was either
13 improper or illegal about the TTO's payment for LT's
14 annual audits?

15 MR. KALTENBACH: I'll object to the extent it
16 calls the witness to formulate a legal opinion. But
17 you can answer.

18 BY THE WITNESS:

19 A. We did not do that for other school
20 districts, and it's not within our purview. I'm
21 also concerned that it also breaks the normal checks
22 and balances between audit. And as a fiduciary and
23 a manager of their money, I would be concerned that
24 if we paid for an audit, it might cause -- the

1 in, and I believe would break down the independence
2 of having one entity pay for the audit of another
3 entity.

4 Q. And that's the basis upon which you
5 believe that these payments were wrongful, correct?

6 A. Well, there's two things. They're
7 wrongful in the payment that we didn't approve them
8 or that they shouldn't have been approved; and
9 they're wrongful in the payment that it did not --
10 it broke, in my mind, the independence of the audit
11 on both sides.

12 Q. Why do you say that the TTO didn't approve
13 the payments?

14 A. Because we would have approved it for all
15 the districts. We try to be very fair.

16 Q. Well, are you saying that the TTO paid the
17 audit costs of LT for 20 years by accident?

18 A. Again, I'm not agreeing that we paid the
19 audit costs for 20 years, number one.

20 Q. Or however many years it was.

21 A. No. I said that earlier that I think that
22 they paid for them because LT was pressuring Bob to
23 do things on their behalf.

24 Q. Okay. But you do agree that in the years

1 chance it could come into question that we were
2 paying for somebody that could not be objective on
3 the other side of an audit versus our auditor on one
4 side. I would have some concerns about that. Those
5 are my concerns.

6 Q. Well, you aware that Bob Healy asked LT to
7 use the Baker Tilly firm and its predecessors,
8 aren't you?

9 A. I'm not aware of that.

10 Q. How do you think it came to be that all
11 the districts and the TTO used the same auditor?

12 A. I have no idea.

13 Q. Is it your position that there's any --
14 and again, I know you're not a lawyer, but I'm
15 asking for your understanding. If you don't have
16 one, tell me you don't have one. Are you aware of
17 any legal bar to the TTO agreeing for all of those
18 20 years to pay for the annual audit costs of LT?

19 A. Can you ask me that question again?

20 Q. Are you aware of any legal bar to the TTO
21 for the 20-year period we're discussing, agreeing to
22 pay the audit costs of LT?

23 A. I'm not aware of any legal bar. I'm aware
24 of a financial bar, for which I do have a background

1 that the TTO paid for the annual audit costs for LT,
2 the TTO did so knowingly and voluntarily, yes?

3 A. The TTO as an entity, the TTO as it
4 relates to Bob specifically?

5 Q. Either one.

6 A. I would not say that I think the board was
7 aware of that. I will say that I think Bob was
8 aware that he was paying those fees.

9 Q. But I showed you testimony from Judge
10 Hartigan who said that he believed that --

11 A. And I think I told you that I think he was
12 incorrect.

13 Q. Okay. Have you talked to any of the other
14 board members who were on the board of trustees of
15 the TTO from 2012 and before about this issue?

16 A. 2012 and before. About the issues of
17 audit fees?

18 Q. Or really anything. Have you ever talked
19 to Donna Milich about anything?

20 A. No. I don't even know who Donna Milich
21 is.

22 MR. HOFFMAN: Let's take a break.

23 (Break from 2:03 p.m. to 2:13 p.m.)

24

1 BY MR. HOFFMAN:

2 Q. Sir, I want to ask you some questions
3 about the interest issues that we started to
4 discuss.

5 MR. HOFFMAN: Let's mark two more, please.
6 (Exhibits 8 - 9 were marked.)

7 BY MR. HOFFMAN:

8 Q. Why don't you take a look at Theissen
9 Exhibit Number 8, which is a September 5, 2013 memo
10 that you sent to all member districts, as well as
11 Theissen Exhibit Number 9, which is a November 7,
12 2013 letter from Dr. Birkenmaier that I believe was
13 sent to all of the districts as well.

14 A. Okay. Number 8. You want me to look at
15 these both or one at a time?

16 Q. Well, I just don't want to hide the ball
17 from you. Why don't you take a look at Exhibit
18 Number 9 because that may help you to testify
19 better. You only have to read the -- I'm only going
20 to ask you about the first section on Exhibit 9, the
21 Previously Distributed Interest section.

22 A. Uh-huh. Okay.

23 Q. All right, sir. Is Theissen Exhibit
24 Number 8 a memo that you sent to the member

1 A. Not 20.

2 Q. Okay. Approximately?

3 A. I would guess five.

4 Q. Okay. And what was the purpose of the
5 review and who conducted the review?

6 A. We conduct the review in-house initially,
7 and then as per the memo, we sought counsel with
8 Miller Cooper. We brought on a new audit firm.

9 Q. And what were the undistributed funds and
10 how did you find them in the financial statements?

11 A. Well, I think there was a line item that
12 said "undistributed funds" or "unallocated funds."

13 Q. And what was the total amount of
14 unallocated funds?

15 A. I don't know that.

16 Q. Was it -- Let's take a look at Theissen
17 Exhibit Number 9.

18 A. Uh-huh.

19 Q. You've seen this Dr. Birkenmaier letter
20 from November 7, 2013 before, correct?

21 A. Yes.

22 Q. And you saw it on or about the date it
23 bears?

24 A. Yes.

1 districts on or about the date it bears, please?

2 A. Yes.

3 Q. And tell me what happened with respect to
4 undistributed funds.

5 A. Based on this memo?

6 Q. Your memo makes a reference to a review
7 prior to your financial statements and you saying
8 that there appears to be some undistributed funds.
9 Do you see that?

10 A. Yes.

11 Q. Okay. What's that all about? Tell me
12 about it. What happened?

13 A. Well, as we reviewed the financial
14 statements, it looked like there were some interest
15 earnings that had not been distributed to the school
16 districts.

17 Q. Are we talking about the financial
18 statements of the TTO?

19 A. Yes.

20 Q. And which financial statements,
21 approximately? For how many years back are we
22 talking?

23 A. Oh, I don't remember that.

24 Q. A few or 20 or what?

1 Q. And it says: "We are, therefore,
2 distributing \$500,000 in interest income from
3 previous years."

4 Do you see that?

5 A. Yes.

6 Q. How was the \$500,000 figure arrived at?

7 A. I think in consultation with Miller Cooper
8 and discussion on the board, I know that that was
9 not the total amount.

10 Q. What was the total amount?

11 A. I do not know the total amount. I know
12 that it was not the total amount for the simple --

13 Q. For -- Go ahead.

14 A. Let me finish. -- for the simple reason
15 that we were unsure of what the market was going to
16 bear, and we usually hold back full allocation of
17 interest in the event that the market goes up or
18 down. We don't want to assume that the quarterly
19 payments are going to be equal. So I think this
20 \$500,000 was a number that we determined was as
21 large as we felt comfortable with the net line item
22 in the event that we had market conditions that
23 would cause that to go down.

24 So hypothetically, it could have been

1 \$700,000, and instead of doing all \$700,000, we only
2 did \$500,000.

3 Q. And that's your best recollection in terms
4 of what the total --

5 A. No. I said hypothetically. It could have
6 been 10 billion.

7 Q. Okay. So you have no idea what the total
8 amount of undistributed interest was?

9 A. I have no idea the exact number of
10 undistributed income, correct.

11 Q. Well, I'm asking you an approximate
12 number, not an exact number, sir.

13 A. And I don't know that.

14 Q. You have no idea?

15 A. No.

16 Q. It could have been \$1 million; it could
17 have been \$10 million --

18 A. It could not have been \$10 million.

19 Q. Why is that?

20 A. Because that would represent a piece of
21 our portfolio that was so large that that it would
22 -- that would have not been able to hide on a
23 financial statement.

24 Q. Could it have been in excess of

1 for one little thing.

2 MR. HOFFMAN: Let the record reflect that I
3 provided the witness with a folder containing the
4 TTO's annual audits from 1995 through 2013.

5 THE WITNESS: So I would assume it is going to
6 be on note 4, Unassigned Income.

7 MR. HOFFMAN: Let's see if it is.

8 THE WITNESS: Nobody else would just change
9 this.

10 BY MR. HOFFMAN:

11 Q. Take your time, sir.

12 A. I don't see it on this most recent one
13 that you have here.

14 Q. It's the 2013?

15 A. Fiscal year 2013.

16 Q. As produced to us. All right? And you
17 don't see in that audit report any statement of
18 unpaid investment interest, correct?

19 A. You mean undistributed --

20 Q. Undistributed.

21 A. -- income?

22 Q. Yes. Undistrib- -- well, let's start
23 over.

24 Is it correct that the 2013 TTO fiscal

1 \$1 million?

2 A. It could have been. It could have been
3 less than \$1 million.

4 Q. You just don't know?

5 A. I do not know.

6 Q. Who would know that: Dr. Birkenmaier?

7 A. She may know that. I mean, I think we
8 could go back and look at the statements. If you
9 need to know the exact number, we can find it for
10 you. I mean, you have the audits, right? You can
11 probably look on your own audits and answer the
12 question.

13 Do you have all of our audits? Do you
14 need them?

15 Q. Yeah. They're in this folder.

16 A. Well, give me one and I'll take a look.

17 Q. Sure.

18 MR. KALTENBACH: If he's going to read off a
19 specific document, I want to make sure the record at
20 least reflects what that is.

21 MR. HOFFMAN: Let's see how it goes. I'll be
22 happy to mark them all, frankly.

23 MR. KALTENBACH: If you want to, go ahead. I'm
24 comfortable not, if he's just going to reference it

1 year audit report does not contain any statement of
2 the undistributed investment income for that fiscal
3 year?

4 A. No, I don't -- I don't think I would say
5 that.

6 Q. Okay. Where is it? Take a look at the
7 2013 audit, please.

8 A. No. I guess what I'm wondering is this
9 could be in another line item.

10 Q. This is the entire -- You're the financial
11 man. So this is your area of expertise. You tell
12 me where that figure is, because you just testified
13 earlier that this was in the financial statement.

14 A. Oh, I think the money is in the financial
15 statement.

16 Q. So in what --

17 A. So I will testify that that \$500,000 is in
18 this financial statement.

19 Q. Well, what you said earlier, as I
20 understood it, is that the financial statements you
21 and Miller Cooper reviewed stated that there was
22 undistributed investment income in the financial
23 statements, and I haven't seen it. So I want you to
24 be kind enough to show me where in the financial

1 statements there is a line item for undistributed
2 investment income.

3 **A. I don't know if it would be on here.**

4 **Q. Well, you testified earlier that it was.**
5 So if you want to correct that testimony?

6 **A. Read back what I said.**

7 **Q. That was hours ago, and we don't have the**
8 **time to do that.**

9 **A. Well, I need -- we need to be very sure.**
10 **We need to be very clear because there's two things.**
11 **Accounting language and what you're asking me are**
12 **not necessarily the same thing. I would never**
13 **say -- I would never use legal language. You have**
14 **legal language; I do not have legal language.**

15 **Undistributed income may or may not have a**
16 **line item. It may be interest earned income or**
17 **interest earned revenue that was undistributed, so**
18 **it may be under the general fund of the interest**
19 **earnings. It would not say "undistributed." We may**
20 **have gone back and found out over time or over this**
21 **issue was, if there was \$1 that was earned, we only**
22 **distributed 80 cents. That would leave 20 cents of**
23 **undistributed income. That would not come up on**
24 **this.**

1 **accounting laws, and that's why those things were**
2 **changed; the language was changed, and the reporting**
3 **mechanisms were changed. That's why there's a stark**
4 **difference on that demarcation point.**

5 **Q. And what in the accounting laws -- because**
6 **that's your area, not mine --**

7 **A. No, I'm not a CPA.**

8 **Q. Okay. But you know more about this,**
9 **obviously, because you just told me that. What is**
10 **your understanding of how the laws changed that**
11 **caused that reporting to be removed from the**
12 **financial statements?**

13 **A. I don't know. I don't know the logic. I**
14 **know that when you -- when I looked at the financial**
15 **statements, I asked that same question, what caused**
16 **this. And our auditor said there was a change in**
17 **the way that we accounted for -- or the TTO**
18 **accounted for distribution and earnings within that**
19 **period of time.**

20 **Q. Are you aware from your review of past**
21 **financial statements that the TTO did not distribute**
22 **to the districts in each of the years from 1995**
23 **through 2007 the same amount of money that it earned**
24 **in investment income; and then in some years it was**

1 **Q. Sir, based on my review of the financial**
2 **statements, what I saw was that the financial**
3 **statements for the TTO from 1995 through 2007 had**
4 **either a net statement as to the interest**
5 **distributed, either positive or negative, and that**
6 **in certain years around 2007 and years before that,**
7 **there was actually a three-line stated: the amount**
8 **distributed, the amount earned, and then the net of**
9 **that.**

10 **And then in 2008 through 2013, there are**
11 **no statements as to the amount distributed or the**
12 **amount earned or the net of those two numbers. And**
13 **my question is --**

14 **A. Well, do you know why that is?**

15 **Q. That is my question, sir. Why don't you**
16 **tell me.**

17 **A. Well, do you know why it is?**

18 **Q. I do not know.**

19 **A. Okay. Does your client know why?**

20 **Q. My client -- I don't know everything my**
21 **client knows, so why don't you tell me while you're**
22 **under oath.**

23 **A. Okay. Well, I was not on the board at**
24 **that time. But there was a major change in the**

1 **more and some years it was less and sometimes by a**
2 **very significant amount. Are you aware of that?**

3 **A. Yeah, I'm aware of that. That's the**
4 **normal market conditions. I mean, we're not in**
5 **the -- this is not in a fixed return environment.**
6 **So I would expect that that could vary wildly,**
7 **materially. That could vary from quarter to**
8 **quarter. I mean, if you had money in the stock**
9 **market in August of '08 versus money that you had in**
10 **the stock market in June of '08, you saw a**
11 **tremendous change. You went from possibly a**
12 **positive gain to a completely negative gain. So it**
13 **does not surprise me that there was a difference in**
14 **what was distributed or that they held some back. I**
15 **think I stated earlier that as a whole, our board**
16 **would hold back money to see if the market condition**
17 **changed over a 12-month period before we distributed**
18 **all of it.**

19 **Q. Do you know why in some years the TTO paid**
20 **significantly more to the districts in investment**
21 **income than the TTO actually earned on their pooled**
22 **investments?**

23 **A. I have a belief, and the majority of the**
24 **belief is because the treasurer was not following**

1 the state-mandated investment policy statement.
 2 Q. And are you aware that in many years there
 3 was a very significant payment by TTO to the
 4 districts that was well in excess of the amount of
 5 earnings on those pooled funds?
 6 A. I'm not -- You'd have to give me an
 7 example. You'd have to show me an example.
 8 Q. Sure.
 9 A. Was it a distribution of principal?
 10 Q. This is your company, sir.
 11 A. Well, but you're asking me the question,
 12 so I can't answer your question unless I know what
 13 you're asking me.
 14 Q. Well, I get the difficulty of answering
 15 questions that go back in the past, but you have
 16 claims that go back in the past as well, and so I
 17 have to ask these questions. So bear with me.
 18 A. Yep.
 19 MR. KALTENBACH: For the record, Mike isn't
 20 asserting any claims in this lawsuit. My client is
 21 asserting claims in this lawsuit. My client is a
 22 body politic.
 23 MR. HOFFMAN: Yeah, I think we get that.
 24 MR. KALTENBACH: Thank you for the commentary.

1 BY MR. HOFFMAN:
 2 Q. So we're looking, sir, at the TTO
 3 financial statement for the year ending June 30,
 4 2004. Okay?
 5 A. Okay.
 6 Q. And you see there's statement of revenues,
 7 expenditures, and changes in the fund balance for
 8 that year, and there's a statement of earnings on
 9 investments of about 3.7 million, and then earnings
 10 on investments paid out to school districts of just
 11 over 6 million. Do you have any understanding of
 12 why that happened?
 13 A. No, no understanding. That makes no sense
 14 to me at all.
 15 Q. If I asked you the same question about all
 16 of the other years for which that information
 17 appears, meaning '95 to 2007, would you give me the
 18 same answer, that you don't know why it was done
 19 that way?
 20 A. Yes.
 21 Q. Is it your belief that other than a
 22 holdback to account for market conditions, that the
 23 TTO should have paid to its member districts the
 24 money that the TTO earned on their pooled funds?

1 A. I'm not following. Ask me again.
 2 Q. Sure. Is it your belief that the TTO in
 3 the years that we're talking about here should have
 4 paid to the districts, distributed to the districts
 5 the money that the TTO earned on their pooled funds
 6 except for perhaps a holdback to account for market
 7 conditions?
 8 A. Yeah, that's what our board does. I can't
 9 speak to other boards, but that's what our board
 10 would do.
 11 Q. Right. But what I'm saying is, do you
 12 know whether or not that's what the TTO did from
 13 1995 to 2012?
 14 A. I don't know that. I don't know that --
 15 I'm concerned that there's a negative distribution,
 16 so I'd have to understand, was it a return of
 17 principal? Were there bond funds in there that were
 18 in the agency fund for a period of time that were
 19 for capital expenses which could cause that
 20 discrepancy?
 21 Q. Well, let me show you --
 22 A. Because lots of times if we have long-term
 23 money that comes in from a bond issue and it's not
 24 going to be spent in a year or less, we may put it

1 in the agency funds so that it can get a greater
 2 return, which is literally our single job as a TTO,
 3 to get the highest return possible for the school
 4 districts. If there was bond money in there that
 5 was drawn out, which in essence would have been
 6 principal, that could account for whether there was
 7 a difference like that.
 8 Q. Is that, in fact, what occurred or --
 9 A. I don't know.
 10 Q. -- are you speculating?
 11 A. I don't know. That's total speculation.
 12 But that would be an opinion that I might have on
 13 why there would be a material difference between
 14 interest earned and distribution.
 15 Q. Well, let me show you the 2003 June 30
 16 audit report. And this shows that interest on
 17 investments net of distributions to school districts
 18 exceeds \$3 million. Do you see that?
 19 A. Uh-huh.
 20 Q. Yes?
 21 A. Yes.
 22 Q. You have to say yes or no, not uh-uh.
 23 A. Yes, I see that.
 24 Q. And do you know why that happened in 2003?

1 A. No.
2 Q. Do you have any opinion as to why the TTO
3 would have paid \$3 million less to the districts
4 than they earned?

5 A. I have no idea why they would do that.

6 Q. Does that give you any concerns in terms
7 of you making a claim against LT alleging that LT
8 was paid in excess of \$1.5 million in interest that
9 it didn't deserve during the '95 through 2012 time
10 period?

11 A. No.

12 Q. Why not? Why doesn't that have any impact
13 in terms of how the TTO actually distributed
14 investment income?

15 A. Because if the TTO was going to distribute
16 investment income during that period of time, it
17 would have done it to all of its members, and it did
18 not. What we're claiming is they did it
19 specifically and singularly to 204. So of that
20 \$3 million, if we're going to use that as an
21 example, let's say 1.5 of that went to 204, the
22 other 1.5, if they were entitled to that much,
23 should have been distributed to the other school
24 districts, which clearly it wasn't. That's what

1 MR. KALTENBACH: Hold on. Just make sure --
2 let him finish answering if he's answering.

3 BY MR. HOFFMAN:

4 Q. You're the one who gave Kelly Bradshaw
5 this assignment to look at the interest earnings,
6 correct? That's what she said.

7 A. Yes.

8 Q. And did you ask her in the course of doing
9 that assignment to look at TTO's annual audit
10 statements?

11 A. No, I did not ask her to look at them
12 specifically and say "Please look at the audit
13 statements." I asked her to look at them related to
14 our in-house accounting and any journal entries or
15 transfers into anybody's fiduciary account, which I
16 believe is what she did.

17 Q. Why didn't you have Kelly Bradshaw look at
18 the annual audit statements of the TTO with respect
19 to the payment of interest?

20 A. I didn't think it was relevant.

21 Q. Why is it not relevant?

22 A. Because that would not show a
23 disproportion of payment in our overall agency fund
24 that has 13 members. I wanted to see specifically

1 we're claiming.

2 Q. I didn't follow that, so say that again.

3 A. So we have \$1.

4 Q. Yes. There's a net amount --

5 A. You have \$1.

6 Q. -- on the financial statement?

7 A. Yes. We have \$1. And let's say it's
8 undistributed income. That dollar would be split up
9 with all of the school districts. We're claiming
10 that LT took 50 cents of that dollar; the other 50
11 cents was not distributed to the other school
12 districts.

13 Q. And what is the basis of that claim, sir:
14 the analysis that Ms. Bradshaw did?

15 A. The analysis that our staff did, yes.

16 Q. And that analysis did not look at all at
17 the financial statements and what they said about
18 distributions of investment earnings, correct?

19 A. I do not know that.

20 Q. You don't know?

21 A. I do not know that. I know that we looked
22 at --

23 Q. Well, you were the one that gave Kelly
24 Bradshaw the assignment, right?

1 what was related to 204. So nothing in that -- I
2 don't believe that those audit statements would show
3 this was paid to 101, this was paid to 102, this was
4 paid to 103, this was paid to 104. I think it said,
5 This is paid to the district, funds to the district.
6 I wanted to know what was paid, if anything was
7 paid, to 204 or any other school districts during
8 that period of time that was not then equally
9 distributed to other school districts.

10 Q. Isn't it true that when you first gave
11 Ms. Bradshaw that assignment, you asked her to look
12 only at District 204?

13 A. I don't remember that.

14 Q. That's what she testified. Do you have
15 any reason to disagree with that testimony?

16 A. I don't have any reason to disagree; I
17 just don't know if that's what I said. I know that
18 when it came to light, what I mentioned before was
19 that we believe that there was undue influence by
20 TTO administrators and elected officials on Bob
21 Healy, but I was more concerned that we were seeing
22 a pattern that 204 was taken advantage of that
23 office at the detriment of the other school
24 districts, which is why we have a \$4.6 million

1 lawsuit.

2 So if I specifically said, Please look at
3 204, my basis was that I had enough belief that
4 there were things there related to 204 that did not
5 apply to 109, 217, LADSE or anything else.

6 Q. Specifically, who are the administrators and
7 elected officials of District 204 that you believe
8 exerted undue influence on Healy?

9 A. I think that there was conversations with
10 our office that Dennis Kelly on numerous occasions
11 had come into Mr. Healy's office and browbeat him,
12 yelled at him, demoralized him, screamed at him. I
13 believe that David Sellers, per the email --

14 Q. Let me go one by one. Who said that?

15 A. Staff members in our office.

16 Q. Which ones?

17 A. I can't remember. It was conversations we
18 had around the lunch table. You'd have to ask
19 Mr. Kelly on those dates.

20 Q. Okay. Next?

21 A. I believe that when I saw the emails
22 between David Sellers and Bob Healy, and there was
23 the, we'll call it, miraculously found \$1.5 million,
24 I had concerns about that.

1 money is not invested independent or in a silo to
2 109 or anything else.

3 Q. I know that. So tell me --

4 A. So when I said I -- miraculous issue --

5 Q. -- what's the -- Stop.

6 What's the 1.5 million that you refer to?

7 What does it relate to and what are the details of
8 the 1.5 million? Is that the total amount of the
9 claim?

10 A. Yes. Yes. On several different
11 occasions --

12 Q. Okay. And how does that relate to Sellers
13 specifically, given that Sellers was only there for
14 some of the years?

15 A. Because I think there's an email or a memo
16 that talks about how Bob found interest that he
17 distributed to 204 after a recent meeting, lunch, or
18 meal together.

19 Q. Okay.

20 A. If that was the case --

21 Q. That's fine. You testified to that
22 earlier.

23 A. Yeah. You're not letting me finish.

24 Q. Go ahead.

1 Q. Tell me about the miraculously found
2 \$1.5 million.

3 A. Well, I mean, we live in a world of
4 accounting and numbers. So if there was a
5 distribution that was going to be made to school
6 districts, it would be made to all school districts.

7 Q. What is the \$1.5 million that you're
8 talking about? You don't have to tell me about the
9 world; just tell me about the \$1.5 million.

10 MR. KALTENBACH: Hold on a second. Jay, you're
11 cutting the witness off. And I understand the
12 desire to get through the deposition, but I think
13 it's improper. You're asking him a question; he
14 should be allowed to finish his answer, just like he
15 should let you finish your question.

16 BY THE WITNESS:

17 A. So I think what we had mentioned before
18 was you don't find undistributed income. You don't
19 find undistributed income specific to a single
20 school district. We pool investments for the
21 economic efficiencies of that. We pool investments
22 so that we can drive down administrative costs. We
23 pool investments to give us a greater diversity and
24 give us a higher return for our districts. So 204's

1 A. So if that was the case, there would be
2 income that would be distributed to the other school
3 districts as well. So I know that, based on going
4 through the books, as Ms. Bradshaw's analysis is,
5 there was not other income that was distributed to
6 the other school districts during that same period
7 of time. So 204 was allocated money improperly,
8 illegally -- I don't know what the right word would
9 be, but it was not rightfully theirs. If there was
10 an interest -- money that was left, it should have
11 been divided amongst all the accounts, not a single
12 school district.

13 Q. Okay. You mentioned Kelly and Sellers.
14 Anyone else?

15 A. I think we're okay with that right now.

16 Q. We have to know for all times, so I have
17 to --

18 A. Those are the two that I know. Those are
19 the two that I know.

20 Q. To the best of your knowledge, you're not
21 aware of any other individuals yourself? Yes?

22 A. No. I'm not aware of any individuals
23 myself, no.

24 Q. Okay. Terrific. Thank you.

1 MR. HOFFMAN: Let's mark this, please.
 2 (Exhibit 10 was marked.)
 3 BY MR. HOFFMAN:
 4 Q. Mr. Theissen, I am handing you a document
 5 that comes from the TTO's files that were produced
 6 to us in this case. And this is the document
 7 exactly as we received it. It was a PDF file, and I
 8 printed it out for our convenience.

9 I would like you to look through the pages
 10 of this and tell me whether you have ever seen this
 11 document before, sir.

12 A. I don't think I've ever seen this document
 13 in totality.

14 Q. Okay. What parts of it have you seen?

15 A. I don't know if I could factually tell you
 16 I've seen any of it.

17 Q. So you've never seen this document before
 18 or any part of it before, correct?

19 A. I don't believe so.

20 Q. Okay. Now, page 1, there's a reference to
 21 Lo, L-o. Is that Lauralee Conway or is that someone
 22 else?

23 A. I believe that would be Lauralee.

24 Q. And you see on the second -- on the first

1 of \$1,512,451. Do you see that?

2 A. Yes, I do.

3 Q. And then that account is not -- that
 4 1-999999 account is not present in the 2012 year.
 5 Do you see that as well?

6 A. I don't know. I don't see what you're
 7 asking.

8 Q. Okay. All right. Well, let me ask you
 9 this because you're the financial guy. Does
 10 Theissen Exhibit Number 11 which has the general
 11 ledger for District 204 as maintained at the TTO for
 12 2011-2012, does this document in any way help you to
 13 answer why the TTO made a cash deduction of just
 14 over \$1.5 million to District 204's account in June
 15 of 2011?

16 A. No, it doesn't help me. And I guess I'm
 17 looking at a couple different things. There's a
 18 similar that would bring my attention in July of
 19 2010 for approximately 1.5 for expenses.

20 Q. It's a different number, isn't it?

21 A. Yeah. But it's similar enough -- it would
 22 be similar enough it would cause me to look twice at
 23 it.

24 Q. Do you know what that's for?

1 page and the second page, there is a one-sided entry
 2 for what's described as Audit Adjustment Interest in
 3 Excess of \$1.5 million. Do you see that?

4 A. Yes.

5 Q. Do you have any understanding as to why
 6 the TTO reduced a fund balance for District 204 in
 7 an amount just over \$1.5 million in or around June
 8 of 2011?

9 A. No, I do not know why.

10 Q. Would it help you at all to see the
 11 general ledger that comes from the TTO's files for
 12 District 204's accounts for the years 2011 and 2012?
 13 Because I have that here, and I'd be happy to show
 14 that to you.

15 A. I'll be happy to take a look at it.

16 Q. All right, sir.

17 MR. HOFFMAN: Let's mark this as 11, please.
 18 (Exhibit 11 was marked.)

19 BY MR. HOFFMAN:

20 Q. All right, sir. I'm handing you the TTO
 21 general ledger printout for District 204's funds for
 22 2011 and 2012. And you'll see that in 2011, there's
 23 a journal entry for the adjustment of interest from
 24 the audit on page 2 about two-thirds of the way down

1 A. I do not know what that's for.

2 Q. How would you find out what that's for?

3 A. I would probably have to ask someone.

4 Q. Who would you ask?

5 A. I would probably ask what fund that it
 6 came out of, what the check went to, and do we have
 7 backup for it.

8 Q. And what person in the TTO would you
 9 ask --

10 A. This was before me, so I don't know.

11 Q. I know it's before you, sir, but we're
 12 dealing with lots of stuff before you. So my
 13 question is -- you said you'd have to ask someone.
 14 My question is: Who specifically would you ask to
 15 find out more about that journal entry?

16 A. I probably would have started with Lo,
 17 then I probably would have started with Kelly. I
 18 probably would have first started with Susan. If
 19 they were to ask me this today, I would ask the
 20 treasurer.

21 Q. Okay. I'll ask her when I see her. How
 22 about that?

23 A. Perfect. So you're telling me this is
 24 the -- What is this for, now?

1 Q. It's the TTO general ledger for District
2 204 contained in TTO's files.
3 A. So money that we put into 204's account.
4 Correct? So if I see a negative here -- I'm asking
5 you because you're asking me to make a judgment.
6 Q. This is a TTO document. I am not
7 testifying about the TTO's document. If you don't
8 know how to read the TTO's general ledger, you can
9 say that. I'm not making any representations at all
10 about what this document means. I'm an attorney and
11 not an accountant.
12 A. Yeah. I think this proves our point, that
13 this money was allocated inappropriately.
14 Q. When you say the money allocated --
15 A. I think these --
16 Q. You understand that's deducting -- I'm
17 sorry. Theissen Exhibit Number 10 is what we're
18 talking about, yes?
19 A. I think you're saying -- if you're telling
20 me that's our general ledger, any moneys would be
21 transferred into the 204 account, out of our account
22 into the 204 account.
23 Q. Could you take a look at Deposition
24 Exhibit 10, please. You see that this is an

1 Q. Let me ask you -- let me interrupt you
2 there. Given that we're dealing with an
3 organization which a man was able to steal
4 \$1 million, do all the debits and credits have to
5 line up perfectly?
6 A. This would have to show up on 204's, which
7 either means they would need to say, I was screwed
8 out of 1.5 million or I just got 1.5 million that I
9 wasn't entitled to.
10 Q. And that's your speculation on what this
11 document means, correct?
12 A. It's not speculation. I'm just saying
13 there should be a corresponding accounting on the
14 other side. That was the whole conversation we had
15 earlier on the checks and balances across --
16 Q. Even though it says on the top
17 "one-sided"? Why does it say "one-sided" at the
18 top? What's your interpretation of that?
19 A. I don't know. I don't know who wrote
20 that.
21 Q. I don't either. It's from your file, sir.
22 So you don't know what this is, Theissen Exhibit
23 Number 10, correct?
24 A. I do not know what that is.

1 adjustment of interest that reduces the cash of
2 District 204 in the amount of 1.5 million and
3 change, yes? You do understand that, correct?
4 A. I don't know if I do understand that.
5 Q. So you think that this document, Theissen
6 Exhibit Number 10, suggests that the TTO was paying
7 to District 204 \$1.5 million, or you don't know?
8 A. I don't know without looking at it in
9 totality.
10 Q. I'm taking that.
11 A. No, there's another page I want to look
12 at.
13 Q. That's fine.
14 A. I mean, part of this is I would need to
15 know what the account 99999 was, how that was coded,
16 what it was for.
17 Q. Would LT have any way of knowing that?
18 A. Sure. Because this --
19 Q. How would they know that?
20 A. This should show up. If we have the LT,
21 we should have a corresponding transaction on the
22 other side. So for every debit, there's got to be a
23 credit; for every credit, there's got to be a debit.
24 Well, this has got --

1 Q. Great. Thank you.
2 Let's talk about the assignment that you
3 gave to Kelly Bradshaw with respect to interest
4 payments to District 204. All right?
5 A. Yes.
6 MR. KALTENBACH: I'll get a little more water.
7 You continue.
8 MR. HOFFMAN: We'll wait a few.
9 BY MR. HOFFMAN:
10 Q. During the 1995 to 2012 period, does the
11 TTO have records showing all of the interest that it
12 earned on the pooled investments of districts?
13 A. I don't know that. That was before my
14 time. I do not know that.
15 Q. Do you have any understanding whether the
16 TTO can correlate the amount of money that it says
17 it earned on investments to specific bank statements
18 or financial institution statements that would show
19 or verify those earnings?
20 A. I would hope that they do, but again, that
21 was before my time.
22 Q. So you don't know whether they do or do
23 not?
24 A. No, not during that period of time.

1 Q. Okay. You asked -- did you ever -- Strike
2 that.

3 You agree that after Healy resigned, the
4 TTO was unable to determine where all of the
5 investments were among other banks and financial
6 institutions; that's what Bradshaw testified to. Is
7 that correct?

8 A. No, I don't agree with that.

9 Q. Okay. So your understanding is at the
10 time Healy resigned, the TTO knew exactly what
11 investments it had and exactly where those
12 investments were for the districts' funds?

13 A. You're talking about the day he resigned
14 or are you talking about the period of time where he
15 found all the investments?

16 Q. The day that he resigned. So Bradshaw
17 described a period of time in which the TTO could
18 not determine its investments and had to call around
19 to banks and wait for statements to come and
20 scramble around and figure out where all the money
21 was. So my point is what do you know about whether
22 the TTO was aware of where all the investments were
23 at the time Healy resigned?

24 A. I know that we went through an exhaustive

1 search to find and to identify our investments,
2 where our investments were, who had them, how they
3 were being managed, and how much they were earning,
4 and whether they were in compliance with the
5 investment policy statement.

6 Q. And you had to call -- somebody had to
7 physically call around to banks to see if they had
8 TTO money, right?

9 A. I don't know that. I mean, we checked
10 with everything. We just found out that there was a
11 potential theft, so we called anybody that we did
12 business with or had done business with to see if we
13 had open accounts.

14 Q. You asked Kelly Bradshaw to compare the
15 handwritten notes that Bob Healy had in his files
16 regarding payment to the districts to the general
17 ledger statements of interest credited to the
18 districts for District 204, right? That's what --

19 A. There's a couple questions there.

20 Q. What did you ask Bradshaw --

21 A. I think I asked Kelly to look at the
22 allocation of interest across all the districts
23 compared against Bob's notes and see if it was done
24 in compliance with how the normal allocation should

1 have been done.

2 Q. Well, that's not what Bradshaw testified
3 to. She said you asked her to focus initially on
4 204. Do you disagree with that?

5 A. No, I don't disagree with that.

6 Q. And let's talk about what exactly you
7 asked her to do. Is it true that you asked her to
8 compare Bob Healy's handwritten notes relating to
9 distribution of interest in each quarter to District
10 204 and compare that to the general ledger and the
11 quarterly interest payments actually made or
12 credited to District 204?

13 A. I could have asked her that, yes.

14 Q. Well, I didn't ask you if you could have
15 or if it is possible. I'm asking if you did.

16 A. I don't recall a conversation I had over
17 five years ago.

18 Q. What did you ask --

19 A. I told you what I asked her to do.

20 Q. Okay. Did you see the -- What do you
21 understand she compared -- What documents do you
22 understand she compared in order to complete her
23 analysis?

24 A. I think she looked at everything she had

1 at her disposal. So I think she looked at any of
2 the journal entries, probably the notes we had
3 access to, any of the bank statements to make sure
4 that there was a corresponding transaction on the
5 other side. And she might have looked at any of the
6 audit or work papers that we had access to within
7 the office.

8 Q. You're speculating about what it is that
9 she did, and you really don't remember, do you?

10 A. No, I do remember.

11 Q. You say you might have. You think she
12 looked at all of those things?

13 A. I'm quite confident she did. She's
14 thorough. She's a qualified professional. She's
15 fantastic. She's a CPA. She's smart. She's one of
16 the smartest persons I've worked with.

17 Q. Let's take a look at --

18 A. If there was a rat hole, she found it.

19 Q. Let's take a look at her testimony, shall
20 we?

21 A. Okay.

22 Q. Go to page 64, please. And the question
23 to Ms. Bradshaw in the deposition is -- The question
24 was, starting in line 14:

1 "Why don't you tell me who asked you to do
2 what in connection with interest paid to District
3 204 by the TTO for a period of years?

4 Answer: "Mr. Theissen asked me to compare
5 the interest earnings that were received" --

6 **A. Hold on. Hold on. I'm not following.**
7 **Starting on line 14?**

8 Q. Right.

9 **A. So before we --**

10 MR. KALTENBACH: Right here (indicating).
11 BY MR. HOFFMAN:

12 Q. "Why don't you tell me who asked you to do
13 what in connection with interest paid to District
14 204 by the TTO for a period of years?"

15 Answer: "Mr. Theissen asked me to compare
16 the interest earnings that were received by District
17 204 in comparison to Mr. Healy's calculations and
18 what was actually reported in the general ledger."

19 Question: "Did he explain why he wanted
20 you to perform this analysis?"

21 Answer: "No."

22 Question, next page: "Did he tell you
23 what he thought might be the problem and why a
24 comparison might be necessary?"

1 **A. You're talking about this table?**

2 Q. Do you know what this table represents?

3 Do you know what she compared?

4 **A. This looks to me like -- I'm assuming RH
5 is Robert Healy.**

6 MR. KALTENBACH: For the record, we're looking
7 at the first page of Bradshaw Number 3.

8 BY THE WITNESS:

9 **A. Calculations versus general ledger.**

10 Q. Yes. So what she told us -- and counsel
11 will correct me if I'm wrong. What she told us is
12 she compared these Healy Quarterly Interest sheets
13 in Bradshaw Number 5 --

14 **A. I'm looking at Bradshaw Number 3.**

15 Q. These Quarterly Interest sheets, Bradshaw
16 Number 5, in my left-hand, not in front of you, and
17 these general ledger reports, Bradshaw Exhibit
18 Number ??

19 **A. Okay.**

20 Q. And then she also did an additional
21 calculation with respect to pro-rata percentages
22 that came out later. So this first column, which is
23 supported by the backup behind it, compared Bob
24 Healy's notes to the general ledger. Is that

1 Answer: "No."

2 Question: "When did this conversation you
3 had with Mr. Theissen about this project occur?"

4 Answer: "Somewhere between probably
5 around September of 2013."

6 Do you see that testimony?

7 **A. Yes.**

8 Q. Do you disagree in any respect with that
9 testimony?

10 **A. I don't disagree with that.**

11 Q. So what she provided to us, sir, was --
12 and you're welcome to see it, this analysis -- This
13 is Bradshaw Exhibit Number 3, the second version of
14 it with its supporting documentation. You paid for
15 this and have seen it before, right?

16 **A. I've seen it.**

17 Q. And she provided to us as well copies of
18 the supporting documentation that she looked at. On
19 the left-hand column, there were Healy Quarterly
20 Interest sheets that she found in Healy's files.

21 MR. KALTENBACH: I'm sorry. Are you asking him
22 to look at something specific?

23 BY MR. HOFFMAN:

24 Q. Correct?

1 consistent with your understanding of what you asked
2 her to do and what she did?

3 **A. Yes, I believe it is consistent with what
4 I asked her to do.**

5 Q. So I want to ask you -- and what she
6 testified to was that Bob Healy's notes, in her view
7 or as she understood it, reflected what Healy
8 intended to distribute to the districts for each
9 quarter. Is that consistent with your understanding
10 as to what those documents represent?

11 **A. No, I don't think -- I don't think we
12 would use the word "intend."**

13 Q. Okay. That's the word she used. What
14 word would you use?

15 **A. I do not know. I do not know what
16 conversation you had with her.**

17 Q. Okay. What is your understanding as to
18 what the documents called Healy Quarterly Interest
19 sheets, which is Bradshaw Exhibit Number 5,
20 represent?

21 **A. I would assume these are --**

22 Q. Don't assume anything.

23 **A. Then I don't know. Do you want me to look
24 at these? Because I probably need a day or two.**

1 We'll have to come back.

2 Q. Oh, no, no, no. Let's not be --

3 A. It's six inches of paper, and you don't
4 want me to assume? Truthfully?

5 MR. HOFFMAN: Let's go off the record.

6 (Discussion off the record.)

7 MR. HOFFMAN: Back on the record. You want to
8 do it the hard way? We'll do it the hard way.

9 MR. KALTENBACH: I'm not doing it the hard way,
10 Jay. Hold on. I'm going to say something so the
11 record is clear on this. It's our record; it's not
12 your record. I have no problem with you talking to
13 the witness off the record in my presence. I think
14 if you're going to start asking the witness about
15 specific documents, that should be on the record.

16 MR. HOFFMAN: Fine. That's perfectly
17 acceptable to me. I was trying to short-circuit
18 things and was trying to make sure the witness
19 wasn't confused, but we'll do it all on the record.
20 No problem.

21 BY MR. HOFFMAN:

22 Q. Sir, these are documents that Kelly
23 Bradshaw relied on in calculating the approximately
24 \$1.5 million interest claim that you've made. What

1 Do you see that?

2 A. Yes, sir. So what is your understanding
3 of what that column represents?

4 A. It looks like it's the difference between
5 Bob's calculation and what was entered into the
6 general ledger.

7 Q. And why is that difference, to your
8 understanding, significant?

9 A. Because it shows me that what Bob
10 calculated and what was entered into the general
11 ledger do not match.

12 Q. Why is the assumption in this analysis --

13 A. This analysis? The one that I'm holding?

14 Q. Correct. Why is the assumption in that
15 analysis that Bob Healey's calculations as to
16 interest were the amounts that should have been paid
17 to District 204, and that any difference between
18 that and the general ledger amounts constituted an
19 overpayment?

20 A. Because the code is very clear on the
21 distribution of earned income, so it really
22 shouldn't take a calculation or an interpretation.
23 It's -- if you have 10 percent of the pro-rata,
24 you're allowed 10 percent of the calculation. So

1 these are, according to her, are Healy's files
2 relating to quarterly interest payments. Are you
3 familiar with these documents at all? And I'm not
4 asking you to look at every page. There's obviously
5 quite a number of pages, but they're all for
6 successive quarters in the relevant years.

7 Do you know what these documents are?
8 Have you seen them before?

9 A. No.

10 Q. Are you aware, even if you haven't seen
11 these documents in Bradshaw Exhibit Number 5, that
12 Healy maintained records relating to interest
13 payments?

14 A. I would assume that, yes.

15 Q. And you're obviously aware that the TTO
16 has a general ledger that has journal entries
17 relating to interest payments as well, correct?

18 A. Yes.

19 Q. So what is your -- So we look back to
20 Bradshaw Exhibit Number 3, the first column -- I
21 don't want you to have to read it out loud and waste
22 your voice. The very first column says Fiscal Year,
23 and the second column says RH Calculation Versus
24 General Ledger, plus or minus \$1,000 per quarter.

1 there really shouldn't be a difference. This
2 spreadsheet should say \$1 million in interest
3 earnings, the pro-rata percentage, the journal entry
4 that takes place.

5 Q. Is it your understanding that Bob Healey's
6 calculations were always based solely on a pro-rata
7 percentage distribution?

8 A. No. I would say this is proof they're not
9 based on a pro-rata distribution. And I can say
10 that in regard to another school district. The
11 school district in which I live, Elementary School
12 100, 101 asked about the interest calculations in a
13 similar meeting that Bob had with either Dennis
14 Kelly or David Sellers, and he said I did go by and
15 look and did find that you have some additional
16 interest earnings. That should never happen in this
17 environment.

18 Q. So my point is why -- as I understand that
19 analysis, Bradshaw Exhibit Number 3, the person who
20 conducted that analysis, Ms. Bradshaw, found
21 approximately a \$1.4 or \$1.5 million difference
22 between Bob Healey's handwritten calculations
23 relating to interest and the interest as reflected
24 on the general ledger for District 204, correct?

1 A. I think that's correct.

2 Q. Okay. So why is the assumption that Bob
3 Healey's handwritten notes are the amounts that
4 should have been paid?

5 A. I'm not following you.

6 Q. Okay. Do you understand what Kelly
7 Bradshaw was doing when she did this report?

8 A. Yes.

9 Q. So she was -- she was comparing -- and she
10 explained it to us -- the Healy handwritten notes
11 and said that that's the amount that District 204
12 should have gotten.

13 A. No, no, no, no, no, no. She was asked to
14 compare what 204 received versus what the law said
15 they should have received. If Bob Healey's notes
16 were in there, that's not -- she may have used that
17 as a check or as a benchmark, but our distribution
18 of income is very clear. You're entitled to see
19 this much income based on our pooled earnings. It
20 doesn't matter whether I want to make it a different
21 number, you want to make it a different, Barry wants
22 to make it a different number. If you're entitled
23 to 11.468 percent, you get 11.468 percent. I don't
24 give you 12 percent. I don't give you 9 percent. I

1 give you what your pro-rata share is.

2 Q. I get that. So here is my question. You
3 said that Kelly was asked to compare what 204
4 received versus what the law said they should have
5 received?

6 A. That's correct.

7 Q. So are the documents in terms of what 204
8 received the general ledger entries? Is that
9 correct?

10 A. I think that's the basis after what she
11 saw was transferred to 204. She went back and did
12 the math and said based on the amount --

13 Q. You're straying from my question. I'd
14 appreciate it if you could focus my question?

15 A. Okay. I don't understand your question.
16 It's unclear. I'm not sure you even know what
17 you're asking me.

18 Q. I do.

19 A. No, you don't. You don't because I'm very
20 clear. If there's a dollar, and they're entitled to
21 32 cents, they get 32 cents. They don't get 36
22 because Bob wrote a memo. They don't get 31 cents
23 because 204 gets 32 cents.

24 Q. I get it. Here is my question, and it's a

1 very simple. What documents did Bradshaw look at to
2 determine the amount that 204 actually received?

3 A. Probably the general ledger.

4 Q. Great. What documents did Bradshaw look
5 at to determine what the law said District 204
6 should have received?

7 A. Probably their fund balance.

8 Q. Do you know what she looked at?

9 A. Yeah, it would have been their fund
10 balance at that time. That's the only way you can
11 determine what they would have been able to be
12 allocated.

13 Q. How did you -- What number did Bradshaw
14 use to determine the amount of interest that should
15 have been paid to all the districts in total?

16 A. It would have been the interest earnings
17 divided by your pro-rata share.

18 Q. How did she find out what the interest
19 earnings were?

20 A. I'm assuming that she looked at the
21 statements related to the interest earnings.

22 Q. I'm not asking you to assume. I'm saying
23 where did she get the money -- where did she get the
24 data on how much interest in total -- Let me finish

1 my question. Where did Bradshaw get the data on how
2 much total interest the TTO earned in each quarter
3 on the pooled investments of the districts?

4 A. I'm assuming that would have been
5 reflected in each of the funds and the investment
6 statements.

7 Q. What investment statements?

8 A. Well, we get an investment statement by
9 everybody who has it, holds an investment in our
10 behalf.

11 Q. You do know. Did you get them back then?

12 A. Well, I wasn't there back then.

13 Q. Well, your claim relates to back then, not
14 now. So my point is where did Bradshaw get the data
15 on the amount --

16 A. I couldn't answer that for you. I
17 couldn't answer that for you. I will say that we do
18 have interest earnings, and whether that was taken
19 off of statements, whether that was taken off of
20 bank deposits, whether that taken off of wire
21 transfers, or whether that was taken off of old
22 bonds which we clipped coupons and received \$50 and
23 deposited it, there is a net amount that would have
24 been determined what would have been distributed to

1 each school district.

2 Q. Would you be concerned to learn that Kelly
3 Bradshaw testified that where she got the amount
4 that should have been distributed to all the
5 districts was from Healey's own handwritten notes
6 that I just showed you in this file, Bradshaw
7 Exhibit Number 5?

8 A. Would I be concerned --

9 Q. Yes.

10 A. -- if Kelly Bradshaw used that information
11 in her analysis?

12 Q. Would you be concerned if the source of
13 information about how much interest was earned by
14 the TTO on the district funds in every quarter came
15 from Healey's handwritten notes and, by the way on
16 top of that, in every single quarter was a round
17 number every time?

18 A. That's the sole source, you're saying she
19 used?

20 Q. Yes.

21 A. The absolutely sole source?

22 Q. Yes, sir. That's what she testified to.

23 A. And was it equally applied to all school
24 districts?

1 Q. Why can't you answer that question?

2 A. Would I personally have some concern?

3 Yes, I would have some personal concern. My bigger
4 concern would be was the interest allocation done
5 fairly as per the school code. That's where my
6 bigger concern is.

7 I'll tell you that Bob Healy was a crook.

8 I have no problem admitting that. So if there was
9 \$1 million and it was not allocated properly to the
10 school districts, that's my bigger concern.

11 Q. So isn't that a problem if Bradshaw's
12 analysis is based solely on Healey's handwritten
13 notes to determine how much interest should have
14 been paid to the districts?

15 A. No.

16 MR. KALTENBACH: Objection to form.

17 BY MR. HOFFMAN:

18 Q. And why is that okay?

19 A. Because if the basis of the analysis was
20 applied to all school districts, I'm comfortable
21 with that. What I'm not comfortable with -- if
22 that's the only number she had to go for, what I
23 would not be comfortable with is that school
24 districts got what they were not entitled to. So if

1 Q. She looked at District 204 because that's
2 what you told her to do.

3 A. So what's your question to me?

4 Q. My question, again, is: Would you be
5 concerned that Bradshaw's sole source of information
6 about how much interest was earned on the pooled
7 investments in each quarter was from Healey's
8 handwritten notes, and she never checked them
9 against bank statements, investment records, or
10 anything like that?

11 A. I would have some concern for that.

12 Q. And why would that be a concern for you?

13 A. Because I think there would be other
14 information she could gather from.

15 Q. And do you think that other information
16 would be more accurate?

17 MR. KALTENBACH: Objection to form.

18 BY THE WITNESS:

19 A. I don't know that.

20 Q. Do you have any concerns about the
21 accuracy of Bob Healey's handwritten notes with
22 respect to interest earned?

23 A. I don't know. I would not know how to
24 answer that question.

1 everybody was applied the same amount, if the pool
2 was the same for all school districts, at that
3 particular time I guess I cannot say I would have a
4 problem with it. What I would have a problem with
5 is if it was not distributed equally or properly.

6 Q. The analysis that Kelly Bradshaw did, is
7 it your understanding that that same analysis and
8 the documents that she looked at as applied to the
9 other school districts other than District 204 would
10 show that the other districts got the amount of
11 money that they were supposed to get or that they
12 got less?

13 A. Some of both. Some got more and some got
14 less.

15 Q. And what is the basis for that claim?

16 A. The calculations that she showed me.

17 Q. Well, we haven't seen them, so you
18 describe them to me. As it relates to other
19 districts, I've never seen them and they've never
20 been produced. So why don't you tell me about them.
21 What do they say?

22 A. I don't remember at this point.

23 Q. Well, what districts got more and what
24 districts --

1 **A. I don't know. There are 13 school**
 2 **districts. I don't know them all.**
 3 Q. I understand that. But they're all
 4 important, aren't they?
 5 **A. They're all important, every single one.**
 6 Q. So how many of the districts other than
 7 District 204 got more investment income than they
 8 should have received during the relative period?
 9 **A. I don't know that.**
 10 Q. More than one?
 11 **A. More than one.**
 12 Q. And do you remember which ones there were?
 13 **A. No.**
 14 Q. And what has the TTO done about that
 15 alleged overpayment of interest with respect to the
 16 districts other than District 204?
 17 **A. I don't think we've done anything with it**
 18 **at this point.**
 19 Q. Why not?
 20 **A. Because there are some that are over and**
 21 **there are some that are under, and as it relates to**
 22 **the amounts, some of them were immaterial. They**
 23 **could have been rounding errors based on the**
 24 **accounting information that we had. There could**

1 **have been when it was booked, if it went over fiscal**
 2 **year.**
 3 Q. Well, you're speculating and you're saying
 4 that some of the amounts are immaterial. Does that
 5 mean some of the amounts were material?
 6 **A. No. They didn't give me an amount. So if**
 7 **it's \$5 over, that's a rounding error or an interest**
 8 **miscalculation.**
 9 Q. Well, you have a detail --
 10 **A. If it's \$5 under --**
 11 Q. We received a detailed analysis of your
 12 claim for interest with respect to District 204.
 13 And now you're telling me that there are other
 14 districts that you believe got overpaid interest --
 15 **A. I also said underpaid interest too.**
 16 Q. I heard that.
 17 **A. Okay.**
 18 Q. So I'm talking about the ones that were
 19 overpaid.
 20 **A. Uh-huh.**
 21 Q. Have you made any effort to recover that
 22 money; and if not, why not?
 23 **A. We have not proceeded down that path.**
 24 Q. Why not?

1 **A. I think it's immaterial based on their**
 2 **total fund balance.**
 3 Q. How much money are we talking about that
 4 was overpaid to the other districts? Give me a
 5 ballpark.
 6 **A. I don't remember.**
 7 Q. You have no idea?
 8 **A. No idea.**
 9 Q. It was less than \$1,000?
 10 **A. Yes, some were less than \$1,000.**
 11 Q. Not some, all. All of them were less than
 12 \$1,000, all of the differences?
 13 **A. No.**
 14 Q. Okay. Were some big?
 15 **A. Well, what's big?**
 16 Q. Well, any of them. You tell me. How
 17 much --
 18 **A. I think I just told you that I don't think**
 19 **any of them were material. So if you're talking**
 20 **about \$1,000 on a \$100 million portfolio, that's an**
 21 **insignificant amount of money. If you're talking**
 22 **about \$500 on a \$600 portfolio, that's material in**
 23 **my mind.**
 24 Q. You're saying that --

1 **A. So the fact -- I'm telling you the ones**
 2 **that were under or over were immaterial. And if we**
 3 **needed to switch -- correct those up at a future**
 4 **date, we would probably try to do that.**
 5 MR. KALTENBACH: You want to take a break?
 6 MR. HOFFMAN: Sure. That would be great.
 7 (Break from 3:18 p.m. to 3:29 p.m.)
 8 BY MR. HOFFMAN:
 9 Q. Sir, I'm going to show you what previously
 10 was marked as Healy Exhibit 4 in this case. And I
 11 believe this is the memo that you made reference to
 12 involving David Sellers and Bob Healy. Am I
 13 correct?
 14 **A. I don't know if it was this specific one,**
 15 **but if you say so.**
 16 Q. This is the one that your attorney showed
 17 to Bob Healy, so --
 18 **A. Okay.**
 19 Q. That's what I'm guessing. Why don't you
 20 tell me. This is, for the record, Healy Exhibit
 21 Number 4 is an August 1, 2006 email from David
 22 Sellers to --
 23 **A. Yes, okay.**
 24 Q. -- Bob Healy, and a further August 2nd --

1 A. Follow-up.
 2 Q. -- 2006 email from David Sellers to Bob
 3 Healy.
 4 A. Yep.
 5 Q. Do you see these?
 6 A. Uh-huh.
 7 Q. Are these the emails you were talking
 8 about earlier in your testimony?
 9 A. Yes.
 10 Q. Have you ever spoken with either Bob Healy
 11 or David Sellers about the subject matters set forth
 12 in this email?
 13 A. No.
 14 Q. Do you know of any other person who has
 15 direct personal knowledge of the circumstances being
 16 discussed in these emails?
 17 A. No.
 18 Q. What is your understanding as to what
 19 these emails say with respect to any alleged
 20 overpayment of interest?
 21 A. Okay. Ask me that question again.
 22 Q. Okay. Do these -- you've testified
 23 earlier that, in your mind, these emails show that
 24 LT got too much interest from the TTO at this time,

1 correct?
 2 A. Yes.
 3 Q. And based on these emails, what was the
 4 amount of money that LT got that was over and above
 5 what it should have gotten?
 6 A. Well, if you asked me based on this email,
 7 it looks like an allocation of approximately
 8 \$280,000. And interest was initially 1.451 million.
 9 You indicated that there was an additional -- you
 10 indicated there was 280,000 more to be added. The
 11 total interest for fiscal year '06 would then be
 12 approximately 1.7 million. The higher number gives
 13 us a good rate of return, while the lower number was
 14 the one I said amounted to just under 3.5 percent,
 15 which is low. Please confirm the amount for LT that
 16 we can count on for fiscal year '07.
 17 That's not arbitration. This is --
 18 Q. I just asked -- I didn't ask you to read
 19 the document, I asked you a very specific question.
 20 In your mind, what is the amount of money, based on
 21 this, that was overpaid to LT, and your answer is
 22 280,000, correct?
 23 A. Related to this email, there was another
 24 allocation of 280,000. I don't know if that's the

1 total amount because I can't take one paragraph --
 2 Q. Why?
 3 A. -- and look at it --
 4 Q. What I'm saying is what -- based on these
 5 two emails --
 6 A. I would have concern based on this email.
 7 This email would lead me to believe that there was a
 8 conversation that they thought that this rate of
 9 return was low, but the 280,000 brought in a rate of
 10 return which 204 thought was acceptable. That's not
 11 how you determine a rate of return. If I'm going to
 12 talk to my financial advisor and tell him I want an
 13 8 percent rate of return, and he tells I'm only
 14 going to get a 6, and I find it unacceptable, he
 15 can't make up 8 percent rate of return. The rate of
 16 return is what the rate of return is.
 17 Q. You need to listen carefully to my
 18 question, sir, please. Because what I'm asking you
 19 to do is quantify what your position is with respect
 20 to these emails as to the amount of overpayment. Am
 21 I correct your view, your reading of these emails is
 22 that LT got \$280,000 more than they should have
 23 gotten based on this back and forth? At least?
 24 Maybe there was other emails more.

1 A. Yes. I would agree to that at least
 2 \$280,000 more.
 3 Q. And then what is your, to your
 4 understanding, the statement in the email on the top
 5 where it says, "I understand that 280,000 was
 6 already included and appreciate the increase of
 7 \$172,165 that we talked through," what is your
 8 understanding as to that?
 9 A. I do not know. If I read this, I would
 10 say that it was 280 and an increase of 174, which
 11 would give me 350 -- 452,000 and then how he wanted
 12 it distributed in the various funds.
 13 Q. Do you say 452,000?
 14 A. It was already included.
 15 Q. Approximately, yes? Is that the sum?
 16 You're better at math than I am.
 17 A. So 447, it looks like.
 18 Q. 447,000. And that's approximately the sum
 19 of 280,000 plus 172,000. Yes?
 20 A. Yeah.
 21 Q. Okay. And can you explain then why in
 22 Bradshaw's analysis that -- let's see. Hold on.
 23 So do you have any understanding as to why
 24 Bradshaw concluded in her analysis that the amount

1 of overpayment for fiscal year '06 to LT was
 2 \$391,000 plus change?
 3 **A. Nope. I do not know how she would get to**
 4 **that.**
 5 **Q. Is it possible that there was no real**
 6 **rhyme or reason as to how Bob Healy actually**
 7 **distributed interest as opposed to considering the**
 8 **interest that was earned and the interest that was**
 9 **paid?**
 10 **A. Is it possible?**
 11 **Q. Yeah.**
 12 **A. It's possible.**
 13 **Q. And is it possible that his lack of**
 14 **precision, if you will, wasn't solely focused on**
 15 **District 204, but actually affected all the**
 16 **districts?**
 17 **A. Of course, because if it affected one, it**
 18 **affects all.**
 19 **Q. What I'm saying is --**
 20 **A. As a pooled investment, if in the event**
 21 **they were overpaid or underpaid, that affects all**
 22 **school districts.**
 23 **Q. If Bob Healy was making arbitrary payments**
 24 **of interest, are you saying that his arbitrary**

1 payments of interest would have always favored
 2 District 204?
 3 **A. I'm not saying that. I'm not saying that**
 4 **at all. What I'm saying is if any school was**
 5 **overpaid or underpaid, it affects all school**
 6 **districts because it takes out of the collective**
 7 **investment pool. So if the collective investment**
 8 **pool, if somebody is paid more or less, then it**
 9 **affects the overall interest of the pool, which then**
 10 **affects the other school districts when it's time**
 11 **for their distribution.**
 12 **Q. All right.**
 13 **Let me show you a document that we've**
 14 **previously marked as Conway -- we're going to switch**
 15 **gears and we're going to talk about this claim that**
 16 **the TFO made for alleged underpayments of pro-rata**
 17 **expenses. Okay?**
 18 **A. Okay.**
 19 **Q. I'm going to show you the minutes of a**
 20 **meeting that the Board of Trustees held on March 21,**
 21 **2000, that's Conway Deposition Exhibit Number 5.**
 22 **It's two pages of minutes as well as an attachment**
 23 **of a February 29, 2000 email from Lisa Beckwith at**
 24 **LT to Bob Healy.**

1 **A. Memo.**
 2 **MR. KALTENBACH: No, you said email.**
 3 **MR. HOFFMAN: Memo. You're right it's not an**
 4 **email. I remember there used to be such thing as**
 5 **memos at one time.**
 6 **BY MR. HOFFMAN:**
 7 **Q. So you see the minutes of the March 21,**
 8 **2000 meeting, right?**
 9 **A. Yes.**
 10 **Q. And you're very familiar with these**
 11 **minutes and you've talked to the press and other**
 12 **people about these minutes, right?**
 13 **A. Yes.**
 14 **Q. Okay. When was the first time that you**
 15 **personally saw the minutes of this meeting?**
 16 **A. Gee, I don't know. Four years ago.**
 17 **Q. Did you see the minutes of this meeting**
 18 **prior to the board authorizing the TFO's attorneys**
 19 **to file the lawsuit in this case?**
 20 **A. I believe we did, yes. I believe I did.**
 21 **Q. All right. Terrific. Have you ever**
 22 **spoken with Russell Hartigan about what occurred at**
 23 **this meeting on March 21st of 2000?**
 24 **A. No. Like I said, I don't think I've ever**

1 **met Russell Hartigan.**
 2 **Q. Have you ever spoken to -- Okay. And fair**
 3 **enough that you've never spoken with Bob Healy about**
 4 **that subject either, have you?**
 5 **A. No, I have not.**
 6 **Q. And Joseph Nicola is unavailable because**
 7 **he's deceased, right?**
 8 **A. Yes.**
 9 **Q. And Donna Millage was not present at this**
 10 **meeting, correct?**
 11 **A. According to the minutes, no. I don't**
 12 **know Donna. So if she was marked as absent, that's**
 13 **what I have to go on.**
 14 **Q. You have no reason to doubt that, right?**
 15 **A. No.**
 16 **Q. Okay. So the three people who were at**
 17 **this meeting were Russell Hartigan, Joseph Nicola,**
 18 **and Bob Healy, correct?**
 19 **A. Yes. At least those three.**
 20 **Q. Okay. And the two people amongst them who**
 21 **are living, Russell Hartigan and Bob Healy, were**
 22 **deposed in this case. Do you know that?**
 23 **A. Yes.**
 24 **Q. And do you know what they said about this**

1 meeting?
 2 A. No.
 3 Q. Are you interested to know what they said
 4 about this meeting?
 5 A. Sure.
 6 Q. Okay. Why is it that three years into
 7 this lawsuit -- well, strike that.
 8 Let me ask you to take a look at the
 9 bottom of page 1, please.
 10 A. Okay.
 11 Q. And it talks about Healy submitting to the
 12 trustees proposals from 204 saying "this office
 13 absorbed certain payroll, accounts payable, and
 14 computer processing expenditures by District 204."
 15 Do you see that?
 16 A. Yes.
 17 Q. And is your understanding of the proposal
 18 the attached February 29, 2000 memo that was
 19 attached to the minutes? Is that what the proposal
 20 is that they're talking about in the minutes?
 21 A. Well, this looks like it's a job
 22 description or a cost allocation.
 23 Q. Have you ever seen the February 29, 2000
 24 memo from Lisa Beckwith to Bob Healy?

1 A. No, I don't think I have.
 2 Q. You've never seen this?
 3 A. I don't think so.
 4 Q. Do you have any understanding of what this
 5 February 29, 2000 memorandum is?
 6 A. It looks like to me a cost allocation of
 7 their staff.
 8 Q. And it says: "Following is a list of
 9 responsibilities that District 204 proposes become
 10 the direct cost and responsibility of the Township
 11 Treasure's Office." Do you see that?
 12 A. Yes.
 13 Q. And then there's a number of amounts. And
 14 then at the bottom, it says: "An invoice will be
 15 sent to the township treasurer in May with receipt
 16 of funds expected prior to the close of the fiscal
 17 year." Do you see that as well?
 18 A. Yes.
 19 Q. And whether or not you've seen this
 20 particular memorandum before, isn't this correct
 21 that this is what LT has said in this case reflects
 22 the agreement between the parties by which the TTO
 23 agreed to pay the costs of LT's business functions
 24 that the TTO would otherwise have to perform?

1 A. Yes. I think that's what they're stating,
 2 yes.
 3 Q. And so how is it that you've never seen
 4 this document before if it's so critical to the
 5 case?
 6 A. Well, this constitutes a memo to me; this
 7 is not a contract.
 8 Q. So unless it's signed by both parties --
 9 A. So any agreement -- any agreement that we
 10 would have with 204 would have to be governed by
 11 interlocal governmental agreement. So I have never
 12 seen anything in our board minutes --
 13 Q. Let me ask you this question.
 14 A. Wait a second. I'm not done.
 15 So to me this does not constitute a
 16 contract. And I don't know whether it legally
 17 constitutes a contract, I just know that the board
 18 president of the Lyons Township School and trustees,
 19 when we approve a contract, we approve it. We take
 20 a formal vote. We ask our attorney for counsel. Is
 21 this a proper form? Is this a proper statute? And
 22 we have a signed agreement between parties. So I
 23 don't think that this rises, in my opinion, as a
 24 level of a contract. I don't see any response -- I

1 don't see any response for us.
 2 Q. Let me ask you about the intergovernmental
 3 agreement part of it. Why is it your belief that
 4 this type of agreement would have required an
 5 intergovernmental agreement?
 6 A. Because these are two independently
 7 elected boards. These are two governmental
 8 entities. It's just like two corporations doing a
 9 deal would be governed by a contract. We're elected
 10 township-wide; 204 is elected by a subset of the
 11 township. So these are two political subdivisions
 12 that I think would have to agree via contract if
 13 they're going to share costs, do anything else.
 14 I know we have contracts with our copy
 15 machines. We have contracts with our accounting
 16 firms. I know with my homework that LT has
 17 contracts with bus companies, with football coaches,
 18 with superintendents that are all signed,
 19 documented, and board approved.
 20 Q. So in your view, there should have been an
 21 intergovernmental agreement or contract between LT
 22 and the TTO with respect to this issue?
 23 A. Yes.
 24 Q. Would any of the other districts, in your

1 view, have had to have been signatories to that
 2 intergovernmental agreement for it to be effective
 3 on this particular subject matter?
 4 **A. In my opinion, no.**
 5 **Q. And why is that?**
 6 **A. Because we're an independently elected**
 7 **board.**
 8 **Q. Now, you see on page 2 it says: "A motion**
 9 **was made by Russell Hartigan, seconded by Joe**
 10 **Nicola, to accept the proposal given to the Lyons**
 11 **Township Trustees of Schools by Cook County High**
 12 **School District Number 204." And there are two**
 13 **"aye" votes and zero "nay" votes. Do you see that?**
 14 **A. Yes.**
 15 **Q. And what is your position as to what it**
 16 **was that the board accepted as reflected in these**
 17 **minutes?**
 18 **A. Well, I would assume it's this**
 19 **correspondence. They received this memo to review.**
 20 **Q. Right. So what is it are you -- are you**
 21 **taking the position that the acceptance by the board**
 22 **of this LT proposal was ineffective because of the**
 23 **lack of intergovernmental agreement?**
 24 **A. No. I think you asked me what the term**

1 **"accepted" means. I mean just like this.**
 2 **(Indicating.) You just accepted that from me.**
 3 **Q. So you're saying "accepting" means**
 4 **recognizing the receipt of, but not agreeing to it?**
 5 **A. Exactly.**
 6 **MR. KALTENBACH: Let the record reflect -- you**
 7 **don't have to laugh if you don't like any of his**
 8 **answers, Jay. It's so unprofessional -- the**
 9 **witness, as he was speaking, handed the exhibit in**
 10 **front of him to Mr. Hoffman, who has now given it**
 11 **back.**
 12 **BY THE WITNESS:**
 13 **A. I would assume if this was a contract,**
 14 **they would have sent an approved proposal.**
 15 **Q. So you are aware, sir, that there was a**
 16 **12-year course of dealing between the parties from**
 17 **2000 to 2012 by which LT received the pro-rata**
 18 **expense billing from the TTO, offset the cost of its**
 19 **business functions, and if there was a net payment,**
 20 **sent that net payment to the TTO, which the TTO**
 21 **accepted. You're aware of that, right?**
 22 **A. Yes, I'm aware of -- I don't think it's**
 23 **exactly as you stated. But I'm aware that they**
 24 **think that --**

1 **Q. I don't want to put words in your mouth.**
 2 **Why don't you state it?**
 3 **A. I think there was a belief between Bob**
 4 **Healy and District 204 related to this so-called**
 5 **agreement that you claim.**
 6 **Q. Are you saying that the trustees were**
 7 **unaware of this course of dealing?**
 8 **A. Yes.**
 9 **Q. So there's no question pending. I'll ask**
 10 **you a question in just a moment.**
 11 **Sir, I'm going to show you a portion of**
 12 **Bob Healey's deposition testimony taken in this**
 13 **case. Let me see if I can find a clean copy of it.**
 14 **MR. HOFFMAN: Do you have Healey's?**
 15 **MR. KALTENBACH: Yeah.**
 16 **MR. HOFFMAN: Thanks. Appreciate it.**
 17 **BY MR. HOFFMAN:**
 18 **Q. Sir, I'd like to direct your attention to**
 19 **the testimony that Bob Healy gave in this case at**
 20 **pages 116 through 117 and ask you to read that to**
 21 **yourself, please.**
 22 **A. 116 through 117?**
 23 **Q. 116 through 117, yes, sir.**
 24 **A. Okay.**

1 **Q. Actually, through 118, please.**
 2 **Have you read that testimony, sir?**
 3 **A. Nope.**
 4 **Okay. I'm through.**
 5 **Q. You see that Bob Healy testified in his**
 6 **deposition that he informed the trustees that the**
 7 **TTO was paying for the cost of LT's business**
 8 **functions during the relevant years and then**
 9 **discussed those costs with the trustees during that**
 10 **time period. Correct?**
 11 **A. Yes, I see where he's saying that.**
 12 **Q. Do you have any reason to doubt that**
 13 **testimony?**
 14 **A. 100 percent.**
 15 **Q. What is your reason to doubt that**
 16 **testimony, sir? Why are you claiming that the**
 17 **trustees were not aware of this course of dealing?**
 18 **A. I think Bob was less than forthright and**
 19 **honest with the trustees. And as I said before, I**
 20 **think because 204 continued to pressure, cajole, and**
 21 **force him, he did that to appease them. He did not**
 22 **let the trustees know the full extent of whatever**
 23 **was going on between 204 and the TTO office.**
 24 **Q. You've never spoken with any of the**

1 trustees, though, have you?

2 A. No, I have not.

3 Q. Has anybody -- did anybody associated with
4 TTO ever interview the trustees before the filing of
5 this suit and report to you on that?

6 A. No.

7 Q. So your disbelief of what Healy says he
8 told and discussed with the trustees is based on no
9 actual evidence?

10 A. It's mine and my own.

11 Q. It's your belief?

12 A. My belief, mine and mine alone.

13 Q. And you have no knowledge as to what
14 exactly the trustees were told with respect to this
15 issue?

16 A. I have as much knowledge as you or Barry
17 or anybody else. We weren't there.

18 Q. Well, I wasn't there, but Bob Healy was.
19 Yeah?

20 A. I don't accept Mr. Healy as an honest and
21 forthright man.

22 Q. Okay. Now, Mr. Healy said that the
23 trustees were aware of and approved the expenditures
24 the trustees made to LT for LT's business functions

1 additional staffing?

2 A. Yes, I am.

3 Q. And what is the basis for that claim?

4 A. Because right now we handle it with less
5 people than what was in that office now with bigger
6 numbers within our staff at the TTO office. So we
7 handle for 13 school districts with roughly eight
8 and a half people. We had more people than that, I
9 believe, at that time. So we handle more
10 transactions, larger numbers, more checks, more
11 payables, more payrolls at the current time than
12 they did then with less people. So I do not believe
13 that there would have to be an addition to staff.
14 And there clearly would not be an addition to staff
15 based on that memo you just showed me where they're
16 trying to allocate three people to it. That's just
17 absurd. Completely absurd. That totally goes
18 against the whole notion of why the TTO exists as a
19 consolidation of government.

20 Q. Why does the TTO exist?

21 A. As a consolidation of government.

22 Q. It doesn't exist in any county other than
23 Cook, right? It doesn't exist in any county other
24 than Cook, does it?

1 when they approved the expenditures of the
2 treasure's office as a whole?

3 A. And that's just not even a factual
4 statement. Because we never made expenditures to
5 204. We never made expenditures to 204. So that
6 alone is not even a factual statement. That would
7 indicate that we paid 204 to do work for us.

8 Q. Isn't that what you essentially did,
9 outsourced the work to 204 that the TTO would
10 otherwise have to do in-house --

11 A. They didn't do any different. There was
12 no change in workload.

13 Q. But this -- isn't it correct that the TTO
14 would have had to hire additional people?

15 A. No, that's not correct.

16 Q. Really?

17 A. No, that's not correct. We don't know
18 that. I don't think the workload changed. I don't
19 know that.

20 Q. So you're saying that the personnel at the
21 TTO from 2000 to 2012 that were handling the
22 workload of all of the districts other than 204 for
23 things like accounts payable and payroll could have
24 also handled District 204's work without any

1 A. I don't believe so.

2 Q. It doesn't. And so why is the TTO so
3 important if every county other than suburban Cook
4 County is able to do without it?

5 MR. KALTENBACH: Aside from my standing
6 objection of relevance, I'm going to argue this line
7 of questioning is argumentative.

8 MR. HOFFMAN: He brought it up.
9 BY THE WITNESS:

10 A. Well, I think it exists because when done
11 correctly, it lowers costs, it yields a higher
12 return, and it creates an additional checks and
13 balances related to school districts and the money
14 that they manage from a safety net perspective.

15 Q. And how did that work under Bob Healey's
16 stewardship?

17 A. It did not work well.

18 Q. And who is the check and balance on Bob
19 Healy?

20 A. Well, in theory, it should have also been
21 the school districts, their accountants and their
22 law firms. Because anything that was -- it's
23 incomprehensible to me that a school district and a
24 school district board and their auditor can get a

1 rate of return that exceeded the market from the TTO
2 without asking a follow-up question.

3 Q. You understand, don't you, that from 1995
4 through 2012, the TTO provided very little, if any,
5 information to LT with respect to the interest
6 payments that they received?

7 A. No.

8 Q. You claim otherwise?

9 A. I guess I don't claim one way or the
10 other. I know that based on the memo you just
11 showed me that 204 thought that 3.5 percent return
12 was more in line with what they thought that they
13 wanted, so they were clearly monitoring the return
14 they were getting from the TTO.

15 Q. Is it your understanding that in the time
16 period, the entire time period which you have a
17 claim claiming interest, that LT was just as able to
18 determine the amount of the interest that should
19 have been paid to LT as the TTO was?

20 A. No. No.

21 Q. Why is that?

22 A. Because they would not have access to the
23 overall portfolio, and they would not know the
24 expenses associated to it. And I do not know what

1 question on page 42 of his deposition.

2 Question: "And you were aware, sir,
3 that from the year 2000 to the remainder of your
4 term as trustee, that the TTO was paying for certain
5 business functions performed at District 204,
6 correct?"

7 Answer: "I think so."

8 Do you see that?

9 A. Yes.

10 Q. And doesn't that indicate that Judge
11 Hartigan believed that he was aware as a trustee of
12 the arrangement that the TTO had with District 204?

13 MR. KALTENBACH: Objection as to the lack of
14 foundation.

15 BY THE WITNESS:

16 A. Yeah, I don't know what the judge was
17 thinking at that time.

18 Q. Well, he's answered that he believes -- he
19 thinks so. So that means no?

20 A. It could be he's unsure.

21 Q. You think "I think so" could be the same
22 as "no"?

23 A. He could be unsure.

24 Q. But you never actually bothered to speak

1 that portfolio was at that time, but right now that
2 portfolio is anywhere between \$240- to \$600 million
3 depending on tax collections.

4 Q. I'm listening.

5 A. So for 204 to determine what they thought
6 their allocation is, they might be able to get
7 close, but they would not know the interest
8 expenses, they would not know the administrative
9 fees, they would not know some things like that
10 within the portfolio.

11 Q. I know you haven't read Judge Hardigan's
12 deposition transcript taken in this case. I'd like
13 to direct your attention -- well, this is it. It
14 just has some handwriting on it.

15 On page 42 of Hardigan's deposition --

16 MR. HOFFMAN: You don't have it there, do you?

17 MR. KALTENBACH: Hardigan's?

18 MR. HOFFMAN: Yeah.

19 MR. KALTENBACH: No, I didn't bring it.

20 MR. HOFFMAN: No, from today.

21 MR. KALTENBACH: No.

22 MR. HOFFMAN: Okay. Fine.

23 BY MR. HOFFMAN:

24 Q. So Russell Hartigan was asked this

1 with him and find out what he knows or doesn't know,
2 right?

3 A. No, I have not.

4 Q. And is that important to you or not
5 important?

6 MR. KALTENBACH: I'm going to object as I
7 think --

8 BY MR. HOFFMAN:

9 Q. With respect to this issue, do you view
10 Judge Hardigan's recollections as a trustee as to
11 what he knew about this payment for business
12 functions issue as significant or not?

13 MR. KALTENBACH: I'm going to object. Although
14 there's a standing relevance objection, I'm going to
15 object that it's as argumentative.

16 MR. HOFFMAN: Fine. You can answer.

17 BY THE WITNESS:

18 A. Do I think it's relevant to this
19 conversation?

20 Q. Yes.

21 A. I think it's relevant. I don't think it's
22 appropriate.

23 Q. Why do you think it's not appropriate?

24 A. Because I don't think he had full

1 knowledge of the relationship between Bob Healy and
2 204. I don't think he was given full information.

3 Q. Okay. And that's based on your
4 speculation, correct?

5 A. That's based on my speculation. That's
6 based on, I believe, the actions of parties. I
7 think it's based on the response that we got from
8 204 when we brought this to light. I think it's
9 based on their continued response that they feel
10 that they're being painted in an unfair manner. So,
11 yeah, no, I don't think that the judge, who I'm sure
12 is a fine man, knew the full extent of what was
13 going on between 204 and Bob Healy.

14 MR. HOFFMAN: Let's mark this as the next
15 exhibit.

16 (Exhibit 12 was marked.)

17 BY MR. HOFFMAN:

18 Q. Sir, I'm handing you Theissen Exhibit
19 Number 12. Theissen Exhibit Number 12, have you
20 seen this before? This is a letter from Bob Healy
21 to Lisa Beckwith at LT with a carbon copy to the
22 trustees of the TTO.

23 A. Yes.

24 Q. Have you seen this letter before?

1 anything. I don't see the word "recommend." If you
2 show me the word "recommend" --

3 Q. You can't glean that from reading this
4 letter? In the first option, which is a deviation
5 from pro-rata billing, am I correct that Healy says
6 it is extremely -- simply put, it is highly unlikely
7 that the boards of those other 11 tax bodies would
8 ever agree --

9 A. I see that.

10 Q. And then he goes on to the second proposal
11 and he says, "As to the funding of some district
12 functions, I would expect that when the trustees of
13 schools takes into consideration these necessary
14 increases, they would logically conclude...that this
15 is reasonable." You don't think that is --

16 A. I don't see "recommendation." I would
17 expect -- you said recommendation. You said did he
18 recommend --

19 Q. You do not think that that's what he was
20 recommending? I will concede to you that that exact
21 word is not stated in there. You're saying that you
22 can't tell from this letter which course of proposal
23 he was recommending?

24 A. Well, let me finish reading the rest of

1 A. I believe that I have, yes.

2 Q. Okay. And this contains ultimately five
3 proposals that were possible between the TTO and LT,
4 correct?

5 A. Yes. It appears that way, yes.

6 Q. And is it your understanding that the
7 proposal that, at least in your view, Bob Healy
8 pursued with respect to LT was the second proposal,
9 which is the funding by Township School Treasure of
10 some district functions, which is at the top of the
11 second page of this document?

12 A. I don't -- ask me that again. Which
13 proposal funding?

14 Q. There's five proposals here, right?

15 A. Right. We're looking at number 2?

16 Q. Right. And you read the letter. You're
17 familiar with it. You recognize that Bob Healy was
18 recommending proposal number 2, which was the
19 funding by Township School Treasurer of some
20 district specific functions. You see that, right,
21 that was one of the five that he was recommending in
22 this letter? If you want to read the letter again
23 to confirm what I just told you.

24 A. I don't see where he says he recommended

1 it.

2 Q. Fine. I would encourage you to notice
3 that he rules out the feasibility of all four other
4 proposals.

5 A. Okay. I'm back on number 2.

6 Q. Isn't it obvious that that is the proposal
7 that Healy expects the parties to proceed with,
8 number 2?

9 MR. KALTENBACH: I'm going to object.

10 BY MR. HOFFMAN:

11 Q. Or do you read this in some other way?

12 MR. KALTENBACH: I'm going to object to the
13 form of --

14 MR. HOFFMAN: Fine. Your objection is noted.

15 MR. KALTENBACH: You know, let me finish my
16 objection.

17 MR. HOFFMAN: I want to -- it's very clear what
18 I'm asking this witness. I wish he would just
19 answer the question.

20 MR. KALTENBACH: Hold on a minute. Jay,
21 please, let's cut the commentary. All right? Ask
22 the question; he'll answer it. My objection is form
23 of the question, lack of foundation.

24 MR. HOFFMAN: Fine.

1 THE WITNESS: So ask me again.

2 BY MR. HOFFMAN:

3 Q. There's five options laid out there,
4 right?

5 A. Yes.

6 Q. You've seen this letter before. Do you
7 have any understanding as to which option Healy was
8 proposing the parties proceed with, at least for the
9 basis of further discussion?

10 A. I think what he -- how I read this letter
11 is maybe the most reasonable chance that might be
12 approved would be number 2.

13 Q. Fine. Terrific. You see that this
14 document reflects a copy to the trustees of the TTO
15 at the end, yes?

16 A. Yes.

17 Q. And you have no reason to believe that
18 they did not receive a copy of this letter, do you?

19 A. I have no reason to believe, no.

20 Q. And isn't it a fact that by receiving a
21 copy of this letter, the trustees were aware, at
22 least at this stage of the negotiation, of the
23 different options and possibilities that were being
24 discussed between the two parties?

1 benefit to doing this?

2 MR. HOFFMAN: I move to strike --

3 BY MR. HOFFMAN:

4 Q. That's an assumption, isn't it?

5 A. That's my opinion.

6 Q. That's your assumption, isn't it?

7 A. It's my opinion.

8 Q. You just said, "I assume." You made an
9 assumption that --

10 A. My opinion --

11 MR. KALTENBACH: Hold on. Hold on a minute.

12 THE WITNESS: It's my opinion.

13 MR. KALTENBACH: Hold on a minute.

14 BY MR. HOFFMAN:

15 Q. You're speculating as to what might have
16 happened based on no personal knowledge. I want to
17 stick to the facts, sir.

18 MR. KALTENBACH: You know what, Jay --

19 BY THE WITNESS:

20 A. I'm reading this in context as a board
21 member.

22 MR. KALTENBACH: Jay, please, enough with the
23 commentary. Okay? And I object to the last several
24 questions. It's just exceptionally argumentative.

1 A. Okay. Ask me that again.

2 Q. Isn't it a fact that by receipt of this
3 August 18, 1999 letter, the trustees of the TTO were
4 aware of the various options being discussed by the
5 parties at this time?

6 A. Yes, I would agree with that. I guess the
7 thing I would add is probably I look at the second
8 to the last paragraph, given all of these issues,
9 it's hard to see what advantages a changeover would
10 be to the operation of the treasure's office in all
11 13 other districts.

12 So I read this as, well, he though maybe 2
13 was the most reasonable. There was no reason to do
14 this. It's not advantageous for the TTO to do this.
15 It's 100 percent of how I read this. What advantage
16 a changeover would be to the operation of the
17 treasurer's office in the 13 other districts I
18 serve.

19 Q. So in your mind, Healy didn't want to
20 proceed with any of these options, as you read this?

21 A. That's how I would read this.

22 Q. Okay. Terrific.

23 A. I'm assuming maybe the other board members
24 when they read this too would say, yeah, what's the

1 BY MR. HOFFMAN:

2 Q. Here is the thing, sir.

3 A. Me?

4 Q. Yeah, Mr. Theissen. You are not allowed
5 to make assumptions. You're not allowed to guess
6 and you're not allowed to suppose. You're here to
7 testify about the facts known to you. So I would
8 respectfully ask you to restrict your testimony to
9 what you actually know.

10 A. Okay.

11 Q. Thank you.

12 A. So then I want to rephrase that. I don't
13 know anything about that memo based on what I read.
14 I don't know what the other people thought about it.
15 And I don't know what 204 thought about it. And I
16 don't know what Bob Healy thought about it.

17 Q. Okay. Thank you.

18 You asked Kelly Bradshaw to compile the
19 numbers on the claim for pro-rata expense payments
20 that the TTO was making, correct?

21 A. Yes.

22 Q. And you asked her to do that without
23 respect to the memos like the February 29, 2000
24 memos setting forth offset amounts that came from

1 LT, correct?

2 A. Correct.

3 Q. And you're familiar with those memos,
4 right? There's a whole series of them, yes?

5 A. Yes.

6 Q. I mean, this is Exhibit Number 3. Are
7 these the memos in the TTO's records -- well, are
8 these the memos that set forth the alleged offset
9 amounts for each year from 2000 to 2012 that you've
10 seen before?

11 A. Oh, I don't know if I've seen all of them,
12 but I'm sure there are memos that have that.

13 Q. You're familiar with these?

14 A. Yeah.

15 Q. Okay. Terrific.

16 A. In theory, yes.

17 Q. And you told Bradshaw that there was no
18 agreement with the TTO based on your review of the
19 minutes of the TTO, correct?

20 A. My minutes of the TTO and minutes of 204
21 as well.

22 Q. Let's take a look at the 204 minutes,
23 Healy Exhibit Number 1.

24 MR. KALTENBACH: Which page?

1 they?

2 MR. HOFFMAN: Why don't you let me show this to
3 you. Okay? Because this is the one that was
4 actually marked as an exhibit in Healy Exhibit 1.
5 BY MR. HOFFMAN:

6 Q. So have you seen this agenda, the minutes,
7 and Attachment T to them before? And take your
8 time.

9 A. I don't know if I have seen this
10 particular one before.

11 Q. Well, take a moment and take a look at it,
12 please. The portion of the minutes that's relevant
13 is page 10, by the way, to save you some time. And
14 if you turn to page 10, there's a reference to the
15 TTO, Exhibit T, and then there's a vote on the
16 consent agenda by the board.

17 A. Okay. I see that.

18 Q. Okay. So in testimony in this case, Lisa
19 Beckwith, who is the business manager of LT, and
20 Dr. Dennis Kelly, who is the superintendent of LT,
21 said that the agreement with the TTO on the payment
22 of the costs of LT's business functions was
23 presented to the board at this meeting through the
24 submission of the memorandum from Dr. Beckwith and

1 MR. HOFFMAN: I didn't give one. Be patient.

2 MR. KALTENBACH: No. For the record I laughed
3 when I said that.

4 MR. HOFFMAN: For the record I know you meant
5 it lightheartedly.

6 BY MR. HOFFMAN:

7 Q. Let's start with the agenda for a June 19,
8 2000 meeting of the board for LT. And these go in
9 chronological order, so use your numbers, please.

10 Have you seen -- there's an agenda and
11 then there are minutes. And following the minutes,
12 there is an attachment to the agenda and the
13 minutes, which is Attachment T as in Tom. And that
14 is a June 14, 2000 memorandum from Lisa Beckwith to
15 the Board of Education. That Exhibit T is
16 referenced in the agenda and minutes.

17 A. Okay.

18 Q. So wait.

19 MR. KALTENBACH: I'll keep it in order.

20 MR. HOFFMAN: No, no, stop. You take that
21 back. You take yours back, please. And I'm going
22 to show you -- yeah, I don't want it to get them
23 mixed up.

24 THE WITNESS: They're the same thing, aren't

1 was voted on and approved in the consent agenda, as
2 shown on page 10 of the minutes. That's their
3 testimony.

4 A. Okay. So I just want to make sure.
5 You're telling me all that would have been -- should
6 have been -- there's no discussion about this
7 exhibit? There was not one word that was read into
8 the record?

9 Q. This is part of the consent agenda, that's
10 correct. Because according to their testimony, they
11 previously discussed and addressed it at the finance
12 meeting that preceded it.

13 A. Okay.

14 Q. There are other documents after that
15 document that are not part of the Healy Exhibit 1.

16 A. I just trying to -- okay. There it is.

17 Q. And you'll see the Exhibit T, which is --
18 Wait. Stop. You're getting these out of the order.

19 A. No, I'm not. I can keep -- I know what
20 I'm doing. It goes right here.

21 Q. Okay.

22 A. I'm not an idiot.

23 Q. Thank you.

24 A. You have a question on this?

1 Q. Yes.
 2 A. Okay.
 3 Q. You want to take a look at Exhibit T?
 4 A. I'm looking at Exhibit T. I've got it
 5 right here.
 6 Q. You see that Exhibit T has attachments to
 7 it?
 8 A. Yeah. They're behind.
 9 Q. My question to you, sir, is in their
 10 testimony in this case, Dr. Kelly and Lisa Beckwith
 11 stated -- whether you agree with it or not we're
 12 about to find out -- that the agreement with the TTO
 13 on the payment for the cost of LT's business
 14 functions was presented to the board and approved
 15 through their consent agenda without specific
 16 discussions, as reflected on page 10 of the minutes
 17 of the board meeting on June 19, 2000. That is
 18 their testimony. And my question to you, sir, is
 19 very simple. Do you have any basis to disagree with
 20 that testimony; and if so, please tell me what that
 21 basis is.
 22 A. I guess I'd like to read the testimony, if
 23 that's the case. And I do disagree with the basis
 24 of it.

1 Q. Why?
 2 A. Because this to me looks like it's a bill,
 3 Township Treasurer expenditures. Attached is the
 4 copy of the agreement. So is this a signed
 5 agreement? Is this a contract? What is this?
 6 Q. Agreement is the February 29, 2000
 7 memorandum which is not signed, according to those
 8 witnesses.
 9 A. February 29th. Where is the February 29th
 10 memo?
 11 MR. KALTENBACH: It's a couple pages back, so
 12 keep flipping.
 13 BY MR. HOFFMAN:
 14 Q. It's specifically referenced in that
 15 memo --
 16 A. Now I'm getting into business forms. Oh,
 17 here it is. Okay.
 18 You're asking me does it constitute a
 19 contract?
 20 Q. We already discussed that.
 21 A. So what are you asking me?
 22 Q. What I'm asking you is if you have any
 23 basis to disagree with the LT witnesses who said
 24 that this agreement that they viewed to be an

1 agreement with the TTO was approved by LT's board on
 2 this date as part of the consent agenda?
 3 A. Yes, I have a disagreement with that.
 4 Q. Tell me where you disagree with that.
 5 A. I don't see the agreement. I see a memo
 6 that really talks about one year, '99 to 2000.
 7 That's a single year.
 8 Q. Right.
 9 A. At the very least, it may be for that.
 10 But I don't see an agreement. I mean, if you want
 11 to show me an agreement.
 12 Q. Excuse me, sir. Let's follow up on that
 13 testimony you just gave.
 14 A. Okay.
 15 Q. If we look solely at this fiscal year and
 16 don't talk about any other fiscal years --
 17 A. Okay. Hypothetically, we're saying?
 18 Q. Correct. Exactly. Do you have any basis
 19 to disagree that LT's board approved this agreement
 20 for that fiscal year based on the minutes of the
 21 June 19, 2000 meeting and the vote taken on the
 22 consent agenda?
 23 A. Ask me the question again.
 24 MR. HOFFMAN: Read it back.

1 (Record read as requested.)
 2 BY THE WITNESS:
 3 A. Yes, I do have disagreement.
 4 Q. Based on what?
 5 A. Well, based on the fact that right here it
 6 says Township Treasurer invoice. It doesn't even
 7 list it as a formal agreement. I mean, every place
 8 else you've got resolution of prevailing wage,
 9 appointments. It's very clear what the action is.
 10 This looks like, to me, it's simply an approval of
 11 an invoice. Q talks about interlocal governmental
 12 agreement cooperative to establish Illinois gas
 13 cooperative. If this said Township Treasure
 14 interlocal governmental agreement, then I wouldn't
 15 have a question.
 16 Yeah, I think this is thin at best. This
 17 would not be in our minutes. We would have had a
 18 contract and a vote. A vote vote: 3-0, 2-0, 1-0,
 19 0-3. This is payment of an invoice.
 20 Q. You mean your minutes currently during
 21 this time now that we're talking about?
 22 A. Yes.
 23 Q. Okay. Very well. Thank you.
 24 MR. KALTENBACH: Well, I'm not going to put a

<p style="text-align: right;">Page 150</p> <p>1 stopwatch on you ever in a deposition, but do you</p> <p>2 have a sense of --</p> <p>3 MR. HOFFMAN: I only have a few more minutes.</p> <p>4 MR. KALTENBACH: That's fine.</p> <p>5 MR. HOFFMAN: We're doing well. I'm still --</p> <p>6 THE WITNESS: Right in the middle of traffic.</p> <p>7 (Discussion off the record.)</p> <p>8 (Exhibit 13 was marked.)</p> <p>9 BY MR. HOFFMAN:</p> <p>10 Q. All right. Sir, I'm showing you Theissen</p> <p>11 Exhibit Number 13. Will you be kind enough to</p> <p>12 confirm this is a letter that you sent to Mike Pera</p> <p>13 at LT on March 8th of 2013?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And you have -- is this letter</p> <p>16 you were talking about where you listed the Baker</p> <p>17 Tilly audit charges?</p> <p>18 A. This was the first set of them, yes.</p> <p>19 Q. And this goes back to 2006, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Can you explain why the time range for</p> <p>22 this letter was 2006 through 2012?</p> <p>23 A. I believe that's all we had uncovered at</p> <p>24 that point.</p>	<p style="text-align: right;">Page 152</p> <p>1 the best of your understanding? I know you're not a</p> <p>2 lawyer, but it's important in this case to ask you</p> <p>3 this.</p> <p>4 Is it your understanding that parties can</p> <p>5 or cannot have an agreement that's written if the</p> <p>6 parties don't sign it? Does that question make</p> <p>7 sense?</p> <p>8 A. Can the parties have an agreement if they</p> <p>9 don't sign it?</p> <p>10 Q. I guess let me ask you a better question</p> <p>11 because that wasn't very good.</p> <p>12 Can the parties have a written agreement</p> <p>13 if the writing that sets forth the terms of the</p> <p>14 agreement is not signed by both parties, to the best</p> <p>15 of your understanding? I guess it's a legal</p> <p>16 question, but I'm asking what you think because your</p> <p>17 view is important here.</p> <p>18 A. I think they can until that document can</p> <p>19 be finalized.</p> <p>20 Q. I'm not sure I understand that. Explain</p> <p>21 to me what you mean by that.</p> <p>22 A. I think if there was a draft agreement</p> <p>23 between two parties and it was using the basis of</p> <p>24 that for a period of time, that would be -- my</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. And explain why that was.</p> <p>2 A. It's a long period of time and a lot of</p> <p>3 paperwork. We just didn't get through all the</p> <p>4 paperwork.</p> <p>5 Q. Okay. Fair enough.</p> <p>6 In the second page, you talk about the</p> <p>7 lack of an agreement between the parties, in your</p> <p>8 view, as to payment for LT's business functions,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And tell me what investigation you had</p> <p>12 done and the TTO had done prior to you sending this</p> <p>13 letter, sir.</p> <p>14 A. We had a meeting. I think I had met with</p> <p>15 Mark, the superintendent. He had one other board</p> <p>16 member there. I had our treasure there. Had asked</p> <p>17 for us to produce the so-called agreement at the</p> <p>18 meeting with Mr. Pera and -- and Dr. Kilrea asked</p> <p>19 for the agreement, the document that would have</p> <p>20 governed this over this 20-year period of time, to</p> <p>21 which I still have not received. And then I asked</p> <p>22 internally if we had such an agreement, being the</p> <p>23 TTO.</p> <p>24 Q. Can parties have a written agreement, to</p>	<p style="text-align: right;">Page 153</p> <p>1 opinion -- would be a short window. I don't think</p> <p>2 that an unsigned agreement survives a 20-year</p> <p>3 window.</p> <p>4 Q. I'm not sure I follow you. I guess what</p> <p>5 I'm trying to figure out is can the parties have a</p> <p>6 written agreement, even though they don't intend to</p> <p>7 and never actually signed the agreement, put pen to</p> <p>8 paper with their John Hancock?</p> <p>9 A. Legally I don't believe that they can or</p> <p>10 they should. That's my opinion.</p> <p>11 Q. Well, which one is it? Is it legally that</p> <p>12 they can't do it or they shouldn't do it? I'm not</p> <p>13 asking what they should do and what's prudent</p> <p>14 practice, I'm asking your understanding what they</p> <p>15 can do. So I need to ask you to clarify that</p> <p>16 testimony.</p> <p>17 THE WITNESS: Read back what I said so I can be</p> <p>18 clear.</p> <p>19 MR. KALTENBACH: Can you read back his prior</p> <p>20 answer?</p> <p>21 (Record read as requested.)</p> <p>22 BY MR. HOFFMAN:</p> <p>23 Q. So let me clarify that, sir. I'm asking</p> <p>24 you not what the parties should do in terms of best</p>

1 business practices or what you would recommend or
 2 what you would expect a lawyer to recommend to you,
 3 what I'm asking is your understanding as to whether
 4 it is possible -- the can part -- for parties to
 5 have a written agreement that sets forth the terms
 6 of an understanding if the parties don't actually
 7 sign that agreement? Does that make sense?

8 **A. Is that a proposal?**

9 MR. HOFFMAN: Can you read the question back
 10 please, that I just asked if see if I --

11 BY THE WITNESS:

12 **A. Well, I'm trying to answer.**

13 **Q. No, I'm not --**

14 **A. I mean, if two -- if we have different**
 15 **written agreements -- if we have different written**
 16 **agreements, so we have an agreement that's not**
 17 **signed, that means we don't have a meeting of the**
 18 **minds, correct? Isn't that just a proposal between**
 19 **the parties?**

20 **Q. Here is the deal. You can't ask me**
 21 **questions at the deposition. It doesn't work that**
 22 **way. So I'm asking for your understanding.**

23 **If you're saying you view a written**
 24 **agreement that is unsigned as a proposal until it is**

1 signed, that's your view, and that's what I'm asking
 2 for. I'm not asking for legal opinion; I'm asking
 3 for your understanding as a very capable and
 4 experienced professional in a nonlegal field.

5 So my question to you, once again, is in
 6 your understanding, is it possible or not possible
 7 for two parties to have a written agreement if the
 8 parties do not sign that agreement and do not intend
 9 to actually sign it?

10 MR. KALTENBACH: I'm going to object. You can
 11 answer in a minute, Mike. I'm going to object. I
 12 think it is argumentative and it is a waste of time
 13 to ask the witness these types of question. Judge
 14 Hall's opinion on that is the only one that matters.

15 That being said, Mike, I'm not instructing
 16 you not to answer, so feel free.

17 MR. HOFFMAN: Go ahead. You can answer.

18 BY THE WITNESS:

19 **A. I don't think it's an agreement if there's**
 20 **never an intent to sign it. I think it can be an**
 21 **agreement if there was a period of time they were**
 22 **working it out; but as you said, if there was never**
 23 **an intent to sign it, then I don't think it's an**
 24 **agreement.**

1 **Q. No, no, no. You misunderstood my**
 2 **question, maybe because my question was unclear.**
 3 **I'm talking about a document -- I'm not saying they**
 4 **intended to leave it unsigned, like there were lines**
 5 **for the signature line and they never filled them**
 6 **in. I'm just saying can there be a -- to the best**
 7 **of your understanding, does every written contract**
 8 **between two parties have to be signed or not?**
 9 **That's my question. And I don't -- with respect, I**
 10 **don't think I've gotten an answer to that.**

11 **A. I think in the order of magnitude, yes,**
 12 **they do need to be signed. In the order of this**
 13 **magnitude, they need to be signed.**

14 MR. HOFFMAN: That's all I want to know.

15 All right. I am done asking questions. I
 16 want to thank you for your time.

17 Are there any questions, Barry, that you
 18 want to ask?

19 MR. KALTENBACH: There are not.

20 MR. HOFFMAN: Thank you very much. We are
 21 done.

22 (Deposition concluded at 4:27 p.m.)
 23
 24

1 I, MICHAEL THEISSEN, have read the foregoing
 2 transcript of my deposition taken on 02/16/2017 and

3 _____ is a true and correct transcript of my
 4 deposition given on the day and date aforesaid, (OR)
 5 I wish to make the following changes
 6 to my deposition:

7 PAGE LINE CHANGE and REASON FOR CHANGE

8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____

20 If you wish to make more changes than space allows for,
 21 please attach additional sheets.

22 _____
 23 Print name Signature

24 _____
 Date

1 STATE OF ILLINOIS)

) SS:

2 COUNTY OF COOK)

3 I, LORETTA A. TYSKA, Certified Shorthand
4 Reporter, do hereby certify that MICHAEL THEISSEN was by
5 me first duly sworn to testify to the truth, the whole
6 truth, and nothing but the truth, and that the above
7 deposition was recorded stenographically by me and was
8 reduced to typewriting under my personal direction.

9 I FURTHER CERTIFY that the foregoing
10 transcript of the said deposition is a true, correct,
11 and complete transcript of the testimony given by the
12 said witness at the time and place specified
13 hereinbefore.

14 I FURTHER CERTIFY that I am not a relative or
15 employee or attorney or counsel of any of the parties,
16 nor a relative or employee of such attorney or counsel,
17 or financially interested directly or indirectly in this
18 action.

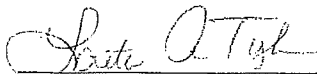
19 IN WITNESS WHEREOF, I have hereunto set my
20 official signature on this 16th day of February, 2017.

21

22

23

24



LORETTA A. TYSKA, CSR, RPR
CSR No. 084-004294

VENDOR DETAIL
 WILLIAM F. GURRIE
 VIRCHOW KRAUSE
 BAKER TILLY VIRCHOW KRAUSE
 FISCAL 1994-2012

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	7/1/1993	BUSINESS SER ANNUAL AUDI	E	73619	1,475.00	5/31/1993	DIST. 204	204 GL	204 GL
1-2520-317-0-0	7/1/1993	BUSINESS SER ANNUAL AUDI	E	73619	1,205.00	3/31/1993	DIST. 204	204 GL	204 GL
1-2520-317-0-0	11/15/1993	BUSINESS SER ANNUAL AUDI	E	82813	2,970.00	10/31/1993	DIST. 204	204 GL	204 GL
1-2520-317-0-0	12/15/1993	BUSINESS SER ANNUAL AUDI	E	91175	1,250.00	11/30/1993	DIST. 204	204 GL	204 GL
1-2520-317-0-0	2/7/1994	PROF SERVICES # 204	C	86028	1,540.00			204 GL	204 GL
1-2520-317-0-0	4/15/1994	DIST 204	E	90298	4,285.00	3/31/1994		204 GL	204 GL
1-2520-317-0-0	5/13/1994	DIST 204 BALANCING	E	94599	2,343.00	4/30/1994	DIST 204	204 GL	204 GL
1-2520-317-0-0	6/15/1994	BUSINESS SER ANNUAL AUDI	E	96496	989.00	5/31/1994	DIST. 204	204 GL	204 GL
1-2520-318-0-0	6/30/1994	BUSINESS SER LEGAL SERV	E	97924	73.00	4/30/1994	DIST #204	204 GL	204 GL
1-0000-000-0-0	6/30/1994	REIMB AUDIT EXP	M JE		15,715.00	6/27/1994		204 YES	204 YES
1-2520-318-0-0	8/31/1994	BUSINESS SER LEGAL SERV	E	101494	441.00	6/30/1994	DIST 204	204 GL	204 GL
1-2520-317-0-0	9/30/1994	BUSINESS SER ANNUAL AUDI	E	104232	8,700.00	8/31/1994	DIST. 204	204 GL	204 GL
1-2520-318-0-0	1/31/1995	BUSINESS SER LEGAL SERV	E	113456	290.00	12/31/1994	SOC SEC #204	204 GL	204 GL
1-2520-317-0-0	4/12/1995	FLEX & SCHLRSHIP	E	119940	75.00	3/28/1995	204	204 GL	204 GL
1-2520-317-0-0	8/11/1995	FORM 5500-CR	E	127635	350.00	7/21/1995	DIST 204	204 GL	204 GL
1-2520-317-0-0	8/11/1995	SCHOOL LEVY/TAX CAP	E	127635	160.00	6/30/1995	DIST 204	204 GL	204 GL
1-2520-317-0-0	9/15/1995	BUSINESS SER ANNUAL AUDI	E	129585	7,500.00	8/31/1995	DIST 204	204 GL	204 GL
1-2520-317-0-0	11/30/1995	BUSINESS SER ANNUAL AUDI	E	136511	2,500.00	10/31/1995	DIST 204	204 GL	204 GL
1-2520-317-0-0	11/30/1995	BUSINESS SER ANNUAL AUDI	E	136511	1,500.00	9/30/1995	DIST 204	204 GL	204 GL
1-2520-318-0-0	12/11/1995	BUSINESS SER LEGAL SERV	E	136567	430.00	10/31/1995	DIST 204	204 GL	204 GL
1-2520-317-0-0	6/28/1996	BUSINESS SER ANNUAL AUDI	E	151793	4,800.00	5/31/1996	DIST 204	204 GL	204 GL
1-2520-317-0-0	7/15/1996	BUSINESS SER ANNUAL AUDI	E	152370	7,200.00	6/30/1996	DIST 204	204 GL	204 GL
1-2520-317-0-0	10/11/1996	BUSINESS SER ANNUAL AUDI	E	158295	1,600.00	9/30/1996	DIST 204	204 GL	204 GL
1-2520-317-0-0	10/31/1996	BUSINESS SER ANNUAL AUDI	E	160108	7,000.00	8/31/1996	DIST. 204	204 GL	204 GL
1-2520-317-0-0	11/14/1997	BUSINESS SER ANNUAL AUDI	E	188826	6,150.00	10/31/1997		204 YES	204 YES
1-2520-317-0-0	1/7/1998	BUSINESS SER ANNUAL AUDI	E	193313	3,150.00	12/31/1997	DIST 204	204 YES	204 YES
1-2520-317-0-0	7/22/1998	BUSINESS SER LEGAL SERV	E	13405	5,200.00	7/10/1998	DIST 204	204 YES	204 YES
1-2520-318-0-0	11/30/1998	BUSINESS SER LEGAL SERV	E	24092	4,000.00	10/31/1998	DIST 204	204 YES	204 YES
1-2520-318-0-0	12/11/1998	BUSINESS SER LEGAL SERV	E	24913	4,000.00	11/30/1998	Jun-98	204 YES	204 YES
1-2520-318-0-0	1/15/1999	AUDIT'S DIST 204	E	26891	1,200.00	12/31/1998	EOY JUNE 98	204 YES	204 YES

EXHIBIT

3

5/9/99

EXHIBIT

5/9/99

170 Days

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	7/15/1999	BUSINESS SERANNUAL AUDI	E	41029	2,475.00	6/30/1999	DIST 204	204 YES	
1-2520-317-0-0	7/30/1999	BUSINESS SERANNUAL AUDI	E	42139	4,450.00	7/20/1999	DIST 204	204 YES	
1-2520-317-0-0	9/15/1999	BUSINESS SERANNUAL AUDI	E	44411	6,000.00	9/3/1999	AUDIT 6/99	204 YES	
1-2520-317-0-0	10/29/1999	BUSINESS SERANNUAL AUDI	E	49743	4,105.00	10/12/1999	204 JUNE 99	204 YES	
1-2520-317-0-0	11/10/1999	BUSINESS SERANNUAL AUDI	E	49927	1,431.00	10/29/1999	YR END D204	204 YES	
1-2520-317-0-0	4/28/2000	AUDIT DIST 204	E	63508	172.70	4/11/2000	550	204 YES	
1-2520-317-0-0	4/28/2000	AUDIT DIST 204	E	63508	936.25	1/31/2000	47	204 YES	
1-2520-317-0-0	5/15/2000	DIST 204	E	63940	5,762.00	5/4/2000	702	204 YES	
1-2520-317-0-0	8/30/2000	AUDIT DIST 204	E	71994	3,880.00	8/15/2000	1116	204 YES	
1-2520-317-0-0	10/13/2000	AUDIT DIST 204	E	75155	3,500.00	10/3/2000	1303	204 YES	
1-2520-317-0-0	11/15/2000	AUDIT DIST 204	E	78213	4,000.00	11/2/2000	1411	204 YES	
1-2520-317-0-0	4/30/2001	AUDIT DIST 204	E	15652	3,000.00	4/11/2001	2386	204 YES	
1-2520-317-0-0	7/16/2001	AUDIT DIST 204	E	21778	5,000.00	7/5/2001	2853	204 YES	
1-2520-317-0-0	9/28/2001	AUDIT FOR DISTRICT #204	E	27284	4,400.00	9/19/2001	3180	204 YES	
1-2520-317-0-0	9/28/2001	CONVERSION OF GASB 34/#204	E	27284	2,500.00	7/18/2001	2906	204 YES	
1-2520-317-0-0	9/28/2001	CASH BASIS MODIFIED ACCRUAL #204	E	27284	4,900.00	7/18/2001	2906	204 YES	
1-2520-317-0-0	7/15/2002	SD #204 ACCRUAL BASIS ACCT 6/30/02	E	1991	1,750.00	7/15/2002	5024	204 YES	
1-2520-317-0-0	7/15/2002	LTHS YR ENDING 6/30/05	E	92513	6,500.00	6/30/2005	11215	204 YES	
1-2520-317-0-0	10/15/2002	AUDIT YEAR ENDED 6/30/02 #12040	E	8059	11,600.00	10/3/2002	5489	204 YES	
1-2520-317-0-0	10/31/2002	YEAR END 6/30/02 CLIENT 12040	E	10900	4,200.00	10/18/2002	5547	204 YES	
1-2520-317-0-0	1/15/2003	CONVERSION OF GASB 34 REPORTING MODEL	E	16591	593.75	12/20/2002	5855	204 YES	
1-2520-317-0-0	9/30/2005	SD #204 YR ENDING 6/30/05	E	98006	8,000.00	6/16/2005	11615	204 YES	
1-2520-317-0-0	10/31/2005	SD #204 YR ENDING 6/30/05	E	100678	12,300.00	10/17/2005	11714	204 YES	
1-2520-317-0-0	11/30/2005	SD #204 YR ENDING 6/30/05	E	103089	6,500.00	11/15/2005	11898	204 YES	
1-2520-317-0-0	1/13/2006	SD #204 YR ENDING 6/30/05	E	106478	3,448.69	12/23/2005	12155	204 YES	
1-2520-317-0-0	2/15/2006	YR ENDING 6/30/04 FOR SD #204	E	109087	1,017.50	1/31/2006	12422	204 YES	
1-2520-317-0-0	6/15/2006	AUDIT FOR SD #204 6/30/06	E	118129	7,500.00	5/31/2006	13152	204 YES	
1-2520-317-0-0	7/14/2006	SD #204 AUDIT 6/30/06	E	120731	4,120.00	6/23/2006	VK187966	204 YES	
1-2520-317-0-0	8/30/2006	SERVICES FOR 6/30/06 AUDIT	E	12698	17,855.00	8/21/2006	VK194698	204 YES	
1-2520-317-0-0	9/29/2006	SERVICES FOR 6/30/06 AUDIT	E	12698	11,695.00	8/24/2006	VK195240	204 YES	
1-2520-317-0-0	3/15/2007	SD #204 YR END 6/30/06	E	126472	4,255.00	9/20/2006	VK198739	204 YES	
1-2520-317-0-0	4/16/2007	AUDIT FOR 6/30/06	E	12967	3,510.00	2/23/2007	VK222390	204 YES	
1-2520-317-0-0	5/15/2007	SD #204 6/30/07 AUDIT	E	14979	2,295.00	3/28/2007	VK231123	204 YES	
1-2520-317-0-0	7/16/2007	LTHS 204 AUDIT FOR 6/30/07	E	22211	10,950.00	6/29/2007	VK245219	204 YES	
1-2520-317-0-0	9/13/2007	AUDIT FOR 6/30/07	E	25736	1,250.00	8/29/2007	VK268304	204 YES	
1-2520-317-0-0	10/30/2007	AUDIT FOR SD #204 6/30/07	E	30328	19,990.00	10/30/2007	VK274450	204 YES	

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	10/30/2007	SD #204 AUDIT SERVICES	E	30328	10,445.00	10/25/2007	WK275728	204 YES	
1-2520-317-0-0	11/30/2007	AUDIT FOR 6/30/07	E	32980	3,910.00	11/15/2007	WK280894	204 YES	
1-2520-317-0-0	12/28/2007	AUDIT FOR 6/30/07	E	37263	5,985.00	12/21/2007	WK284839	204 YES	
1-2520-317-0-0	2/14/2008	FINAL BILL FOR AUDIT 6/30/07	E	13061	485.00	1/31/2008	WK291691	204 YES	
1-2520-317-0-0	5/9/2008	TIME & EXPENSE FOR #204 MEETING	E	19524	855.10	4/29/2008	WK317005	204 YES	
1-2520-317-0-0	6/13/2008	SD #204 AUDITED ENDING 5/31/08	E	22713	1,930.00	5/28/2006	WK325962	204 YES	
1-2520-317-0-0	7/15/2008	2ND BILL FOR 2008 AUDIT	E	25092	9,000.00	6/30/2008	WK331461	204 YES	
1-2520-317-0-0	8/15/2008	2008 AUDITED FINANCIAL STMTS	E	26623	7,900.00	7/31/2008	WK335759	204 YES	
1-2520-317-0-0	10/15/2008	AD #204 AUDIT FOR 6/30/08	E	31249	11,872.76	9/30/2008	WK343587	204 YES	
1-2520-317-0-0	11/14/2008	SERVICES ENDING 10/31/08	E	34305	8,942.44	10/29/2008	WK347810	204 YES	
1-2520-317-0-0	12/15/2008	SD #204 AUDIT 11/30/08	E	36609	5,654.80	11/25/2008	WK353915	204 YES	
1-2520-317-0-0	1/6/2009	AUDIT FOR 12/31/08	E	37974	5,267.55	12/22/2008	WK356942	204 YES	
1-2520-317-0-0	3/13/2009	AUDIT ENDING 2/28/09	E	43064	1,050.00	2/26/2009	WK368671	204 YES	
1-2520-317-0-0	8/17/2009	AUDIT FOR 6/30/09 ENDING 7/31/09	E	54389	8,500.00	7/28/2009	BT406802	204 YES	
1-2520-317-0-0	9/15/2009	SD #204 PERIOD ENDING 8/31/09	E	56338	6,500.00	9/1/2009	BT412949	204 YES	
1-2520-317-0-0	10/14/2009	AUDIT ENDING 9/30/09 FOR JUNE	E	58632	22,000.00	9/28/2009	BT414879	204 YES	
1-2520-317-0-0	11/13/2009	AUDIT FOR 10/31/09	E	61513	10,000.00	10/28/2009	BT420286	204 YES	
1-2520-317-0-0	12/15/2009	AUDIT FOR PERIOD ENDING 11/30/09	E	64026	4,000.00	12/15/2009	BT424391	204 YES	
1-2520-317-0-0	1/5/2010	AUDIT ENDING 12/	E	65070	1,500.00	12/29/2009	BT428814	204 YES	
1-2520-317-0-0	5/28/2010	AUDIT SD #204 ENDING 4/30/10	E	75778	7,000.00	4/27/2010	BT455209	204 YES	
1-2520-317-204-0	10/15/2010	AUDIT ENDING 9/30/10 FOR 6/30/10	E	85599	23,500.00	9/29/2010	BT482616	204 YES	
1-2520-317-204-0	11/16/2010	SD #204 AUDIT ENDING 10/31/10	E	88601	2,000.00	10/29/2010	BT489027	204 YES	
1-2520-317-204-0	12/14/2010	SD #204 AUDIT ENDING 11/30/10	E	126632	5,000.00	11/29/2010	BT492203	204 YES	
1-2520-317-204-0	1/4/2011	AUDIT ENDING 12/18/10 SD #204	E	127733	3,625.00	12/22/2010	BT495134	204 YES	
1-2520-317-204-0	2/15/2011	AUDIT ENDING 1/31/11 FOR 6/30/10	E	130609	750.00	1/28/2011	BT500082	204 YES	
1-2520-317-204-0	3/15/2011	AUDIT FOR SD #204 ENDING 2/28/11	E	132615	395.56	2/25/2011	BT505086	204 YES	
1-2520-317-204-0	7/15/2011	SD #204 AUDIT ENDING FOR 6/30/11	E	141908	6,700.00	7/15/2011	BT535498	204 YES	
1-2520-317-0-0	11/15/2011	PROFESSIONAL SERV 10-31 THRU 6-30-	E	150247	29,800.00	10/28/2011	BT551560	204 YES	
1-2520-317-0-0	1/13/2012	BUSINESS SERAUDIT WORK TTO	E	3635	2,500.00	12/22/2011	BT560281	204 YES	
1-2520-317-0-0	6/12/2012	AUDIT WORK TTO	E	13933	9,750.00	5/22/2012	BT596768	204 YES	

511,068.60

DATE 3/09/2015

LYONS TOWNSHIP

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*** DETAIL STATEMENT OF FUND ACCOUNTS ***

DATE	VEND #	VEND NAME	DIST	TYP	DET #	INV #	PO #	DET DESCRIPTION	DET AMOUNT	OP
ACCT# /EXP/	1	2520	317	0	0	EDUCATION	BUSINESS SER	AUDIT FY12	BT	
7/01/1993	9999	WILLIAM F. GURRIE & CO.,	100	E	73619	DIST. 204		BUSINESS SER ANNUAL AUDI	→	1,205.00 CD
7/01/1993	9999	WILLIAM F. GURRIE & CO.,	100	E	73619	DIST. 204		BUSINESS SER ANNUAL AUDI	→	1,475.00 CD
7/15/1993	9999	WILLIAM F. GURRIE & CO.,	100	E	74201			BUSINESS SER ANNUAL AUDI		8,000.00 BC
8/16/1993	9999	WILLIAM F. GURRIE & CO.,	100	E	75663	YR END 6/93		BUSINESS SER ANNUAL AUDI		2,200.00 CD
9/15/1993	7911	WILLIAM F. GURRIE & CO.,	100	E	76665			BUSINESS SER ANNUAL AUDI		3,200.00 CD
10/18/1993	7911	WILLIAM F. GURRIE & CO.,	100	E	79718	YR JUN 1993		BUSINESS SER ANNUAL AUDI		8,000.00 CD
11/15/1993	7911	WILLIAM F. GURRIE & CO.,	100	E	82813	DIST. 204		BUSINESS SER ANNUAL AUDI	→	2,970.00 CD
11/15/1993	7911	WILLIAM F. GURRIE & CO.,	100	E	82813	ALL		BUSINESS SER ANNUAL AUDI		800.00 CD
12/15/1993	7911	WILLIAM F. GURRIE & CO.,	100	E	91175	DIST. 204		BUSINESS SER ANNUAL AUDI	→	1,250.00 CD
2/07/1994	7911	WILLIAM F. GURRIE & CO.,	100	C	86028			PROF SERVICES # 204	→	1,540.00 BC
3/03/1994	7911	WILLIAM F. GURRIE & CO.,	100	C	88767			AUDIT		4,655.00 BC
4/15/1994	7911	*** WM F. GURRIE & COMPAN	100	E	90298			BUSINESS SER ANNUAL AUDI		1,200.00 CD
4/15/1994	7911	*** WM F. GURRIE & COMPAN	100	E	90298			DIST 204	→	4,285.00 CD
5/13/1994	7911	*WM. F. GURRIE & COMPANY	100	E	94599	DIST 204		DIST 204 BALANCING	→	2,343.00 CD
6/15/1994	7911	*WM. F. GURRIE & COMPANY	100	E	96496	DIST. 204		BUSINESS SER ANNUAL AUDI	→	989.00 CD
8/05/1994	82	WILLIAM F. GURRIE & CO.,	100	C	100176			ANNUAL AUDIT		6,000.00 BC
8/15/1994	7911	*WM. F. GURRIE & COMPANY	100	E	100456			BUSINESS SER ANNUAL AUDI		100.00 BKC
9/08/1994	7911	*WM. F. GURRIE & COMPANY	100	E	101833	YR END 6/30		BUSINESS SER ANNUAL AUDI		7,000.00 CD
9/30/1994	7911	*WM. F. GURRIE & COMPANY	100	E	104232	DIST. 204		BUSINESS SER ANNUAL AUDI	→	8,700.00 CD
10/14/1994	7911	*WM. F. GURRIE & COMPANY	100	E	104918	YR END 6/94		BUSINESS SER ANNUAL AUDI		5,500.00 SYS
12/15/1994	7911	*WM. F. GURRIE & COMPANY	100	E	110929	TTO 6/94		BUSINESS SER ANNUAL AUDI		4,000.00 CD
1/18/1995	7911	*WM. F. GURRIE & COMPANY	100	E	111890	JUNE 1994		BUSINESS SER ANNUAL AUDI		2,000.00 CD
3/15/1995	7911	*WM. F. GURRIE & COMPANY	100	E	117808	JUNE 1995		BUSINESS SER ANNUAL AUDI		2,000.00 CD
4/12/1995	7911	*WM. F. GURRIE & COMPANY	100	E	119940	204		FLEX & SCHLRSHF	→	75.00 CD
4/12/1995	7911	*WM. F. GURRIE & COMPANY	100	E	119940	TTO		BUSINESS SER ANNUAL AUDI		1,450.00 CD
5/15/1995	7911	*WM. F. GURRIE & COMPANY	100	E	122061	ON ACCOUNT		BUSINESS SERANNUAL AUDI		2,000.00 CD
5/31/1995	7911	*WM. F. GURRIE & COMPANY	100	E	123427			AUDIT JUNE 95		2,000.00 BC
6/27/1995	7911	*WM. F. GURRIE & COMPANY	100	E	125012			BUSINESS SERANNUAL AUDI		2,090.00 CD
7/18/1995	7911	*WM. F. GURRIE & COMPANY	100	E	126783			BUSINESS SERANNUAL AUDI		6,600.00 CD
8/11/1995	7911	*WM. F. GURRIE & COMPANY	100	E	127635	DIST 204		FORM 5500-CR	→	350.00 CD
8/11/1995	7911	*WM. F. GURRIE & COMPANY	100	E	127635	DIST 204		SCHOOL LEVY/TAX CAP	→	160.00 CD
8/11/1995	7911	*WM. F. GURRIE & COMPANY	100	E	127635	EOY 6/30		BUSINESS SERANNUAL AUDI		3,500.00 CD
9/15/1995	7911	*WM. F. GURRIE & COMPANY	100	E	129585	DIST 204		BUSINESS SERANNUAL AUDI	→	7,500.00 CD
9/15/1995	7911	*WM. F. GURRIE & COMPANY	100	E	129585	TTO		BUSINESS SERANNUAL AUDI		2,000.00 CD
10/13/1995	7911	*WM. F. GURRIE & COMPANY	100	E	132102	JUNE 1995		BUSINESS SERANNUAL AUDI		6,000.00 CD
11/15/1995	7911	*WM. F. GURRIE & COMPANY	100	E	135239	JUNE 1995		BUSINESS SERANNUAL AUDI		1,500.00 CD
11/30/1995	7911	*WM. F. GURRIE & COMPANY	100	E	136511	DIST 204		BUSINESS SERANNUAL AUDI	→	2,500.00 CD
11/30/1995	7911	*WM. F. GURRIE & COMPANY	100	E	136511	DIST 204		BUSINESS SERANNUAL AUDI	→	1,500.00 CD
12/11/1995	7911	*WM. F. GURRIE & COMPANY	100	E	136567	JUNE 1995		BUSINESS SERANNUAL AUDI		10,000.00 CD
1/05/1996	7911	*WM. F. GURRIE & COMPANY	100	E	139759	YR END 6/95		BUSINESS SERANNUAL AUDI		3,565.00 CD
4/09/1996	7911	*WM. F. GURRIE & COMPANY	100	E	145350	JUNE 30, 1996		BUSINESS SERANNUAL AUDI		2,000.00 CD
5/13/1996	7911	*WM. F. GURRIE & COMPANY	100	E	147476	JUNE 30, '96		BUSINESS SERANNUAL AUDI		1,000.00 CD
6/14/1996	7911	*WM. F. GURRIE & COMPANY	100	E	149509	JUNE 30, 1996		BUSINESS SERANNUAL AUDI		6,000.00 CD
6/28/1996	7911	*WM. F. GURRIE & COMPANY	100	E	151793	DIST 204		BUSINESS SERANNUAL AUDI	→	4,800.00 CD
7/15/1996	7911	*WM. F. GURRIE & COMPANY	100	E	152370	DIST 204		BUSINESS SERANNUAL AUDI	→	7,200.00 CD
8/28/1996	7911	*WM. F. GURRIE & COMPANY	100	E	154625	JUNE 1996		BUSINESS SERANNUAL AUDI		2,500.00 CD
9/16/1996	7911	*WM. F. GURRIE & COMPANY	100	E	155564	JUNE 1996		BUSINESS SERANNUAL AUDI		2,000.00 CD

EXHIBIT

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EXHIBIT

T10 Rep #14
2-27-17 K1

DATE 3/09/2015

LYONS TOWNSHIP
*** DETAIL STATEMENT OF FUND ACCOUNTS ***

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	DISTRICT	DATE	ACCOUNT NUMBER	SPECIAL PARAMETERS
LOW PARAMS:	0100	7011993	1 2520 317 0 0	BYP CASH ALL RESP BEG FLG=N
HIGH PARAMS:		10311996	1 2520 317 0 0	ALL TYPES ALL ACCTS BUDG FLG=N
** TOTAL # TRANSACTIONS:		50		** ACCT \$ TOTAL: 173,802.00- **

DATE 3/09/2015

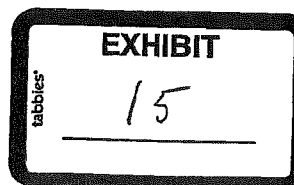
LYONS TOWNSHIP
*** DETAIL STATEMENT OF FUND ACCOUNTS ***

PAGE NO 2

	DISTRICT	DATE	ACCOUNT NUMBER	SPECIAL PARAMETERS
LOW PARAMS:	0100	6301994	1 2520 318 0 0	BYP CASH ALL RESP BEG FLG=N
HIGH PARAMS:		12111995	1 2520 318 0 0	ALL TYPES ALL ACCTS BUDG FLG=N
** TOTAL # TRANSACTIONS:		19		** ACCT \$ TOTAL: 42,746.75- **

District 204
Interest Allocation Analysis
Summary of Differences by Fiscal Year

Fiscal Year	RH Calculation vs General Ledger +/- \$1,000 per Quarter
FY1995	5,000.34
FY1996	
FY1997	44,903.13
FY1998	(95,052.36)
FY1999	
FY2000	2,499.65
FY2001	
FY2002	
FY2003	
FY2004	
FY2005	127,611.74
FY2006	420,744.00
FY2007	827,163.47
FY2008	127,863.26
FY2009	246,711.45
FY2010	
FY2011	(240,001.56)
FY2012	(40,001.08)
	<u>\$ 1,427,442.04</u>



Lyons Township Trustees of Schools
Interest Allocation
Compare System Reports to GI and RH calculations
Selected quarters with no missing data

Summary fund balance report

District	Fiscal Year	Date	204 FB per RH	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
				Percent	FB per Reports	Total Avg FB per Reports	Percent based on Reports	Income	Calculated Interest Allocation	Calculated Interest Reports	Allocation per TTD GI	Difference RH to TTD GI	Difference TTD GI to TTD GI	Difference District FB	Difference Total FB														
204	FY1995	4/30/1995	26,166.713	26.166713	26,166.713	96,934.350	26.166713	950.000	255,566.57	255,566.57	260,567.00	5,000.33	4,121.51	837,751.06	313,856.41														
204	FY1996	4/30/1996	25,309.400	25.309400	25,309.400	101,312.772	25.309400	1,200.000	299,777.41	299,777.41	299,829.00	(0.58)	51.59	613,518.04	(80.90)														
204	FY1997	4/30/1997	25,170.014	25.170014	25,170.014	129,119.428	25.170014	1,100.000	228,216.76	228,216.76	228,217.00	0.24	3,337.66	1,226,206.36	(3,720,272.85)														
204	FY1998	4/30/1998	25,669.269	25.669269	25,669.269	138,222.988	25.669269	900.000	202,998.31	202,998.31	202,998.00	(0.31)	(0.51)	600,085.69	(3,720,272.85)														
204	FY1999	4/30/1999	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	379,252.32	379,252.32	389,927.00	4,674.68	4,659.41	1,404,454.85	(361,688.93)														
204	FY2000	4/30/2000	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,000.000	254,417.11	254,417.11	254,417.00	(0.11)	(1,477.84)	1,254,702.82	(489,97)														
204	FY2001	4/30/2001	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	348,608.02	348,608.02	348,608.00	0.02	(0.02)	65,611.98	(3,720,272.85)														
204	FY2002	4/30/2002	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	339,433.26	339,433.26	339,433.00	(0.26)	(0.26)	0.04	(0.04)														
204	FY2003	4/30/2003	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	254,417.11	254,417.11	254,417.00	(0.11)	(1,477.84)	1,254,702.82	(489,97)														
204	FY2004	4/30/2004	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	452,209.31	452,209.31	452,209.00	(0.31)	(6,130.68)	1,254,702.82	(489,97)														
204	FY2005	4/30/2005	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	286,481.92	286,481.92	286,481.00	(0.92)	(189.92)	1,254,702.82	(489,97)														
204	FY2006	4/30/2006	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	837,242.10	837,242.10	837,242.00	(0.10)	(86.15)	1,254,702.82	(489,97)														
204	FY2007	4/30/2007	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	143,908.09	143,908.09	143,908.00	(0.09)	1,418.75	1,254,702.82	(489,97)														
204	FY2008	4/30/2008	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	880,357.22	880,357.22	880,357.00	(0.22)	6,070.30	1,254,702.82	(489,97)														
204	FY2009	4/30/2009	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	233,765.85	233,765.85	233,765.00	(0.85)	17.64	1,254,702.82	(489,97)														
204	FY2010	4/30/2010	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	589,363.43	589,363.43	589,363.00	(0.43)	(0.43)	1,254,702.82	(489,97)														
204	FY2011	4/30/2011	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	207,592.82	207,592.82	207,592.00	(0.82)	(0.82)	1,254,702.82	(489,97)														
204	FY2012	4/30/2012	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	408,529.97	408,529.97	408,529.00	(0.97)	(0.97)	1,254,702.82	(489,97)														
204	FY2013	4/30/2013	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	260,152.99	260,152.99	260,153.00	0.01	(0.45)	1,254,702.82	(489,97)														
204	FY2014	4/30/2014	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	142,489.25	142,489.25	143,908.00	(0.09)	1,418.75	1,254,702.82	(489,97)														
204	FY2015	4/30/2015	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	880,357.22	880,357.22	880,357.00	(0.22)	6,070.30	1,254,702.82	(489,97)														
204	FY2016	4/30/2016	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	233,765.85	233,765.85	233,765.00	(0.85)	17.64	1,254,702.82	(489,97)														
204	FY2017	4/30/2017	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	589,363.43	589,363.43	589,363.00	(0.43)	(0.43)	1,254,702.82	(489,97)														
204	FY2018	4/30/2018	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	207,592.82	207,592.82	207,592.00	(0.82)	(0.82)	1,254,702.82	(489,97)														
204	FY2019	4/30/2019	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	408,529.97	408,529.97	408,529.00	(0.97)	(0.97)	1,254,702.82	(489,97)														
204	FY2020	4/30/2020	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	260,152.99	260,152.99	260,153.00	0.01	(0.45)	1,254,702.82	(489,97)														
204	FY2021	4/30/2021	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	142,489.25	142,489.25	143,908.00	(0.09)	1,418.75	1,254,702.82	(489,97)														
204	FY2022	4/30/2022	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	880,357.22	880,357.22	880,357.00	(0.22)	6,070.30	1,254,702.82	(489,97)														
204	FY2023	4/30/2023	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	233,765.85	233,765.85	233,765.00	(0.85)	17.64	1,254,702.82	(489,97)														
204	FY2024	4/30/2024	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	589,363.43	589,363.43	589,363.00	(0.43)	(0.43)	1,254,702.82	(489,97)														
204	FY2025	4/30/2025	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	207,592.82	207,592.82	207,592.00	(0.82)	(0.82)	1,254,702.82	(489,97)														
204	FY2026	4/30/2026	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	408,529.97	408,529.97	408,529.00	(0.97)	(0.97)	1,254,702.82	(489,97)														
204	FY2027	4/30/2027	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	260,152.99	260,152.99	260,153.00	0.01	(0.45)	1,254,702.82	(489,97)														
204	FY2028	4/30/2028	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	142,489.25	142,489.25	143,908.00	(0.09)	1,418.75	1,254,702.82	(489,97)														
204	FY2029	4/30/2029	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	880,357.22	880,357.22	880,357.00	(0.22)	6,070.30	1,254,702.82	(489,97)														
204	FY2030	4/30/2030	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	233,765.85	233,765.85	233,765.00	(0.85)	17.64	1,254,702.82	(489,97)														
204	FY2031	4/30/2031	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	589,363.43	589,363.43	589,363.00	(0.43)	(0.43)	1,254,702.82	(489,97)														
204	FY2032	4/30/2032	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	207,592.82	207,592.82	207,592.00	(0.82)	(0.82)	1,254,702.82	(489,97)														
204	FY2033	4/30/2033	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	408,529.97	408,529.97	408,529.00	(0.97)	(0.97)	1,254,702.82	(489,97)														
204	FY2034	4/30/2034	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	260,152.99	260,152.99	260,153.00	0.01	(0.45)	1,254,702.82	(489,97)														
204	FY2035	4/30/2035	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	142,489.25	142,489.25	143,908.00	(0.09)	1,418.75	1,254,702.82	(489,97)														
204	FY2036	4/30/2036	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	880,357.22	880,357.22	880,357.00	(0.22)	6,070.30	1,254,702.82	(489,97)														
204	FY2037	4/30/2037	25,669.269	25.669269	25,669.269	138,222.988	25.669269	1,500.000	233,765.85	233,765.85	233,765.00	(0.85)	17.64	1,254,702.82	(489,97)														
204	FY2038	4/30/2038	25,669.269	25.669269	25,66																								

Summary fund balance report

\$ 206,468,890.98
\$ 34,038,428.16

Selected quarters with +/- \$1,000 difference

1,477,566.65

District	Fiscal Year	Date	204 FB per BH	Total Avg FB	Percent based on Reports	Income	Calculated Interest Allocation	Calculated Interest Reports	Allocation per TIO GL	Difference RH to TIO GL	Difference Reports to TIO GL	Difference District FB	Difference Total Avg FB	Comments
204 FY2012	6/30/2012	48,277,585	240,031,526	20.113%	1,750,000	351,977.89	350,413.50	356,377.00	(15,000.89)	(13,486.50)	(0.66)	(1,071,606.82)		
204 FY2012	6/30/2012	48,277,586	241,103,153	20.024%	1,750,000	351,977.89	350,413.50	356,377.00	(15,000.89)	(13,486.50)	(0.66)	(1,071,606.82)		
204 FY2012	1/31/2012	36,050,979	196,957,796	18.304%	750,000	137,279.33	136,749.82	137,275.00	(0.33)	529.18	(0.21)	762,937.48		
204 FY2011	6/30/2011	48,216,829	252,109,900	19.125%	4,000,000	765,072.86	764,552.16	565,017.00	(200,000.86)	(199,940.16)	(0.24)	(20,006.16)		
204 FY2011	1/31/2011	24,795,502	160,926,622	15.408%	500,000	77,099.78	77,099.78	77,040.00	0.22	1,000.00	(0.46)	(5.18)		
204 FY2010	6/30/2010	50,973,820	255,980,334	19.920%	1,750,000	348,603.18	348,602.92	348,602.00	(0.18)	(0.92)	(0.15)	(196.18)		
204 FY2010	1/31/2010	28,887,553	144,200,754	20.033%	750,000	150,246.75	150,555.68	150,247.00	0.25	(108.68)	(0.39)	104,704.94		
204 FY2009	6/30/2009	42,768,413	199,101,607	21.481%	1,800,000	366,652.55	366,928.62	693,364.00	246,711.45	247,435.38	(0.53)	(85,700.63)		
204 FY2009	1/31/2009	34,416,572	171,141,749	20.110%	750,000	150,824.85	150,756.90	150,846.00	21.15	89.10	(0.70)	(77,139.22)		
204 FY2008	6/30/2008	44,020,982	202,691,927	21.718%	2,877,000	624,831.84	624,831.82	624,831.00	(0.84)	(0.82)	(0.02)	(7.87)		
204 FY2008	1/31/2008	27,275,390	138,360,794	19.713%	1,000,000	197,132.36	197,130.09	197,855.00	722.64	724.91	-	(1,995.60)		
204 FY2007	6/30/2007	43,210,453	197,206,681	21.911%	3,600,000	788,805.08	801,302.99	788,805.00	(0.08)	(12,497.99)	17,315.32	3,647,816.70		
204 FY2007	1/31/2007	40,046,346	184,912,943	21.657%	1,000,000	216,568.65	216,503.69	341,568.00	124,999.35	125,064.31	(0.98)	(55,483.86)		
204 FY2007	7/31/2007	no data	no data	no data	-	-	-	-	-	-	-	-	-	
204 FY2006	6/30/2006	39,818,907	156,817,335	25.392%	750,000	190,499.28	190,367.88	190,440.00	0.72	72.12	(0.86)	(58,320.84)		
204 FY2006	1/31/2006	36,769,528	129,551,760	28.382%	700,000	196,674.80	196,636.35	196,675.00	0.20	2,038.45	(0.06)	(2,641,771.42)		
204 FY2005	6/30/2005	29,374,456	115,618,372	24.557%	2,000,000	589,363.43	691,308.43	771,496.55	185,135.12	83,188.12	(21,957,968.39)	(59,979,927.55)		
204 FY2005	1/31/2005	38,665,241	139,691,935	27.679%	750,000	207,592.82	194,046.74	750,000.00	8.18	13,554.26	3,225,224.08	2,714,021.10		
204 FY2004	6/30/2004	55,730,719	189,913,995	29.345%	3,000,000	880,357.22	874,286.70	880,357.00	(0.22)	6,070.30	542,345.31	542,339.12		
204 FY2004	1/31/2004	39,644,793	169,588,985	23.77%	3,000,000	233,763.85	233,751.36	233,769.00	(0.83)	17.64	-	(13,419.96)		
204 FY2003	6/30/2003	36,369,628	162,899,249	22.326%	3,750,000	837,242.10	837,328.15	837,242.00	(0.10)	(86.15)	(498.73)	14,502.20		
204 FY2003	1/31/2003	30,775,601	148,921,831	20.666%	650,000	134,326.45	134,326.45	134,327.00	0.64	0.55	-	100.01		
204 FY2002	6/30/2002	40,764,068	171,544,746	23.767%	6,500,000	1,509,210.36	1,445,463.17	1,509,210.00	(0.36)	63,746.83	2,872,988.47	5,057,128.41		
204 FY2002	1/31/2002	31,682,612	149,158,893	21.241%	500,000	106,204.24	106,299.52	106,204.00	(0.24)	(95.42)	-	133,708.03		
204 FY2001	6/30/2001	37,501,662	160,223,912	23.406%	3,800,000	889,419.78	889,433.65	889,420.00	0.22	0.34	-	(21.08)		
204 FY2001	1/31/2001	33,674,900	135,031,030	21.721%	1,900,000	325,870.90	325,820.85	325,871.00	0.10	0.15	-	(27.55)		
204 FY2000	6/30/2000	39,255,271	169,505,904	23.159%	3,000,000	694,789.35	694,759.35	697,259.00	2,499.65	2,499.65	-	0.04		
204 FY2000	1/31/2000	39,434,128	147,749,785	22.629%	1,500,000	339,433.26	339,433.26	339,433.00	(0.26)	(0.26)	(0.01)	0.02		
204 FY1999	6/30/1999	36,945,517	156,916,691	23.545%	2,875,000	676,909.27	653,918.74	676,909.00	(0.27)	22,990.26	1,254,702.82	(499.97)		

204	FY1999	2/28/1999	33,565,522	140,041,980	23.96%	33,565,522	140,107,592	23.957%	1,250,000	209,502.32	209,462.02	299,602.00	[0.37]	139.88	1,000,000	[0.02]	[65,611.98]	X
204	FY1998	6/30/1998	38,626,585	154,228,090	25.04%	37,272,130	154,589,729	24.07%	4,000,000	1,001,804.15	969,120.39	1,003,907.00	2,102.85	40,786.61	1,000,000	1,404,454.85	[961,638.83]	X
204	FY1998	6/30/1998	40,980,763	148,975,942	27.47%	40,980,763	147,668,979	27.71%	2,250,000	618,181.30	623,653.19	516,352.00	[101,829.90]	[107,301.19]	1,000,000	-	1,306,592.36	X
204	FY1997	6/30/1997	28,440,940	135,711,903	20.95%	27,214,733	137,432,175	19.80%	3,750,000	785,881.37	742,586.29	830,785.00	44,933.13	88,198.71	1,000,000	1,226,206.36	[1,770,272.85]	X
204	FY1997	6/30/1997	27,678,819	125,004,946	21.98%	27,678,819	126,505,031	21.88%	1,350,000	296,782.67	295,374.86	296,783.00	0.33	1,408.14	1,000,000	-	[600,985.63]	X
204	FY1996	6/30/1996	28,486,390	118,940,261	23.95%	27,874,872	118,940,262	23.45%	2,100,000	502,988.30	492,156.57	502,989.00	0.20	10,482.43	1,000,000	613,518.04	[0.90]	X
204	FY1995	6/30/1995	24,912,378	96,225,630	25.78%	24,912,378	96,855,920	25.72%	800,000	206,258.64	205,768.55	206,259.00	0.16	490.45	1,000,000	-	[230,729.66]	X
204	FY1995	6/30/1995	29,576,100	113,049,704	26.16%	28,738,349	112,735,848	25.49%	1,650,000	431,673.53	420,614.00	431,677.00	3.47	11,053.00	1,000,000	837,751.06	313,856.41	X
204	FY1995	6/30/1995	29,145,605	94,924,904	30.70%	29,145,605	94,924,054	30.70%	800,000	245,604.37	245,607.17	245,600.00	75.03	72.83	1,000,000	0.01	849.84	X
204	FY1994	6/30/1994	29,922,778	85,642,623	34.93%	missing data	missing data	#VALUE!	700,000	244,573.82	#VALUE!	244,574.00	0.18	#VALUE!	1,000,000	#VALUE!	#VALUE!	X
204	FY1994	6/30/1994	25,267,366	84,106,199	34.79%	missing data	missing data	#VALUE!	625,000	217,488.17	#VALUE!	217,358.00	[130.17]	#VALUE!	1,000,000	#VALUE!	#VALUE!	X
													1,427,998.51					
													381,832.54					
													1,803,771.05					

Lyons Township School Treasurer Analysis
Quarterly Interest Allocation Analysis SD#204
Fiscal Year 2012-2000
Lyons Township Trustees of Schools
Interest Allocation

3/30/2017 11:32

Compare System Reports to GL and RH calculations

District	Fiscal Year	Date	204 FB per RH	Total Avg FB	Percent	Income	Calculated Interest Allocation	Allocation per TFO GL	Difference	Comments
204	FY2012	6/30/2012	48,277.595	240,031,526	20.113%	1,750,000	351,977.89	336,977.00	(15,000.89)	
204	FY2012	7/31/2012	40,179,650	209,812,794	19.150%	1,900,000	472,322.19	147,352.00	(25,000.19)	1 FALSE
204	FY2012	1/31/2012	36,050,979	196,957,795	18.304%	750,000	137,279.33	137,279.00	(0.33)	1 FALSE
204	FY2012	10/31/2012	30,555,222	185,340,602	16.485%	750,000	123,144.38	123,615.00	470.62	1 FALSE
204	FY2012	6/30/2011	48,216,829	252,109,900	19.125%	4,000,000	765,012.86	565,012.00	(200,000.86)	1 FALSE
204	FY2011	1/31/2011	24,795,502	160,926,622	15.408%	500,000	77,039.78	77,040.00	0.22	1 FALSE
204	FY2011	10/31/2011	24,795,502	160,926,622	15.408%	500,000	77,039.78	77,040.00	0.22	1 FALSE
204	FY2010	6/30/2010	50,973,820	255,890,334	19.920%	1,750,000	348,603.18	348,602.00	(1.18)	1 FALSE
204	FY2010	1/31/2010	28,887,593	144,200,754	20.033%	750,000	150,246.75	150,247.00	0.25	1 FALSE
204	FY2010	10/31/2010	28,887,593	144,200,754	20.033%	750,000	150,246.75	150,247.00	0.25	1 FALSE
204	FY2009	6/30/2009	42,768,413	199,101,607	21.481%	1,800,000	386,652.55	633,364.00	246,711.45	1 FALSE
204	FY2009	1/31/2009	34,416,572	171,141,749	20.110%	750,000	150,824.85	150,846.00	21.15	1 FALSE
204	FY2009	10/31/2009	27,801,658	154,182,478	15.032%	200,000	624,831.84	624,831.00	(0.84)	1 FALSE
204	FY2008	6/30/2008	44,020,982	202,691,919	21.718%	2,877,000	624,831.84	624,831.00	(0.84)	1 FALSE
204	FY2008	1/31/2008	27,275,390	138,360,794	19.713%	1,000,000	197,132.36	197,855.00	722.64	1 FALSE
204	FY2008	10/31/2008	27,275,390	138,360,794	19.713%	1,000,000	197,132.36	197,855.00	722.64	1 FALSE
204	FY2007	6/30/2007	43,210,453	197,206,681	21.911%	3,600,000	788,805.08	788,805.00	(0.08)	1 FALSE
204	FY2007	1/31/2007	40,046,346	184,912,943	21.657%	1,000,000	216,568.65	341,568.00	124,999.35	1 FALSE
204	FY2007	10/31/2007	37,552,750	177,018,804	21.215%	1,000,000	216,568.65	341,568.00	124,999.35	1 FALSE
204	FY2007	7/31/2007	no data	no data	no data	no data	no data	no data	no data	1 FALSE
204	FY2006	6/30/2006	43,240,453	179,755,938	24.037%	1,700,000	406,629.97	557,449.00	150,819.03	1 FALSE
204	FY2006	1/31/2006	38,037,820	146,818,892	26.015%	1,000,000	260,152.99	260,153.00	0.01	1 FALSE
204	FY2006	10/31/2006	38,037,820	146,818,892	26.015%	1,000,000	260,152.99	260,153.00	0.01	1 FALSE
204	FY2005	6/30/2005	29,374,456	119,618,372	24.557%	2,400,000	589,363.43	774,496.55	185,133.12	1 FALSE
204	FY2005	1/31/2005	38,665,241	139,691,395	27.679%	750,000	207,592.82	213,805.00	6,212.18	1 FALSE
204	FY2005	10/31/2005	38,665,241	139,691,395	27.679%	750,000	207,592.82	213,805.00	6,212.18	1 FALSE
204	FY2004	6/30/2004	55,730,719	189,913,996	29.345%	3,000,000	880,357.22	880,357.00	(0.22)	1 FALSE

District	Fiscal Year	Date	204 FB per RH	Total Avg FB	Percent	Income	Calculated Interest Allocation	Allocation per TIO GL	Difference	Comments
204	FY1994	4/30/1994	27,879,853	72,230,198	38.621%	600,680	27,492,512	27,492,500	10.38	
204	FY1994	1/31/1994	29,267,366	84,106,199	34.798%	625,000	217,488.17	217,358.00	(130.17)	
204	FY1994	10/31/1993	27,220,503	73,511,522	37.157%	625,000	217,220.63	217,220.00	0.63	
									1,478,062.51	NET
									381,832.54	SUM OF REDUCTIONS IN INTEREST
									1,859,895.05	POTENTIAL OVERAGE

If Then <

FALSE

FALSE

FALSE

FALSE

if then >

FALSE

FALSE

FALSE

FALSE

1

1

170 Rega 6/30/99

TTD #16
2-27-75 RP

Pro Rata 6/30/00

101	OK 19574 6/2200 \$32178.00	100
102	12 6/2200 \$48143.75	100
103	OK 20508 6/2201 \$71179.35	100
104	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
105	OK 19466 6/2200 \$472954.02	100
106	OK 20898 6/2201 \$31026.54	100
107	OK 19964 6/2201 \$428988.55	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
108	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
109	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
204	OK 214516 6/2201 \$339747.75	100
204.5	OK 20723 6/2201 \$51460.27	100
	OK 21473 7/01 \$100883.33	100
	OK 21001 7/01 \$13231.24	100
217	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
	OK 21001 7/01 \$13231.24	100
915/999	12 6/2201 \$13496.15	100

NEED 204

Private Care

EDUCATION IS EVERYONE'S RESPONSIBILITY

Township Trustees of Schools

TOWNSHIP 38 NORTH, RANGE 12 EAST

P.O. BOX #1246
930 BARNSDALE ROAD
LA GRANGE PARK, ILLINOIS 60526-9346

BOARD OF SCHOOL TRUSTEES
Joseph Nekola, President
Donna A. Milich, Trustee
Russell W. Hartigan, Trustee

ROBERT G. HEALY
TOWNSHIP SCHOOL TREASURER
Telephone: Area 708-352-4480
Fax: 708-352-4417

May 29, 2001

Dr. Dennis Kelly, Superintendent
Cook County High School District #204
100 S. Brainard Avenue
LaGrange, IL 60525

Dear Dr. Kelly:

Pursuant to Section 8-4 of the School Code, please consider this a revised invoice for services provided by the Lyons Township School Treasurer's office for the 2000 fiscal year. The District's share amounts to \$165,476.00.

Any increase in the District's fee will represent either an increase in the expenses of this office or an increase in the District's percentage of total revenues received by this office. Please note that bond proceeds are not considered as revenues in determining the percentage.

I hope your district is satisfied with the services which are being provided. If there are any suggestions on additional services which we can provide or if there are any questions please give me a call.

Sincerely,

Robert G. Healy
Lyons Township School Treasurer

RGH/grm

Memorandum

LAST
YEAR

To: Robert Healy

From: Lisa Beckwith

Date: February 29, 2000

Re: Treasurer's Office Responsibilities

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest and student activities.
- Annual salary and benefit costs for 3 employees as listed below:

	Salary	OASDI		Insurance	Insurance	
	<u>99-00</u>	<u>Medicare</u>	<u>IMRF</u>	<u>Medical</u>	<u>Life</u>	<u>Total</u>
Programmer Analyst	\$41,205	\$3,152	\$3,045		\$48	\$47,450
Accounts Payable Bkkeeper	\$23,192	\$1,774	\$1,714	\$7,028	\$48	\$33,756
Payroll Bookkeeper	\$21,861	\$1,672	\$1,616		\$48	\$25,197
Total	\$86,258	\$6,598	\$6,375	\$7,028	\$144	\$106,403

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the fiscal year.

Pro Rata 6/30/2002

PRO RATA JUNE 30, 2002 ^{6/30/02}

(100) 11999

DISTRICT	CHECK #	DATE	AMOUNT	WRKSH
101	28574	6/16/03	37,838.00	✓ 100
102	J.E.	6/03	108,578.00	✓ 100
103	28408	6/14/03	60,427.00	✓ 100
104	33094	8/20/03	13,028.50	✓ 100
2ND QTR	43226	10/2003	13,028.50	✓ 100
3RD QTR	50153	1/2004	13,028.50	✓ 100
4TH QTR	57311	4/2004	13,028.50	✓ 100
105	26825	5/27/03	45,839.00	✓ 100
106	28867	6/17/03	32,980.00	✓ 100
107	26587	5/21/03	31,019.00	✓ 100
108	J.E.	7/03	3,162.25	✓ 100
2ND QTR	J.E.	10/03	3,162.25	✓ 100
3RD QTR	J.E.	1/04	3,162.25	✓ 100
4TH QTR	J.E.	4/04	3,162.25	✓ 100
109	30125	7/15/03	20,804.25	100 ✓
2ND QTR	35925	9/23/03	20,804.25	100 ✓
3RD QTR	49817	1/2004	20,804.25	100 ✓
4TH QTR	57002	4/2004	20,804.25	100 ✓
204	06230705	6/18/03	17,948.00	✓ 100
2045	29983	6/30/03	6,475.00	✓ 100
217	30778	7/14/03	16,625.50	✓ 100
2ND QTR	37778	10/15/03	16,625.50	✓ 100
3RD QTR	47193	12/08/03	16,625.50	✓ 100
4TH QTR	56487	4/7/04	16,625.50	✓ 100
995/999	J.E.	6/03	22,050.00	✓ 100

LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204

TOWNSHIP SCHOOL TREASURER
10.8.00.2310.3170.7100

DIST 204 01/02

17,948.00

17,948.00

INVOICE TOTAL

17,948.00

17,948.00

Vendor

437911

Voucher

00729

6/18/03

230705

Check Total

17,948.00

CK 230705 -

PW RATA

Wfs

EDUCATION IS EVERYONE'S RESPONSIBILITY

Township Trustees of Schools

TOWNSHIP 38 NORTH, RANGE 12 EAST

P.O. BOX #1246
930 BARNSDALE ROAD
LA GRANGE PARK, ILLINOIS 60526-9346

BOARD OF SCHOOL TRUSTEES
Joseph Nekola, President
Paul Newman, Trustee
Russell W. Harligan, Trustee

ROBERT G. HEALY
TOWNSHIP SCHOOL TREASURER
Telephone: Area 708-352-4480
Fax: 708-352-4417

May 6, 2003

Dr. Dennis Kelly, Superintendent
Cook County High School District #204
100 S. Brainard Avenue
La Grange, IL 60525

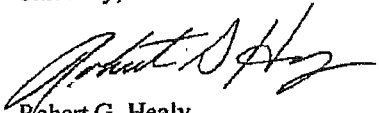
Dear Dr. Kelly:

Pursuant to Section 8-4 of the School Code, please consider this an invoice for services provided by the Lyons Township School Treasurer's office for the 2002 fiscal year. The District's share amounts to \$186,502.00.

Any increase in the District's fee will represent either an increase in the expenses of this office or an increase in the District's percentage of total revenues received by this office. Please note that bond proceeds are not considered as revenues in determining the percentage.

I hope your district is satisfied with the services which are being provided. If there are any suggestions on additional services which we can provide or if there are any questions please give me a call.

Sincerely,



Robert G. Healy
Lyons Township School Treasurer

RGH/grm
Attachment

Pro Rata 6/30/2001

PRO RATA F/Y/E JUNE 30, 2001

PRO RATA JUNE 30, 2001

DISTRICT	CHECK #	DATE	AMOUNT	WRKSHT
101	601023	6/02	36,855.00	100 ✓
102	J.E.	6/02	84,753.00	100 ✓
103	45271	5/20/02	74,762.00	100 ✓
7/02 104	2192	7/02	12,045.75	100 ✓
2ND QTR	8579	10/02	12,045.75	100 ✓
3RD QTR	17037	1/03	12,045.75	100 ✓
4TH QTR	23601	4/03	12,045.75	100 ✓
105	46137	5/28/02	42,567.00	100 ✓
106	45817	5/21/02	29,668.00	100 ✓
107	44850	5/15/02	31,560.00	100 ✓
7/02 108	J.E.	7/02	2,983.00	100 ✓
2ND QTR	J.E.	10/02	2,983.00	100 ✓
3RD QTR	J.E.	1/03	2,983.00	100 ✓
4TH QTR	J.E.	4/03	2,983.00	100 ✓
7/02 109	1939	7/02	18,375.00	100 ✓
2ND QTR	16994	1/03	18,375.00	100 ✓
3RD QTR	16995	1/03	18,375.00	100 ✓
4TH QTR	22943	4/03	18,375.00	100 ✓
204	223736	6/02	40,148.00	100 ✓
2045	44077	4/2	51,483.00	✓
7/02 217	1742	7/02	20,024.75	100 ✓
2ND QTR	9503	10/02	20,024.75	100 ✓
3RD QTR	16371	1/03	20,024.75	100 ✓
4TH QTR	22647	4/03	20,024.75	100 ✓
995/999	J.E.	4/02	12,142.00	✓

**LYONS TOWNSHIP SCHOOL TREASURER
PRO RATA BILLING
FOR FISCAL YEAR ENDED JUNE 30, 2001**

DISTRICT	REVENUES	PERCENTAGE	COST FOR DIST
101	9,853,608.19	4.8724	36,855.00
102	22,659,882.99	11.2048	84,753.00
103	19,988,542.67	9.8839	74,762.00
104	12,208,870.54	6.0370	48,183.00
105	11,380,737.54	5.6275	42,567.00
106	7,932,264.57	3.9223	29,668.00
107	8,448,437.66	4.1776	31,560.00
108	3,190,048.00	1.5774	11,932.00
109	19,651,625.58	9.7173	73,502.00
204	47,830,303.38	23.6510	178,897.00
LADSE	13,764,571.19	6.8063	51,483.00
217	21,415,326.93	10.5894	80,099.00
MEDICAL	3,909,925.83	1.9328	12,142.00
TOTAL	\$202,234,145.07	100.00	\$756,403.00

Memorandum

To: Robert Healy

From: Harold Huang

Date: May 30, 2001

Re: Treasurer's Office Responsibilities

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest and student activities.
- Annual salary and benefit costs for 3 employees as listed below:

	Salary	OASDI		Insurance	Insurance	
	<u>00-01</u>	<u>Medicare</u>	<u>IMRF</u>	<u>Medical</u>	<u>Life</u>	<u>Total</u>
Programmer Analyst	\$43,265	\$3,310	\$2,328		\$48	\$48,903
Accounts Payable Bkkeeper	\$29,431	\$2,252	\$1,583	\$7,650	\$48	\$40,916
Payroll Bookkeeper	\$34,000	\$2,601	\$1,829	\$4,896	\$48	\$43,326
Total	\$106,696	\$8,163	\$5,740	\$12,546	\$144	\$133,289

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the fiscal year.

Lyons Township School Treasurer
Pro Rata Billing
Fiscal Year Ending June 30, 2010

DISTRICT	PERCENTAGE	AMOUNT
101	3.61	\$35,600.63 ✓
102	11.08	\$109,331.37 ✓
103	6.52	\$64,068.68 ✓
104 QTRLY	7.82	25,770.34 ✓ 19,380.25 ✓ \$77,123.41 ✓
105	7.02	\$69,254.09 ✓
106 + 1005	5.58	106 ✓ 106.5 ✓ \$14,137.31 ✓
107	4.21	\$41,511.62 ✓
X 108	1.67	\$16,501.96 ✓
109 QTRLY	9.25	22,733.17 ✓ 22,733.17 ✓ \$91,288.68 ✓
204	21.89	\$215,973.48 ✓
LADSE	7.2	\$70,977.78 ✓
217 QTRLY	10.08	24,359.63 ✓ 24,359.63 ✓ \$98,438.48 ✓
X 999	2.06	\$20,292.67 ✓
TOTAL	100.0	\$886,421.16

no credit 7/10

no credit 7/10

Pro-Rata Billing 6/30/10

Credit #100 1-1999

PRO RATA

PRO-RATA BILLS 6/30/11

Kelly Gets Copy of All
Pro RATA Checks

FY 11

Paid in Full

Lyons Township School Treasurer
Pro Rata Billing
Fiscal Year Ending June 30, 2008

204 Pro Rata Billing History					
Fiscal Year	Billed To	204 Paid	Receivable	Payment Detail	Invoice copy
FY96	144,051	144,051	-	CHK#65458 6/13/97 AP STUB AVAILABLE	YES
FY97	144,004	144,004	-	CHK#73708 6/26/98 AP STUB AVAILABLE	YES
FY98	155,863	155,863	-	CHK#82377 6/99 AP STUB AVAILABLE	YES
FY99	165,476	165,476	-	JE PAYMENT GL DETAIL OF PAYMENT RECEIPT	YES
FY00	173,032	98,816	74,216	CHK#207283 7/00 AP STUB AVAILABLE	YES
FY01	178,897	40,498	138,399	CHK#214346 6/27/01 AP STUB AVAILABLE	YES
FY02	185,502	17,948	168,554	CHK#223736 6/02 HANDWRITTEN NOTES	YES
FY03	171,265	-	171,265	CHK# GL DETAIL OF PAYMENT RECEIPT	YES
FY04	179,345	-	179,345	CHK#230705 6/18/03 AP STUB AVAILABLE	YES
FY05	180,684	-	180,684		YES
FY06	200,680	-	200,680		Missing our bill
FY07	190,328	-	190,328		YES
FY08	245,177	-	245,177		YES
FY09	289,560	-	289,560		YES
FY10	215,973	-	215,973		YES
FY11	216,348	-	216,348		YES
FY12	253,930	-	253,930		YES
FY13	253,900	149,551	104,349		YES
Total:	3,545,014	916,207	2,628,807		

EXHIBIT
ITA Dep #17
8-27-17

EXHIBIT
17

Township Trustees of Schools
vs.
Lyons Township High School

No. 13 CH 23386

Kelly A. Bradshaw

10/25/2016

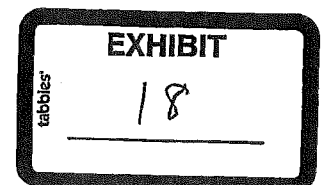
TRANSCRIPT AND WORD INDEX

CASALE REPORTING SERVICE, INC.

33 North Dearborn Street
Suite 1506
Chicago, Illinois 60602

tel: 312.332.7900
fax: 312.332.6555

e-mail: crs@casalereporting.com
www.casalereporting.com



Page 1

1
2 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
3 COUNTY DEPARTMENT - CHANCERY DIVISION
4 TOWNSHIP TRUSTEES OF)
5 SCHOOLS TOWNSHIP 38 NORTH)
6 RANGE 12 EAST,)
7 Plaintiff,)
8 -vs-) Case No. 13 CH
9 LYONS TOWNSHIP HIGH SCHOOL) 23386
10 DISTRICT 204,)
11 Defendant.)
12
13 The deposition of KELLY A. BRADSHAW,
14 called by the Defendant for examination, taken
15 pursuant to the provisions of the Code of Civil
16 Procedure and the Rules of the Supreme Court of the
17 State of Illinois pertaining to the taking of
18 depositions for the purpose of discovery, taken
19 before SHARON A. STUCKLY, a Notary Public within and
20 for the County of Cook, State of Illinois and a
21 Certified Shorthand Reporter of said state at 20
22 North Clark Street, Suite 2500, Chicago, Illinois,
23 on the 25th day of October A.D. 2016 at 1:05 p.m.
24

Page 2

1 PRESENT:
2
3 MILLER, CANFIELD, PADDOCK and STONE, PLC,
4 by
5 MR. BARRY P. KALTENBACH
6 225 West Washington Street, Suite 2600
7 Chicago, Illinois 60606
8 (312) 460-4251
9 kaltenbach@millercanfield.com
10 Appeared on behalf of the Plaintiff;
11
12 HOFFMAN LEGAL, by
13 MR. JAY R. HOFFMAN
14 20 North Clark Street, Suite 2500
15 Chicago, Illinois 60602
16 (312) 899-0899
17 jay@hoffmanlegal.com
18 Appeared on behalf of the Defendant.
19
20 ALSO PRESENT:
21
22 MR. RANDALL D. WILSON.
23
24

Page 3

1 INDEX
2
3 WITNESS EXAMINATION
4 KELLY A. BRADSHAW
5 By Mr. Hoffman 4
6
7 EXHIBITS
8 NUMBER MARKED OR FIRST
9 REFERRED TO
10 Bradshaw Deposition Exhibit
11 No. 1 55
12 No. 2 56
13 No. 3 62
14 No. 4 105
15 No. 5 116
16 No. 6 116
17 No. 7 126
18 No. 8 126
19 No. 9 138
20
21
22
23
24

Page 4

1 (WHEREUPON, the witness was duly sworn.)
2 KELLY A. BRADSHAW,
3 called as a witness herein, having been first duly
4 sworn on oath, was examined and testified as follows:
5 EXAMINATION
6 BY MR. HOFFMAN:
7 Q All right. Would you be so kind as to
8 state your full name?
9 A Kelly Ann Bradshaw.
10 Q All right. And at what address can we
11 reach you?
12 A 1115 Daisy Lane in Naperville, Illinois.
13 Q Is that your home residence?
14 A Yes.
15 Q What's your zip code?
16 A 60564.
17 Q All right. Terrific. Have you ever
18 given a deposition before?
19 A No.
20 Q All right. And Barry Kaltenbach is the
21 gentleman seated to next to you. And is it fair to
22 say that he is representing you as your attorney at
23 this deposition?
24 A Yes.

Page 5

1 Q All right. And I'm sure Barry did a
2 good job explaining to you what's involved in a
3 deposition, but let me give you some introductory
4 information that may put your mind at ease a little
5 bit.
6 I am going to ask you a series of
7 questions today. And it's a very easy exam because
8 you know all the answers. Unlike school, you get
9 full credit for I don't know or I don't remember if
10 that is in fact your best memory.
11 I want you to help me ask good questions
12 because as you will see very soon, I am not an
13 accounting professional and I am not as well versed
14 in your area of expertise as you are.
15 So if I ask you a question that you do
16 not understand or that doesn't seem to make sense to
17 you or I'm using the wrong terminology, will you
18 please tell me that?
19 A Sure.
20 Q All right. I appreciate that. The
21 young lady to your right is the court reporter. And
22 Sharon can only write down things that you say out
23 loud. So if you shake or nod your head, that's hard
24 for all of us to put into the written record.

Page 6

1 And the other thing I should mention is
2 that uh-huhs and uh-uhs tend to sound the same and
3 so yes or no is a better way to go.
4 A Okay.
5 Q Thank you. Why don't you start off by
6 telling me a little bit about your professional
7 background and let's start with your educational
8 history, please.
9 A I have an accounting degree from North
10 Central College in Naperville.
11 Q Is that a Bachelor's degree or --
12 A Yes.
13 Q Okay. And have you had any other formal
14 accounting training or certifications?
15 A I am a CPA.
16 Q When did you receive your degree from
17 North Central College, please?
18 A 1993.
19 Q When did you become a CPA?
20 A I honestly don't remember.
21 Q Approximately?
22 A Would have been between '95 and '97.
23 Q What is your current employment status?
24 Are you a sole proprietor or do you work for a firm

Page 7

1 or are you an employee of --
2 A I'm a contractor for Lyons Township
3 School treasurer's office.
4 Q And to make that a little less of a
5 mouthful, would it be okay with you if I referred to
6 the Lyons Township School treasurer's office as the
7 TTO?
8 A Yes.
9 Q Is that something that you would
10 ordinarily call it if you are saying it in shorthand?
11 A Yes.
12 Q All right. And then we're going to be
13 talking a bit about the Lyons Township High School
14 District 204. And you're familiar with that school,
15 correct?
16 A Yes.
17 Q And is it okay with you if I refer to
18 the Lyons Township High School as Lyons? Will that
19 make sense?
20 A 204 would be better.
21 Q You want to call them 204?
22 A Yes, please.
23 Q Sure. That works for me. When you say
24 you're a contractor, you're not an employee of the

Page 8

1 TTO, correct?
2 A No. I am not.
3 Q So you bill the TTO for your time and
4 they pay you for your time, is that correct?
5 A Yes.
6 Q Is that done on an hourly or weekly or
7 some other basis?
8 A I charge them by the hour. The timing
9 of the billing is typically concurrent with their
10 board meetings.
11 Q Okay. And currently how much do you
12 charge by the hour?
13 A \$65.
14 Q Has that changed over time?
15 A No.
16 Q When did you start working --
17 A Oh, wait, I'm sorry. There was a period
18 of time where I was charging I think it was \$40
19 prior to September 1, 2012.
20 Q For how long have you been a contractor
21 for the TTO?
22 A Since January 2012.
23 Q Who hired you?
24 A I guess it would have been Bob Healy.

Page 9

1 Q For what purpose did Bob Healy hire you?
2 A He had me compiling some bank information.
3 Q What kind of bank information, please?
4 A They would supply me with statements and
5 I would put them into a spreadsheet.
6 Q What were the bank statements of? In
7 other words, what funds were being kept in the bank?
8 A Some of them would have been school
9 district funds and some of them would have been
10 investments.
11 Q Is this work that previously had been
12 done by somebody else at the TTO or was this
13 something that was a new project?
14 A No. It was something that was
15 previously done by another contractor.
16 Q Who was that other contractor, if you
17 know?
18 A Cheryl Sudd.
19 Q Can you spell that, please?
20 A C-h-e-r-y-l. And then S-u-d-d.
21 Q Is there anything that you were doing
22 beginning in 2012 other than taking information from
23 bank statements and putting them in spreadsheets?
24 A Not at that time.

Page 10

1 Q At some time did your responsibilities
2 expand?
3 A Yes.
4 Q And when was that and what else did you
5 start doing?
6 A September 2012. I was basically hired
7 at that point or I was brought into the office with
8 Clyde Bradley and Mike Theissen and asked to do
9 various assistance in accounting and analysis.
10 Q And what positions did Clyde Bradley and
11 Mike Theissen have at that time?
12 A Clyde was the interim treasurer and Mike
13 Theissen at that point was a board trustee.
14 Q How did you originally find out about
15 the availability of a position or work at the TTO?
16 A I knew Cheryl Sudd.
17 Q Okay. Did Cheryl Sudd -- was there an
18 overlap period of time where Cheryl had explained to
19 you her duties and what she was doing and trained
20 you to perform these tasks when you started in 2012?
21 A Yes.
22 Q And did you have any idea how long
23 before 2012 Cheryl Sudd worked at the TTO?
24 A I don't know how many years it was. No.

Page 11

1 Q Do you have any idea, any feel for
2 whether it was a short period of time or long period
3 of time or anything like that?
4 A I believe it was a long period of time.
5 Q Okay. And did you ever have occasion to
6 go back and look at the records that Cheryl Sudd had
7 prepared in terms of spreadsheets from bank
8 statements and things like that?
9 A Not in prior years, no.
10 Q Okay. All right. So beginning in
11 September 2012, what exactly did Mr. Bradley and
12 Mr. Theissen ask you to do?
13 A I was assisting with the team's bank
14 reconciliation process. I was trying to understand
15 what investments were held by the treasurer's
16 office.
17 Q Was -- I'm sorry. Please.
18 A I investigated some of the fraud that
19 Mr. Healy was convicted for.
20 Q Anything else?
21 A Later -- I mean the duties just kept
22 kind of coming as things came out. So at some point
23 I ended up researching some of the items that are
24 involved in this lawsuit.

Page 12

1 Q Anything else?
2 A I assisted them with their audit.
3 Q All right. Anything beyond that?
4 A Not significantly, no.
5 Q Okay. Let's talk about the
6 investigation that you conducted into Healy's fraud.
7 What did you do and what did you determine?
8 A I reviewed years of Amalgamated Bank
9 statements.
10 Q When you say, "Amalgamated," you mean
11 Amalgamated Bank?
12 A That's correct.
13 Q And why -- what was the significance of
14 Amalgamated Bank with respect to your investigation?
15 A It came to light that there were wire
16 transfer confirmations, like templates that were in
17 Robert Healy's name.
18 Q And what did you determine from this
19 analysis?
20 A That there were transactions that had
21 not been accounted for in their underlying
22 reconciliations.
23 Q When you say -- you say, "the underlying
24 reconciliations," what do you mean by that?

Page 13

1 A So Mr. Healy would give to TTO employees
2 a breakdown of the funds that -- and transactions
3 that occurred in the Amalgamated Bank and he would
4 help identify which districts the funds belonged to.
5 And those were used in their bank reconciliations.
6 In comparing those documents, we
7 determined that there were transactions that were in
8 the bank statement that were never recorded in the
9 TTO records.
10 Q When you say, "in the TTO records," what
11 records specifically do you mean?
12 A The bank reconciliations for the
13 Amalgamated Bank.
14 Q What is the relationship of a bank
15 reconciliation to the general ledger of a TTO?
16 A Bank reconciliation would be comparing
17 the transactions that got recorded actually in the
18 accounting general ledger versus the bank
19 reconciliation takes all of the transactions and
20 compares the two.
21 Q When you say, "compares the two," it
22 compares the general ledger to what?
23 A To the bank statement.
24 Q Okay. And how much -- and how much

Page 14

1 money was involved in this discrepancy and over what
2 period of time?
3 A It was over several years and it
4 amounted to approximately a million dollars.
5 Q When you say, "over several years," can
6 you be any more specific about the time period,
7 please?
8 A I don't recall the exact time period,
9 but it was over 10 years.
10 Q So it would be 10 years ending in about
11 2012 given when Healy left?
12 A Yes.
13 Q Okay. And this \$1 million discrepancy,
14 was it your belief that that was a million dollars
15 approximately of money that Healy had taken from the
16 funds that the TTO was holding for the various
17 school districts?
18 A That's what it appeared to be.
19 Q Did you have any role in seeking to
20 recover on any surety bonds or other related
21 insurance that the TTO had for Healy's theft of
22 funds?
23 A I did not.
24 Q And when did Healy leave the TTO? Some

Page 15

1 time in 2012, correct?
2 A My understanding was August 31, 2012.
3 Q Okay. So between January 1st and
4 August 31st of 2012, you worked at the TTO at the
5 same time that Healy was there, correct?
6 A I worked from home.
7 Q And why is that significant?
8 A Because I didn't interact with him very
9 much.
10 Q Who was directing your efforts during
11 the January through August 2012 time period?
12 A Briefly Cheryl Sudd kind of cross
13 trained. And then no one was really directing my
14 efforts. I would compile the information that they
15 sent to me and send it to Bob Healy.
16 Q Okay. So Bob Healy was your immediate
17 supervisor then in terms of a point of contact with
18 the TTO, correct?
19 A Yes.
20 Q And for how long was there an overlap
21 with you and Cheryl?
22 A Maybe two or three months.
23 Q Okay. Did you -- during the time period
24 that you worked with Bob Healy, did you form any

Page 16

1 opinion as an accounting professional and CPA of
2 Healy's skills or abilities as an accounting
3 professional?
4 A No. I wouldn't say I interacted with
5 him enough to form an opinion on accounting related
6 to him.
7 Q Did you have any opinions at all about
8 Healy's integrity or honesty?
9 A No. I wasn't given anything at the -- I
10 didn't interact enough with him to have any opinions
11 on his integrity.
12 Q Did you have any reason to believe that
13 Healy was stealing from funds that the TTO was
14 holding for school districts in 2012?
15 A I did not.
16 Q Did you ever speak with anybody at the
17 TTO other than Mr. Healy who at any time told you
18 that they had concerns or suspicions or issues about
19 Bob Healy's performance or honesty or integrity as
20 treasurer of the TTO?
21 A No.
22 Q Did you prepare any kind of report or
23 written analysis of your investigation of Bob Healy
24 and his transactions with Amalgamated Bank?

Page 17

1 A Yes. There's a summary document of
2 Amalgamated Bank compared to the bank reconciliations.
3 Q Were you ever asked to investigate any
4 other area of Bob Healy's financial dealings other
5 than the Amalgamated Bank transactions, the wire
6 transactions at Amalgamated Bank?
7 A Later I was asked to relook at his
8 employee pay history so that his actual earnings
9 could be submitted to the IMRF.
10 Q Submitted to who?
11 A IMFR. Illinois Municipal Retirement
12 Funds.
13 Q What did you determine from your
14 analysis of Bob Healy's employee pay history?
15 A It wasn't an analysis. It was compiling
16 what he should have been paid from his contract
17 versus what he was actually paid.
18 Q And was there discrepancy between what
19 he should have been paid and what he was actually
20 paid?
21 A Yes. It appeared he was paid too much.
22 Q How much?
23 A That I don't recall.
24 Q Approximately are we talking about a few

Page 18

1 thousand dollars, are we talking about \$100,000, a
2 million dollars?
3 A I want to say it was in the range of
4 like between 4 and \$500,000.
5 Q And that was money that would have come
6 from the funds of District 204 and the other school
7 districts being held by the TTO?
8 A It was recorded in the treasurer's
9 office expenses.
10 Q Well, the treasurer's office itself --
11 the TTO doesn't have any money of its own, correct?
12 All of the money that it holds and manages is money
13 that belongs to the various districts and then the
14 TTO sends out requests for payment for the TTO's
15 expenses, right?
16 A Yes. They bill the districts.
17 Q So the TTO -- the funds that the TTO has
18 are funds that it manages on behalf of the various
19 districts including District 204, correct?
20 A Yes.
21 Q Okay. So when Bob Healy was overpaying
22 himself by 4 to \$500,000, that was in part the money
23 that belonged to District 204, correct?
24 A If they would have been billed for it,

Page 19

1 yes.
2 Q Were they billed for it?
3 A I don't know.
4 Q Okay. And District 204 was
5 approximately 25 percent of the group of districts
6 that formed the TTO, am I right about that?
7 A Approximately, yes.
8 Q And they were the only high school among
9 the districts that formed the TTO, am I right about
10 that?
11 A No.
12 Q Okay. But they're the largest school
13 district of any of the other districts, am I correct
14 about that?
15 MR. KALTENBACH: I'm going to object as
16 to largest as being vague, but you can answer the
17 question.
18 BY MR. HOFFMAN:
19 Q Well, the TTO -- I'll ask a better
20 question. The TTO -- you said that the funds that
21 the TTO holds are approximately 25 percent of the
22 funds of District 204 roughly, correct?
23 A Their fund balance is approximately 25
24 percent against all of the school districts, yes.

Page 20

1 Q Is there any other district that has a
2 larger fund balance?
3 A I don't recall because they ebb and
4 flow, so there are districts that are close to them,
5 but I don't remember each district's percentage off
6 the top of my head.
7 Q Okay. Fair enough. Let me tell you
8 something that I usually say at the start of a
9 deposition, but I'll tell you now. If at any time
10 you want to take a break for any reason, just let me
11 know that and we'll stop and you can use the
12 washroom or get more water or a cup of coffee or
13 whatever you'd like. So make yourself at home.
14 Okay?
15 A Okay.
16 Q You talked earlier about assisting
17 Mr. Bradley and Mr. Theissen with the bank
18 reconciliation process to try and -- to try to
19 understand what investments were held by the
20 treasurer's office. Do you remember that?
21 A Yes.
22 Q And so what did you do in that respect,
23 please?
24 A I helped various treasurer's office

Page 21

1 employees in completing or understanding how to
2 complete bank reconciliations. I made phone calls
3 to various local banks trying to understand what
4 investments might be held by the TTO.

5 Q Why was this necessary?

6 A There didn't appear -- there wasn't
7 anybody within the treasurer's office that had a
8 good sense of what all of the investments were
9 because Mr. Healy was responsible for that in the
10 past.

11 Q Well, why weren't there written records
12 of the investments that the TTO had?

13 A I can't speak to why there were not.

14 Q But in fact there were not written
15 records sufficient for you to determine the
16 investments that the TTO held during the time that
17 Healy was treasurer, correct?

18 A I could not be certain that any records
19 were fully inclusive, no.

20 Q And why couldn't you be certain that the
21 records were fully inclusive?

22 A Mr. Healy was responsible for all of the
23 investments and kept track of any supporting
24 documents related to those transactions.

Page 22

1 Q Well, did Mr. Healy to your knowledge
2 take documents with him when he left the TTO?

3 A I can't say that for certain.

4 Q But in conducting your analysis, you
5 were not able to find documents sufficient to
6 identify all of the investments that the TTO held on
7 behalf of member districts as of late 2012, am I
8 correct about that?

9 A Correct.

10 Q And did you go back to original bank
11 statements that the TTO had in its files?

12 A In some cases, yes.

13 Q And what did you determine from looking
14 at those bank statements?

15 A That question is kind of vague. I'm not
16 certain what you're asking.

17 Q Were you able to go back and look at
18 bank statements and from those statements determine
19 what investments the TTO held as of 2012?

20 A A combination of statements and
21 consulting with banks because statements aren't
22 always available for -- for example, a local CD,
23 there aren't statements. They're certificates.

24 Q So in some instances, the statements of

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1 banks or other financial institutions were not
2 sufficient to give you a full picture of the
3 investments that the TTO held in 2012, correct?

4 A You use the word, "bank statement."
5 Some investments are not bank statements, so that's
6 why I was trying to be more specific.

7 Q I see. So they were both banks and
8 other financial institutions that had investment
9 funds of the TTO?

10 A Yes.

11 Q Okay. And what types of financial
12 institutions other than a traditional bank was the
13 TTO putting investment funds into?

14 A They dealt with various investment
15 advisors. At that time they were dealing with
16 brokers such as --

17 Q How many brokers?

18 A That was one of the things we had to
19 determine when he left. There were approximately
20 between eight and ten different places he was
21 investing with in addition to the local banks.

22 Q And how many banks approximately did the
23 TTO have money in in 2012?

24 A Including the CDs, I would say probably

Page 24

1 between 15 and 20.

2 Q Okay. And were you able to contact each
3 and every one of them and determine all of the funds
4 that they held on behalf of the TTO?

5 A We believe so, yes.

6 Q When you say you believe so, why do you
7 limit your answer in that way?

8 A Every now and then we would get a piece
9 of paper from a bank that said there was inactive
10 activity and we would have to research whether it
11 was pertinent to a current investment or if he had
12 stopped using that institution.

13 Q And in any of those instances, did you
14 find more money that was held by the TTO at another
15 bank?

16 A We did not.

17 Q Okay. So your thinking is if the TTO
18 had money in a bank that you didn't know about,
19 eventually the bank would send a notice to the TTO
20 and you would investigate it and find the extra
21 money?

22 A Correct.

23 Q Okay. Did -- when you did your
24 investigation in late 2012 into the investments held

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1 by the TTO, was that the time period in which you
2 began doing that work, late 2012?
3 A Yeah. It could have been into '13. I
4 don't recall the exact timing. It was within fiscal
5 '13.
6 Q So either in late 2012 or early 2013,
7 you did your work analyzing the investments that the
8 TTO held, am I right about that?
9 A Yes.
10 Q Okay. And did you prepare a report or
11 spreadsheet or other type of summary that listed all
12 of the banks or brokers or other financial
13 institutions or investment advisors who were holding
14 money of the TTO's districts?
15 A Yes.
16 Q And when did you prepare that report?
17 A It would have been given in conjunction
18 with the fiscal 2012 audit and then ongoing after
19 that.
20 Q And if I wanted to find that, where
21 would I find it? Did you bring it with you today?
22 A No.
23 Q Okay. So where would I find your report
24 that had all of the TTO investments as of the end of

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1 the 2013 year?
2 A The end of --
3 Q Or, I'm sorry, as of the end of the
4 2012-2013 fiscal year.
5 A Well, I believe I have it in an e-mail.
6 Unfortunately my files from 2012 are on a flash
7 drive and I can't find the flash drive right now.
8 Q Could you explain that to me, please?
9 A I lost the flash drive that held that
10 year's data on it. I have an e-mail that I have --
11 that the auditors gave to me if you're specifically
12 looking for June 30, 2012.
13 Q Could you describe the e-mail a little
14 more to me? I'm not sure I follow you in terms of
15 what the e-mail is.
16 A I gave it to the auditors. They gave it
17 back to me with some comments on it.
18 Q You gave --
19 A I gave this file that --
20 Q Flash drive?
21 A No, not the flash drive. You asked me
22 for June 30, 2012.
23 Q Right.
24 A That file. A copy of it would have been

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1 produced and given to the auditors for June 30,
2 2012.
3 Q Okay. And that's the file that you gave
4 to the auditors and you know you did it because you
5 have an e-mail that said you're transmitting that
6 file?
7 A No. I have an e-mail back from them
8 that commented on it.
9 Q Do you remember what comments, if any,
10 you got back?
11 A No, I don't.
12 Q And then you kept a copy of that file on
13 a flash drive, but you can't find the flash drive?
14 A That's correct.
15 Q All right. And the auditors that you
16 sent the file that has the report on investments, is
17 that Baker Tilly?
18 A Yes.
19 Q And who at Baker Tilly sent you the
20 e-mail responding back about this report?
21 A Jim White.
22 Q So if I wanted to get a copy of the
23 document that we're discussing, I could get a copy
24 from Jim White at Baker Tilly?

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1 A I can't speak to whether he still has
2 that or not.
3 Q Okay. Assuming that he still retained
4 it. But he did get a copy of it in 2012, right?
5 A To the best of my knowledge, yes.
6 Q The TTO doesn't have any sort of back-up
7 system or any other type of document retention plan
8 that would have --
9 A You're asking about a time when they
10 were still kind of following Bob Healy's policies.
11 Currently all of the files are either saved on a
12 shared drive or in a drop box, so they're backed up
13 multiple times.
14 Q But the file that you created is not
15 backed up on a shared drive, is it?
16 A No.
17 Q The one we're talking about?
18 A Not for that period of time, no.
19 Q Okay. And that wasn't the Bob Healy
20 time period. That was after that, right?
21 A Yeah, I guess.
22 Q So how come that didn't get backed up?
23 A There was no policy in place for backing
24 up files.

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1 Q And you understand that this lawsuit
2 that we're here for today involves the time period
3 during which Healy was the treasurer, correct?
4 A Yes.
5 Q Okay. And the document that you created
6 and then lost that showed the investments that the
7 TTO held as of June 30, 2012, did you ever see any
8 similar documents prepared by anyone else for years
9 prior to the 2012 to 2000 fiscal year, did you ever
10 see one for prior fiscal years like that?
11 A Not formally kept, but in some of
12 Mr. Healy's interest files, there were similar
13 listings.
14 Q Were those listings comprehensive such
15 that you could get a clear picture of all the
16 investments and investment income that the TTO had
17 and earned from 1995 to 2012?
18 A I didn't review those documents, so I
19 don't know if they were fully inclusive.
20 Q Why didn't you review those documents?
21 A Because I was trying to compile things
22 from fresh data.
23 Q Okay. Now, let's talk about the project
24 that you worked on -- well, before I get to this,

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1 are you -- let's see. We have been told that you
2 worked on analyzing the TTO's payments of investment
3 income to District 204 during certain years, is that
4 correct?
5 A Yes.
6 Q Okay. There are also issues in this
7 case having to do with the TTO's payment for audits
8 that Baker Tilly and its predecessors did of
9 District 204 during a certain period of time. Did
10 you ever have any involvement in that other issue?
11 A Yes. I also compiled -- assisted in
12 compiling those numbers.
13 Q And what did you do in order to compile
14 the numbers for the amounts the TTO paid for
15 District 204 audits?
16 A I received copies of invoices from
17 Lauralee Conway at the TTO as a first pass.
18 Q Okay.
19 A And then subsequent to that, we ran a
20 vendor history out of their accounting system.
21 Q Out of whose accounting system?
22 A The TTO's.
23 Q Okay. And how were you able to
24 determine whether a particular invoice was for the

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1 District 204's audit?
2 A If there was an invoice copy available,
3 we reviewed it and it clearly stated it was for
4 204's audit.
5 Q When you say, "if there was an invoice
6 copy available," were there instances in which there
7 were no invoice copy available?
8 A Yes.
9 Q And how many instances was there a
10 missing invoice for audit work?
11 A I don't recall specifically, but it was
12 less than 20. It was in -- going back to some of
13 the early years that were included in the time
14 period. In those instances, we looked at
15 descriptions that had been keyed in at the time of
16 payment and those also clearly referred to District
17 204.
18 Q Were the charges for District 204's
19 audits done by Baker Tilly relatively uniform over
20 years or did they vary from year to year?
21 A I don't recall.
22 Q Do you recall in 2000 the charges being
23 very, very much larger than in other years?
24 A I don't recall.

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1 Q And you have no idea why they were or
2 were not, do you?
3 A I would not be able to answer that.
4 Q Did you speak with anyone at Baker Tilly
5 about the charges that they might have made for the
6 District 204's audit to double check whether your
7 numbers were right?
8 A We received the invoice copies from them.
9 Q How far back did the invoice copies go
10 that you got from Baker Tilly and when did you get
11 them?
12 A I don't recall how far they go back.
13 The spreadsheet that we produced would say whether
14 there's an invoice copy included or available or
15 not.
16 Q Well, there was a point in which Baker
17 Tilly didn't have the invoices, right? Their
18 documents only went back so far, am I right?
19 A Right. And so then we went to the
20 treasurer's office invoices.
21 Q Well, how far back did the Baker
22 Tilly -- approximately did the Baker Tilly's
23 invoices go?
24 A I honestly don't remember. It was prior

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1 to at least -- it was prior to 2006 for sure.
2 Q So Baker Tilly at least had copies of
3 invoices from 2006 on?
4 A I believe so, yes.
5 Q Okay. And you're not sure whether they
6 had them in 2005 or 2004 or 2000?
7 A I don't recall.
8 Q Did they have them for 1995?
9 A I don't recall when -- because at that
10 point they would have been Virchow and Krause. I
11 don't remember how far they went back versus when we
12 pulled from the treasurer's office records.
13 Q So there was a period of years where
14 Baker Tilly did not have invoices?
15 A I believe so, yes.
16 Q And what you looked at instead of the
17 actual invoices was descriptions that were coded
18 into the TTO's records at the time of payment?
19 A Correct.
20 Q Could you describe those codings and
21 what system they would have been in?
22 A They would have entered into the TTO's
23 accounting system called DCR.
24 Q And how does that relate to the general

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1 ledger?
2 A That is the general ledger. There's
3 also an AP section.
4 Q Is AP accounts payable?
5 A That's correct.
6 Q And what sort of codes or descriptions
7 did you look at in the general ledger in lieu of
8 looking at actual invoices?
9 A In the instances where there was not an
10 invoice available, we looked at either a description
11 field or the invoice field. And in those instances,
12 they refer to District 204's audit or District 204.
13 Q Did you ever speak with anybody at the
14 TTO to determine why the TTO had been paying for
15 District 204's audits at Baker Tilly and its
16 predecessors for so many years?
17 A The employees that were there did not
18 have knowledge as to why, so I can't speak to why
19 they were paid.
20 Q Who were the employees that you talked
21 to to determine that they didn't know why?
22 A Clyde Bradley and Lauralee Conway.
23 Q How far back did Lauralee Conway go?
24 A I don't know when she started her

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1 employment.
2 Q And those are the only two
3 individuals -- and Clyde Bradley started with the
4 TTO after Healy was gone, right?
5 A Correct.
6 Q Okay. And neither of them knew why the
7 TTO had paid for District 204's audits for many
8 years prior?
9 A No, they did not.
10 Q Okay. Do you have any knowledge
11 independent of talking to these individuals as to
12 why and how these payments were made?
13 A I do not.
14 Q Do you have any opinion as to whether or
15 not these payments were proper or improper?
16 A I don't have an opinion.
17 Q Do you know whether or not the TTO paid
18 for the annual audits done by Baker Tilly or its
19 predecessors or any other firm for any other
20 district other than District 204?
21 A Predominantly that answer would be no.
22 We looked and found a couple instances of a couple
23 thousand dollars that appeared to have been paid in
24 error.

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1 Q When was that and what were those
2 instances?
3 A I believe it was going back to like
4 1999. It was for a district called 204.5 or LADSE.
5 Q Or what?
6 A LADSE which is LaGrange Area Special
7 Education I believe is what it stands for.
8 Q And what did you find with regard to the
9 1999 payments?
10 A It just appeared that they had been paid
11 in error because there were no other instances of
12 any other district where an audit had been paid for
13 besides 204.
14 Q Why did you check as to whether the TTO
15 had paid for audits of other districts other than
16 204?
17 A It was a question that was asked in
18 conjunction with the litigation preparation.
19 Q And who asked you that question? Who
20 asked you to determine that information?
21 A I can't recall who from the attorney's
22 office asked me to do that.
23 Q But it one of the TTO's attorneys?
24 A Yes.

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1 Q Was it Gerald Kubasiak?
2 A I don't recall who it was.
3 Q Very distinguished gentleman with white
4 hair --
5 A I know that, but it would have been done
6 via e-mail, so I don't recall.
7 Q So it was either he or somebody from his
8 firm?
9 A Correct.
10 Q And do you provide a written report to
11 the Kubasiak firm about the search you had done and
12 determination you had made about the payment by the
13 TTO on behalf of other districts?
14 A On behalf of other districts, no,
15 there's no report.
16 Q So you didn't put together any kind of
17 analysis describing the 1999 payments to District
18 204.5?
19 A I did not.
20 Q Okay. Do you know that Bob Healy
21 represented in writing to District 204 that the TTO
22 was paying for the audits of all of the districts?
23 A I did not know that.
24 Q Do you believe from your analysis that

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1 you did -- do you have any opinion as to whether
2 that statement by Mr. Healy if I'm quoting it
3 correctly was accurate or not?
4 A Based on the review I did, I would say
5 the statement is inaccurate.
6 Q Do you -- is it -- based on your
7 professional experience, is it fair to say that the
8 TTO under Bob Healy's leadership in 1994 to 2012 was
9 knowingly paying for the annual audits of District
10 204 that the Baker Tilly and its predecessors had
11 done?
12 MR. KALTENBACH: I'm sorry. I missed
13 the start of that question. Could you --
14 MR. HOFFMAN: You can reread it.
15 (WHEREUPON, the record was read
16 by the reporter as requested.)
17 MR. KALTENBACH: I'm going to object on
18 foundation and I think it calls for the witness to
19 make an opinion that she's not -- has not
20 represented herself to be qualified to make, but you
21 can answer the question, Kelly.
22 BY THE WITNESS:
23 A I mean --
24

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1 BY MR. HOFFMAN:
2 Q Let me ask you a better question.
3 You're a CPA and accounting professional. Does it
4 appear from your review of the general ledger and
5 the invoices and payments made by the TTO to Baker
6 Tilly and its predecessors for the District 204
7 audit, does it appear from your review of that
8 information that the TTO accidentally paid these
9 amounts for almost 20 years or does it appear that
10 these were deliberate payments?
11 MR. KALTENBACH: I'm going to object.
12 Same objection. You can answer the question.
13 BY MR. HOFFMAN:
14 Q You can answer.
15 A I don't know that I can speak to that
16 given there -- there isn't any sign-offs on things,
17 you know, that would suggest that, you know -- they
18 didn't have a practice in place where someone would
19 sign off on each individual invoice. They were --
20 it was certainly paid in their normal AP process,
21 but I can't speak to whether that's knowing or not
22 knowing.
23 Q So you don't have any opinion as to
24 whether based on your review of past invoices and

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1 general ledger entries, you have no opinion as to
2 whether the TTO's payments of the District 204's
3 audit expenses was, you know, knowing and
4 intentional on one hand or accidental on the other
5 hand?
6 MR. KALTENBACH: Same objection.
7 BY THE WITNESS:
8 A I don't -- I said I don't and I didn't
9 finish my sentence. I'm sorry. I don't know. I
10 don't understand why that --
11 BY MR. HOFFMAN:
12 Q Well, look, you're a CPA and accounting
13 professional with an accounting degree and you've
14 spent many hours of your life looking over
15 financial records of the TTO and many other
16 businesses, correct, and any other governmental
17 entities or other entities that keep books, right?
18 A Yes.
19 Q Okay. So what I'm trying to determine
20 is we know as a matter of fact that from 1994 to
21 2012 TTO paid for District 204's audits, right?
22 A There's evidence of -- that they paid
23 for them, yes.
24 Q Right. And so what I'm asking you is

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1 for your professional opinion based on your
2 expertise and your analysis of these documents
3 whether these payments over that almost 20-year
4 period of time were accidental and fell through the
5 cracks or whether these payments appear to be
6 deliberate and intentional?
7 MR. KALTENBACH: I'm going to make the
8 same objection. I don't think --
9 MR. HOFFMAN: And if you can't tell,
10 then you tell me that as well.
11 MR. KALTENBACH: Let me -- let's not
12 talk over each other. Let me finish making my
13 objection. I don't think there's a foundation. And
14 I think she's being called to offer an opinion on
15 someone's intent. So I don't think that's
16 appropriate. Subject to that objection, you can
17 answer the question.
18 BY THE WITNESS:
19 A I can't speak to what other people were
20 involved in a period of time where I wasn't there to
21 pay the bills. They were -- they're clearly
22 included in their accounting system. They're, you
23 know, included with all their other checks, but I
24 can't speak to who signed off on those or who

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1 knowingly was a part of that payment process.
2 BY MR. HOFFMAN:
3 Q I understand that you can't read minds.
4 But on the other hand sometimes the only records
5 that we have to deal with are written records,
6 right? Yes?
7 A Yes.
8 Q And so does it appear from your analysis
9 of the written records that the invoices that were
10 sent and paid for by the TTO specifically stated
11 that they had to do with the District 204's audits?
12 A Can you read that back, please?
13 Q Let me say it again. The invoices that
14 you were able to find for Baker Tilly's and its
15 predecessors' audits of District 204 that the TTO
16 paid, those invoices specifically stated that the
17 work was for the District 204 audit, correct?
18 A They stated they were for the 204 audit,
19 yes.
20 Q Can you think of any reason based on
21 your accounting experience why somebody associated
22 with the TTO might have not understood those
23 invoices or charges to be related to District 204?
24 MR. KALTENBACH: I'm going to object.

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1 It calls for speculation or perhaps an opinion, but
2 you can answer.
3 BY THE WITNESS:
4 A When you're using the broad sense of the
5 TTO, I don't know who you're speaking to as to who
6 would be a part of that process. It's -- that's a
7 generic term.
8 BY MR. HOFFMAN:
9 Q Well, somebody signed off on making
10 those payments at the TTO, correct?
11 A There is no evidence of an actual
12 sign-off as you would say.
13 Q Okay. But the checks were written and
14 the amounts were paid, correct?
15 A That is correct.
16 Q And my question is in your opinion -- or
17 my question is do you have any opinion as to whether
18 those payments appeared to be accidental or they
19 appeared to be intentional? If you don't have an
20 opinion, then I won't ask you what it is.
21 A I don't --
22 MR. KALTENBACH: Same objections. You
23 can answer.
24 BY MR. HOFFMAN:

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1 Q Go ahead.
2 A I don't have an opinion whether they're
3 an accidental or a knowing payment.
4 Q Okay. Thank you.
5 MR. KALTENBACH: Jay, I don't think we
6 have ever taken the position that Bob Healy
7 accidentally made the payments. I mean, I just --
8 MR. HOFFMAN: Okay. Well, you know --
9 MR. KALTENBACH: I don't think that's
10 what we alleged. I certainly don't think that's the
11 position that we've ever taken to my knowledge.
12 MR. HOFFMAN: Okay. Fair enough.
13 BY MR. HOFFMAN:
14 Q Let me ask you about the issue in this
15 lawsuit that involves the payment of expenses of the
16 TTO by District 204. Are you familiar with that
17 issue?
18 A Yes.
19 Q Okay. And were you involved in the
20 compilation of any numbers or information relating
21 to that issue?
22 A I reviewed Lauralee Conway's initial
23 compilation.
24 Q And what is that compilation? And where

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1 would I find it?
2 A It's been produced for you.
3 Q Okay.
4 A It's a comparison of invoices that the
5 treasurer's office has in their folders that were
6 submitted to District 204 compared to the payments
7 that were received related to those invoices.
8 Q Okay. And once you looked over Lauralee
9 Conway's analysis, what did you determine as to how
10 accurate or inaccurate it was?
11 A There were some errors that I corrected
12 and then it was determined that there was a
13 significant balance that had not been paid.
14 Q What errors did you correct and how were
15 they made?
16 A I can't recall.
17 Q And then what -- when you say there was
18 a significant balance that hadn't been paid, that's
19 the amount that they're suing for in this lawsuit,
20 correct?
21 A That's correct.
22 Q What was your -- do you have any
23 understanding as to whether the TTO had agreed to
24 pay for the accounting slash business functions of

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1 District 204?
2 A I have no knowledge of that.
3 Q Okay. Have you seen a series of memos
4 that District 204 sent to the TTO on an annual basis
5 from 2000 to 2012 stating that it was taking the
6 amount that the TTO had invoiced for the pro rata
7 share of the TTO's invoices attributable to District
8 204 and deducting from that the amount that the TTO
9 had agreed to pay for District 204's business slash
10 accounting functions?
11 A I've seen some of those memos.
12 Q Okay. And do you speak with anybody at
13 the TTO about those memos?
14 A I mean there were various conversations
15 prior to and after the submission of the lawsuit
16 with Clyde Bradley, Mike Theissen and their
17 attorneys.
18 Q Okay. And what were those discussions?
19 I mean tell me what you guys talked about in terms
20 of these memos that showed this offset of the pro
21 rata charge?
22 MR. KALTENBACH: Hold on. Kelly, to the
23 extent you're talking about conversations with
24 Mr. Bradley or Mr. Theissen, you can certainly

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1 testify as to that. To the extent you're talking
2 about conversations you had with, you know, me or
3 Jerry or one of the attorneys, I'm going to instruct
4 you not to reveal the substance of those
5 communications at least at this time. Doesn't
6 seem -- it seems to me those are privileged.
7 BY THE WITNESS:
8 A Okay. So the conversations with
9 Mr. Bradley or Mr. Theissen were more in what memos
10 were available or not available and specific
11 amounts, but we didn't have any substantive
12 conversations as to what they meant as kind of an
13 offset or anything to the pro rata.
14 BY MR. HOFFMAN:
15 Q Well, why didn't you think that was
16 important for you to understand given that you were
17 preparing an analysis of pro rata amounts that were
18 allegedly unpaid by District 204?
19 A I wasn't asked to take those into
20 consideration.
21 Q And you didn't as an accounting
22 professional have any questions about whether -- did
23 you ask somebody, hey, there's these memos that show
24 this offset, what am I supposed to do with them and

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1 did somebody give you an answer to that?
2 A I was instructed to compile the invoices
3 versus the payments. I was never instructed to
4 include these memos in that analysis.
5 Q But you were aware of the existence of
6 these memos, correct?
7 A To the extent that some of them were
8 available, yes, but they didn't have all of them at
9 the time.
10 Q What was your understanding of what
11 these memos represented or what agreement there was
12 between the TTO and District 204 that these memos
13 were discussing?
14 A Anything I would understand would come
15 from someone else telling it to me. I don't have
16 any direct knowledge of what the memos are or what
17 conversations were had between the treasurer's
18 office and 204.
19 Q I understand that. So what were you
20 told about these memos?
21 A I was told that 204 submitted these
22 items, but no one told me what to do with offsetting
23 them.
24 Q Did you ever ask anybody specifically

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1 whether you should take these memos and the items in
2 these memos for offsets into account?
3 A Yes, I did. And the conversations with
4 Mr. Bradley and Mr. Theissen were that they were not
5 based on school code supposed to be offset.
6 Q What else did they tell you?
7 A I can't recall anything else specific.
8 Q Did they tell you whether or not there
9 actually was an agreement between the TTO and
10 District 204 with respect to the TTO's payment for
11 District 204's business functions?
12 A I mean they told me that there was not
13 an agreement.
14 Q What else did they tell you on that
15 subject?
16 MR. KALTENBACH: Again I'll just caution
17 you. His question relates to --
18 MR. HOFFMAN: We're talking -- you're
19 saying Bradshaw and Theissen.
20 THE WITNESS: Yes. Bradley and
21 Theissen.
22 BY MR. HOFFMAN:
23 Q So Bradshaw and Theissen told you --
24 excuse me --

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1 MR. KALTENBACH: She's Bradshaw.
2 BY MR. HOFFMAN:
3 Q You're Bradshaw. I apologize for that.
4 So Mr. Bradley and Mr. Theissen told you that there
5 was not an agreement between the TTO and District
6 204 whereby District 204 would pay for the business
7 functions -- or excuse me -- I'm sorry -- whereby
8 the TTO would pay for the --
9 Let me start that question over because
10 I got it jumbled. So Mr. Bradley and Mr. Theissen
11 -- when did those conversation take place that
12 you're telling me about?
13 A I can't specifically recall when the
14 conversations take place.
15 Q Approximately are we talking the late
16 2012 or early 2013 time period?
17 A That would have been somewhere between
18 March and September of '13.
19 Q Okay. So sometime between March and
20 September of 2013, you talked to Mr. Bradley and
21 Mr. Theissen about whether or not there was an
22 agreement between District 204 and the TTO as to the
23 payment of District 204's business functions and
24 those gentlemen told you, no, there was never an

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1 agreement like that, right?
2 A That's correct.
3 Q Okay. And did they tell you anything
4 else about, you know, why there wasn't an agreement?
5 A They told me they had reviewed the
6 minutes and hadn't found any evidence of a contract
7 and they were not privy to any such discussions.
8 Q When you say, "the minutes," what
9 minutes are you talking about?
10 A The treasurer's office minutes of the
11 board minutes.
12 Q Did you yourself look at the treasurer's
13 board minutes?
14 A Not in totality, no.
15 Q When you say, "not in totality," what do
16 you mean by that?
17 A There were other instances where I would
18 have been able to review the minutes, but I didn't
19 specifically look for any wording regarding this
20 agreement. It would have come up in other work that
21 I have seen in minutes.
22 Q If there was a record in the minutes of
23 the TTO's board indicating an agreement with
24 District 204 and the payment of District 204's

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1 business expenses, would that have any impact on
2 your analysis as to allegedly unpaid pro rata
3 expense amounts?
4 A Well, I didn't see any, so I can't speak
5 to whether -- I mean I was asked to prepare
6 information. I wasn't providing an opinion on any
7 of this data.
8 Q Yes. But what I'm asking you is if
9 there was information in the minutes of the TTO's
10 board indicating an agreement with District 204 on
11 the payment of District 204's business functions as
12 set forth in these memos we're talking about, would
13 that -- if it did exist, would that have any impact
14 or no impact on the analysis you did?
15 A I think you're asking me to form an
16 opinion that I wasn't asked to do. I was asked to
17 compile the differences between the invoices and
18 what payments were had. I was not asked to form an
19 opinion whether there was a contract and how I
20 should handle those memos.
21 Q Okay. So those memos really were
22 irrelevant for the purpose of your work?
23 A I was instructed to solely look at
24 things exclusive of those memos.

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1 Q So who -- and who instructed you to
2 ignore the memos?
3 A They didn't ask me to ignore them.
4 Q Who asked you to not include the memos
5 and the figures and information in the memos as part
6 of your analysis?
7 MR. KALTENBACH: Objection. Misstates
8 prior testimony.
9 BY MR. HOFFMAN:
10 Q Did anyone tell you that?
11 A They told me to compile the differences
12 between the invoices and the payments received.
13 Q Right. But there were also these memos
14 showing offsets against those amounts, right?
15 A Those -- yes.
16 Q And at some point somebody said don't
17 factor those amounts into your analysis, that's not
18 part of it, there's no agreement between the TTO and
19 District 204 on that subject, right?
20 A Yes.
21 Q And you said it was Mr. Bradley and
22 Mr. Theissen. Do you remember whether it was one of
23 them or both of them or --
24 A I don't recall.

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1 Q Okay. But you met with both of them and
2 had a discussion with both of them about this
3 subject, that's why you're not sure which one it
4 was?
5 A Well, I had different discussions at
6 different times. I can't say that they were both in
7 the room at the time of each discussion.
8 Q Okay. And after several years, these
9 discussions kind of blend together in your mind?
10 A Yes.
11 Q I understand that. That's very typical.
12 All right. We've been going about an
13 hour. Let's take a break.
14 (WHEREUPON, there was a short
15 recess taken.)
16 MR. HOFFMAN: Okay. Let's go back on
17 the record. Can you mark this as -- let's call
18 this --
19 MR. KALTENBACH: Yeah. Do you just want
20 to -- do you want to have each witness start with
21 their own set or do you want to sequentially run
22 through the whole case?
23 MR. HOFFMAN: Well --
24 MR. KALTENBACH: Are you going to have

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1 multiple attorneys -- we're off the record.
2 (WHEREUPON, the document was
3 marked for identification as
4 Bradshaw Deposition Exhibit No. 1.)
5 BY MR. HOFFMAN:
6 Q Miss Bradshaw, I'm showing you a
7 document that we've marked as Exhibit No. 1 and that
8 is a notice of deposition for you. Have you seen
9 that before?
10 A I have not.
11 Q Okay. It says in the second paragraph,
12 "By agreement of the parties' counsel, Kelly
13 Bradshaw will bring to the deposition the documents
14 she relied on and the documents she prepared in
15 analyzing plaintiff's payments of investment income
16 to defendant in certain years." Do you see that?
17 A Okay.
18 Q And did you bring those materials with
19 you to the deposition today?
20 A Yes, they did.
21 Q Okay. Okay. So your lawyer actually
22 was the one who schlepped them over, but they're
23 here with us today?
24 A Yes.

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1 Q Okay. Terrific. Okay. I've got two
2 sets of documents. One has got a handwritten
3 notation in the upper right-hand corner that says
4 interest allocation 1 dot XLS produced 2 slash 19
5 slash 2016. Let's mark that as Bradshaw Exhibit 2,
6 please.
7 (WHEREUPON, the document was
8 marked for identification as
9 Bradshaw Deposition Exhibit No. 2.)
10 BY MR. HOFFMAN:
11 Q Can you explain what this document is,
12 please?
13 A This is a compilation of interest
14 earnings given to District 204 comparing Mr. Healy's
15 calculations to the general ledger and then
16 comparing different system reports to identify if
17 there were any differences.
18 Q Okay. And the first page is the
19 summary? Yes?
20 A Correct.
21 Q And the large formatted pages that
22 follow the first page, what are those?
23 A They are -- there's two different
24 analyses, one of which compared Mr. Healy's

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1 calculations to the general ledger and then when we
2 tried to use system reports to compare to the
3 general ledger, we found additional differences.
4 Q And when you say, "we," who is "we?"
5 A Well, I had people reviewing what
6 information was on here, so there were other
7 treasurer's office employees that reviewed certain
8 pieces of data in the documents.
9 Q Who were those people?
10 A At one point every employee was helping
11 me review. At that time it would have been Lauralee
12 Conway, Fran Green, Beverly Carnival, Nancy
13 Bechtold, Mary Woods and Mike Vargas.
14 Q And were you certain of the capabilities
15 and qualifications of all those individuals to help
16 you perform this analysis?
17 A For what they were reviewing, yes.
18 Q Okay. And what made you sure that they
19 were doing the work properly?
20 A Well, I had compiled it first and they
21 were double checking by comparing a report that was
22 in front of them to the Excel spreadsheet and they
23 were checking it off. And based on other work that
24 they've performed, it seemed reasonable that they

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1 could double check the columns.
2 Q And in some instances, these were the
3 same individuals who were involved in the accounting
4 work at the TTO's office when millions of dollars
5 went missing from the office, is that true?
6 A That is true.
7 Q And so why is it you felt that they were
8 capable of helping you with your analysis?
9 A As I said, what they were doing was a
10 very simple comparing of two documents. They were
11 not exposed to the items that Mr. Healy had done,
12 and based on other work that I had seen them do, I
13 felt comfortable they could compare and just double
14 check the numbers I had put down.
15 Q Do you have any understanding as to
16 whether any other employee at the TTO was involved
17 in criminal acts of fraud other than Bob Healy?
18 A With respect to the Amalgamated area?
19 Q With respect to anything?
20 A To my knowledge no one had any
21 understanding that -- of the Amalgamated
22 transactions.
23 I am under the understanding that
24 Beverly Carnival was aware that he was paying

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1 himself additional payroll history.
2 Q So Beverly Carnival, what was her job
3 title?
4 A She was a payroll clerk.
5 Q Okay. And she was aware that Bob Healy
6 was paying himself more than he was supposed to get
7 in income and other benefits, right?
8 A That's my understanding.
9 Q Okay. And how did you obtain that
10 understanding?
11 A When the district attorney's office was
12 interviewing certain employees, I was in the room
13 and that's when --
14 MR. KALTENBACH: I'm going to -- hold
15 on. To the extent attorneys were involved, I don't
16 think you should reveal the substance.
17 MR. HOFFMAN: Well, the district
18 attorney is not --
19 MR. KALTENBACH: I'm just not sure what
20 she meant by district --
21 THE WITNESS: No. This would have
22 been --
23 MR. KALTENBACH: The criminal --
24 THE WITNESS: Yeah, the criminal came

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1 out.
2 MR. KALTENBACH: I'm sorry. Go ahead.
3 BY MR. HOFFMAN:
4 Q Go ahead. You can tell me.
5 A So there was assistant district attorney
6 that was questioning the employees on what
7 information they knew or did not know. And I was in
8 the room at the time.
9 Q What did Miss Carnival say on the
10 subject? And when did that take place?
11 A Gosh, I don't know.
12 Q Well, was it in the 2012 or 2013 time
13 period?
14 A Between '13 and '14. I can't say
15 specifically.
16 Q It was before this analysis that we have
17 in front of you was created, right?
18 A I can't say for certain when it was,
19 whether it would have been before or after.
20 Q Okay. And what did Miss Carnival say in
21 this regard?
22 A I'm paraphrasing, but she indicated that
23 she knew there were certain instances where he was
24 paying himself more than his contract, but that he

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1 had indicated that it was okay and she proceeded
2 with the payments.
3 Q Did she ever alert anybody at the TTO
4 that Healy was getting more in income than he was
5 supposed to get under his contract with the TTO?
6 A Not to my knowledge.
7 Q Okay. And despite her knowledge of this
8 fraud by Mr. Healy and her failure to alert anybody
9 to it, why did you think it was appropriate to
10 have Miss Carnival work on your analyses in this
11 case?
12 A She was part of a team that compared a
13 specific report to a column in here that I had
14 reviewed. And so I was just having a second set of
15 eyes. I felt it was appropriate given she checks
16 payroll numbers for other districts and there have
17 been no other instances of knowing. It wasn't the
18 same situation.
19 Q Okay. And let's mark this as document
20 called interest allocation 2 dot XLS produced 2
21 slash 19 slash 2016 as Bradshaw Exhibit 3, please.
22 MR. KALTENBACH: Which one -- I'm sorry.
23 Which one was 2?
24 MR. HOFFMAN: Interest allocation 1 is

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1 Bradshaw 2. Interest allocation 2 is Bradshaw 3.
2 (WHEREUPON, the document was
3 marked for identification as
4 Bradshaw Deposition Exhibit No. 3.)
5 BY MR. HOFFMAN:
6 Q And what is the difference between
7 interest allocation 1 and interest allocation 2
8 which are also marked as Bradshaw 2 and 3?
9 A When the litigation was filed a second
10 time, I was asked to go over the analysis again and
11 realized that there was a formula error in the --
12 where we were comparing the system reports to the
13 general ledger.
14 Q What was the formula error and who made
15 it?
16 A I made it.
17 Q What was it?
18 A I had -- I can't remember if it was a
19 plus or whether it was a minus. It was in relation
20 to the formula that's in purple.
21 Q The one that says compare GL dif?
22 A Yeah.
23 Q Is that short for compare general ledger
24 difference?

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1 A Correct.
2 Q Compare the general ledger difference as
3 to what?
4 A So we'd have to take a step back and
5 really understand each portion of the analysis, but
6 the specific error was I had the columns subtracting
7 numbers and they should have been added together.
8 Q So you made about a \$200,000 error in
9 your initial analysis, right?
10 A I did.
11 Q And that was in excess of 10 percent of
12 the total amount that you found to be overpaid?
13 A Yes.
14 Q And so instead of \$1.38 million
15 approximately being overpaid to District 204, you
16 went back and decided it was really about
17 \$1.57 million overpaid to District 204?
18 A Yes.
19 Q Okay. And given that you made an error
20 of this magnitude in your initial analysis, why do
21 you feel that it's fair for us to rely upon your
22 analysis that you presented here in interest
23 allocation 2?
24 A I have -- the initial analysis was

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1 prepared very quickly. The second time I had more
2 time to go through and make sure that everything was
3 accurate.
4 Q And so is it fair to say that you're
5 certain sitting here today that the numbers and
6 figures used in interest allocation 2 are correct
7 and there aren't any other errors?
8 A To the best of my knowledge, yes.
9 Q Why don't -- let's use interest
10 allocation 2 which is Bradshaw No. 3 and running
11 through -- and having you explain to me the analysis
12 that you did on interest allocation.
13 So before we get to the specific columns
14 and rows of this document, why don't you tell me who
15 asked you to do what in connection with interest
16 paid to District 204 by the TTO for a period of
17 years?
18 A Mr. Theissen asked me to compare the
19 interest earnings that were received by District 204
20 in comparison to Mr. Healy's calculations and what
21 was actually recorded in the general ledger.
22 Q Did he explain why he wanted you to
23 perform this analysis?
24 A No.

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1 Q Did he tell you what he thought might be
2 the problem and why a comparison might be necessary?
3 A No.
4 Q When did this conversation that you had
5 with Mr. Theissen about this project occur?
6 A Somewhere between -- probably around
7 September 2013.
8 Q Weren't you curious as to why he wanted
9 you to do this and what the point of it was?
10 A I mean there were a lot of job
11 responsibilities at the time. I was being -- there
12 were a lot of things being thrown at me, so I was
13 doing what I was asked to compile at the time.
14 Q Okay. So you didn't ask any questions
15 about why you were doing this, right?
16 A No. I completed what I needed to do.
17 Q Okay. And did Mr. Theissen explain to
18 you why he thought there might be a discrepancy or
19 might be a problem?
20 A No. Just with everything else that had
21 occurred with Mr. Healy, we thought it was prudent
22 to look at the analysis.
23 Q What do you mean, that you found out
24 that Mr. Healy had stolen over a million dollars

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1 from the districts, is that what you mean?
2 A Yes.
3 Q Okay. And at that time did Mr. Theissen
4 ask you to look at the interest payments made to all
5 of the districts in the TTO's jurisdiction?
6 A We started with 204, but then, yes, I
7 did look at other districts.
8 Q Why did you start with 204?
9 A There was the potential of pending
10 litigation and they wanted to know the answer before
11 that litigation was filed.
12 Q Who told you this?
13 A Mr. Theissen.
14 Q Wouldn't it have been easier to look at
15 the interest allocation made to all of the districts
16 at the same time so that you could get a sense of
17 what had been done with respect to all of them?
18 A I don't know that it was easier or
19 harder. Each district needed to be looked at
20 individually.
21 Q Okay. And how many districts were there
22 at this time in September of 2013 to look at?
23 A Well, we went back for the period of
24 time of fiscal 1994 through 2012. And I'm going to

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1 count on my fingers for a moment. So there were
2 approximately 20 districts or co-ops over that
3 period of time that needed to be reviewed, but not
4 all of them had interest earnings in each year.
5 Q I'm sorry. Wouldn't that also have
6 involved your toes if you were counting?
7 Did you look at the interest that the
8 TTO paid to all 20 of those districts over the 1994
9 to 2012 period?
10 A Yes. We did the initial review of those
11 districts.
12 Q When you say, "initial review," what do
13 you mean?
14 A So we -- as we get into understanding
15 this analysis, we performed the first comparison of
16 Robert Healy's calculations to the general ledger.
17 In the other districts, there were no significant
18 variations.
19 Q Did you prepare a report as to the other
20 districts or just to District 204?
21 A This is the district that we went to,
22 both comparisons that you see in front of you.
23 Q I'm sorry. I didn't understand your
24 question. The district that I see -- the report

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1 that I see in front of you is a report for District
2 204, correct?
3 A Correct.
4 Q So where are the reports for the other
5 districts?
6 A We didn't go to this level of analysis
7 for the other districts because on the first pass
8 the districts had small differences, nothing as
9 significant as 204.
10 Q Well, what documents did you produce
11 that showed you that there were only small
12 differences? What reports were there?
13 A I compared the Healy calculations to the
14 general ledger.
15 Q And you prepared a document that showed
16 the comparison between those two things for the
17 other districts, right?
18 A Yes.
19 Q Okay. And where are those documents?
20 A Those are in my files.
21 Q Have those been produced to --
22 A I don't believe so because they don't --
23 they didn't go to the same analysis or critical
24 review because the first pass was di minimus.

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1 MR. HOFFMAN: Barry, I believe you
2 represented to the court in writing that there were
3 no other analyses done for other districts. I will
4 go back and take a look. But without question --
5 MR. KALTENBACH: Let him make a
6 statement.
7 MR. HOFFMAN: -- without question, we
8 want to see those and those should have been given
9 to us and we have a pending motion to compel and
10 order granting the motion to compel.
11 And obviously I would like to ask
12 Miss Bradshaw questions about those documents that
13 I've never seen.
14 So I'm not going to argue with you about
15 it now because that's a waste of everyone's time,
16 but I am going to note for the record that we should
17 have received those and that I reserve my right to
18 recall this witness to ask questions about that
19 subject.
20 MR. KALTENBACH: That's fine. You can
21 note that for the record. I'm not going to respond
22 substantively. I'm not saying I agree. I'm not
23 saying I disagree.
24 MR. HOFFMAN: Okay. Fair enough.

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1 BY MR. HOFFMAN:
2 Q Who chose the 1994 through 2012 time
3 period?
4 A That's the information that was
5 available in their general ledger system.
6 Q What records are there of the TFO prior
7 to the 1994-1995 fiscal year?
8 A They all would be handwritten green bar
9 files.
10 Q Why did you decide that those
11 handwritten green bar files were not files that you
12 should review for years prior to fiscal year 1995?
13 A I didn't decide anything. We just -- in
14 the conversation with Mr. Theissen, he said to use
15 the information that was available in the general
16 ledger.
17 Q The information that was available in
18 the general ledger was computerized, correct?
19 A Correct.
20 Q So starting in 19 -- starting in --
21 would it be easier and would it be fair -- I see in
22 your interest allocation analysis you refer to
23 fiscal year 1995. And that refers to the fiscal
24 year that starts in 1994 and ends July 30, 1995,

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1 correct?
2 A Yes.
3 Q Okay. So just so we can --
4 MR. KALTENBACH: June 30th. You said
5 July. He said it wrong and you heard it wrong.
6 BY MR. HOFFMAN:
7 Q Sorry. My mistake. And, Barry, thank
8 you for correcting. I appreciate that.
9 So fiscal year 1995 as stated in your
10 interest allocation analysis means July 1, 1994,
11 through June 30, 1995, correct?
12 A Yes.
13 Q So is it okay when I ask you questions
14 about this if I refer to that year as fiscal year
15 1995 just like you did?
16 A Yes.
17 Q As a shorthand. Okay. So in order to
18 examine fiscal year 1994 and earlier years and the
19 interest paid to the districts in those years, you
20 would have had to go to handwritten documents rather
21 than computerized records for the general ledger,
22 correct?
23 A 1994 was reviewed as well, but it didn't
24 meet the criteria of a difference.

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1 Q So you -- why did you review 1994?
2 A Because it was also in the general
3 ledger.
4 Q So when you say, "the criteria of a
5 difference," what does that mean, that it was --
6 A So through discussions with Mr. Theissen
7 he decided that if a difference was plus or minus a
8 thousand dollars in any given quarter that it wasn't
9 significant enough to be called a difference. It
10 could have been a rounding or an estimate error.
11 Q What is the accounting basis of that
12 determination?
13 A It's just a business call. It wasn't an
14 accounting determination.
15 Q Do you think that's one that makes sense
16 to you?
17 A I do. I do. It's a di minimus amount.
18 Q Okay. And even if that di minimus
19 amount would have favored District 204, you ignored
20 it in your analysis, correct?
21 A It was not compiled as a total
22 difference. Yes.
23 Q So if District 204 in any one quarter
24 got \$999 less than you determined that they should

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1 have, you ignored that amount, correct?
2 A Yes.
3 Q Okay. And in 1994, there was no
4 significant difference in any of the quarters in
5 1994, right?
6 A There was not.
7 Q And how do you know that? What are you
8 looking at?
9 A I'm looking at the last page of
10 Exhibit 3. And you can see that there are
11 four quarters for fiscal 1994 referred to. One was
12 a 15 cent difference, one was \$130 difference, a 32
13 cent difference and 18 cent difference.
14 Q So for the fiscal year 1994, you had to
15 actually go back and look at hard copy green bar
16 files to determine what the general ledger had for
17 interest payments?
18 A I did not. Fiscal '94 was also in the
19 general ledger.
20 Q I see. So the general ledger started in
21 fiscal year 1994?
22 A Yes. That was the first full year of
23 activity.
24 Q So why isn't -- okay. So you actually

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1 reviewed fiscal year 1994 through 2012, correct?
2 A I did. Yes.
3 Q And then you left fiscal year 1994 off
4 of the summary page because there was no significant
5 difference for that year?
6 A Correct.
7 Q Okay. Why didn't you go back and -- as
8 long as you were going all the way back to 1994, why
9 didn't you also go back to 1993 and 1992 and 1991
10 and 1990 as far back as the records would go?
11 A I wasn't asked to do that.
12 Q Who told you not to do that or who
13 limited your analysis to the fiscal year 1994 and
14 subsequent years?
15 A Mr. Theissen decided the time period
16 that we would be doing the work for.
17 Q And did he tell you the basis for his
18 decision on the time period?
19 A No.
20 Q Did he tell you that it would have taken
21 too much time and effort to look at 19 -- fiscal
22 year 1993 and prior years?
23 A No.
24 Q Okay. Would it have taken that much

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1 more time even though the interest -- even though
2 the general ledger for fiscal year 1993 and prior
3 years was on hard copy, it wouldn't have taken any
4 significantly more time to analyze those years than
5 looking at the electronic records of the general
6 ledger for subsequent years, right?
7 A Yes, it would.
8 Q It would?
9 A Yes.
10 Q How much more time would it take?
11 A I can't speak to it because I didn't
12 look through them, but it's paper documents that
13 you'd have to flip through versus being able to run
14 a specific report for the criteria that you're
15 looking for.
16 Q Do you have any opinion as to whether or
17 not District 204 was paid the right amount by the
18 TTO in fiscal year 1993 and prior years?
19 A I have no way to speak to that.
20 Q Do you have any knowledge as to -- did
21 anyone ever tell you how far back the TTO legally
22 can go in terms of reaching back to claw back money
23 from District 204?
24 A No. I don't know.

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1 Q Okay. But you're not aware of anything
2 that would limit its ability to go back to 1994 and
3 no further back, are you?
4 A I can't speak to what records are
5 available prior to that time.
6 Q What I'm asking you is you don't have
7 any reason to believe that somehow the TTO is
8 limited in its recovery as to only 1994 and that it
9 couldn't make the same claim as to prior years,
10 right? You don't know anything about that?
11 A I don't know.
12 Q Okay. Fair enough. Did Mr. Theissen
13 tell you why he only wanted you to go back to 1994?
14 Was it because the general ledger was electronic
15 only as to those years or did he just not give you a
16 reason?
17 A I can't recall. I mean we talked about
18 what was available electronically, but I don't know
19 if that was the determining factor or not.
20 Q Okay. Do you have any understanding --
21 now, you've prepared an analysis that claims that
22 the TTO overpaid District 204 in interest earnings
23 in the amount of over \$1.5 million for the 1995 to
24 2012 time period, correct?

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1 A Yes.
2 Q Okay. Do you have any idea as to how
3 that happened?
4 A I do not.
5 Q Do you have any knowledge of any -- or
6 did you see any evidence of District 204 somehow
7 asking for a payment of any interest money or
8 earnings in excess of what it might have been
9 entitled to?
10 MR. KALTENBACH: If you -- don't reveal
11 the substance of privileged communications. If you
12 have seen a document -- and I need to ask her what
13 she saw, I guess, because I don't -- I mean if you
14 saw like an e-mail from one of us or a memo from our
15 firm, I don't want you to reveal the substance of
16 that.
17 If you have independent knowledge of
18 something because you've seen a document, then you
19 absolutely can testify as to documents you have
20 seen.
21 BY THE WITNESS:
22 A Okay. So I have seen e-mails from David
23 Sellers at 204 to Mr. Healy requesting additional
24 interest income, them going to lunch, and then

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1 Mr. Sellers thanking Mr. Healy for giving him
2 additional interest income in the subsequent month.
3 BY MR. HOFFMAN:
4 Q And what was the time period of those
5 communications to the best of your knowledge?
6 A It was July 2006. E-mails were in
7 August of 2006.
8 Q Did you ever see any communications
9 between TTO and District 204 between 1994 and 2005
10 having anything to do with the amount of interest
11 paid?
12 A No.
13 Q Okay. And is it your belief that -- are
14 you telling me that the TTO paid District 204 too
15 much money from 1984 through 2012 because of memos
16 that were written in July of 2006 by the business
17 manager of District 204?
18 A When you said 1984, I can't speak to
19 them.
20 Q 1994.
21 A The period of 1994 to 2012, I can't
22 speak to all of why they might have been paid extra
23 money. I could only speak to the fact that I saw
24 that particular e-mail.

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1 Q So your belief or your understanding or
2 your opinion, maybe you can clarify and tell me what
3 it is, but you think that the TTO paid District 204
4 more money than they were entitled to get because
5 District 204 asked them to?
6 MR. KALTENBACH: I'm going to object. I
7 don't think a foundation has been laid. I don't
8 think the witness is qualified to offer an opinion
9 on that issue. And to imply that she has an opinion
10 on that misstates her prior testimony. Subject to
11 that objection --
12 MR. HOFFMAN: I'd ask you to not coach
13 the witness through your objection --
14 MR. KALTENBACH: I don't think I was.
15 MR. HOFFMAN: I think you are.
16 BY MR. HOFFMAN:
17 Q So I'm asking you for your understanding
18 as to how this happened. If you don't have any
19 idea, you can tell me that. But what you did tell
20 me is you saw e-mails in 2006 that in your mind
21 suggested that District 204 was asking for more
22 interest payments? Yes?
23 A In that instance, yes.
24 Q Okay. So we're looking at a period that

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1 started in mid 1994 and continued through mid 2012
2 based on your analysis, correct?
3 A Yes.
4 Q And so what I'm asking you is do you
5 have any understanding as to how these supposed
6 overpayments from the TTO to District 204 occurred?
7 A I can't speak to that other than to
8 identify that there were differences that got
9 recorded between what was asserted should have been
10 interest income to 204 and what actually got
11 recorded.
12 Q Did you talk to employees at the TTO to
13 ask them what happened with respect to these
14 interest payments to District 204?
15 A No one else had any other knowledge of
16 how the interest payments were compiled as Mr. Healy
17 was in charge of all of that.
18 Q Was he in charge of it or was he in fact
19 the only person who was involved in making interest
20 payments?
21 A Well, he would compile the numbers and
22 then he would tell the employees what numbers to
23 book.
24 Q In your opinion as an accounting

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1 professional and CPA, was that an appropriate
2 responsibility for one person at an organization to
3 hold?
4 MR. KALTENBACH: I'm going to object as
5 to lack of foundation. And she's not been disclosed
6 as an opinion witness.
7 MR. HOFFMAN: I'm asking her opinion.
8 She's a CPA.
9 MR. KALTENBACH: I'm not instructing her
10 not to answer.
11 BY MR. HOFFMAN:
12 Q Okay. Was that appropriate for
13 Mr. Healy to be making all of these determinations
14 without any check from anyone else?
15 MR. KALTENBACH: Same objection.
16 BY MR. HOFFMAN:
17 Q In your opinion?
18 A It's not unusual in a small office for
19 that to occur. Could there be better controls?
20 Yes.
21 Q Well, there obviously could have been
22 better controls at the TTO in many respects, isn't
23 that true?
24 MR. KALTENBACH: Same objection.

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1 BY MR. HOFFMAN:
2 Q Yes? Come on.
3 A Yes. We've improved controls
4 significantly since Mr. Healy has left.
5 Q Okay. But the period of time that we're
6 dealing with in this lawsuit is the period of time
7 that Mr. Healy was there, right?
8 A Yes.
9 Q Okay. So my question is what lack of
10 controls did you identify at the TTO with respect to
11 any of the issues we've discussed today having to do
12 with Mr. Healy's reign at the TTO?
13 A I was not asked to compile a list of
14 internal controls for them.
15 Q I'm not asking whether you did or did
16 not compile a list of internal controls, but you're
17 a CPA working with the TTO as an outside
18 professional and were able to examine the operations
19 firsthand. And what I'm asking you is what lack of
20 controls did you observe in the course of your work
21 whether it had to do with this lawsuit or otherwise
22 at the TTO during Healy's period of time as
23 treasurer?
24 MR. KALTENBACH: Objection. Lack of

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1 foundation. Calls for an opinion. Subject to that,
2 you can answer.
3 BY THE WITNESS:
4 A Well, it's a very broad question.
5 BY MR. HOFFMAN:
6 Q It is.
7 A I would say that the predominant lack of
8 control or weak control would be that you had one
9 person that was making decisions and instructing
10 others to do things.
11 Q What's the problem with that ---
12 MR. KALTENBACH: Objection.
13 BY MR. HOFFMAN:
14 Q -- when that happens in your experience?
15 MR. KALTENBACH: Objection. Foundation.
16 Calls for an opinion. You can answer.
17 BY MR. HOFFMAN:
18 Q It does call for an opinion. What's
19 your opinion? What happens when one person is
20 running the whole show?
21 A Well, the opportunity is there for
22 controls to be broken and for things to happen.
23 Q Isn't there also a problem with accurate
24 recordkeeping as well?

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1 MR. KALTENBACH: Objection. Lack of
2 foundation. Vague. Calls for an opinion.
3 BY THE WITNESS:
4 A Recordkeeping isn't necessarily a
5 control, so I can't speak to whether the
6 recordkeeping is the result of one person or not.
7 Recordkeeping is different than accuracy.
8 BY MR. HOFFMAN:
9 Q What you're saying in this analysis on
10 interest income is that Healy's records of interest
11 payments were wildly incorrect, right?
12 MR. KALTENBACH: Objection. Vague.
13 BY MR. HOFFMAN:
14 Q Yes?
15 A I would say that there are differences
16 identified and those are summarized here.
17 Q Well, the differences exceed \$1.5 million,
18 right?
19 A Yes.
20 Q That's a big number, isn't it?
21 A It depends on your -- what materiality
22 is to you.
23 Q I think it's a really big number.
24 What -- so my point is why was there -- in your

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1 analysis, did you form any conclusions as to why
2 there was such a big discrepancy between the records
3 that Bob Healy kept of interest payments and
4 whatever it said in the general ledger?

5 A I couldn't speak to why it occurred. He
6 was not available for any sort of questioning. All
7 we could do was identify what those differences
8 were.

9 Q And nobody at the TTO was able to lend
10 any insight of any kind into how there could be such
11 a huge discrepancy between those sets of numbers,
12 right?

13 A That's correct.

14 Q Now, let's talk about your specific
15 methodology in conducting this interest allocation
16 analysis.

17 How were you as an initial matter able
18 to determine how much income -- how much interest
19 and investment income the TTO made on the funds that
20 it held for the various districts?

21 A I did not determine that. I used the
22 number that Mr. Healy had on his documents.

23 Q What documents were those?

24 A He had a quarterly piece of paper that

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1 summarized income and its allocation to the
2 districts.

3 Q Did you find Healy's quarterly piece of
4 paper summarizing the income and allocation to
5 districts for every quarter in the fiscal year 1995
6 to 2012 period?

7 A No. I think there were some missing.

8 Q What was the effect of those missing
9 documents?

10 A I can't recall how he handled those.

11 Q Well, take your time and look back
12 through your analysis.

13 A I marked them as no data or NA because
14 there was no data.

15 Q Were there also instances in which
16 Robert Healy had a quarterly piece -- by the way,
17 this quarterly piece of paper, was it handwritten or
18 was it a printout of a computer record?

19 A It was mostly handwritten notes.

20 Q Handwritten notes. So this quarter --
21 and can we call that Healy's handwritten quarterly
22 income records?

23 A I think we called them Healy's interest
24 income sheets.

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1 Q Healy's interest income sheets. And in
2 some instances, were these interest income sheets
3 done for a period of time that didn't quite match up
4 to the end of the quarter that were done for other
5 months and other periods that weren't exactly
6 quarterly?

7 A No. There were interest payments that
8 were made that were not on quarterly, but there were
9 never sheets produced on the on quarters.

10 Q So in order to determine how much money
11 the -- so the money that the TTO held for District
12 204 was commingled with the money of all the other
13 districts, correct?

14 A Yes.

15 Q And the income that was earned -- the
16 investment income or interest income -- let's just
17 call it income, right?

18 A Okay.

19 Q Okay. So the income that was earned was
20 income that was earned on the whole pool of funds
21 involving District 204 and the other districts'
22 money, right?

23 A Yes.

24 Q And so you got the amount that was made

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1 by District 204 in interest income from Healy's
2 handwritten notes called Healy's interest income
3 sheets, correct?

4 A I got the money that was distributed on
5 those handwritten sheets, yes.

6 Q Well, I don't mean -- first, in order to
7 figure out how much money should have been paid to a
8 particular district, you'd have to know how much
9 money the TTO earned in that period of time,
10 wouldn't you?

11 A I was asked to compile the numbers that
12 Healy used for interest income.

13 Q Right. But what I'm saying is you'd
14 have to know -- in order to figure out how much
15 should have been paid to district 204 in a given
16 fiscal year, you'd have to know how much money the
17 TTO made in income and then how much of that income
18 was -- belonged to on a percentage basis to District
19 204, right?

20 A I wasn't asked to look at the actual
21 interest income. I was asked to compare what
22 Mr. Healy said was income versus what was
23 distributed.

24 Q What's the difference between the actual

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1 interest income and what Mr. Healy said was the
2 interest income? I'm not sure I understand what you
3 mean.

4 A I don't -- I don't have an actual number
5 to compare in those years. I was asked to look at
6 the interest income that he said he was distributing
7 to what was really distributed.

8 Q So you have no idea and it is not part
9 of your analysis to determine how much money the TTO
10 actually earned in interest income for each fiscal
11 year?

12 A Yeah. I don't know that.

13 Q And in order to determine that
14 information, wouldn't you -- wouldn't you have to go
15 back and look at the source documents from
16 investment brokers and advisors and banks and other
17 financial institutions to actually check and see how
18 much money the TTO earned in a given year in
19 interest?

20 A Is there a question in there? I'm
21 sorry.

22 Q Yes. There was at the end. Could you
23 read it back, please?

24 (WHEREUPON, the record was read

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1 by the reporter as requested.)

2 BY THE WITNESS:

3 A Yes.

4 BY MR. HOFFMAN:

5 Q Okay. And you didn't perform that
6 analysis, correct?

7 A I did not.

8 Q Why not?

9 A I wasn't asked to.

10 Q Okay. But as a CPA, don't you think
11 that that would be an important part of your
12 analysis in trying to determine whether District 204
13 actually got the amount of money that it should have
14 gotten?

15 A I wasn't asked to give an opinion. I
16 was asked to compile data and compare it. That's
17 different than actually trying to have an opinion on
18 what should have been included in the analysis.

19 Q So this one -- this number that's in the
20 bottom right-hand corner of Bradshaw 3, it's
21 \$1,574,636.77, what in your estimation based on your
22 analysis does that figure represent?

23 A It represents the difference between
24 what income Mr. Healy said was to be distributed

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1 versus what was actually given to District 204.

2 Q So this number doesn't represent the
3 amount that District 204 received in interest that
4 it should not have received in interest based on the
5 actual earnings of the TTO on its money that the TTO
6 was holding for it?

7 A I can't speak to whether it was the
8 actual earnings or if there would have been any
9 differences between the numbers as to Healy
10 represented versus actual.

11 Q Okay. So how confident were you in the
12 accuracy of the figures contained in the general
13 ledger in the course of performing your analysis?

14 A I mean it's a system-generated report
15 that has been audited by the various districts'
16 auditors, so I chose to rely on the actual DCR
17 information from the general ledger.

18 Q Well, you didn't completely rely on the
19 general ledger information, did you?

20 A I don't understand the question.

21 Q Well, in looking at this summary on
22 interest allocation 2 which is also Bradshaw Exhibit
23 No. 3 which you've got in front of you, you've got a
24 column for each fiscal year on the left side and in

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1 the next column is RH calculation versus general
2 ledger plus or minus \$1,000 per quarter. Do you see
3 that?

4 A Yes.

5 Q Why don't you tell me what that column
6 represents.

7 A So that column is comparison of the
8 Healy interest sheets versus the GL detail for
9 interest.

10 Q And then you've got a column to the
11 right that says additional differences relating to
12 system reports versus RH figures used. What does
13 that column represent?

14 A Given we had seen differences in the
15 first comparison, we wanted to try and validate
16 whether the fund balance information that Mr. Healy
17 had on his sheets was accurate, so we pulled general
18 ledger fund balance reports.

19 Q I don't understand that. Can you
20 explain that to me a little better --

21 A Sure.

22 Q -- given that I'm not an accountant like
23 you are.

24 A So at the end of each month, the system

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1 will generate what's called a fund balance report.
2 For school districts, they are required to have
3 certain individual funds like operations, education
4 funds, various other funds, and all of their
5 accounting is supposed to be allocated between those
6 funds. And the sum of all of those funds is what
7 the interest income is supposed to be allocated
8 based on.

9 Q So were these additional system reports
10 that you used somehow in conflict with the
11 information in the general ledger such that they
12 required further correction?

13 A Well, it wasn't within the general
14 ledger. It would have been in conflict with
15 Mr. Healy's -- the information Mr. Healy had on his
16 interest income sheets.

17 Q So what information -- the first column
18 where you're comparing Healy's calculations to the
19 general ledger, what types of figures are you
20 comparing there?

21 A That would have been the calculated
22 interest allocation for 2004 on Mr. Healy's interest
23 income sheets compared to the general ledger amounts
24 for interest in that same time period.

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1 Q And why do you -- given all the problems
2 at the TTO during Healy's time as treasurer, why do
3 you think that the general ledger is accurate and
4 can be relied on as opposed to Healy's handwritten
5 materials?

6 A Well, again the general ledger detail
7 would have been audited that that journal entry
8 actually took place and was included in each
9 district's audits which would have been audited by
10 other auditing firms.

11 Q Are you confident that Baker Tilly and
12 its predecessors did an appropriate and thorough job
13 in auditing the TTO for fiscal years 1995 through
14 2012?

15 A Well, that would speak to a different
16 area, but with regard to the actual interest that
17 received, there would be Baker Tilly or other
18 auditors that are looking at whether the individual
19 districts received a journal entry for interest
20 income. And you can see the journal entry. And so
21 if that -- if those numbers are included in their
22 annual financial report, then they are audited
23 numbers.

24 Q Right. And you -- but my question is if

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1 the general ledger numbers are audited, you would
2 still have to believe in order to rely on those
3 numbers that the auditors did the right thing and
4 did a good job, wouldn't you?

5 A I mean there's an audit opinion out
6 there that you would be relying on. I can't speak
7 to the quality of each individual firm's audits.

8 Q Are you aware that the TTO threatened to
9 sue Baker Tilly for audits that it performed for the
10 TTO?

11 A Yes.

12 Q And are you aware of the basis upon
13 which the TTO made those threats? In other words,
14 are you aware of why the TTO believed that Baker
15 Tilly had done a deficient job in auditing the TTO?

16 A I'm not.

17 Q Are you aware of the current status of
18 that claim of the TTO against Baker Tilly?

19 A All I'm aware of is that there is a
20 tolling agreement between the treasurer's office and
21 Baker Tilly. I haven't seen the document nor
22 understand what it relates to.

23 Q Neither have I, interestingly enough,
24 Barry. And that was something that you had agreed

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1 to provide to me, so I would like to see that.

2 But -- so it's your understanding that the TTO's
3 claim against Baker Tilly is subject to a tolling
4 agreement which stops the statute of limitations and
5 therefore that claim is still pending, right?

6 A Yes.

7 Q And even with that knowledge, you think
8 it's appropriate to rely upon the audited numbers
9 from the general ledger?

10 A Again you have to compare to a specific
11 source document. They -- those audits at the
12 district level are -- all we're witnessing is that
13 there's a specific journal entry that has been made,
14 so I can see the journal entry that has been made
15 and I feel comfortable relying on the general ledger.

16 Q Okay. Did you go back and check those
17 journal entries against copies of checks or bank
18 statements?

19 A There wouldn't be copies of checks or
20 bank statements in this instance. The interest
21 distribution is solely done via a journal entry.

22 Q I see. Because it's all -- because the
23 TTO is holding the money, it simply moves the money
24 from one pocket to another essentially?

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1 A Right. So there's no real cash movement
2 that is done.
3 Q I see. So that comparison of Robert
4 Healy's handwritten documents to the general ledger
5 produced a claimed overpayment of about
6 \$1.477 million as we see in the second column of
7 your summary, right?
8 A Yes.
9 Q So explain to me why there's an
10 additional \$97,000 beyond the general ledger where
11 you found what you identified as other problems or
12 discrepancies that work in the TTO's favor?
13 A So the difference between the two
14 columns is when you're comparing the fund balance
15 information, we use the summary of fund balance
16 report if it was available, calculated a revised
17 percentage and then --
18 Q Percentage of what?
19 A Of what their percentage allocation of
20 interest should be. So if they were -- if they
21 were -- for example, let's say the fund balance was,
22 you know, 25,000 out of a \$100,000, they're 25
23 percent of the pool, right?
24 Q Right.

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1 A So if the summary fund balance number
2 said that it was 27 instead of 25, that would give
3 them a different percentage of the interest for that
4 particular quarter.
5 Q So you used -- these additional
6 differences in the third column have to do with
7 adjustments that you made into the percentage of
8 income District 204 was entitled to receive from the
9 overall pool, correct?
10 A Yes.
11 Q Okay. And it was adjusting -- so those
12 numbers were not contained in the general ledger, is
13 that correct? The percentages. Or were they in the
14 general ledger --
15 A No. The percentages are never --
16 they're not on Mr. Healy's interest sheets or on any
17 document in the general ledger.
18 Q Okay. So, so that I understand this and
19 I don't want to put words in your mouth, but if I
20 can say it and it make sense, then maybe I have some
21 hope of understanding this.
22 Am I correct that the \$97,000 difference
23 is based on what you perceive to be errors in the
24 percentage allocation to District 204 in a given

Page 99

1 year as opposed to the amount that was actually paid
2 to them?
3 A Yeah. That would probably be a fair
4 representation.
5 Q Okay. And if you're saying in this
6 analysis that the amount that Robert Healy wrote
7 down as to the amount of interest due District 204
8 was frequently incorrect and that's -- that is what
9 this says essentially, yes? That Robert Healy's
10 handwritten record of how much money should be paid
11 to District 204 in many years was wrong, yes?
12 MR. KALTENBACH: I'm going to object to
13 the form of the question.
14 BY MR. HOFFMAN:
15 Q Does that question make sense to you?
16 A No.
17 Q Okay. So the Robert Healy calculation
18 of interest due District 204 is different than the
19 amount that was paid -- oh, let me start off asking
20 you a different question.
21 So Healy paid interest to the districts
22 on a quarterly basis or sometimes not quite a
23 quarterly basis, is that right?
24 A The predominance would be on a quarterly

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1 basis.
2 Q But sometimes it was off by a month or
3 two, is that fair to say?
4 A It would be a rare instance.
5 Q Did Healy -- but it did happen, right?
6 A Yes.
7 Q Did Healy pay estimated amounts in the
8 first three quarters and then pay a trued-up number
9 in the final quarter of each fiscal year?
10 A I can't speak to what -- how he decided
11 that number.
12 Q Well, in some quarters, the amounts that
13 Healy paid in interest were round numbers, is that
14 right?
15 A Yes.
16 Q Or amounts Healy recorded as being due
17 the districts were round numbers, is that right?
18 A Yes.
19 Q And in some instances, the amount that
20 was actually paid in accordance with the general
21 ledger were round numbers, correct?
22 A I'd have to go back and review it. I
23 don't recall.
24 Q Take a quick look. You can tell that

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1 from this document, can't you?

2 A Uh-huh. There really aren't any round
3 numbers in the allocations to the general ledger.

4 Q So sometimes the --

5 A But that would be -- I mean that's what
6 was due to 204. I mean so I was responding
7 specifically to your question that the amounts given
8 to the district were flat numbers.

9 Q So I guess what I'm saying is Healy's
10 records of the amount that was due District 204, his
11 handwritten records that you're saying were largely
12 incorrect, did those show estimated amounts for some
13 quarters or were they always specific and detailed
14 numbers, dollars and cents?

15 A I didn't say that they were largely
16 incorrect. Those are your words.

17 Q Okay. They were incorrect in a majority
18 of the fiscal years according to this analysis,
19 right?

20 A I don't know what reports he used, so I
21 can't speak to if he had a piece of paper that he
22 thought was accurate in front of him. I can only
23 comment on the reports that were available to me as
24 system-generated reports.

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1 Q I see. So there was a 1.477
2 approximately million dollar difference between
3 Healy's numbers on interest payments and the numbers
4 recorded in the general ledger, correct?

5 A That one is correct, yes.

6 Q And your belief is that the general
7 ledger's information is correct and that Healy's
8 calculations are wrong, is that true or not true?

9 A I believe --

10 Q Are you making that valued judgment or
11 not or are you just saying there's a difference?

12 MR. KALTENBACH: Hold on. I'm going to
13 object to a compound question there.

14 BY MR. HOFFMAN:

15 Q Yeah. I mean I just want to make sure I
16 understand you right. So you've identified -- let
17 me ask you a better question. You've identified a
18 difference -- significant difference between Healy's
19 interest calculations and the general ledger's
20 payment records, yes?

21 A Yes.

22 Q And are you saying here today that there
23 is this difference or are you saying that Healy's
24 numbers were wrong and the numbers in the general

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1 ledger were right?

2 A I'm saying that the general ledger is
3 what was received by the district.

4 Q Well, right. And are you saying that
5 the general ledger amounts -- so you're saying that
6 therefore that Healy's calculations were incorrect
7 because they didn't reflect the amount that was
8 actually paid to the district?

9 A All I can identify is that there's a
10 difference. I can't speak to which one is correct,
11 but they received more than Mr. Healy's interest
12 sheets.

13 Q Okay. And so in terms of relying on --
14 in terms of trying to determine how much should have
15 been paid to District 204, you think the best source
16 for how much District 204 was overpaid, you think
17 the best source of information is the general
18 ledger, right?

19 MR. KALTENBACH: I'll object to the form
20 of the question. You can answer.

21 BY MR. HOFFMAN:

22 Q Is that true?

23 A I'm sorry. I didn't understand the
24 question.

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1 Q In terms of your analysis claiming that
2 District 204 was overpaid interest money, interest
3 income, you think the best source of information is
4 the amount stated in the general ledger, right?

5 MR. KALTENBACH: Objection to the form.
6 You can answer.

7 BY THE WITNESS:

8 A The general ledger says what they were
9 actually paid. And I've identified differences
10 between Mr. Healy's spreadsheets and what they were
11 actually paid.

12 BY MR. HOFFMAN:

13 Q Okay. And again you don't have any
14 understanding as to why there is this difference?

15 A I do not.

16 Q Okay. Yet at the same time you're
17 relying on Healy's figures in his handwritten
18 reports as to how much income was earned, aren't
19 you?

20 A That was just what was -- he was
21 intending to distribute. I wasn't asked to compare
22 that to any real or unreal interest income.

23 Q But in this analysis, aren't you
24 assuming that Healy's figures in his handwritten

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1 reports on interest earned are correct for purposes
2 of this analysis?
3 A I'm not assuming they're correct. I'm
4 assuming that's what he intended to distribute.
5 Q Okay. You've -- you've seen the -- have
6 you ever seen the complaint in this case that the
7 TTO filed?
8 A No. I haven't seen this complaint.
9 Q Okay. So let's mark that as Bradshaw 4.
10 (WHEREUPON, the document was
11 marked for identification as
12 Bradshaw Deposition Exhibit No. 4.)
13 BY MR. HOFFMAN:
14 Q Have you seen this document before?
15 A I have not.
16 Q This is -- this is District 204's Answer
17 to the Amended Complaint of the TTO. Did you ever
18 see the original complaint of the TTO or the amended
19 complaint of the TTO even if you haven't seen the
20 answer?
21 A I believe I saw a draft of the initial
22 complaint, but I never saw the final draft.
23 Q Okay. And who showed you a copy of the
24 draft complaint?

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1 A I don't recall.
2 Q Was it lawyer or was it Mr. Bradley or
3 Mr. Theissen?
4 A I believe I would have been included
5 with Jerry Kubasiak and others at the TTO when I
6 would have seen the draft.
7 Q Okay. So it was at a meeting attended
8 by Gerald Kubasiak, the attorney for the district?
9 A Yes.
10 Q Did you review the -- did you review and
11 make any comments on the draft complaint?
12 A I don't recall.
13 Q Okay. And take a look at paragraph 44,
14 please. Paragraph 44 of the TTO's amended complaint
15 states, quote, "In fiscal years 1995 through 2012,
16 the treasurer erroneously allocated \$1,574,636.77 in
17 interest on investments to District 204," quote. Do
18 you see that?
19 A Yes.
20 Q Do you believe that that is a correct
21 statement?
22 MR. KALTENBACH: Objection as to form
23 and foundation, but you can answer.
24

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1 BY MR. HOFFMAN:
2 Q Do you know whether or not that's true?
3 MR. KALTENBACH: Well, it's a different
4 question.
5 BY MR. HOFFMAN:
6 Q All right. Let's start with the first
7 one. Is this a correct statement to the best of
8 your knowledge?
9 MR. KALTENBACH: Objection as to form
10 and foundation.
11 BY THE WITNESS:
12 A To my knowledge there are differences
13 between Mr. Healy's calculation and what was
14 recorded in the ledger.
15 BY MR. HOFFMAN:
16 Q But that is not my question with all due
17 respect. My question, ma'am, was whether the
18 statement, "In fiscal years 1995 through 2012, the
19 treasurer erroneously allocated \$1,574,636.77 in
20 interest on investments to District 204," unquote,
21 whether that is to the best of your knowledge a
22 correct statement?
23 A I mean to the best of my knowledge there
24 are differences that would make it erroneous.

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1 Q Okay. So is it your opinion -- is it
2 your testimony based on the analysis you performed
3 that the treasurer erroneously allocated the amount
4 stated in paragraph 44 in interest on investments to
5 District 204?
6 MR. KALTENBACH: I'll object as to form
7 and foundation. Also calls for the witness to
8 render an opinion.
9 BY THE WITNESS:
10 A I'm willing to say that there are
11 differences between Mr. Healy's calculations and the
12 general ledger. I wasn't asked to form an opinion
13 as to the correctness. I was asked to identify the
14 differences and compile those differences.
15 BY MR. HOFFMAN:
16 Q And that's what I'm trying to determine
17 is the limit of your analysis. And so is it true
18 that you have no opinion as to whether the
19 allegation in paragraph 44 of the amended complaint
20 is true or not? You have no opinion on that based
21 on your analysis? You have identified differences,
22 but you have no opinion as to whether the treasurer
23 erroneously paid over \$1.5 million in investment
24 income to District 204, correct?

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1 MR. KALTENBACH: Objection as to form.
2 BY THE WITNESS:
3 A I mean given the general ledger is
4 different than what he asserted was to be
5 distributed, that is an error.
6 BY MR. HOFFMAN:
7 Q That is not my question.
8 Read my question back, please.
9 (WHEREUPON, the record was read
10 by the reporter as requested.)
11 BY THE WITNESS:
12 A I mean there's an error in that there
13 are differences.
14 BY MR. HOFFMAN:
15 Q That's not my question.
16 A I don't understand --
17 MR. KALTENBACH: He didn't ask you a
18 question. He just made a statement.
19 BY MR. HOFFMAN:
20 Q You've identified differences between
21 two sets of numbers, correct?
22 A Yes.
23 Q Okay. But what I'm asking you is
24 something different which is do you have an opinion

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1 as to whether the treasurer actually overpaid
2 District 204 over \$1.5 million in interest during
3 the time periods that we're talking about which is
4 the allegation that's made in paragraph 44?
5 MR. KALTENBACH: Objection.
6 BY MR. HOFFMAN:
7 Q You can say I believe that's correct
8 based on the analysis that I did. You can say that
9 I can't verified this because my analysis was more
10 limited. Or you can say anything you want. But I
11 want to know whether or not your analysis -- how
12 your analysis relates to the statement of fact in
13 paragraph 44 of the amended complaint.
14 MR. KALTENBACH: Objection. Form. And
15 significantly compound which is part of form. And
16 foundation.
17 BY MR. HOFFMAN:
18 Q Do you understand the question?
19 A This last one, no. You compiled many
20 things into there.
21 Q Okay. Let me ask you a better question.
22 Paragraph 44 of the amended complaint states, "In
23 fiscal years 1995 through 2012, the treasurer
24 erroneously allocated \$1,574,636.77 in interest on

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1 investments to District 204," quote. Based on the
2 analysis you performed, do you have any opinion as
3 to whether the statement that I just read you in
4 paragraph 44 of the amended complaint is accurate?
5 MR. KALTENBACH: Objection as to
6 foundation and form and calls for the witness -- to
7 the extent it might call for the witness to make an
8 opinion.
9 BY THE WITNESS:
10 A It would appear to me that they were
11 overallocated interest income.
12 BY MR. HOFFMAN:
13 Q So it's your opinion based on your
14 analysis and your professional background that
15 District 204 received a little over \$1.5 million in
16 interest income from the TTO during these years more
17 than it should have, correct?
18 MR. KALTENBACH: Objection. Form.
19 Foundation. Calls for --
20 BY MR. HOFFMAN:
21 Q Am I correct? Is that correct?
22 A The numbers --
23 MR. KALTENBACH: Same objection. You
24 can answer.

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1 MR. HOFFMAN: Please stop interrupting
2 the witness and let her answer already.
3 MR. KALTENBACH: Hold on a minute, Jay.
4 MR. HOFFMAN: Come on, Barry.
5 MR. KALTENBACH: No, Jay. You asked a
6 question. I have to get my objection on the record
7 before she answers as a general rule. You keep --
8 every time I ask -- I object, you then throw in
9 another question. You ask a question, I object, she
10 answers.
11 BY MR. HOFFMAN:
12 Q Okay. You can go ahead and answer.
13 A I don't even remember the question
14 anymore. There's been so many conversations going
15 on back and forth.
16 Q Okay. You can read it back.
17 (WHEREUPON, the record was read
18 by the reporter as requested.)
19 BY MR. HOFFMAN:
20 Q Go ahead.
21 MR. KALTENBACH: Are you reasking the
22 question she just read?
23 MR. HOFFMAN: I want her to answer the
24 question that the court reporter just read back.

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1 Are you going to interrupt your witness again?
2 MR. KALTENBACH: First of all --
3 MR. HOFFMAN: She just read your
4 objection again. So how many times do you want to
5 go through this?
6 MR. KALTENBACH: Well, how about we
7 don't talk over each other, first of all, because I
8 think that's pretty fair. I'm trying to figure out
9 what question you're asking her because the court
10 reporter just read at least two different questions
11 back.
12 MR. HOFFMAN: She did not.
13 MR. KALTENBACH: Okay. We disagree.
14 BY MR. HOFFMAN:
15 Q Is that correct? That's -- answer the
16 question, please, or do you want it read back one
17 more time?
18 A Could you read just the larger question
19 without all of the noise after it, please?
20 MR. HOFFMAN: Thank you. I agree that
21 would be helpful.
22 (WHEREUPON, the record was read
23 by the reporter as requested.)
24 MR. KALTENBACH: Same objection. You

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1 can answer.
2 BY THE WITNESS:
3 A Yes.
4 MR. HOFFMAN: Thank you.
5 MR. KALTENBACH: Jay, it's been another
6 hour. Do you want to take a short break?
7 MR. HOFFMAN: Absolutely. Let's do it.
8 (WHEREUPON, there was a short
9 recess taken.)
10 BY MR. HOFFMAN:
11 Q Back on the record, please. All right.
12 Would you be kind enough to tell me what are
13 contained in the additional files that you and your
14 counsel brought with you today which are contained
15 in three Redwell folders and then some
16 binder-clipped spreadsheets?
17 And why don't we run through them one by
18 one. And this is where my Sharpie is going to come
19 in handy assuming the -- oh, dear. I just saw it.
20 MR. KALTENBACH: Did you take it back to
21 your office?
22 (WHEREUPON, discussion was had
23 off the record.)
24

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1 BY MR. HOFFMAN:
2 Q All right. So let's start with -- tell
3 me what these materials are generally, please.
4 A So these two are Mr. Healy's interest
5 sheets.
6 Q Okay. So would you please take my
7 beloved Sharpie and write on the actual exterior of
8 the Redwell file what is contained in that Redwell
9 and then write your name and the date, please.
10 A So they're asserting that they brought
11 1993 through 2000 in this first folder.
12 Q It has a yellow Post-It note --
13 MR. KALTENBACH: Right. That's not
14 Kelly's handwriting.
15 BY MR. HOFFMAN:
16 Q There's a yellow Post-it note taped to
17 this folder that says, "quarterly distribution of
18 interest produced," and it's got the word "not"
19 crossed off and it has 7-15-15 and then "some to be
20 replaced done 1993 and 2000 1 of 2." And then the
21 next Redwell says -- says, "quarterly distribution
22 of interest 2000 to '12, 2 of 2." So these work
23 together, yes, these two Redwells?
24 A Yes.

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1 MR. KALTENBACH: And that's just I think
2 because it's a recycled Redwell.
3 MR. HOFFMAN: Okay. Wherever it says
4 WaMu exhibits, that has nothing to do with this
5 case. Let's cross that out, shall we?
6 MR. KALTENBACH: That's fine.
7 MR. HOFFMAN: And this Di Bernardino has
8 nothing to do with the case either.
9 MR. KALTENBACH: No. Just a recycled
10 Redwell.
11 MR. HOFFMAN: Let's cross that out.
12 Glad to see it being recycled.
13 BY MR. HOFFMAN:
14 Q So write on these Redwells what they
15 are, please. All right. And can you put No. 1 on
16 Redwell No. 1 and No. 2 on Redwell No. 2, please.
17 And then would you put your name on both
18 of those so we know the source of them and the date
19 of today which is October 25, 2016.
20 And then mark this as 5 and 6.
21 (WHEREUPON, the folders were
22 marked for identification as
23 Bradshaw Deposition Exhibit
24 Nos. 5 and 6.)

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1 BY MR. HOFFMAN:
2 Q Okay. So we marked as Bradshaw Exhibit
3 No. 5 the Redwell marked as Healy quarterly interest
4 sheets No. 1. And we marked as Bradshaw Exhibit
5 No. 6 the Redwell marked as Healy quarterly interest
6 sheets No. 2.
7 Are these your original documents or
8 are these copies?
9 A They appear to be copies.
10 MR. HOFFMAN: Okay. And what I would
11 like to do is have these copied. And I'd like the
12 copies to go to you and me, Barry, and then have the
13 originals be part of the transcript. Is that all
14 right? Or would you like me to make a copy --
15 MR. KALTENBACH: We'll figure it out.
16 MR. HOFFMAN: Obviously I want this -- I
17 want these part of the record and I want to get a
18 copy. So you and I will figure out some way to do
19 this.
20 BY MR. HOFFMAN:
21 Q So let's talk about the Healy quarterly
22 interest sheets. What are these and what part do
23 they play in your analysis, please?
24 A So the quarterly interest sheets were

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1 used to compile the columns in interest allocation
2 2 --
3 MR. KALTENBACH: Refer to the exhibit
4 number.
5 BY THE WITNESS:
6 A I'm sorry. Exhibit No. 3. So the date,
7 the 204 FB per RH --
8 BY MR. HOFFMAN:
9 Q Yes.
10 A -- the total average FB and the column
11 that says income.
12 Q Right. Why is the column that says
13 income a round number for all of these entries at
14 least on the first page of your spreadsheet?
15 Actually on both pages of the spreadsheet that
16 you're referring to.
17 A That's the number I compiled from the
18 Healy interest sheets. I can't speak to why the
19 number is what it is.
20 Q Well, isn't it impossible for the actual
21 interest that the TTO earned on its investments,
22 impossible for it to have been a round number to the
23 nearest 50,000 or thousand dollar in all of the
24 fiscal years 1995 through 2012?

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1 A I can't speak to that as I was just
2 taking the number off of Healy's interest sheets.
3 Q But so what you're saying is these could
4 be -- all of these statements of income from Healy's
5 interest sheets could all be exactly the amount of
6 interest that the TTO earned in each of these
7 quarters?
8 A I can't speak to whether they were
9 earned or not. This is the number that he was
10 asserting to distribute.
11 Q But the amount that Healy intended to
12 distribute wasn't necessarily a percentage of the
13 amount of money that was actually earned, was it?
14 A I can't speak to whether it is or it
15 isn't.
16 Q Doesn't that have an impact on whether
17 your analysis supports a claim of \$1.5 million
18 overpayment to District 204?
19 A That isn't what I was asked to do. I
20 was asked to compile from the -- the amount that he
21 wanted to distribute, what the differences were.
22 Q Right. But in order to best determine
23 how much District 204 deserved to be paid each year
24 from the income earned, you would have to know

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1 exactly how much income was earned and then exactly
2 what percentage District 204 was entitled to get,
3 right?
4 A I can't speak to what the process should
5 have been. All I can do is take the number that he
6 said he was distributing.
7 Q The fact that in every single quarter
8 it's a round number, doesn't that indicate that
9 Healy's numbers are all approximations in terms of
10 the income earned?
11 A I can't speak to that.
12 Q So, in your opinion, there's about, oh,
13 30 numbers on the income column in the second and
14 third pages of Bradshaw Exhibit 2 and every single
15 one of them end in 000. Do you see that?
16 A Yes.
17 Q And so your statement is you don't know
18 whether or not those numbers are exact amounts of
19 income that was earned by the TTO in those years.
20 You can't tell?
21 A I cannot tell.
22 Q In your professional opinion, they could
23 be amounts actually earned and they could be
24 estimates, you don't know?

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1 A I can't speak to whether they're
2 accurate or not.
3 Q Okay. And you made no effort because
4 you were asked to make no effort to compare the
5 income figures in Healy's quarterly interest sheets
6 to the source documents from financial institutions
7 and brokers, correct?
8 A I made no comparison.
9 Q And based on what you -- the analysis
10 you did in 2012 trying to figure out how much --
11 what the investments were that the TTO held, is it
12 even possible for somebody solely looking at the
13 records of the TTO maintained from 1995 to 2012, is
14 it possible for someone to go back and determine
15 exactly how much income the TTO earned in each year
16 based on source documents?
17 A I wouldn't be able to know that.
18 Q How come you don't know that?
19 A Because I wasn't asked to compile income
20 in those years.
21 Q But aren't you aware that there were
22 missing financial statements that required you to
23 make phone calls to banks and try to figure out
24 where the investments were?

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1 A Yes.
2 Q So doesn't the fact that you had to call
3 those financial institutions mean that there is --
4 that there are not documents that would tell
5 somebody looking at the documents how much income
6 was earned on all of the investments of the TTO in
7 all of these years? Isn't that fair to say?
8 A No. Because I can't speak to -- that
9 was a point in time where the documents weren't
10 readily available. I can't speak to the accuracy of
11 what recordkeeping is there or not in those years
12 because I wasn't asked to compare the income to what
13 Mr. Healy intended to distribute.
14 Q Okay.
15 A Comparing two separate scenarios.
16 Q One of the years you did look at in
17 terms of interest analysis was the fiscal year 2012,
18 correct? That was the final year of your analysis?
19 A Yes.
20 Q And in fact in 2012, you know that for
21 that fiscal year there are not records sufficient to
22 identify all of the investments in the TTO and all
23 of the income earned on those investments, correct?
24 A For that particular point in time, yes.

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1 Q Okay. For that fiscal year 2012, maybe
2 not the others, but for that one, the records are
3 not all there, right?
4 A They weren't readily available at the
5 time that we were trying to prepare for the audit.
6 Q Are they there now?
7 A For 2012, yes. We believe we had all
8 the records.
9 Q Okay. And what about 2011?
10 A I can't speak to that.
11 Q And any prior years, same answer?
12 A Yes.
13 Q Okay. Now, let's take a look at this
14 third Redwell which says month end. Do you see
15 that?
16 A Yeah.
17 Q Is that your handwriting?
18 A No.
19 Q Okay. And it also says on yellow
20 Post-it-notes interest income, it says C5 or
21 maybe --
22 A Yeah. That's a DCR specific name of a
23 report to run.
24 Q Okay. So a C5 is a report run on the

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1 DCR which is the general ledger?
2 A Yes.
3 Q Okay. And then it also has a Post-it
4 note that says related to interest income analysis
5 applicable to items 12 and 47. Do you see that?
6 MR. KALTENBACH: I'm sorry. Can I see
7 that? Yeah, you know what, I didn't even notice
8 that was on there. I'm going to remove that
9 because --
10 MR. HOFFMAN: That has to do with your
11 document production?
12 MR. KALTENBACH: Yeah. It might.
13 MR. HOFFMAN: Or lack thereof.
14 MR. KALTENBACH: Jay, come on. Stop the
15 snide comments. Yeah. This may have been intended
16 to be work product of our office. The other stuff
17 is arguably too, but it's germane.
18 MR. HOFFMAN: Fair enough. I understand.
19 BY MR. HOFFMAN:
20 Q What are -- what is this -- so this
21 Redwell has the general ledger documents that you've
22 used to compare to the Healy calculations, correct?
23 A Yes. I used an electronic form of that.
24 We produced those for the discovery.

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1 Q Okay. So these are a hard copy version
2 of the electronic pages that you looked at?
3 A Right. I reviewed those to determine
4 what to include for the general ledger number.
5 Q Okay. So would you be so kind, please,
6 as to do the same task with this Redwell and put in
7 your handwriting what this Redwell contains and then
8 add your name and date, please.
9 All right. Now, Miss Bradshaw, would
10 you explain the statement that says C5 and then it
11 says 1510 A slash C GIL reports. What is that
12 shorthand for?
13 A C5 is the name of the report in DCR.
14 1510 is what the state calls a function code. A
15 slash C is short for account. G slash L is short
16 for general ledger.
17 Q Gotcha. Okay. Great. And then there's
18 also a series of documents. There are three
19 documents that are stapled together.
20 A Those are three individual copies.
21 These are the only ones that are -- aren't they?
22 MR. KALTENBACH: Yeah. That should be
23 three copies of that spreadsheet.
24 MR. HOFFMAN: All right. So let's --

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1 what we're going -- correct. Thank you. So the
2 Redwell that we're looking at called for the C5
3 G slash L reports will be Bradshaw Exhibit No. 7.
4 (WHEREUPON, the folder was
5 marked for identification as
6 Bradshaw Deposition Exhibit No. 7.)
7 BY MR. HOFFMAN:
8 Q Now, the next set of files are -- is a
9 document that says average fund balances dot XLS
10 produced 2 slash 19 slash 2016, is that correct, in
11 handwriting in the upper right-hand corner?
12 A Yeah. That's not my handwriting, but
13 that is what this is.
14 Q Okay. And so let's mark that as
15 Bradshaw Exhibit No. 8, please.
16 (WHEREUPON, the document was
17 marked for identification as
18 Bradshaw Deposition Exhibit No. 8.)
19 BY THE WITNESS:
20 A I'm assuming we're going to refer back
21 to that if you're going to start asking me these
22 things.
23 BY MR. HOFFMAN:
24 Q Sure. What is Bradshaw Exhibit No. 8

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1 which is entitled average fund balances dot XLS?
2 A So this is a summary of the -- summary
3 of fund balance reports if they were available and a
4 calculation of a quarterly average by fiscal year.
5 Q Okay. And for what years were they
6 available and what years were they not available?
7 A Looks like the predominance of the
8 reports were not available in 1994 and then they
9 were sporadically not available in other years.
10 Q So what did you do when -- you didn't --
11 you excluded 1994 from your analysis, correct?
12 A I did the first pass of it, but I don't
13 recall -- I don't think I would have been able to do
14 the second pass because -- yeah, the second pass
15 which relates to the system reports, fiscal year
16 1994 wasn't available.
17 Q So what did you do when the average fund
18 balances were unavailable in quarters between fiscal
19 year 1995 and 2012?
20 A I identified whether they were
21 unavailable. We then went to the treasurer's office
22 board packets, and at times there was a report
23 called district operations which would have been
24 the -- what was represented as the individual

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1 district's fund balances at that time. If those
2 reports were not available, then I inserted no data
3 as a notation.
4 Q I see. Thank you. And this is the
5 document that corresponds to the third column of
6 your summary with the \$97,000 figure, correct?
7 A So those would have been what the
8 average fund balances were and those would
9 correspond to the column that says total average --
10 total AVG FB per reports. It's the one, two, three,
11 four, five, six, seven, eight column over.
12 Q I see. Thank you. So in just running
13 across the spreadsheet that we're looking at which
14 is page 2 of Bradshaw Exhibit 3, the interest
15 allocation 2 spreadsheet, the district fiscal year
16 and date columns, what does the date column
17 represent in this spreadsheet?
18 MR. KALTENBACH: I'm sorry. When you
19 say, "this spreadsheet" --
20 BY MR. HOFFMAN:
21 Q I'm sorry. We're looking at page 2 of
22 Bradshaw Exhibit 3, the interest allocation 2
23 spreadsheet. I just said that. So it's got a
24 column for district which in all cases is 204,

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1 correct?
2 A Yes.
3 Q And it has a column for fiscal year and
4 for 1995 it has three rows, right?
5 A Yes.
6 Q So what do those three rows represent?
7 A Those would have corresponded to a Healy
8 income sheet and interest distributions for those
9 dates.
10 Q So would that be something that was
11 typically done by quarter?
12 A Typically quarterly.
13 Q How come there are only three quarters
14 in fiscal year 1995?
15 A I can't speak to that.
16 Q That's just the information that Healy
17 had and that's what you went with?
18 A No. In that instance, the October 1994
19 payment was only off 42 cents, and so it doesn't
20 appear that we did an additional comparison if it
21 wasn't in the initial system reports.
22 Q If you look at the next five -- so
23 whenever there wasn't what you considered to be a
24 significant difference, you omitted it from the

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1 spreadsheet?
2 A I'd have to go through line by line, but
3 I believe so.
4 Q Well, there's only three quarters for
5 fiscal year 2000. Do you see that? And there's
6 only three quarters for fiscal year 2003, right, on
7 this spreadsheet?
8 A Okay. Give me a minute, please.
9 Q Okay. I'm sorry. Take your time.
10 A So fiscal 2000 --
11 Q Yes.
12 A -- the October 1999 payment was only off
13 79 cents. I can't speak to why it's not on the --
14 there's an October -- there's -- oh, it's the
15 April one that's missing. Hold on.
16 I don't know why it's not on the system
17 report one. It is on the initial comparison. There
18 may have been that it was not -- there wasn't a
19 difference, but I don't recall.
20 Q Well, there's a claim here by the TTO
21 for allegedly overpaid interest in excess of
22 \$1.5 million that is being supported by this
23 document that we're looking at, Bradshaw Exhibit 3.
24 So I'd like you to take your time and look at any

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1 material you need to look at in order to tell me why
2 for fiscal year 2000 there are only three quarters
3 listed on this spreadsheet.
4 A So the top spreadsheet says it's
5 selected quarters with no missing data.
6 Q That's the header on the spreadsheet
7 that we're looking at, page 2 of Bradshaw Exhibit
8 No. 3?
9 A Right.
10 Q And so is it your belief that the --
11 A Hold on.
12 Q I'm sorry. I want you to take as much
13 time as you need. I don't want to rush you.
14 A So there's missing data in the April of
15 2000. If you go -- do we need to number these
16 pages? Is that easier? So on the fifth page for
17 April of 2000 --
18 Q Yes.
19 A -- in total average per reports, there
20 was missing data to calculate an average so it was
21 not included in the summary on where selected
22 quarters where there was no missing data. So that's
23 why April is not on the page.
24 Q When there's a line in your spreadsheet

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1 that we're looking at here that says hashtag value
2 exclamation mark --
3 A That would be an Excel term. Because
4 there's missing data, it can't calculate a value.
5 Q Okay. So wherever there's an entry that
6 says hashtag value exclamation mark, that's an
7 indicator of missing data, correct?
8 A Well, if you look at the other lines
9 next to it, it says missing data.
10 Q Well, I want to make sure I understand
11 it. I'm not -- I see there are -- where it says
12 missing data, that means there's missing data,
13 right?
14 A Right. And so it can't make a
15 calculation and so that's why Excel produces that
16 pound value exclamation point.
17 Q Okay. So when there's missing data
18 Excel can't make a calculation and that's why it
19 says pound value exclamation mark because it's part
20 of a formula that the missing data was supposed to
21 go into?
22 A Yes.
23 Q Okay. That's what I need.
24 A So because there was missing data, we

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1 didn't want to include it in the -- that quarter in
2 the total for system reports and so the top two
3 sheets are a summary of the quarters where we were
4 able to make the actual calculation.

5 Q Does the -- does the number of times
6 that there was data missing for your analysis give
7 you any concern about the accuracy or value of your
8 analysis?

9 A Not in this particular instance because
10 again the general ledger journal entries are able to
11 be produced. This would be just a second look at
12 the fund balances and the accounting system that was
13 in place at that time someone had to remember to
14 save that file so there was either a piece of paper
15 produced that would be in a box or if it's -- if
16 it's an archived file, the employee would have had
17 to remember to archive it at that time. And then
18 our third alternative was to go to those board
19 minutes to see if someone had produced that number
20 to the board.

21 Q So in terms of the second column in your
22 summary, the RH calculation versus the general
23 ledger, just so I'm clear on this, you were looking
24 at the income earned per Healy's written --

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1 handwritten reports and the amount that he intended
2 to pay District 204 and comparing that to the
3 general ledger to show what they were actually paid?

4 A That's the first column.

5 Q Right. Okay. And that's what it is. I
6 got that part right?

7 A So it's Healy's interest compared to the
8 general ledger journal entries.

9 Q But how do you know that what Healy
10 intended to pay based on his handwritten reports was
11 actually the amount of interest that should have
12 been paid to District 204 in each year?

13 A Again I wasn't asked to assert whether
14 that number was correct. I was asked to take the
15 number that he was intending to distribute and see
16 if it's what District 204 received.

17 Q But when you told me earlier that it's
18 your opinion that District 204 received over
19 \$1.5 million in interest income beyond what it
20 should have gotten, that's based on an assumption
21 that Healy's handwritten calculations on interest
22 were correct, isn't it?

23 A It's a piece of it. It would also be
24 things like the e-mail where they went to lunch and

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1 got additional interest income.

2 Q That was only in 2006, right?

3 A It was a significant portion of the
4 number. It was almost \$500,000 of the whole number.

5 Q Okay. And then why would you rely on
6 the accuracy of numbers that were prepared by a
7 person who's been proven to be a felon who committed
8 a multi-million dollar financial crime involving
9 TTO? Why would you rely on those numbers?

10 A I was asked to compile numbers based on
11 his spreadsheets. And we took it to an additional
12 level to try to compare it to those summary fund
13 balance reports. I completed the work that I was
14 asked to do. I wasn't asked to compare the income
15 numbers.

16 Q But because you gave me the opinion that
17 District 204 was overpaid more than \$1.5 million of
18 interest income, I have to ask you how can you have
19 that opinion if you're relying on the accuracy of
20 numbers produced by Bob Healy who is a convicted
21 class X felon?

22 A I was asked to compare pieces of
23 information. When you tried to pin me to an opinion
24 that was based on the language that is in the

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1 complaint and that my opinion is based on the fact
2 that there are differences between Healy's interest
3 spreadsheets and the general ledger and the fact
4 that the e-mails have suggested that discussions
5 allowed them to get additional interest.

6 Q Okay. Well, you don't want to take back
7 any of the testimony you've given here today, do
8 you? Your answer suggested that somehow I was
9 asking you questions about certain things. Is there
10 any answer you've given here today that on
11 reflection you'd like to take back?

12 A Well, opinion means something different
13 to me than -- I feel like you're trying to assert
14 that I'm giving an accounting opinion. A personal
15 opinion is different than an accounting opinion.
16 I'm not -- I'm not signing off on an audit or
17 anything of that nature. It's kind of a -- based on
18 a reasonableness of the information that has been
19 shared. That would be what an opinion means to me
20 in this setting.

21 Q Okay. Well, is your opinion that the
22 TTO overpaid District 204 in excess of \$1.5 million
23 in interest income during the fiscal years we're
24 talking about, is that a personal opinion or an

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1 accounting opinion?
2 A That would be a personal opinion.
3 Q Okay. So that is not based on your
4 background and knowledge and experience and
5 certainty as an accountant. It's just based on you
6 as an individual looking at all the facts and
7 circumstances?
8 A Yes.
9 Q Okay. Now, we've marked as exhibit --
10 as Bradshaw 3 the summary document and the
11 spreadsheets that back up that summary document.
12 And we've marked as Bradshaw Exhibits 4 -- or excuse
13 me -- yeah, Bradshaw Exhibit 5, 6, 7 and 8 the
14 supporting documents.
15 Are these all of the documents that you
16 relied on in doing your analysis? I think they are.
17 I just want to make sure I'm right.
18 A Yes. Underneath these, there are actual
19 system reports that have been inventoried as a part
20 of the produced document that if you wanted to
21 compare back to specific pieces of paper you could.
22 Q And when you say, "these," your hand is
23 on Bradshaw Exhibit 8?
24 A I'm sorry. Yes.

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1 Q Okay. So the only other thing that you
2 would have relied on in your analysis would be the
3 actual system reports which are captured and
4 summarized in Bradshaw Exhibit 8?
5 A Yes.
6 Q Okay. Other than the analyses that we
7 talked about here today, did you perform any other
8 analyses for the TTO with respect to District 204?
9 A No. I don't believe so.
10 Q Okay. Are you familiar with the
11 requirements set forth in the school code of the
12 state of Illinois that govern the TTO and its
13 requirement to keep records?
14 A I would say that people have told me
15 that. I wouldn't say I'm an expert or have a
16 thorough understanding of the school code.
17 Q Well, let me -- let me show you a couple
18 provisions from the school code. I'm going to mark
19 these as 9.
20 (WHEREUPON, the document was
21 marked for identification as
22 Bradshaw Deposition Exhibit No. 9.)
23 BY MR. HOFFMAN:
24 Q All right. Now, I understand that

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1 you're not an expert in the school code, but I do
2 know that you're intimately familiar with the
3 recordkeeping at the TTO for the, you know, 1994 to
4 2012 period that we're talking about and you've gone
5 through it for several different reasons. So I'm
6 going to ask you some questions about it. And if
7 you don't know the answer, you can tell me that and
8 that's fine. Or if you do know, then you can tell
9 me and that's fine too. Okay? Fair enough?
10 MR. KALTENBACH: I'm going to object to
11 the extent I think that mischaracterizes her prior
12 testimony. It wasn't a question beyond do you
13 understand, but that's okay.
14 BY MR. HOFFMAN:
15 Q Okay. Well, are you --
16 A You used the word -- go ahead.
17 Q I said intimately.
18 A Yes, you did.
19 Q Well, how much -- how much money have
20 you earned to date since you started in 2012 for
21 your work with the TTO? Approximately ballpark.
22 A I don't know. I don't keep -- I mean I
23 don't -- you're asking me over a period of time. I
24 don't remember.

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1 Q Yeah. I mean you've earned well in
2 excess of \$100,000 for your work for the TTO, is
3 that fair to say?
4 A Yes.
5 Q And in the course of working with the
6 TTO, you've gotten to be familiar with how they kept
7 records and what records exist for expenses, income,
8 interest income and accounts payable, payroll and
9 other accounting issues for the '94 through 2012
10 period, correct?
11 A I don't know that I would assert those
12 years. Certainly the years that I've been involved
13 with them, I would have more knowledge as to what
14 recordkeeping they have.
15 Q Well, in at least three different
16 instances, you went back as far as 1994 to compile
17 information for the TTO to assert claims in this
18 lawsuit against District 204, haven't you?
19 A Yes.
20 Q Okay. And so isn't it fair to say that
21 you're familiar with the recordkeeping at the TTO
22 for that time period?
23 A Yes.
24 Q Okay. Now, I'd like to start with the

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1 first page of Bradshaw Exhibit 9. And it's
2 provision 8 dash 5 of the school code. And it says
3 that the -- quote, "The township treasurer shall be
4 provided by the trustees of schools with a cash
5 book, a loan book, a district account book and a
6 journal," unquote.

7 Do you have any understanding of what
8 those terms mean in relation to the types of
9 accounting records that we've talked about today?

10 MR. KALTENBACH: I'm going to object as
11 to foundation. You can answer.

12 BY MR. HOFFMAN:

13 Q So that's why I asked her if she has any
14 understanding. If you do, you do. And if you
15 don't, you don't.

16 A No, I don't.

17 Q Okay. So you don't know whether there
18 is a thing called a cash book or a loan book or a
19 district account book or a journal at the TTO
20 insofar as those terms are used in section 8 dash 5
21 of the school code, correct?

22 A Not in those terms, no.

23 Q Okay. Let's look at section 8 dash 6
24 which is the third page of Bradshaw Exhibit 9. And

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1 it talks about the school treasurer, quote, "Shall
2 keep in a cash book separate cash balances. In the
3 cash book, he shall enter in separate accounts the
4 balance, comma, total of all moneys received in each
5 fund, comma, and the total of the orders
6 countersigned or checks signed with respect to each
7 fund and extend the balances and the aggregate cash
8 balance for all fund balances at least monthly,"
9 unquote.

10 Are you familiar with any record that
11 would -- kept at the TTO during the '94 through 2012
12 time period that would correlate to that sentence in
13 section 8 dash 6 of the school code?

14 A Without having a legal background, my
15 interpretation of that would be that there is a cash
16 balance in each district's general ledger that
17 summarizes all of the cash activity related to each
18 district.

19 Q Okay. So in your view, this cash book
20 would correlate to the general ledger?

21 A Yes.

22 Q All right. Fair enough. And turn two
23 more pages to section 8 dash 7 of the school code.

24 It's actually the page after that one. Yes, please.

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1 And it says in the last sentence, "When moneys of
2 more than one fund of a single school district are
3 combined for investment purposes or when moneys of a
4 school district are combined with moneys of other
5 school districts, community college districts or
6 educational service regions, the moneys combined for
7 such purposes shall be accounted for separately in
8 all respects and the earnings from such investments
9 shall be separately and individually computed and
10 recorded and credited to the fund or school
11 district, community college district or educational
12 service region as the case may be for which the
13 investment was acquired," unquote. Do you see that?

14 A I do.

15 Q Okay. And my question is did the TTO
16 from the 1994 to 2012 time period separately account
17 in all respects the earnings from their investments
18 and did they separately and individually compute and
19 record them and credit them to the fund or each
20 school district for which the investment was
21 acquired? Was that done?

22 MR. KALTENBACH: Objection. Foundation.
23 You can answer.

24

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1 BY THE WITNESS:

2 A I'm not certain that I can interpret
3 what this means versus what was done at the
4 treasurer's office.

5 BY MR. HOFFMAN:

6 Q Well, let's at least take the part where
7 we're talking about money for more than one fund of
8 a single school district being combined for
9 investment purposes. Do you see that language in
10 the second line on that page? "When moneys of more
11 than one fund of a single school district are
12 combined for investment purposes." Do you see that?

13 A Yeah.

14 Q That is what the TTO did, correct? So
15 they took all of the district's money and combined
16 them into one large investment fund. We talked
17 about that earlier. Yes?

18 A They combined all of the school district
19 funds together.

20 Q Right. So that's -- so moneys of more
21 than one fund of a single school district were in
22 fact combined for investment purposes by the TTO in
23 accordance with this tradition here. They can do
24 that. They did that. That's what they did, right?

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1 A Yes.
2 Q Okay. So when there is such a
3 combination, it says in the fifth line down, "The
4 moneys combined for such purposes shall be accounted
5 for separately in all respects." Did the TTO do
6 that during this time period?
7 MR. KALTENBACH: Objection.
8 BY MR. HOFFMAN:
9 Q Yes, no or I don't know.
10 MR. KALTENBACH: Objection. Foundation.
11 You can answer.
12 BY THE WITNESS:
13 A Well, again any of their cash
14 transactions would be accounted for on a district
15 and fund level within the general ledger.
16 BY MR. HOFFMAN:
17 Q Well, you're talking about cash
18 transactions, but did -- well, let me ask you this
19 part. It says, "And the earnings" -- quote, "And
20 the earnings from such investment shall be
21 separately and individually computed and recorded,"
22 comma, unquote. Was that done during the '95 to
23 2012 time period at the TTO according to the records
24 that you reviewed?

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1 MR. KALTENBACH: Objection. Foundation.
2 You can answer.
3 BY MR. HOFFMAN:
4 Q Yes, no or I don't know.
5 A I mean the individual funds were given
6 an interest distribution. I can't specifically
7 interpret school code, but they were individually
8 computed and recorded by fund.
9 Q Did the TTO keep records that separately
10 and individually computed the earnings from each of
11 their commingled investments?
12 A I can't speak to that. I wasn't asked
13 to review that.
14 Q You don't know?
15 A No.
16 Q Okay. Fair enough. Let's take a look
17 at the next page which is section 8 dash 13 of the
18 school code. It says, "On or before June 30
19 annually, the township treasurer shall deliver to
20 the county superintendent of schools a statement
21 verified by his affidavit showing the exact
22 condition of the township funds." It goes on to
23 say, "Such statement shall contain a description of
24 all bonds, mortgages, notes and other securities

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1 held as principal of the township fund giving names,
2 dates, amounts, rates of interest when due and other
3 data necessary to a full understanding of the
4 condition of the funds." Do you see that?
5 A Uh-huh. Yes.
6 Q Do you know whether the TTO provided
7 those statements described in section 8 dash 13 for
8 fiscal years 1995 through 2012?
9 A I do not know.
10 Q And the last page is section 8 dash 14
11 of the school code. And it talks about information
12 that the township treasurer submits to the trustees
13 of schools. And it says, "Shall submit," quote, "a
14 statement showing the amounts of interest, rents,
15 issues and profits on township lands and funds that
16 have accrued since their last regular meeting,"
17 quote.
18 Do you know whether those statements
19 were provided by the treasurer, Mr. Healy, from 1995
20 through 2012?
21 A I do not know.
22 Q All right. I want to take a short break
23 and see if I've got any last-minute questions, but
24 otherwise we're very close to being done. And I

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1 appreciate your patience.
2 (WHEREUPON, there was a short
3 recess taken.)
4 BY MR. HOFFMAN:
5 Q Back on the record. Miss Bradshaw, you
6 testified earlier about relying on data that was
7 produced for board minutes that had to do with --
8 that had to do with amounts held by each district.
9 Do you recall that testimony?
10 A Yes.
11 Q Who produced that data for the board
12 minutes to the best of your knowledge?
13 A I don't know.
14 Q Was that -- do you believe that that
15 might have been data that was also produced by
16 Mr. Healy?
17 A I don't know one way or the other.
18 Q Okay. And you've never asked anybody at
19 the TTO who provided those numbers or whether
20 they're good numbers to rely on?
21 A No. When we had missing data, there was
22 a discussion as to if there were any alternatives.
23 And I don't recall who suggested using these.
24 Q Was there any analysis that you proposed

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1 doing concerning the TTO's records that had to do
2 with the payment for Baker Tilly audits or the
3 interest income paid to District 204 or the share of
4 pro rata expenses? Was there ever any analysis that
5 you suggested doing on any of those issues that
6 either someone told you not to do or you ended up
7 just not doing?
8 A No.
9 Q Okay. And why -- given that you're a
10 CPA and a very experienced professional, why did you
11 simply take the assignments given to you and not try
12 to frame the assignments in a way that you thought
13 might be more consistent with a more thorough
14 accounting approach?
15 MR. KALTENBACH: I'll object. I'm going
16 to object to the form of the question. You can
17 answer.
18 BY MR. HOFFMAN:
19 Q You can answer.
20 A At the time I was asked as a contractor
21 to compile data. I wasn't asked to give any expert
22 opinion as to what should or should not have been
23 analyzed. There was a lot of work that needed to be
24 done at the treasurer's office at that time and I

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1 was doing what was asked of me.
2 Q Okay. And so it never occurred to you
3 to say, you know, wait a minute, Mr. Bradley, or
4 wait a minute, Mr. Theissen, I really think instead
5 of looking at what you've asked me to look at, I
6 think we should do something different or broader or
7 look at other documents because I think that would
8 be a better or more accurate way to do it?
9 A Not in these instances, no.
10 Q Why not?
11 A I didn't feel that the approach was
12 grossly inaccurate and again I was being paid to do
13 specific work.
14 Q Okay. All right. I have no further
15 questions.
16 Barry, do you have any questions of this
17 witness?
18 MR. KALTENBACH: Nope.
19 BY MR. HOFFMAN:
20 Q Then the thing that the court reporter
21 is going to ask you is whether you would like an
22 opportunity to read the transcript and see if there
23 are any errors made in the actual transcription or
24 writing down of your answers as opposed to answers

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1 you might want to change later. You can correct
2 transcription errors, but you can't change your
3 testimony. I think that's a fair statement.
4 Do you want an opportunity or would
5 Barry like you to have an opportunity to review your
6 testimony in this case?
7 A Yes.
8 MR. KALTENBACH: If you want -- if you
9 want to, that's fine.
10 THE WITNESS: Sure.
11 MR. KALTENBACH: Okay.
12 MR. HOFFMAN: Okay. Then the court
13 reporter will make sure that that happens.
14 BY MR. HOFFMAN:
15 Q And now that we have gone through our
16 answers for a few hours, again I'll ask you is there
17 any answer that you've given me here today that you
18 would like to change at this time?
19 A No.
20 Q Okay. Then we are done. Thank you.
21 I would like an electronic like a disk
22 or e-mail version of -- I would like an electronic
23 version of the transcript.
24 THE COURT REPORTER: Do you want a PDF

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1 version or E-tran?
2 MR. HOFFMAN: I suppose -- E-tran is
3 searchable, right?
4 THE COURT REPORTER: They're both really
5 searchable, but E-tran, yeah.
6 MR. HOFFMAN: I'll take E-tran.
7 MR. KALTENBACH: I'll do the same thing.
8 I think -- I'm assuming we have the software to open
9 it at my firm. I haven't had one there yet, but if
10 not, I'll get back to you on that.
11 MR. HOFFMAN: Let's go off the record.
12 FURTHER DEPONENT SAITH NOT. . .
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FISCAL 1994-2012

EXHIBIT #11
TID REP
3/21/10

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	7/15/1999	BUSINESS SERANNUAL AUDI	E	41029	2,475.00	6/30/1999	DIST 204	204	YES
1-2520-317-0-0	7/30/1999	BUSINESS SERANNUAL AUDI	E	42139	4,450.00	7/20/1999	DIST 204	204	YES
1-2520-317-0-0	9/15/1999	BUSINESS SERANNUAL AUDI	E	44411	6,000.00	9/3/1999	AUDIT 6/99	204	YES
1-2520-317-0-0	10/29/1999	BUSINESS SERANNUAL AUDI	E	49743	4,105.00	10/12/1999	204 JUNE 99	204	YES
1-2520-317-0-0	11/10/1999	BUSINESS SERANNUAL AUDI	E	49927	1,431.00	10/29/1999	YR END D204	204	YES
1-2520-317-0-0	4/28/2000	AUDIT DIST 204	E	63508	172.70	4/11/2000	550	204	YES
1-2520-317-0-0	4/28/2000	AUDIT DIST 204	E	63508	936.25	1/31/2000	47	204	YES
1-2520-317-0-0	5/15/2000	DIST 204	E	63940	5,762.00	5/4/2000	702	204	YES
1-2520-317-0-0	8/30/2000	AUDIT DIST 204	E	71994	3,880.00	8/15/2000	1116	204	YES
1-2520-317-0-0	10/13/2000	AUDIT DIST 204	E	75155	3,500.00	10/3/2000	1303	204	YES
1-2520-317-0-0	11/15/2000	AUDIT DIST 204	E	78213	4,000.00	11/2/2000	1411	204	YES
1-2520-317-0-0	4/30/2001	AUDIT DIST 204	E	15652	3,000.00	4/11/2001	2386	204	YES
1-2520-317-0-0	7/16/2001	AUDIT DIST 204	E	21778	5,000.00	7/5/2001	2853	204	YES
1-2520-317-0-0	9/28/2001	AUDIT FOR DISTRICT #204	E	27284	4,400.00	9/19/2001	3180	204	YES
1-2520-317-0-0	9/28/2001	CONVERSION OF GASB 34/#204	E	27284	2,500.00	7/18/2001	2906	204	YES
1-2520-317-0-0	9/28/2001	CASH BASIS MODIFIED ACCRUAL #204	E	27284	4,900.00	7/18/2001	2906	204	YES
1-2520-317-0-0	7/15/2002	SD #204 ACCRUAL BASIS ACCT 6/30/02	E	1991	1,750.00	7/15/2002	5024	204	NO
1-2520-317-0-0	7/15/2005	LTHS YR ENDING 6/30/05	E	92513	6,500.00	6/30/2005	11215	204	YES
1-2520-317-0-0	9/30/2005	SD #204 YR ENDING 6/30/05	E	98006	8,000.00	6/16/2005	11615	204	YES
1-2520-317-0-0	10/31/2005	SD #204 YR ENDING 6/30/05	E	100678	12,300.00	10/17/2005	11714	204	YES
1-2520-317-0-0	11/30/2005	SD #204 YR ENDING 6/30/05	E	103089	6,500.00	11/15/2005	11898	204	YES
1-2520-317-0-0	1/13/2006	SD #204 YR ENDING 6/30/05	E	106478	3,448.69	12/23/2005	12155	204	YES
1-2520-317-0-0	2/15/2006	YR ENDING 6/30/04 FOR SD #204	E	109087	1,017.50	1/31/2006	12422	204	YES
1-2520-317-0-0	6/15/2006	AUDIT FOR SD #204 6/30/06	E	118129	7,500.00	5/31/2006	13152	204	YES
1-2520-317-0-0	7/14/2006	SD #204 AUDIT 6/30/06	E	120731	4,120.00	6/23/2006	VK187966	204	YES
1-2520-317-0-0	8/30/2006	SERVICES FOR 6/30/06 AUDIT	E	123698	17,855.00	8/21/2006	VK194698	204	YES
1-2520-317-0-0	8/30/2006	SERVICES FOR 6/30/06 AUDIT	E	123698	11,695.00	8/24/2006	VK195240	204	YES
1-2520-317-0-0	9/29/2006	AUDIT 6/30/06 FOR DIST. 204	E	126472	4,255.00	9/20/2006	VK198739	204	YES
1-2520-317-0-0	3/15/2007	SD #204 YR END 6/30/06	E	12967	3,510.00	2/23/2007	VK222390	204	YES
1-2520-317-0-0	4/16/2007	AUDIT FOR 6/30/06	E	14979	2,295.00	3/28/2007	VK231123	204	YES
1-2520-317-0-0	5/15/2007	SD #204 6/30/07 AUDIT	E	17295	317.50	4/27/2007	VK245219	204	YES
1-2520-317-0-0	7/16/2007	LTHS 204 AUDIT FOR 6/30/07	E	22211	10,950.00	6/29/2007	VK261182	204	YES
1-2520-317-0-0	9/13/2007	AUDIT FOR 6/30/07	E	25736	1,250.00	8/29/2007	VK268304	204	YES
1-2520-317-0-0	10/30/2007	AUDIT FOR SD #204 6/30/07	E	30328	19,990.00	10/30/2007	VK274450	204	YES
1-2520-317-0-0	10/30/2007	SD #204 AUDIT SERVICES	E	30328	10,445.00	10/25/2007	VK275728	204	YES

ACCOUNT NUMBER	CHECK DATE	DESCRIPTION	TYPE	CHECK NO	AMOUNT	INV DATE	INV NUMBER	204 BILL	INV COPY
1-2520-317-0-0	11/30/2007	AUDIT FOR 6/30/07	E	32980	3,910.00	11/15/2007	VK280894	204	YES
1-2520-317-0-0	12/28/2007	AUDIT FOR 6/30/07	E	37263	5,985.00	12/21/2007	VK284839	204	YES
1-2520-317-0-0	2/14/2008	FINAL BILL FOR AUDIT 6/30/07	E	13061	485.00	1/31/2008	VK291691	204	YES
1-2520-317-0-0	5/9/2008	TIME & EXPENSE FOR #204 MEETING	E	19524	855.10	4/29/2008	VK317005	204	YES
1-2520-317-0-0	6/13/2008	SD #204 AUDITED ENDING 5/31/08	E	22713	1,930.00	5/28/2006	VK325962	204	YES
1-2520-317-0-0	7/15/2008	2ND BILL FOR 2008 AUDIT	E	25092	9,000.00	6/30/2008	VK331461	204	YES
1-2520-317-0-0	8/15/2008	2008 AUDITED FINANCIAL STMTS	E	26623	7,900.00	7/31/2008	VK335759	204	YES
1-2520-317-0-0	10/15/2008	AD #204 AUDIT FOR 6/30/08	E	31249	11,872.76	9/30/2008	VK343587	204	YES
1-2520-317-0-0	11/14/2008	SERVICES ENDING 10/31/08	E	34305	8,942.44	10/29/2008	VK347810	204	YES
1-2520-317-0-0	12/15/2008	SD #204 AUDIT 11/30/08	E	36609	5,654.80	11/25/2008	VK353915	204	YES
1-2520-317-0-0	1/6/2009	AUDIT FOR 12/31/08	E	37974	5,267.55	12/22/2008	VK356942	204	YES
1-2520-317-0-0	3/13/2009	AUDIT ENDING 2/28/09	E	43064	1,050.00	2/26/2009	VK368671	204	YES
1-2520-317-0-0	8/17/2009	AUDIT FOR 6/30/09 ENDING 7/31/09	E	54389	8,500.00	7/28/2009	BT406802	204	YES
1-2520-317-0-0	9/15/2009	SD #204 PERIOD ENDING 8/31/09	E	56338	6,500.00	9/1/2009	BT412949	204	YES
1-2520-317-0-0	10/14/2009	AUDIT ENDING 9/30/09 FOR JUNE	E	58632	22,000.00	9/28/2009	BT414879	204	YES
1-2520-317-0-0	11/13/2009	AUDIT FOR 10/31/09	E	61513	10,000.00	10/28/2009	BT420286	204	YES
1-2520-317-0-0	12/15/2009	AUDIT FOR PERIOD ENDING 11/30/09	E	64026	4,000.00	12/15/2009	BT424391	204	YES
1-2520-317-0-0	5/28/2010	AUDIT SD #204 ENDING 4/30/10	E	75778	7,000.00	4/27/2010	BT455209	204	YES
1-2520-317-204-0	10/15/2010	AUDIT ENDING 9/30/10 FOR 6/30/10	E	85599	23,500.00	9/29/2010	BT482616	204	YES
1-2520-317-204-0	11/16/2010	SD #204 AUDIT ENDING 10/31/10	E	88601	2,000.00	10/29/2010	BT489027	204	YES
1-2520-317-204-0	12/14/2010	SD #204 AUDIT ENDING 11/30/10	E	126632	5,000.00	11/29/2010	BT492203	204	YES
1-2520-317-204-0	1/4/2011	AUDIT ENDING 12/18/10 SD #204	E	127733	3,625.00	12/22/2010	BT495134	204	YES
1-2520-317-204-0	2/15/2011	AUDIT ENDING 1/31/11 FOR 6/30/10	E	130609	750.00	1/28/2011	BT500082	204	YES
1-2520-317-204-0	3/15/2011	AUDIT FOR SD #204 ENDING 2/28/11	E	132615	395.56	2/25/2011	BT505086	204	YES
1-2520-317-204-0	7/15/2011	SD #204 AUDIT ENDING FOR 6/30/11	E	141908	6,700.00	7/15/2011	BT535498	204	YES
1-2520-317-0-0	11/15/2011	PROFESSIONAL SERV 10-31 THRU 6-30-	E	150247	29,800.00	10/28/2011	BT551560	204	YES
1-2520-317-0-0	1/13/2012	BUSINESS SERAUDIT WORK TTO	E	3635	2,500.00	12/22/2011	BT560281	204	YES
1-2520-317-0-0	6/12/2012	AUDIT WORK TTO	E	13933	9,750.00	5/22/2012	BT596768	204	YES

473,174.85

STATE OF ILLINOIS)
) SS:
 COUNTY OF C O O K)

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

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

-vs-

No. 13 CH 23386

LYONS TOWNSHIP HIGH)
 SCHOOL DISTRICT 204,)
)
 Defendant.)

The discovery deposition of JAMES MARTIN,
 taken before MAUREEN A. WOODMAN, a Certified
 Shorthand Reporter and Notary Public in and for
 the County of Cook and State of Illinois,
 pursuant to the Illinois Code of Civil
 Procedure and the Rules of the Supreme Court
 thereof, pertaining to the taking of
 depositions for the purpose of discovery at 20
 North Clark Street, Chicago, Illinois, on March
 30, 2017, at the hour of 1:00 o'clock p.m.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MILLER CANFIELD</p> <p>4 BY: MR. BARRY P. KALTENBACH</p> <p>5 225 West Washington Street</p> <p>6 Suite 2600</p> <p>7 Chicago, Illinois 60606</p> <p>8 312.460.4251</p> <p>9 Kaltенbach@millercanfield.com,</p> <p>10</p> <p>11 On behalf of the Plaintiff,</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>HOFFMAN LEGAL</p> <p>BY: MR. JAY HOFFMAN</p> <p>20 North Clark Street</p> <p>Suite 2500</p> <p>Chicago, Illinois 60602</p> <p>312.899.0899</p> <p>Jay@hoffmanlegal.com,</p> <p>On behalf of the Defendant.</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 (Witness was duly</p> <p>3 sworn.)</p> <p>4 JAMES MARTIN,</p> <p>5 called as a witness herein, after having been</p> <p>6 first duly sworn, was examined and testified as</p> <p>7 follows:</p> <p>8 THE WITNESS: Yes.</p> <p>9 EXAMINATION</p> <p>10 BY MR. HOFFMAN:</p> <p>11 Q. Good afternoon, Mr. Martin. My name</p> <p>12 is Jay Hoffman. I am the attorney for the</p> <p>13 defendant in this case. The defendant is Lyons</p> <p>14 Township High School, and if it's okay with</p> <p>15 you, I'll refer -- we'll refer to that client</p> <p>16 of mine as either LT or District 204. Fair</p> <p>17 enough?</p> <p>18 A. Yes.</p> <p>19 Q. You are the expert for the Plaintiff</p> <p>20 in this case, which has a very long name, which</p> <p>21 some people refer to as the TTO. Is that</p> <p>22 acceptable to you?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Thank you. Tell me how many</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 JAMES MARTIN</p> <p>4 Examination by Mr. Hoffman..... 4-180</p> <p>5</p> <p>6 -----</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 DEPOSITION EXHIBIT PAGE</p> <p>10 Exhibit 1 7</p> <p>11 Exhibit 2 7</p> <p>12 Exhibit 3 23</p> <p>13 Exhibit 4 29</p> <p>14 Exhibit 5 72</p> <p>15 Exhibit 6 95</p> <p>16 Exhibit 7 102</p> <p>17 Exhibit 8 103</p> <p>18 Exhibit 9 140</p> <p>19 Exhibit 10 145</p> <p>20 Exhibit 11 163</p> <p>21 (NOT ATTACHED)</p> <p>22 (Retained by Attorney Hoffman)</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 depositions you've given, please?</p> <p>2 A. I'd say probably 10 or 12.</p> <p>3 Q. You are an old pro.</p> <p>4 I won't give you a lot of</p> <p>5 instructions here except to tell you that if I</p> <p>6 ask a question that you do not understand,</p> <p>7 please let me know that, so I can ask you a</p> <p>8 better question. Fair enough?</p> <p>9 A. Yes.</p> <p>10 Q. And you need to answer yes or no</p> <p>11 rather than uh-huh or uh-uh, because those</p> <p>12 latter two answers sound similar, and it's hard</p> <p>13 for our court reporter to get that information</p> <p>14 down. Okay?</p> <p>15 A. Yes.</p> <p>16 Q. Sir, where is your -- I see on your</p> <p>17 business card you have offices listed for</p> <p>18 Chicago and Bloomfield Hills, Michigan,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. What is your primary office?</p> <p>22 A. My personal primary office?</p> <p>23 Q. Yes, sir.</p> <p>24 A. Detroit.</p>

2 (Pages 2 to 5)

1 Q. Okay. And how frequently are you in
2 Chicago for business?
3 A. Approximately 15 days a month.
4 Q. And how was it that your firm came to
5 represent the TTO as an expert in this case?
6 A. I don't know.
7 Q. You don't know who at your firm has a
8 connection with somebody, either an attorney
9 for or somebody working at or with the TTO?
10 A. Our firm does a lot of work with
11 Miller Canfield. I don't know specifically how
12 this case came in though.
13 Q. Okay. Who would know that?
14 A. Harry Cendrowski.
15 Q. Is he the senior partner on this
16 matter? I see he billed time to this matter at
17 various points.
18 A. He is another partner on the matter.
19 Q. And how was it that you ended up with
20 the job of testifying?
21 A. I do more of forensic accounting type
22 things, so sorting through the numbers and
23 grinding out the details and that, so that's
24 how I came to be the testifying expert on it.

1 Q. Okay. And in order to answer
2 questions that I'm going to ask you here today,
3 you're familiar with the work that Cendrowski
4 and various other team members that you worked
5 with did on this case so you can answer in a
6 broad sense and not just as to what you saw and
7 did, correct?
8 A. Yes.
9 MR. HOFFMAN: Let's mark this as Exhibit
10 No. 1 and 2.
11 (WHEREUPON, said
12 documents were marked as
13 Martin Deposition
14 Exhibit Nos. 1 and 2 for
15 Identification.)
16 BY MR. HOFFMAN:
17 Q. Sir, I've shown you two documents.
18 One is Martin Exhibit No. 1. These are
19 invoices that the TTO's counsel provided to us
20 previously.
21 Martin Exhibit 2 is an updated
22 invoice.
23 Is my understanding correct that
24 Martin 1 plus Martin 2 set forth all the time

1 and billing that your firm has done on this
2 matter?
3 A. I'd have to take a look at them first.
4 Q. Please do.
5 A. Sure looks like it is. I believe so.
6 Q. Great. I took the liberty of adding
7 up the numbers for all of those invoices. I
8 came up with a total of \$121,139.79. Does that
9 sound about right to you? Let me show you my
10 notes which have the list --
11 A. Sure, I see.
12 Q. -- the amounts. I understand you
13 didn't do the math, but does that generally
14 look correct to you?
15 A. It seems to be okay, yes.
16 Q. Thank you.
17 I'd like to ask you a few
18 questions about some of the items set forth in
19 Martin Exhibit No. 1. If you turn to page two
20 of that exhibit, sir, I'd appreciate it. The
21 first date listed is July 14th of 2016. Do you
22 see that?
23 A. Yes.
24 Q. Stop. Put the pen down.

1 Let the record reflect it
2 happens, we understand, but you are not allowed
3 to write on the original exhibits. And one of
4 my witnesses did it.
5 You see how the first date listed
6 is July 14th, 2016?
7 A. Yes, sir.
8 Q. Was the firm -- your firm retained on
9 or about that date to perform services for
10 Miller Canfield and the TTO in this case?
11 A. I assume so from this.
12 Q. Without looking at that, when was your
13 firm hired?
14 A. I don't know. I have to look.
15 Q. Well, you got involved in it on July
16 18th of 2016, correct?
17 A. Uh-huh.
18 Q. Yes?
19 A. Yes.
20 Q. You did uh-huh.
21 A. I know. You're right.
22 Q. Is that the first time you worked on
23 this case, the July 18th, 2016, time entry for
24 you, JPM?

1 A. Yes.

2 Q. And do you know whether your firm had
3 just started work on this case or are there
4 earlier invoices than the one we're looking at?

5 A. No, this would be the start of -- this
6 would be the start of work.

7 Q. Okay. And I see that there's
8 investigatory services listed by a person named
9 Michael Maloziec, M-A-L-O-Z-I-E-C, and then
10 there's litigation support with listings for
11 both you and Michael. Do you see that?

12 A. Yes.

13 Q. What's the distinction there between
14 investigatory services and litigation support?

15 A. It's really an internal -- really
16 internal code in the billing system.
17 Practically it really doesn't mean that much.

18 Q. There's a reference to an on-site
19 meeting on July 21st of 2016 under Michael's
20 time entry. Were you at that meeting?

21 A. Yes, I was.

22 Q. And how many times did you or somebody
23 from your firm physically go to the TTO's
24 offices?

1 A. I was physically there once. Mike was
2 physically there twice.

3 Q. And you also met at Miller Canfield to
4 talk to the TTO's lawyers, correct?

5 A. Yes.

6 Q. How many times do you remember doing
7 that?

8 A. I'd say two or three.

9 Q. And there's a lot of references in the
10 next few invoices for documentation that you
11 and your colleagues reviewed. And if you look
12 on the first page of the January 18th, 2017,
13 invoice, there's a number of references to
14 investment statements. Do you see that?

15 A. Yes.

16 Q. What are those investment statements?

17 A. The investment statements are
18 underlying actual statements from CD accounts,
19 from, you know, Merrill Lynch would be one.
20 Like investment companies. Actual companies
21 holding the investment -- or the funds in
22 investments.

23 Q. Why did your firm look at those
24 documents?

1 A. To get an overall understanding of how
2 the transactions flowed in the trustee's office
3 and to see how the funds were being accounted
4 for.

5 Q. Did your firm analyze the investment
6 statements in order to try to figure out how
7 much interest the TTO actually earned on the
8 pooled investments for the years relevant to
9 the lawsuit?

10 A. Yes.

11 Q. And were you able to make that
12 determination?

13 A. No.

14 Q. Why not?

15 A. The records weren't entirely complete.
16 There were some gaps in there, but that
17 was -- we did schedule that out like that,
18 so...

19 Q. We did schedule that out like that
20 means what?

21 A. We did try to determine the actual
22 interest income.

23 Q. And how incomplete were the records,
24 either on a percentage basis or years or

1 months? Were there entire years in which there
2 were missing records?

3 A. Not recently. There may have been in
4 the early years.

5 Q. Remember, sir, we're concerned about
6 both the early years and the late years, right?

7 A. Yes.

8 Q. The claim is for the fiscal year 1995
9 that goes back to the calendar year 1994 and
10 then carries through to mid 2012, correct?

11 A. Yes, sir Z.

12 Q. When you say not so much the later
13 years, maybe some earlier years, I'm asking you
14 about the entire time period, because there is
15 a claim for approximately -- roughly 20 years
16 of interest being made against us. Do you get
17 that?

18 A. Yes, sir.

19 Q. So let's go back and have you tell me
20 how incomplete the records of investment
21 statements, meaning the actual earnings the TTO
22 made on the pooled investments were through
23 this entire relevant time period.

24 A. Sure. Through the entire relevant

1 time period, there were more missing documents
2 in the early years, in the last several years,
3 ten, fifteen years, they were much more
4 complete.

5 Q. When you say much more complete, were
6 the more current years entirely complete or
7 were they mostly complete?

8 A. They were mostly complete. I'd say
9 probably 90 percent.

10 Q. And on a percentage basis, how would
11 you characterize the completeness of the
12 records in the first few years that are
13 relevant to our analysis? Were some of of them
14 missing entirely?

15 A. I don't recall if there were any years
16 missing entirely, but they were certainly a lot
17 more spotty.

18 Q. Rough percentage basis?

19 A. In the '90s, maybe 40, 50 percent.

20 Q. 40, 50 percent missing or present?

21 A. Present.

22 Q. The 40 would be the only thing that
23 would matter.

24 A. We'll make it 50.

1 Q. About half there and half missing for
2 the earlier years?

3 A. For the earlier years.

4 Q. So is it fair to say it was impossible
5 for you or anyone else to determine with any
6 degree of reasonable certainty how much
7 investment income the TTO earned on the
8 District's pooled investment funds for the
9 entire relevant period?

10 MR. KALTENBACH: I'll object to the form of
11 the question. You can answer, Jim.

12 THE WITNESS: Really was -- we weren't able
13 to complete it.

14 BY MR. HOFFMAN:

15 Q. What I'm asking is: You spent a great
16 deal of time and money trying to complete that
17 analysis and you were unable to do so.

18 Is it your belief that some other
19 accounting firm could come in and do that
20 analysis where you couldn't?

21 A. Not if they were provided the same
22 records that we were given.

23 Q. So based on the records that you got,
24 it wasn't through a lack of effort on your

1 firm's part, no accountant doing their job
2 right based on the records that were given to
3 you could determine the actual investment
4 income earned by the TTO on the District's
5 pooled funds for the relevant time period?

6 MR. KALTENBACH: I'll object.

7 BY MR. HOFFMAN:

8 Q. Correct?

9 MR. KALTENBACH: I'll object on form. It's
10 vague. You can answer, Jim.

11 THE WITNESS: Based on my analysis of it,
12 we looked at all the records we were provided
13 and tried to determine that and weren't able to
14 do so.

15 BY MR. HOFFMAN:

16 Q. Okay. How much approximately -- let
17 me start over. In your invoices there are
18 many, many references to investment statements,
19 and attempts that your firm made to try to get
20 a complete picture of how much interest the TTO
21 actually earned on investment income.

22 Can you tell me about how much of
23 your work was done in that area, meaning, you
24 know, on a dollar or percentage of time basis

1 A. No.

2 Q. No idea? It was not the majority of
3 the time you spent was trying to do that
4 project?

5 A. I don't know.

6 Q. Okay. What's the -- I'm sorry. Turn
7 to the March 23rd invoice, sir, please. Page
8 one. Let's make that page two. There's a
9 reference on page two of the March --

10 A. Second page or the one that says two.

11 Q. The one that says two at the bottom.
12 There's a reference to an investment summary
13 matrix about on the -- on Michael's entries on
14 2/14/2017. Do you see that?

15 A. Yes.

16 Q. Is that the attempt to compile the
17 investment money earned through reference to
18 source documents?

19 A. No.

20 Q. What is that?

21 A. This is trying to come up with the
22 total fund balance.

23 Q. What was the purpose of doing that?

24 A. Well, again, it was to understand the

1 accounting that the trustee's office did.

2 Q. Were you able to come up with a total
3 fund balance for the entire relevant time
4 period?

5 A. No.

6 Q. Why not?

7 A. For the same reasons, it was the
8 same -- the fund balance and the income --
9 interest income is on the same statement.

10 Q. Is that because of a lack of
11 documentation then?

12 A. Yes.

13 Q. And I see you have two entries on
14 February 13th and February 14th for reviewing
15 deposition transcripts.

16 A. Yes.

17 Q. And those total ten hours?

18 A. Yes.

19 Q. What deposition transcripts did you
20 review, sir?

21 A. I reviewed -- in total I reviewed
22 Kelly Bradshaw. I reviewed the one for
23 Mr. Healy. I reviewed the one for Dr.
24 Birkenmaier. And also for Mr. Thiessen.

1 Q. And what was the purpose of your
2 reviewing those deposition transcripts?

3 A. To try to understand how the
4 accounting's function worked at the Trustee's
5 Office.

6 Q. Was there anyone at the Trustee's
7 Office during the time you were doing the work
8 who was able to shed any light on that subject?

9 A. At the Trustee's Office?

10 Q. Let me ask you a better question.

11 During your work in 2016 and
12 2017, did you meet with any employee or
13 representative of the TTO who had firsthand
14 knowledge of how the investments worked or how
15 interest was allocated to the districts during
16 the relevant time period?

17 A. Yes.

18 Q. Who?

19 A. Kelly had an understanding at some
20 level.

21 Q. Kelly who?

22 A. Kelly Bradford.

23 Q. Bradshaw?

24 A. Bradshaw.

1 Q. She was the outside accountant -- when
2 you say Kelly, it was a little confusing to me.
3 There is a gentleman we deposed named Dennis
4 Kelly. You meant Kelly Bradshaw, right?

5 A. Yes. I'm sorry.

6 Q. And is it your belief that Kelly
7 Bradshaw had firsthand experience working with
8 the TTO on the interest income issues?

9 A. I don't know. I think she made a
10 summary of things.

11 Q. But her testimony, not to beat around
12 the bush, was she said that Healy was the only
13 person at the TTO who was involved in interest
14 issues, and that she was not personally
15 involved, and she just went back to the records
16 and did her analysis.

17 Do you have any reason to doubt
18 that testimony?

19 A. I have no idea what her involvement
20 was.

21 Q. Well, did you meet with her or speak
22 with her?

23 A. Yes.

24 Q. When?

1 A. She was at the meeting on July 21st.

2 Q. Did you ever talk or speak with her
3 after July 21st?

4 A. She was on the phone at the last
5 meeting, which was on March 1st. Actually, I
6 was on the phone, she was probably there.
7 March 1st.

8 Q. Did Kelly Bradshaw ever tell you that
9 she had any firsthand personal involvement in
10 any of the interest issues, putting aside doing
11 an analysis after Healy left?

12 A. No.

13 Q. Okay. You also reviewed -- your firm
14 also reviewed audit reports, correct?

15 A. Yes.

16 Q. What was the purpose of the review of
17 audit reports?

18 A. Again, the audit reports included a
19 fund balance total. And, again, that was
20 another source of trying to understand the
21 accounting that was done by the trustee's
22 office.

23 Q. Were you able -- ultimately was that
24 analysis of the audit report fruitful in any

1 way to help your understanding?

2 A. Yes.

3 Q. How so? What did you learn from
4 reviewing the audit reports?

5 A. Well, they had detail in there. There
6 were notes and things about how the office
7 functioned, about the responsibilities for
8 accounting that were useful in there.

9 Q. And what specifically?

10 A. I don't recall specifically. It was
11 more of a general understanding of how things
12 worked.

13 Q. So you never looked at the audit
14 reports in order to track or analyze the
15 distribution of investment funds to the
16 District in any particular year overall, did
17 you?

18 A. No.

19 Q. Why not?

20 A. That didn't seem -- I don't know.
21 That didn't seem relevant to the analysis I was
22 performing.

23 Q. What did the audit report say, if you
24 recall, as to whether the TTO regularly paid

1 Q. Did anybody ever tell you, hey, I'm
2 only giving you some but not others or on the
3 other hand I'm giving you all of them?

4 A. No.

5 Q. Do you have any reason to believe that
6 you're only getting some of the document
7 production as opposed to all of them?

8 A. No.

9 Q. Did you go through all those
10 documents?

11 A. Yes.

12 Q. You personally or you and your staff?

13 A. I reviewed almost all of them, but
14 between me and my staff we've been through them
15 all, yes.

16 Q. You also received a whole lot of
17 meeting minutes, right?

18 A. Yes.

19 Q. And what was -- did you analyze those
20 meeting minutes for any purpose?

21 A. No.

22 Q. Okay. You also received -- and I'm on
23 page four now, the little tiny four. You
24 received what are called paper sheets on

1 out in each year the amount of money that it
2 earned or some different amount?

3 A. I don't recall reading that in there.

4 Q. Okay. We'll look at that later.
5 Let's take a look at this Exhibit
6 No. 3.

7 (WHEREUPON, said
8 document was marked as
9 Martin Deposition
10 Exhibit No. 3 for
11 Identification.)

12 Sir, Martin Exhibit 3 was
13 provided to us by the attorneys for the TTO
14 with a representation that this is the
15 inventory of documents you received from the
16 TTO with respect to this case; is that correct?

17 A. Yes.

18 Q. Great. So I just want to confirm a
19 couple of things. You received, based on what
20 it says toward the top of page one, all of the
21 Plaintiff's document productions in the course
22 of the case, correct?

23 A. I don't know if this is all or not.
24 These were all that we were given.

1 quarterly distribution of interest. These are
2 Healy handwritten notes relating to interest,
3 correct?

4 A. Yeah. It was like a green bar, the
5 old accounting ledger pads. The five-column
6 pads.

7 Q. We'll just call those documents the
8 Healy notes, because you refer to them in the
9 disclosure in a variety of different ways. I
10 think it will be easier if we did it that way.
11 Is that good with you?

12 A. Yes.

13 Q. And then you received many, many, many
14 boxes of documents or groupings of documents
15 relating to companies to which the TTO made
16 investments, correct?

17 A. Yes.

18 Q. Those are all the investment
19 statements we talked about earlier, right?

20 A. Yes.

21 Q. Turn to page 47, please. In the
22 middle you have a listing of Dr. Birkenmaier
23 provided audits for fiscal year 2006 to 2012
24 for a number of the other districts. Do you

1 see that?

2 A. Yes.

3 Q. Do you know why you didn't get audit
4 statements for earlier years prior to 2006?

5 A. No.

6 Q. In the next grouping you've got more
7 statements, again these are starting in 2006.
8 Do you know what these documents were?

9 A. Not offhand. I'd have to go back and
10 open the files.

11 Q. Were the documents that had to do with
12 other districts other than District 204, were
13 some of those documents unavailable for
14 years -- that were on the earlier end of the
15 relevant time period for this case?

16 A. I don't understand the question.

17 Q. You were given a bunch of documents
18 relating to other districts, right?

19 A. Yes.

20 Q. Were those other district documents
21 complete or were they missing some years,
22 particularly earlier years? Because that's
23 what it looks like here.

24 A. In total?

1 Q. What impact did the lack of complete
2 documents have on your analysis?

3 A. For these documents?

4 Q. Or any of the documents we just
5 discussed, the documents relating to the other
6 districts, the documents relating to
7 reconciliations, other things.

8 A. Yes. The documents I had were
9 sufficient to complete my analysis.

10 Q. So you just spot checked the other
11 districts' years? How did you do it?

12 A. We totalled other districts' years
13 from the -- it was the journal entry reports.

14 Q. The general ledger reports?

15 A. Yes.

16 Q. Who is Ken Getty?

17 A. I'm sorry?

18 Q. Ken Getty. GETTY.

19 A. I don't know.

20 MR. HOFFMAN: Does he work at your firm?

21 MR. KALTENBACH: No.

22 BY MR. HOFFMAN:

23 Q. Sir, I'm marking Exhibit No. 4, this
24 is Plaintiff's Rule 213(F)(3) Expert

1 Q. Yes.

2 A. In total we had them all for the
3 interest general ledger account.

4 Q. I'm not talking about just the general
5 ledger accounts. I mean were -- you got other
6 documents relating to districts like audit
7 reports and other things, yes?

8 A. Yes.

9 Q. And were some of those documents
10 relating to the other districts incomplete for
11 the entire time period that is relevant to the
12 case?

13 A. Yes.

14 Q. And describe the level of
15 incompleteness of the records pertaining to the
16 other districts.

17 A. Well, like, for example, here in the
18 audits you can see they go back to 2006.

19 Q. Right. If you turn the page, you've
20 got bank reconciliation packets, right?

21 A. Yes.

22 Q. And those go back only as far as 1999,
23 correct?

24 A. Yes.

1 Disclosure-James P. Martin.

2 (WHEREUPON, said
3 document was marked as
4 Martin Deposition
5 Exhibit No. 4 for
6 Identification.)

7 You've seen this document before?

8 A. Yes.

9 Q. And you worked with Barry Kaltenbach
10 and/or people at his firm to prepare this?

11 A. Yes.

12 Q. And you read this document and it is
13 correct and complete, yes?

14 A. Yes.

15 Q. Let's turn to page two, please. In
16 the -- toward the middle of the page it reads,
17 "Mr. Martin is expected to testify," and it
18 goes on for the remainder of that paragraph,
19 the last complete paragraph on page two. Where
20 did you get that understanding of how the
21 process at the Treasurer's Office worked?

22 A. From in terms of pooling investments
23 and investing on behalf of the districts?

24 Q. Let's do this the hard way. It says

1 here -- it talks about revenues for the school
2 districts, right? And it makes a statement
3 here, "The treasurer maintained a summary of
4 the investments on a ledger and later an Excel
5 workbook." Do you see that?

6 **A. Yes.**

7 **Q. What is the basis for your**
8 **understanding of that?**

9 **A. Those were the documents we were**
10 **provided.**

11 **Q. And then goes on to talk about, "The**
12 **treasurer maintained a general ledger for each**
13 **district. This tracked each district's fund**
14 **balances, e.g. education, transportation, et**
15 **cetera. This was used to calculate the**
16 **percentage of each district's ownership of the**
17 **fiduciary fund total. This percentage was used**
18 **to calculate the district's share of the**
19 **fiduciary fund as well as to allocate**
20 **investment income. Each quarter the treasurer**
21 **estimated a total investment income amount,**
22 **this amount was typically a round number."**

23 **What is your -- what is the basis**
24 **for that statement? Where did you get the**

1 information to make that statement?

2 **A. That was -- that's the information on**
3 **the Healy notes.**

4 **Q. When you say this amount was typically**
5 **a round number, wasn't it always a round**
6 **number?**

7 **A. It was a round number, I think, almost**
8 **every single time. I can't remember if there**
9 **were two or two where it wasn't a round number.**
10 **Almost always a round number.**

11 **Q. At least almost always, maybe always?**

12 **A. Yes.**

13 **Q. Then it says this calculation -- "The**
14 **treasurer applied the district's ownership**
15 **percentage to the estimated investment income**
16 **to determine the investment income to be**
17 **ascribed to each district." Do you see that**
18 **statement?**

19 **A. Yes.**

20 **Q. Is that what the treasurer did?**

21 **A. That's what's on the Healy notes.**

22 **Q. So you're looking at the Healy notes**
23 **and getting that information from the Healy**
24 **notes, correct?**

1 **A. Yes.**

2 **Q. Did you ever speak with Bob Healy?**

3 **A. No.**

4 **Q. Did anybody from your firm ever speak**
5 **to Bob Healy?**

6 **A. No.**

7 **Q. Why not?**

8 **A. I don't know.**

9 **Q. What do you mean you don't know?**

10 **Why wouldn't it be important for**
11 **somebody from your firm to at least try to**
12 **reach out to Bob Healy and ask him questions**
13 **about what he did with respect to investment**
14 **income?**

15 **A. We had his deposition transcript and I**
16 **read that.**

17 **Q. Did that answer all the questions that**
18 **you had?**

19 **A. As well as I would expect from another**
20 **conversation with him would be.**

21 **Q. So you thought because of the**
22 **deposition transcript you had for Bob Healy,**
23 **there was no need to ask Bob Healy any further**
24 **questions?**

1 **A. Right. Yes.**

2 **Q. And then it states in this disclosure,**
3 **"This calculation of investment income was used**
4 **to create a journal entry input into each**
5 **district general ledger. What is the source of**
6 **that statement?**

7 **A. That's from the 205 reports. Let me**
8 **get the right name of that, if I could, please.**

9 **Q. I know what the general ledger is, but**
10 **that's not what this statement says. I know**
11 **what the general ledger is. You don't need to**
12 **tell me.**

13 **How did you know how the**
14 **information in Healy's notes were then made**
15 **part of the general ledger?**

16 **A. Oh, because you can --**

17 **Q. Who told you that?**

18 **A. No one told me, but you can see the**
19 **entries on the Healy notes as a journal entry**
20 **on the general ledger sheets.**

21 **Q. You also state in this disclosure, "No**
22 **formal reconciliation between the fiduciary**
23 **fund and the district general ledgers appears**
24 **to have been undertaken based on materials**

1 Mr. Martin reviewed." Do you see that?

2 A. Yes.

3 Q. Do you have any understanding as to
4 why there was no formal reconciliation?

5 A. No.

6 Q. What is the importance of a
7 reconciliation between the fiduciary fund and
8 the district general ledgers?

9 A. Well, just show that the amount in the
10 general ledger actually tied to the investment
11 fund balance.

12 Q. Okay. Would that have been good
13 practice to -- for the TTO to use?

14 MR. KALTENBACH: Objection. I object as
15 beyond the scope. You can answer.

16 THE WITNESS: I wasn't engaged to evaluate
17 their internal control procedures.

18 BY MR. HOFFMAN:

19 Q. So you have no opinion even though
20 you've been an accountant and an analyst
21 for -- how many years, 20 years?

22 A. Long time. 30 years.

23 Q. 30 years. So you don't have any
24 opinion whatsoever on whether it would have

1 Q. Later on in the disclosure, you talk
2 about the four quarters and how the treasurer
3 calculated investment income amount for those
4 four quarters, right?

5 A. You're referring to the --

6 Q. The photograph that starts on
7 quarterly basis.

8 A. Yes.

9 Q. And there's 11 months listed there.
10 Why is there a month missing?

11 A. The -- well, the fourth quarter of the
12 fiscal year, so the second quarter of the year,
13 April, May, June was only calculated on the
14 April and May balance.

15 Q. What is the effect of that?

16 A. It was consistently applied, so as
17 long as it was consistent, it really wouldn't
18 have much effect.

19 Q. Well, did anybody -- was June
20 considered in next year or was June ignored
21 entirely?

22 A. June was really just not considered in
23 the allocation calculations.

24 Q. And what impact would that have in

1 been a good idea for the TTO to reconcile the
2 fiduciary fund to the district general ledgers?

3 MR. KALTENBACH: Same objection. Also
4 argumentative.

5 THE WITNESS: No, I wasn't engaged to look
6 at their internal controls.

7 BY MR. HOFFMAN:

8 Q. Regardless of whether you were paid to
9 do that or not, I'm asking right now whether
10 you think that would have been something that
11 would have been important and valuable in
12 looking back on this?

13 MR. KALTENBACH: Same objection.

14 THE WITNESS: I have no opinion on that.

15 BY MR. HOFFMAN:

16 Q. Did you attempt to reconcile the
17 fiduciary fund to the district general ledgers?

18 A. That would have been possible if we
19 were able to complete the analysis of the fund
20 balance summary, but...

21 Q. But because you couldn't complete the
22 fund balance summary, it became impossible to
23 do a reconciliation, right?

24 A. Yes.

1 terms of whether the allocations were right?

2 A. Really wouldn't impact the allocations
3 at all.

4 Q. Why not?

5 A. Because the allocations are just based
6 on a percentage of the pool ownership. It was
7 taking the average of those months to determine
8 the average fund balance for that period.

9 Q. You state, "The manual calculation of
10 investment income allocation was input into the
11 general ledger books of each individual
12 district as a journal entry." How do you know
13 that?

14 A. Because you can trace the numbers from
15 the Healy notes into the journal entry detail.

16 Q. You state that on page four, it says,
17 "Based on his review analysis, as explained
18 above, Mr. Martin is expected to opine that
19 during the relevant time period, District 204
20 was over allocated a total of \$1,427,442.04."
21 Do you see that?

22 A. Yes.

23 Q. What is the -- that opinion does not
24 have any relationship, does it, to whether

<p style="text-align: right;">Page 38</p> <p>1 District 204 was actually paid its share of the 2 interest that was actually earned by the TTO 3 from the pooled investment fund? 4 A. I'm sorry. Could you -- 5 Q. There is a difference between the 6 allocation of the amounts listed in Healy's 7 notes and the actual amounts of money that were 8 earned by the TTO, a share of which belonged to 9 District 204, correct? 10 A. Yes. 11 Q. So you don't have any opinion 12 whatsoever as to whether based on the money 13 that the TTO actually earned, District 204 14 received either too much or too little 15 investment income? 16 A. I'm sorry? 17 MR. HOFFMAN: You can repeat that back. 18 (Said question was read 19 back.) 20 MR. KALTENBACH: I'll object. I don't 21 think the witness took it as and I don't think 22 it was a question, I think it was a statement 23 that you're looking for a response to. 24 BY MR. HOFFMAN:</p>	<p style="text-align: right;">Page 40</p> <p>1 A. That's correct. 2 Q. Okay. So it is theoretically 3 possible, isn't it, that if Healy's 4 distribution numbers in each quarter were too 5 low in relation to the amount of money the TTO 6 actually earned on the investments, that 7 District 204 could have been underpaid through 8 this time period; isn't that true? 9 A. No. 10 Q. Why not? 11 A. Because of the -- the Healy notes 12 included an estimate of the interest that was 13 actually earned on investments. 14 The actual investments once they 15 were earned, if they were underdistributed, it 16 would have flowed into the pool balance anyway, 17 and they would be -- they would become part of 18 the pool. 19 Q. Well, you don't know how much interest 20 District 204 should have gotten from the fiscal 21 years 1995 through 2012, do you? 22 A. You got to repeat the question, 23 please. 24 Q. You don't know how much investment</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. It's a question. 2 A. Could you repeat the question. 3 (Said question was read 4 back.) 5 THE WITNESS: Can you break that down. 6 BY MR. HOFFMAN: 7 Q. Sure. You've agreed that the amount 8 of money -- the TTO earned money on the pooled 9 investments, right? 10 A. Yes, it did. 11 Q. And District 204 was entitled to a 12 share of the investment income earned, correct? 13 A. Yes, absolutely. 14 Q. And you were not able to analyze how 15 much investment income the TTO made and 16 therefore what share of that money District 204 17 was entitled to get during the relevant time 18 period; am I right? 19 A. Yes. 20 Q. So what you analyzed was the 21 difference between Healy's handwritten notes 22 relating to distributions and the general 23 ledger entries relating to amounts credited to 24 District 204, right?</p>	<p style="text-align: right;">Page 41</p> <p>1 income District 204 should have received based 2 on money actually earned for the 1995 to 2012 3 time period, do you? 4 A. How much they should have received 5 based on the actual earnings? 6 Q. Yes. 7 A. I didn't have any analysis what the 8 actual earning -- what the actual interest 9 income or investment income was. 10 Q. It's okay to agree with a question I 11 ask you. 12 A. I'm trying to be clear. 13 Q. I know you're clear. 14 I know what the predicate is. 15 You can go ahead and then make the logical 16 connection that because you don't know how much 17 interest was earned, you don't have any opinion 18 as to how much District 204 should have 19 received from -- during that time period in 20 investment income? 21 A. Well, no, I would know that they 22 should receive their proper share of what 23 Mr. Healy had been calculated based on the 24 estimate, which may be --</p>

11 (Pages 38 to 41)

1 Q. You don't know --

2 MR. KALTENBACH: Hold on. Let him finish.

3 THE WITNESS: Which may be different than
4 that same percentage applied to the actual
5 interest income during that period.

6 BY MR. HOFFMAN:

7 Q. But you have no way of knowing whether
8 the numbers in Healy's notes bore any
9 relationship whatsoever to the interest
10 actually earned?

11 MR. KALTENBACH: Objection. Form.

12 BY MR. HOFFMAN:

13 Q. Answer.

14 A. What was the question?

15 Q. Isn't it true that you have no way to
16 know whether the numbers in the Healy notes as
17 to investment interest to be distributed have
18 any relationship to the amount of money that
19 the TFO actually earned?

20 MR. KALTENBACH: Same objection. Go ahead.

21 THE WITNESS: That's true, yes, I agree
22 with that.

23 BY MR. HOFFMAN:

24 Q. It says here -- now, you go through

1 and you talk about the three adjustments you
2 made, and basically if I understand this
3 correctly, at the end of the day, you went back
4 to Bradshaw's analysis, you made three
5 adjustments to particular entries. You
6 eliminated one of the columns and then that
7 became the basis for your opinion; is that fair
8 enough?

9 A. No.

10 Q. Okay. We'll get to that. It looks
11 like exactly what you did. We'll talk about
12 that.

13 And then it says at the bottom of
14 feigning four, "In forming his opinions on this
15 matter, Mr. Martin did not assume the workbooks
16 to be either accurate or inaccurate." What
17 does that mean? When you say workbooks, are
18 you talking about the Healy notes, general
19 ledger or both?

20 A. That's the Healy notes.

21 Q. So you did not assume the Healy notes
22 to be either accurate or inaccurate. What do
23 you mean by that?

24 A. Well, because they were based on an

1 estimate of what the interest income was for
2 the quarter.

3 Q. Okay. What impact in the real world
4 would Healy's notes being inaccurate have?

5 A. That the amount of interest earned by
6 the districts would flow into the fund balance
7 or come out of the fund balance.

8 Q. What do you mean by that?

9 A. Well, the fund balance was really all
10 the investment, the pooled investments that
11 would fluctuate over time, earn interest and
12 things like that.

13 If Healy were to estimate what
14 the actual interest on that would be for a
15 quarter and then ascribe that in the proper
16 percentages to the districts, if the amount he
17 was ascribing in total was too high, it was
18 more than the actual interest, he would be
19 pulling principal out of that and ascribing
20 principal amounts.

21 If the amount was too low,
22 interest that was earned who flow and become
23 part of the fund balance, the actual principal
24 balance.

1 Q. Was all of the interest that the
2 TFO -- let's see. Let me ask you a better
3 question. Are you aware that in 2013 the TFO
4 communicated with the districts to tell them
5 that they had located a fund that they
6 described as undistributed investment income?

7 A. No.

8 Q. I'm showing you Thiessen
9 exhibits -- let's look at Thiessen Exhibit 8.
10 And it says, I'll just read it, in the third
11 paragraph, "However, in reviewing" -- Thiessen
12 Exhibit 8 is -- you know who Michael Thiessen
13 is?

14 A. Yes.

15 Q. It's something that Michael Thiessen
16 and Dr. Bradley who preceded Dr. Birkenmaier as
17 the treasurer wrote to all member districts.
18 It says, "In reviewing prior year financial
19 statements, there appears to be some
20 undistributed funds. We have been actively
21 communicating with our new auditors regarding
22 the possibility of distributing these funds to
23 the school districts. We want a better
24 understanding and sign-off on the issue before

<p style="text-align: right;">Page 46</p> <p>1 distributing these funds." 2 Have you ever seen this document 3 before, sir? 4 A. No. 5 Q. And Thiessen Exhibit No. 9 is a 6 November 7th, 2013, letter from Dr. Birkenmaier 7 to the districts. It says, "It has been 8 determined that this interest income should be 9 distributed to the township districts and 10 agencies. We are therefore distributing 11 \$500,000 in interest income from previous 12 years. The calculation of revenue distribution 13 will be based on," blah, blah, blah. 14 Have you ever seen this document 15 before, sir, this communication on 16 undistributed investment income? Yes, no, I 17 don't remember. 18 A. Not that I recall now. 19 Q. Okay. Both of Thiessen Exhibit 8 and 20 9 were the subject of questions that I asked 21 Mr. Thiessen and Dr. Birkenmaier in their 22 depositions. 23 Do you remember the testimony 24 they gave on that subject?</p>	<p style="text-align: right;">Page 48</p> <p>1 the proportionate shares by all the underlying 2 districts. 3 Q. Well, wouldn't that concern you if 4 there was money that should have been 5 distributed to District 204 and the other 6 districts but the TTO didn't distribute it? 7 MR. KALTENBACH: Objection. Form. You can 8 answer. 9 BY MR. HOFFMAN: 10 Q. Would it concern you? 11 A. No. 12 Q. Why not? 13 A. That would just be a timing difference 14 at that point in time. 15 Q. Is it your understanding that the TTO 16 can choose to distribute interest or not 17 distribute interest at any time as it chooses? 18 MR. KALTENBACH: Objection. Form and 19 beyond the scope of his engagement. You can 20 answer. 21 THE WITNESS: That's really isn't within 22 the scope of what I was looking at. 23 BY MR. HOFFMAN: 24 Q. You don't know whether the TTO has to</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Vaguely, I think. 2 Q. And do you remember that Dr. 3 Birkenmaier testified -- and I got her 4 deposition, we can dig it out if I have to. Do 5 you remember she testified that in 2013 they 6 distributed \$500,000, but the actual amount in 7 the fund was more like 1.2, 1.3 million, do you 8 remember that testimony? 9 A. No. 10 Q. Does the fact that there is a -- and 11 do you remember her testifying that she wasn't 12 sure how much that fund amounts to now, but she 13 believes it's about 1.7 million? 14 A. No. 15 Q. Does the fact that there is a 16 significant amount of undistributed interest 17 the TTO was holding based on the testimony of 18 Dr. Birkenmaier have any impact on your 19 opinions or analysis? 20 A. No. 21 Q. Why not? 22 A. Because, again, the fund, whether it's 23 an undistributed income fund or in the 24 investment principal fund, it still is owned in</p>	<p style="text-align: right;">Page 49</p> <p>1 distribute investment income or not to the 2 districts, true? 3 MR. KALTENBACH: Same objections, plus 4 argumentative. 5 BY MR. HOFFMAN: 6 Q. You are shaking your head. 7 A. True. 8 Q. Okay. Let me show you a document that 9 was previously marked as Thiessen Exhibit 10. 10 It includes a document that was in TTO's 11 document production in this case, which you 12 received. This was an exhibit to the Thiessen 13 deposition as well as the Dr. Birkenmaier 14 deposition, and I asked him questions 15 extensively about this document. Have you seen 16 it before? 17 A. Not that I recall, no. 18 Q. Are you sure you read the depositions 19 of Thiessen and Birkenmaier? 20 A. Yes. 21 Q. And you don't remember any discussion 22 about -- in the transcript, if you look to the 23 second page of Thiessen Exhibit 2 -- let me 24 start over.</p>

13 (Pages 46 to 49)

1 Look at the second page of
 2 Thiessen Exhibit 2, you'll see a one-sided
 3 request for posting entry for an audit
 4 adjustment-interest in June of 2011 in the
 5 amount of \$1,512,451.00. Do you see that?
 6 A. Yes.
 7 Q. Do you know what that transaction was?
 8 A. Nope, I don't.
 9 Q. Did anyone in the TTO ask you to
 10 consider this document, or even if they didn't
 11 ask you to consider this document, possibly
 12 looking into the transaction that's described
 13 in this document to see how it affected
 14 interest?
 15 A. No, they did not.
 16 Q. Is it fair to say that this appears to
 17 be a request for an entry to the general ledger
 18 of the TTO -- by the way, you know who -- you
 19 recognize this as a TTO document on page two,
 20 don't you? It says Lyons Township School
 21 Treasurer and --
 22 A. Yes.
 23 Q. You see down at the bottom there's
 24 Laura Lee Conway's signature?

1 A. I don't know if that's hers.
 2 Q. Dr. Birkenmaier said it was. Do you
 3 agree with that? Do you have any reason to
 4 doubt it?
 5 A. I don't doubt it.
 6 Q. So what's a one-sided transaction?
 7 A. Well, a one-sided transaction would be
 8 made to one side of the general ledger, in this
 9 case, at least I believe that's what this form
 10 would do.
 11 Q. Tell me a little -- you're defining it
 12 using the term as somebody who's not in your
 13 field. If I was good with numbers, I wouldn't
 14 have gone to law school, right?
 15 A. Got you.
 16 Q. Tell me the significance of the
 17 transaction being one-sided, please.
 18 MR. KALTENBACH: I'm going to object as to
 19 being vague, and as the witness testified,
 20 beyond the scope. With that being said, you
 21 can answer.
 22 THE WITNESS: Yeah, it really is beyond the
 23 scope in sort of an academic --
 24 BY MR. HOFFMAN:

1 Q. Sir, I didn't ask you to make an
 2 objection as to scope.
 3 MR. KALTENBACH: Hold on. Jay, let him
 4 finish his answer.
 5 At the start of the deposition,
 6 you usually ask a witness can we not talk over
 7 each other and now you're doing it.
 8 MR. HOFFMAN: He is not a junior attorney.
 9 He is an accounting professional. He has no
 10 business adopting your objections as to scope.
 11 He's been an accountant for 30 years. He can
 12 tell me what a one-sided transaction is. You
 13 had your objection. It is on the record.
 14 BY MR. HOFFMAN:
 15 Q. Sir, I would respectfully ask you not
 16 to parrot your lawyer's objections. Simply
 17 answer the questions based on your knowledge
 18 and experience.
 19 If you can't tell me what a
 20 one-sided transaction is, then tell me that.
 21 If you can, tell me that as well. Thank you.
 22 MR. KALTENBACH: I'm going to object. I
 23 don't think that there's an actual question
 24 that's now pending. I also think it's

1 argumentative.
 2 BY MR. HOFFMAN:
 3 Q. Great. It says here.
 4 MR. KALTENBACH: Jay, knock off the
 5 commentary.
 6 MR. HOFFMAN: There is a question pending.
 7 MR. KALTENBACH: Knock off the commentary.
 8 MR. HOFFMAN: You are obstructing the
 9 deposition.
 10 MR. KALTENBACH: Knock off the commentary.
 11 BY MR. HOFFMAN:
 12 Q. Sir, this document at the very top
 13 says one-sided.
 14 Based on your vast experience in
 15 the accounting field, what is a one-sided
 16 transaction and what is the significance of it?
 17 A. Well, again, it's an
 18 academic -- you're asking a very academic
 19 accounting question, and there's a couple of
 20 ways that could be. One is that the
 21 accounting, just pure GAAP accounting, like
 22 generally accrual account is based on two
 23 entries that are always in balance, there's a
 24 debit and credit amount.

1 A one-sided entry would be an
2 entry that would affect just one side of that,
3 one debit or one credit, without the
4 corresponding -- without the corresponding
5 opposite side of that, that has the unfortunate
6 effect of making the general ledger not
7 balance, so the trial balance doesn't come out
8 if you make a one-sided entry; however, that is
9 still done in certain circumstances where there
10 would be a correction needed or some other
11 thing that you are trying record. For example,
12 a lot of general ledger systems require a
13 one-sided entry at the end of the period, at
14 the end of the year, in order to close out the
15 income statement into the balance sheet at the
16 end of the year. That would be a one-sided
17 entry to do so.

18 Another example of a one-sided
19 entry would be, for example, making an entry
20 where it's -- depends on the context, and I
21 don't know the context of this particular form
22 or what they use this form for, but it could be
23 a subledger only entry without affecting the
24 general ledger balance as well, because that's

1 sometimes referred in certain accounting
2 circles as being a one-sided entry, too,
3 because you are affecting the subledger without
4 affecting the control total of the general
5 ledger.

6 Q. Great. I knew you knew the answer and
7 that's what I wanted from you. Thank you.

8 Tell me whether you're aware of
9 audit adjustments for interest amounts being
10 made to District 204's accounts in 2011 or any
11 other year?

12 A. Not specifically, no.

13 Q. And am I correct that this is a
14 reduction in the District 204's fund balance of
15 approximately \$1.5 million?

16 MR. KALTENBACH: Same objection as before.

17 BY MR. HOFFMAN:

18 Q. Am I correct?

19 A. I have no idea what this entry would
20 be doing.

21 Q. Would it help you to see the general
22 ledger, which is Thiessen Exhibit No. 11? It
23 may help, it may not help. You tell me.
24 You'll see at the very top listed as page 24,

1 you see there's -- it says Jay J/E, journal
2 entry, audit adjustment interest negative
3 \$1,512,451.

4 A. No, I don't see that.

5 Q. Right here. It says page 24 at the
6 top here. I'm sorry about that. You got it?

7 A. Oh, yes.

8 Q. Do you know what that journal entry
9 means?

10 A. No, I don't.

11 Q. Do you see on the second page of this
12 document, which is listed as page 22, about
13 two-thirds of the way down there's a similar
14 listing of journal entry audit adjustment
15 interest in a negative amount of \$1,512,451?

16 A. Yes.

17 Q. Do you know what that -- this is for
18 District 204's account. Do you know what
19 that -- what that entry is for?

20 A. No, I don't.

21 Q. Now, when you read the Thiessen and
22 Birkenmaier deposition transcripts, did that
23 cause you to have any questions about this one
24 and a half million dollar debit for an audit

1 adjustment on interest that was discussed in
2 the deposition transcripts?

3 A. No.

4 Q. Why not?

5 A. Because I was really talking about the
6 fund balance, not about the allocation of
7 interest.

8 Q. Look on page one of Thiessen Exhibit
9 No. -- Thiessen Exhibit 10, please. And you
10 see that there's a -- it has the \$1,512,451
11 adjustment for 204, right?

12 A. Yes.

13 Q. And then it has a positive number of
14 \$1,742,417. Did you see that?

15 A. Oh, up here, uh-huh.

16 Q. Yes?

17 A. Yes.

18 Q. And you see it's got a hundred next to
19 it. And that's the TTO's account, right?

20 A. Yes.

21 Q. And so didn't you have any questions
22 about why there was a gain to the TTO and a
23 reduction in District 204's funds relating to
24 interest of about a million and a half dollars

1 in June of 2011?

2 MR. KALTENBACH: Same objection as before.

3 THE WITNESS: No.

4 BY MR. HOFFMAN:

5 Q. Why not?

6 A. I don't know what the -- I don't know
7 what the context of these entries are.

8 Q. Well, how would you find out?

9 A. Well, I mean I'd have to research it
10 further.

11 The note here says it's a 2010
12 adjustment but self corrected in -- I don't
13 know what that is. 2011.

14 Q. Whose handwriting is that based on
15 your review of the documents?

16 A. I don't know.

17 Q. What does that note mean, do you know?

18 A. Well, that would mean these are just
19 an accrual. That it was to make the 2010
20 ledger correct. I'm assuming anyway. It would
21 be to adjust it per what the auditors had found
22 during the conduct of their audit, that they
23 felt it should have been recorded one way or
24 another.

1 BY MR. HOFFMAN:

2 Q. Isn't it important to know that?

3 A. It doesn't affect the analysis that I
4 perform, no.

5 Q. Isn't the analysis you performed to
6 try to figure out if District 204 got too much
7 or too little interest?

8 A. Yes, versus what the other districts
9 received, yes.

10 Q. This journal entry, Thiessen Exhibit
11 No. 10, is not uniform as to all the other
12 districts, it specifically affects District
13 204, doesn't it?

14 MR. KALTENBACH: Same objection as before.

15 THE WITNESS: The one line on there is
16 affecting District 204, yes.

17 BY MR. HOFFMAN:

18 Q. As reflected in the first page, it
19 lists other districts, but the amount's very
20 small, right?

21 A. Yes.

22 Q. And your testimony is that this is
23 unimportant to your analysis?

24 A. That's correct.

1 MR. HOFFMAN: Move to strike the last
2 answer containing an assumption, lack of
3 foundation.

4 BY MR. HOFFMAN:

5 Q. Sir, I'd like to caution you not to
6 make assumptions or guesses, because they are
7 not evidence.

8 So bottom line is, you don't know
9 what this document Thiessen Exhibit No. 10 or
10 11, what these entries represent, do you?

11 A. That's correct.

12 Q. And if this is a reduction of a
13 million a half dollars as an adjustment for
14 interest based on audits done in 2011, this
15 number is big enough to wipe out the entire
16 damage claim of the TTO on interest, which is
17 about 1.4 million, correct?

18 A. Well --

19 MR. KALTENBACH: Same objection as before.
20 You can answer.

21 THE WITNESS: I don't know what the reason
22 that that sheet represents, so I don't really
23 know what their -- what they were suggesting
24 that should be made for.

1 MR. KALTENBACH: It's been about an hour.
2 Do you want to --

3 MR. HOFFMAN: I WANT to ask him another
4 question.

5 BY MR. HOFFMAN:

6 Q. When I depose Mike Thiessen, I asked
7 him about the same figure, and he looked on
8 Thiessen Exhibit No. 11, and he found a number
9 that was roughly similar in size, and so his
10 testimony was that that the general entry for
11 audit adjustment for interest could somehow
12 offset this \$1,587,295.84 entry for July 2010
13 expenses. Do you see that?

14 A. Yes, I see it.

15 Q. Based on your understanding of the
16 documents and the general ledger, do you have
17 any reason to believe that that negative entry
18 for District 204 expenses for that month has
19 any relationship to the negative \$1.5 million
20 number for an audit adjustment for interest?

21 MR. KALTENBACH: Same objection.

22 THE WITNESS: I have no idea.

23 BY MR. HOFFMAN:

24 Q. Does it seem logical those two numbers

<p style="text-align: right;">Page 62</p> <p>1 would be connected given that -- does it seem 2 logical that those two numbers would be 3 connected given that the numbers are different 4 and that one relates to interest and one 5 relates to expenses? 6 MR. KALTENBACH: Hold on a minute, Jim. 7 Same objection. 8 MR. HOFFMAN: Settle down. 9 MR. KALTENBACH: Jay, don't tell me to 10 settle down. 11 MR. HOFFMAN: Don't interrupt people when I 12 am asking a question. You are objecting before 13 a question is out of my mouth. 14 MR. KALTENBACH: Your voice was trailing 15 off, and I wanted to get the objection out 16 before the witness answered, which I, generally 17 speaking, try to do. 18 BY MR. HOFFMAN: 19 Q. May I get an answer to my question, 20 please? 21 THE WITNESS: Could you read the question, 22 please. 23 (Said question was read 24 back.)</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Sure. 2 A. Just this last sentence here at the 3 bottom, I think I misread that the first time 4 where it said the workbooks. I think I said it 5 was the Healy notes, but it actually is the 6 Kelly Bradshaw workbooks. 7 Q. So your reference was actually to 8 Bradshaw's workbooks? 9 A. Right. 10 Q. So Bradshaw's workbooks captured 11 information from Healy's notes as well as the 12 general ledger, right? 13 A. From Healy's notes and the general 14 ledger, yes. 15 Q. And so you didn't go back and trace 16 the numbers in Bradshaw's report to see whether 17 she had correctly pulled the numbers from 18 Healy's notes or the general ledger, right? 19 A. Oh, no. That's not right. I did 20 both. 21 Q. Did you? 22 A. Yes. Absolutely. 23 Q. For \$120,000, I would hope you did. 24 A. Yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 THE WITNESS: I have no idea. 2 MR. HOFFMAN: Okay. Take a break. 3 (Recess.) 4 BY MR. HOFFMAN: 5 Q. On page four we talked about your 6 opinion as to an overallocation of 7 \$1,427,442.04. 8 A. Okay. 9 Q. Right? 10 A. Yes. 11 Q. And that differs from the amount that 12 was in Bradshaw's analysis, correct? 13 A. Yes, it does. 14 Q. And so I just want it clear on the 15 record that your -- and -- Barry, you can fill 16 us in on this, that this amount stated in the 17 disclosure is the TTO position on damages for 18 its interest claim in this case? 19 MR. KALTENBACH: That's correct, and I sent 20 you an e-mail to that earlier this week 21 confirming that. 22 THE WITNESS: Actually, reading this, if I 23 can make a correction to a prior answer. 24 BY MR. HOFFMAN:</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. So why are you saying that you did not 2 assume that Bradshaw's workbooks were accurate 3 or inaccurate, what does that mean? 4 A. Well, I mean she wrote numbers down, 5 but I would never assume them to be correct or 6 incorrect. I had to verify -- I did my own 7 work on that. 8 Q. You went back and tick and traced it 9 as they say? 10 A. Oh, yes. I created a separate sheet 11 where it actually balanced out the -- all the 12 interest entries on the general ledgers. 13 Q. And had Bradshaw made any mistakes 14 that you found? 15 A. Well, I don't know if it was mistakes. 16 She misinterpreted -- she interpreted some of 17 the entries differently than I did. 18 Q. And did you speak with Ms. Bradshaw 19 about that? 20 A. Yes. 21 Q. And did she persuade you at any of her 22 interpretations, or did you decide that your 23 interpretations which differed from Ms. 24 Bradshaw's were correct?</p>

17 (Pages 62 to 65)

1 A. Well, it wasn't intended to be a
2 persuasive thing. I was asking her why she
3 didn't pick up a couple of the entries that
4 were in there.

5 She interpreted them differently
6 than I did, and I didn't change my opinion on
7 that.

8 Q. And these are the three changes that
9 you describe in the middle of page four of the
10 disclosure, yes?

11 A. Exactly.

12 Q. Did you make any assumption as to the
13 correctness or incorrectness of the Healy
14 notes?

15 A. No. Treated those as a business
16 record that were correct at that time.

17 Q. And why would you treat Mr. Healy's
18 notes as being correct given that he's a class
19 X felony who stole more than a million and a
20 half dollars from the districts?

21 A. They were the records that were
22 available from that time.

23 Q. Do you feel that Healy was a
24 trustworthy and reliable professional in light

1 of his criminal record and history of theft?

2 MR. KALTENBACH: Same objection as before,
3 scope and form.

4 THE WITNESS: I wasn't really engaged to
5 opine on Mr. Healy's conduct.

6 BY MR. HOFFMAN:

7 Q. Let's dispense with the it's not
8 within the scope. I'm asking you a question as
9 an accountant and a professional.

10 And the question is: Do you have
11 any concerns relying on Healy's handwritten
12 notes as being what should have been
13 distributed given Healy's history of theft from
14 the funds that the TTO held for the districts?

15 A. No.

16 Q. Doesn't concern you at all?

17 A. No, not relying on the Healy's notes,
18 no.

19 Q. You are relying on the Healy's notes
20 as for what distributions should have been
21 made, right?

22 A. That's correct.

23 Q. Okay. Are you relying on the Healy
24 notes as to what amounts they state should be

1 allocated to each district?

2 A. Yes.

3 Q. So whatever amount Healy put in his
4 handwritten notes as to the allocation to each
5 district, is the amount that you believe should
6 have been paid to each district in that
7 quarter?

8 A. Not exactly. It really is the
9 proportion of the entries. It's the proportion
10 of the amounts.

11 Again, as we talked about
12 earlier, it's not that the amounts that are in
13 there equal the actual interest. It's the
14 proportion of the amounts by district.

15 Q. So fair enough.

16 What I'm saying is: In each of
17 Healy's handwritten notes there was -- I
18 understand they weren't all exactly the same,
19 but generally what they have is they have a
20 statement of the fund balances of each
21 district, the amount that he's going to
22 distribute as a total of all of the allocations
23 that he makes amongst the districts, correct?

24 A. Yes.

1 Q. And in one quarter it may be that he's
2 going to -- he writes down \$10 million for the
3 distribution and then he writes down a specific
4 number for each of the districts in his notes,
5 correct?

6 A. Well, \$10 million would be
7 extraordinarily large. I don't recall any that
8 were quite that large, but that's the way it
9 would work though.

10 Q. Would you feel more comfortable with a
11 number of one million?

12 A. Yes.

13 Q. Terrific.

14 So in any given quarter, if he
15 intended to distribute a million dollars total
16 in interest, he also had specific numbers as to
17 the amount that two go to each district,
18 correct?

19 A. Yes.

20 Q. And did you rely on the specific
21 numbers that Healy set forth in his notes as to
22 the amount that each district should have been
23 allocated in that quarter?

24 A. Yes.

1 Q. So it wasn't just taking the total of
2 a million dollars for that particular quarter,
3 figuring out a percentage allocation and using
4 that number, you actually used the number that
5 Healy came up with on his sheet, right?

6 A. Yes.

7 Q. Okay. Now, in some of the sheets
8 there were little side calculations where, for
9 one or more of the districts, he did an
10 additional analysis as to interest income. Do
11 you remember seeing those?

12 A. Not specifically, no.

13 Q. I don't need to ask you what you did
14 in that circumstance, do I?

15 MR. KALTENBACH: Objection. Argumentative
16 and form.

17 BY MR. HOFFMAN:

18 Q. You say you don't remember seeing any
19 Healy handwritten notes in which there was a
20 little sidebar or adjacent analysis on finances
21 for one or more of the districts in addition to
22 the straight allocation of a distribution,
23 right?

24 A. Not offhand, no.

1 Q. So if I ask you what you did when
2 there was a little sidebar like that, what are
3 you going to tell me?

4 MR. KALTENBACH: I'm going to object. I
5 think that -- form of the question.

6 BY MR. HOFFMAN:

7 Q. So you don't remember there being any
8 separate calculation in Healy's notes in any
9 given quarter, therefore you don't remember
10 having to deal with the problem of what do I do
11 when there's a little side calculation set
12 forth?

13 A. Yeah, I'm not familiar with those
14 notes you're describing, so...

15 Q. Did you personally go through all of
16 Healy's notes?

17 A. Yes.

18 Q. And you don't remember seeing in any
19 of them a side calculation relating to one or
20 more districts in addition to the total
21 distribution across the districts that they all
22 have?

23 A. Not as I sit here today, no.

24 Q. Sir, this is one of the documents we

1 received from your counsel.

2 It's an Excel spreadsheet that we
3 printed out on paper and the title is Other
4 Districts' Comparison, right?

5 A. Yes.

6 (WHEREUPON, said
7 document was marked as
8 Martin Deposition
9 Exhibit No. 5 for
10 Identification.)

11 BY MR. HOFFMAN:

12 Q. Is there a document you created?

13 A. This was created by actually Mike
14 Maloziec, but I'm familiar with what this is
15 and what he did on it.

16 Q. What is it and what did he do?

17 A. He took the general ledger journal
18 entries for interest ascribed to other
19 districts, other than 204, and compared that to
20 the Healy notes.

21 Q. For what periods of time did he
22 perform this analysis?

23 A. Well, he didn't get all the way
24 through with this. As you can see, there's

1 some that are the -- where they're blank.
2 Basically it is the ones that show the big
3 difference on the right he didn't get to yet.
4 The ones that don't have the full fund balance
5 filled in. But it was really from 2005 through
6 2012.

7 Q. So why wasn't there any comparison
8 done prior to 2005?

9 A. Well, I mean, again, this was
10 to -- this was just to show that the districts
11 weren't also getting ascribed additional funds,
12 but we just started it with 2005 to 2012, just
13 a starting point.

14 Q. Why did you pick 2005?

15 A. 2005 was a breaking point it seemed
16 from the district that looked like there was
17 like a system that was implemented or something
18 because there were two sets of reports, there
19 was a set prior to that and then a set after
20 that.

21 Q. Did you not have this data for 2004
22 and earlier years?

23 A. Yes, we did.

24 Q. So when you say it is a break point,

1 what do you mean by that?

2 A. There was one set of reports would go
3 through 2005 and then 2005 was another set of
4 reports. Either stored in different archive or
5 from a different system or something.

6 Q. And so you for districts -- the very
7 top is an analysis of one particular quarter
8 for all the districts, October 31st, 2011,
9 right?

10 A. Yes.

11 Q. And then you go through and for
12 Districts 101, 102 you run from late 2005
13 through mid 2012, correct?

14 A. Yes.

15 Q. And then for all of the other
16 districts, you do late 2005 through early 2008,
17 correct?

18 A. I'm not following where you are.

19 Q. Turn to the second page, middle.
20 Starting with District 103, that runs -- you
21 got data that runs from 10/1/05 through
22 1/31/08. Do you see that?

23 A. Yes, sir.

24 Q. And then all of the remaining

1 Q. Well, are districts supposed to be
2 getting extra interest?

3 A. They're not supposed to get interest
4 out of proportion with what the other districts
5 receive.

6 Q. What did you interpret the extra in
7 the general ledger to mean?

8 A. I didn't interpret it. We noted it
9 for follow up.

10 Q. Did you follow up on that?

11 A. Certainly will at the correct time,
12 yes.

13 Q. You're being deposed now, and your
14 expert report was due March 15th. When would
15 the correct time be?

16 A. Well, this would be -- again, the
17 purpose of this analysis was to show that the
18 other districts weren't also getting interest
19 out -- weren't getting additional interest at
20 the time that 204 was.

21 Q. You just told me in the tenth line, or
22 thereabouts, about the tenth row, there's extra
23 interest, according to the general ledger, paid
24 to District 109, right?

1 districts only go through that same time
2 period, just late 2005 through the first month
3 of 2008.

4 A. Yes.

5 Q. And it was your opinion that this was
6 a sufficient sample to prove your point?

7 A. Yes.

8 Q. And let me ask you, why are some of
9 the cells highlighted in yellow?

10 A. Those were things that were on there
11 that we had a question for follow-up on. So,
12 for example, there's an entry, you can see the
13 note over there, you know, just, for example,
14 the first one for District 109, if you look at
15 the GL, there's an entry that says extra. Some
16 of these other ones say interest without being
17 quarterly interest.

18 Q. Let's start with that one. When you
19 say there's something that says extra, what is
20 that?

21 A. If you look at the GL for District 109
22 for 2011, again, each one of those is a 15-page
23 report, but in all the detail in there, there
24 is one entry that says extra.

1 A. Well, no, I don't know if that's extra
2 interest paid to them. There's an entry that
3 says extra that I didn't know what it was.

4 Q. Did you attempt to find out?

5 A. Not yet, no.

6 Q. When are you planning on doing that?

7 A. At some point we'll report that to the
8 trustee's office.

9 Q. Why didn't you do it before today so
10 that we could talk about it?

11 A. I don't know.

12 Q. You spent \$120,000 in fees on this.
13 How come there's work that still has to be
14 done?

15 MR. KALTENBACH: I object as argumentative.

16 BY MR. HOFFMAN:

17 Q. You can answer.

18 A. Well, I guess we'd have to report that
19 to the trustee's office.

20 Q. How much extra did -- how much is the
21 amount described as extra, whatever that means,
22 for 109 and -- for District 109 on the
23 10/31/2011 quarter, what's the extra amount?

24 A. I don't know. I'd have to pull that

1 sheet to see.

2 Q. Was it a large amount of money? This
3 is highlighted, it's noted as a problem, you
4 say you're going to follow up with it, yet at
5 the same time you're testifying that none of
6 the other districts got more than they
7 deserved.

8 A. Well --

9 Q. I want to know. I want to know how
10 much. How much money are we talking about
11 approximately?

12 MR. KALTENBACH: I'm objecting as a series
13 of compound questions.

14 BY MR. HOFFMAN:

15 Q. How much money are we talking about in
16 this quarter for District 109 as an extra
17 payment, roughly?

18 A. Roughly it would be the 57,000.

19 Q. And you have no understanding why
20 there would be an entry in the general ledger
21 for District 109 for this quarter stating there
22 was an extra 57,000, you don't know?

23 A. That's correct.

24 Q. And let's say you follow up on this,

1 for a quarter in 2007 for District 101. What's
2 the significance of that?

3 A. Well, that's again the difference
4 between the total, according to the GL we were
5 provided, and the Robert Healy sheet.

6 Q. Does that indicate that for this
7 quarter, District 101 received \$49,000 too
8 little?

9 A. That could be one possible thing for
10 this.

11 Q. Well, what's your -- having looked at
12 all these records and investigated this as
13 thoroughly as you did, what's your belief and
14 opinion as to what this \$49,000 figure
15 represents?

16 A. Well, I didn't investigate this that
17 thoroughly.

18 Again, this sheet was prepared
19 because in those periods where District 204 was
20 being ascribed interest out of formula against
21 the other districts, I was trying to determine
22 that there wasn't just some other mass interest
23 payment that was properly ascribed to all the
24 other districts.

1 as you say you will, how are you going to do
2 that? Whom are you going to ask? What are you
3 going to do?

4 A. I would ask the trustee's office to
5 say here is an entry that we came across during
6 our analysis of the 204 misallocations, that
7 possibly is another misallocation as well, and
8 they can resolve that accordingly.

9 Q. But whom would you speak with to get
10 more information given that Healy's in jail,
11 and he was the only one involved in the
12 interest determinations in 2011?

13 A. Well, I wouldn't really investigate
14 that. I would point that out as another
15 anomaly to the -- it was something we noted in
16 our analysis that's, again, not related to the
17 scope of the 204 analysis, but we noted it, and
18 I just noted it on our summary here.

19 Q. How many other similar sort of
20 anomalies did you find?

21 A. There's a few.

22 Q. Okay. And further down on page one of
23 Martin Exhibit 5, there's another highlighted
24 cell, and it has a negative 49,383.38. This is

1 Q. How could District 101 in the quarter
2 ending 4/31/2007 get about \$49,000 too little
3 when, say, District 103 in the same quarter got
4 what you regard as the right amount of
5 interest? In other words, the general ledger
6 and Healy's notes match up for District 103 for
7 that quarter but not for District 101. How do
8 you explain that?

9 A. I don't have an explanation.

10 Q. Doesn't that suggest for some quarters
11 and some districts, the allocation did not go
12 according to the -- the notes -- the amounts in
13 the Healy notes, the actual general ledger
14 entries don't match up for districts other than
15 District 204?

16 A. No, I wouldn't conclude that.

17 Q. Well, isn't that exactly what this
18 line says for this quarter for District 101?
19 And it doesn't -- it's not shown up in other
20 districts for that quarter, right?

21 A. I didn't see it in any other quarter.

22 Q. Take a look. The 4/31/07 quarter
23 where you note an underpayment to District 101
24 of 49,000. You don't note underpayments to any

1 other districts in that quarter, do you?

2 **A. Nope, I don't see any.**

3 **Q. How do you explain that then?**

4 **A. I don't explain that.**

5 **Q. Did you read in Bob Healy's deposition**
6 **transcript the statement he made that**
7 **he -- strike that. We'll get to his deposition**
8 **later.**

9 **Let's go to page -- these pages**
10 **aren't numbered, but -- the numbers are very**
11 **small and I'm old. Go to page four. For**
12 **District 106.5 on the far column, you see that**
13 **\$200,000 number?**

14 **A. Yes.**

15 **Q. What is that?**

16 **A. I think that's just a typo or**
17 **something, because it should be the difference**
18 **between those two things. It's just a stray**
19 **number, I think.**

20 **Q. It's a stray number. Okay.**

21 **And then on page six for District**
22 **109, the very first quarter, why is there a**
23 **highlighted -- why is there a highlighted cell**
24 **for 67,878, and then it says interest on**

1 reserve 10,806? What is that?

2 **A. On the general ledger sheet there's a**
3 **line that says interest on reserve.**

4 **Q. Yes.**

5 **A. For that amount.**

6 **Q. Was that amount something you included**
7 **or didn't include?**

8 **A. That amount -- that amount is not**
9 **included here.**

10 **Q. Why is that amount not included?**
11 **Because for District 204 you included things**
12 **that just said interest even if it didn't say**
13 **quarterly interest, didn't you?**

14 **A. No, I think in 204 it was all items**
15 **that said quarterly interest or -- quarterly**
16 **interest or additional interests that were**
17 **noted as being in the quarterly columns.**

18 **Q. You understand the districts got**
19 **interest from a variety of different sources,**
20 **right?**

21 **A. Yes.**

22 **Q. If something just said interest for**
23 **District 204, or one of the other districts in**
24 **the general ledge, you would not include that,**

1 right?

2 **A. It would depend on the context of what**
3 **the line actually said.**

4 **Q. What if it just said interest?**

5 **A. Again, I would have to look at**
6 **specific cases.**

7 **Q. I'm asking you about your methodology,**
8 **and I'd like a straight answer. What did you**
9 **include in your methodology? I know you**
10 **included quarterly interest. Did you include**
11 **some line item in the general ledger where it**
12 **just said interest?**

13 **MR. KALTENBACH: I object as argumentative**
14 **and compound. You can answer.**

15 **THE WITNESS: I'd have to look at specific**
16 **cases or not. It would depend on going through**
17 **the general ledger detail and seeing what the**
18 **line entry said.**

19 **BY MR. HOFFMAN:**

20 **Q. Let's say it says interest transfer.**
21 **What did you do with a line entry that says**
22 **that and only that?**

23 **A. Interest transfer, I would see if**
24 **there was offset somewhere else in the document**

1 in that month.

2 **Q. Would you regard a positive number for**
3 **interest transfer as being quarterly interest**
4 **from the investment income?**

5 **A. Again, if it wasn't offset somewhere,**
6 **it should have -- if an interest transfer**
7 **should have been offset within those periods.**

8 **Q. That wasn't my question. My question**
9 **is: As a general ledger entry for an interest**
10 **transfer, is that included in your quarterly**
11 **interest analysis or excluded?**

12 **A. I can't answer in general on that. It**
13 **would depend on -- would depend on the actual**
14 **entry within the general ledger.**

15 **Q. What if it only say interest transfer**
16 **and nothing else? How would you know that was**
17 **quarterly interest?**

18 **A. Well, again, it would be looking at**
19 **the -- it would be looking at the entries there**
20 **and seeing the context of the entries.**

21 **Q. Okay. There's two more highlighted**
22 **cells on page six for District 109. One talks**
23 **about an additional interest of 9,566. What's**
24 **that what about?**

1 A. That, again, was a line in there that
2 said additional interest.

3 Q. How come you didn't include it and add
4 it to the 73,110 figure that's highlighted?

5 A. Well, because it's noted in the
6 right-hand column.

7 Q. But if there was an additional
8 interest -- you certainly had no problem adding
9 it to District 204's total when you thought
10 there was additional interest paid to them.
11 Why didn't you do it for 109?

12 A. I'm not calculating an amount of
13 differential for District 109.

14 Q. So how can you come up with 73,110 as
15 the sum of Healy's note -- as the sum of the
16 general ledger entries when, in fact, it's
17 9,566 higher?

18 Why did you make the numbers
19 match when, in fact, they don't match?

20 A. Again, it's noted in the right-hand
21 column that that is an amount that's shown on
22 that ledger sheet for that quarter.

23 Q. Why didn't you add the additional
24 interest to the general ledger total?

1 A. Because it's in this column on the
2 right as an entry.

3 Q. With a question mark? Why does it
4 have a question mark?

5 It says additional -- if it's
6 additional interest, it's additional interest,
7 right? Why is there a question mark?

8 MR. KALTENBACH: Hold on. Objection.
9 Compound.

10 BY MR. HOFFMAN:

11 Q. Why is there a question mark next to
12 the 9,566 in additional interest for District
13 109?

14 A. Because those are items to be followed
15 up. Those are questions that were -- came to
16 our attention during the analysis.

17 Q. But you never actually did follow up
18 on that, did you?

19 A. Not yet, no.

20 Q. And then additional interest of 35,534
21 for District 109 and the quarter ending October
22 31st, 2007, do you see that?

23 A. Yes.

24 Q. Is that another instance in which

1 there was additional interest paid to District
2 109 in a particular quarter based on the
3 general ledger entries and your analysis
4 comparing it to Healy's notes?

5 A. I don't know.

6 Q. How come you don't know for District
7 109, but you have no doubt about District 204's
8 overpayments?

9 A. Again, I wasn't looking at calculating
10 the sum differential for District 109.

11 Q. I'm looking at that one particular
12 quarter entry. The amounts in the general
13 ledger are \$35,534 larger than the amount in
14 Healy's notes, correct? That's what this
15 means, yes?

16 MR. KALTENBACH: Objection. Compound.

17 BY MR. HOFFMAN:

18 Q. Correct?

19 MR. KALTENBACH: Objection. Compound.

20 MR. HOFFMAN: It is not compound.

21 MR. KALTENBACH: Don't argue with me.

22 MR. HOFFMAN: You are interrupting. You're
23 trying to obstruct this deposition. I'm sick
24 of it. It is not a compound question. Knock

1 it off.

2 BY MR. HOFFMAN:

3 Q. Answer the question.

4 MR. KALTENBACH: Hold on. Jay, do not
5 yell. Do not raise your voice and yell.

6 MR. HOFFMAN: Barry, you are constantly
7 objecting. They are meritless objections.
8 Knock it off.

9 MR. KALTENBACH: Jay, I'll assert an
10 objection if I believe it is appropriate. And
11 if you think I'm doing that, take it to Judge
12 Hall.

13 Ask your question. Don't raise
14 your voice and yell.

15 BY MR. HOFFMAN:

16 Q. Sir, am I correct that the general
17 ledger entries for District 109 for the quarter
18 10/31/2007 total \$35,534 more than the \$92,123
19 reflected in Healy's notes?

20 A. No.

21 Q. So where is the \$34,534 in additional
22 interest coming from?

23 A. The general ledgers have a whole lot
24 of other transactions in there, as well.

1 This was just showing that
2 there's one line in there that says additional
3 interest 35,534. And marked for follow-up as
4 something that came to our attention during
5 this analysis.

6 Q. Based on your review of a small subset
7 of the records -- so you looked at less than
8 two and a half years of the 1995 through 2012
9 period for District 109, right?

10 A. Well, we looked at '5, '6 and -- yeah,
11 half of '5, '6 and '7.

12 Q. You didn't look at half of '5, did
13 you? You looked at one quarter?

14 A. One quarter of '5.

15 Q. That's not half, is it?

16 A. No, it's a quarter.

17 Q. And then you didn't look at half of
18 2008 either, you looked at one quarter, right?

19 A. Yes.

20 Q. So you looked at 2006, 2007 and one
21 quarter in 2005 and 2008, correct?

22 A. Yes.

23 Q. So that would be ten quarters, if my
24 math is right, right?

1 BY MR. HOFFMAN:

2 Q. Isn't it true, sir -- I know there are
3 a lot of interest statements. This is your
4 analysis. You went through the general ledger,
5 and you felt you were able for District 204 to
6 determine which interest payments were
7 quarterly interest payments from the investment
8 pool and which were something else, right?

9 A. Yes.

10 Q. So you were able to do -- to make that
11 same judgment and distinction for the other
12 districts and their general ledger entries,
13 too?

14 A. I didn't do that for the 109 entries,
15 no.

16 Q. Somebody did this for the 109 entries,
17 and three of the ten quarters they found
18 additional interest payments that exceeded Bob
19 Healy's notes, didn't they?

20 MR. KALTENBACH: Objection. Asked and
21 answered.

22 MR. HOFFMAN: It wasn't answered.

23 MR. KALTENBACH: I don't need the
24 commentary, Jay.

1 A. Yes, sir.

2 Q. And in three of those ten quarters for
3 District 109 that you looked at, you found
4 additional interest payments ranging from \$9500
5 to \$35,000, correct?

6 A. We found transactions that were marked
7 in the ledger with those descriptions there in
8 those amounts.

9 Q. Did you -- that didn't answer my
10 question. That evaded my question.

11 Isn't it true that for three of
12 the ten quarters you looked at for District
13 109, you found interest payments that exceeded
14 the numbers in Bob Healy's notes as reflected
15 in the general ledger payments?

16 A. The general ledger has a lot of other
17 interest that's not just interest of those,
18 there's interest on other funds, on cash
19 balances and everything else and every period.

20 Q. That's not what I asked you. I'd
21 appreciate a straight answer to a straight
22 question.

23 MR. KALTENBACH: I object to the
24 commentary.

1 THE WITNESS: No. We noted them as this is
2 an entry that's in there with this description
3 and this amount.

4 BY MR. HOFFMAN:

5 Q. I can read, but I'm asking you what it
6 means.

7 Isn't it true, sir, that in three
8 of the ten quarters that your firm looked at,
9 there were additional interest payments beyond
10 the amounts in Healy's notes reflected in the
11 general ledger for District 109? Answer that
12 question.

13 MR. KALTENBACH: Hold on. Objection. Asked
14 and answered. Objection. Form of the
15 question.

16 BY MR. HOFFMAN:

17 Q. You can answer.

18 A. These are three transactions that we
19 noted as this description and this amount in
20 there. I didn't investigate the basis for them
21 or come to any conclusion.

22 Q. How would you investigate the basis
23 for them?

24 A. I would need to look at the other

1 entries in there. Look at the context of it.

2 Q. Well, did District 109, yes, no, or I
3 don't know, receive an overallocation of
4 interest during the period that you looked at?

5 A. I don't know.

6 Q. So doesn't that necessarily mean, sir,
7 that you do not have an opinion as to whether
8 the other districts were under or overallocated
9 interest during the period relevant to this
10 lawsuit?

11 A. No.

12 Q. How can you have an opinion that all
13 of the other districts were underallocated
14 interest if you don't know whether, for
15 example, District 109 was overallocated
16 interest during the ten quarters you studied?

17 A. I didn't form a conclusion on District
18 109's entries.

19 Q. But yet you're voicing an opinion that
20 all of the other districts were underallocated
21 money on interest because District 204 was
22 overallocated, aren't you?

23 A. Yes.

24 Q. How can you possibly reach that

1 conclusion if you have no opinion as to whether
2 during the time period you studied District 109
3 they were under or overallocated interest?

4 A. Those are really two completely
5 unrelated things.

6 MR. HOFFMAN: Okay. Let's take a couple of
7 minutes.

8 (Recess.)

9 MR. HOFFMAN: Back on the record.

10 Mark this as Exhibit No. 6.

11 (WHEREUPON, said
12 document was marked as
13 Martin Deposition
14 Exhibit No. 6 for
15 Identification.)

16 BY MR. HOFFMAN:

17 Q. We marked as Martin Exhibit No. 6 a
18 spreadsheet that we obtained from your Counsel.
19 It says Summary Interest Income in the name of
20 the Excel spreadsheet. Can you tell me what
21 this document is, please?

22 A. Yes. This is the summary of the
23 interest allocations from the general ledger
24 for District 204 by year.

1 Q. Okay. And how did you -- there's one
2 highlighted row on the second page. Why is
3 that row highlighted?

4 A. Is that highlighted in the sheet?

5 Q. This is exactly as I received it, sir.

6 Question is: Why is that highlighted?

7 A. I think that was one of the rows that
8 had a question that was a difference from -- I
9 don't know. I don't know why that's
10 highlighted, actually.

11 Q. Okay. I appreciate your candor.

12 Now, who prepared this?

13 A. I did.

14 Q. And tell me how you pulled
15 these -- where did you get these numbers from?

16 A. Those are from the -- I don't remember
17 the name of that form.

18 Q. The general ledger?

19 A. General ledger 205 reports. I can't
20 remember what they're called.

21 Q. I'll help you. Are they called the C5
22 Reports?

23 A. Yes. Exactly.

24 Q. It's Bradshaw Exhibit No. 7. They're

1 also C5-1510?

2 A. Yes.

3 Q. These were the reports you used to get
4 that?

5 A. Yes.

6 Q. And so tell me the -- in going through
7 the general ledger, and we talked about this in
8 general before, in going through the general
9 ledger, there's a number of entries in the
10 general ledger that are related to interest,
11 correct?

12 A. Yes.

13 Q. And some of them were pertinent to
14 your analysis and some of them were not, right?

15 A. Yes.

16 Q. Tell me by description which ones were
17 pertinent to your analysis and which ones were
18 not?

19 A. Sure. That's mostly related to the
20 education fund, because the other funds it's
21 pretty much just the allocated interest in most
22 cases.

23 But the education fund gets a lot
24 of other interest things coming in or things

1 that are marked interest and things. And I was
2 looking for the ones that said quarterly
3 interest on there. And then evaluating for
4 other large items on there, if there was
5 another large entry, seeing if it was like a
6 transfer, sometimes interest transfer from one
7 fund to another, those would not be included if
8 it was moving it from, oh, I don't know, just
9 for example, working cash education, they would
10 cancel each other out.

11 But it was trying to see which
12 ones would relate back to the Healy report.

13 Q. So you included -- and you never spoke
14 to any of the individuals at the TTO who
15 actually made these journal entries, did you?

16 A. No.

17 Q. So on the very first one here on
18 Bradshaw Exhibit No. 7, we can see there's a
19 quarter and -- there's a series of entries on
20 this first page for the general ledger report.
21 And so tell me which of these you used to put
22 into your summary interest income?

23 A. It should be the quarterly interest,
24 quarterly distribution of interest, quarterly

1 what would you have done with an entry in
2 quarter number two that corrected an interest
3 payment attributable to quarter number one?
4 How would that work?

5 A. Well, theoretically it would be on
6 this sheet, if I -- if I picked it up.

7 Q. I don't know what this sheet is.

8 A. If I -- when I was typing the entries
9 on to Martin Exhibit 6, that would just create
10 an out-of-balance between period to period. It
11 would reverse from one period to another.

12 Q. I didn't follow any of that.

13 Let me ask you this question a
14 better way.

15 A. Sure.

16 Q. According to your methodology, and
17 there are instances of this occurring by the
18 way, in quarter number two, if there's a
19 general ledger journal entry that has a
20 correction for quarterly interest paid
21 attributable to quarter number one, did you
22 attribute the correction to quarter number one
23 or quarter number two?

24 A. I don't recall.

1 distribution and the quarterly distribution
2 here.

3 Q. So the four quarterly distributions?

4 A. Yes.

5 Q. So if there are other records of
6 interest that's paid, you did not include that,
7 except you said if it was a large number and
8 you couldn't track it back to something else.
9 What do you mean by that?

10 A. I mean that in some periods if you
11 look at the detail there's a -- you know,
12 there's an interest says interest transfer.
13 Sometimes it was -- and there was also some
14 posting entries and corrections where things
15 would be reversed out that were all washed out.
16 So something washed out against another entry,
17 it was offset by another entry, I guess, it
18 wasn't included.

19 Q. When there is a correction made in one
20 quarter that applied to a prior quarter, did
21 you ever see any instances of that happening in
22 the general ledger?

23 A. I don't recall offhand actually.

24 Q. Well, in keeping with your approach,

1 Q. In keeping with how this would make
2 sense, would that go to quarter one or quarter
3 two or really doesn't matter in your opinion?

4 A. It really wouldn't matter. If it were
5 not picked up correctly, you would see a
6 difference between -- like the comparison to
7 the Healy number, it would be offset by the
8 opposite number the following quarter.

9 Q. Didn't you try to come up with an
10 accurate record for each quarter?

11 A. Yes.

12 Q. So if there was an entry that was
13 correcting quarter number one that was written
14 in quarter number two, wouldn't it make more
15 sense to put the corrected journal entry,
16 attribute that to quarter number one for
17 purposes of your summary in Martin Exhibit 6?

18 A. Yes.

19 Q. In how many instances in producing
20 Martin Exhibit 6 did you find differences
21 between your numbers and the numbers in Ms.
22 Bradshaw's calculations?

23 A. Right, that be would the column on the
24 right on page two, that would be -- appears

<p style="text-align: right;">Page 102</p> <p>1 there, so it was in 2005 and 2006.</p> <p>2 Q. And they were minor differences in</p> <p>3 2007 and 2008, as well?</p> <p>4 A. Yes, that's true.</p> <p>5 Q. Are those the differences you describe</p> <p>6 in your disclosure statement that we looked at</p> <p>7 earlier?</p> <p>8 A. Yes.</p> <p>9 MR. HOFFMAN: Mark this as Exhibit No. 7.</p> <p>10 (WHEREUPON, said</p> <p>11 document was marked as</p> <p>12 Martin Deposition</p> <p>13 Exhibit No. 7 for</p> <p>14 Identification.)</p> <p>15 BY MR. HOFFMAN:</p> <p>16 Q. Sir, can you tell me what Martin</p> <p>17 Exhibit No. 7 is? We received this from your</p> <p>18 Counsel as a series of spreadsheets containing</p> <p>19 a workbook that was entitled Interest to</p> <p>20 Allocation Analysis II.</p> <p>21 A. Yes.</p> <p>22 Q. Was there an Interest to Allocation</p> <p>23 Analysis I?</p> <p>24 A. I'm assuming --</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Yes.</p> <p>2 Q. And do you have any knowledge as to</p> <p>3 how or why District 204 received any of these</p> <p>4 alleged overallocations?</p> <p>5 A. How or why?</p> <p>6 Q. Yes, how and why.</p> <p>7 A. I don't know why. I wouldn't be -- I</p> <p>8 could talk about how.</p> <p>9 Q. Well, tell me how.</p> <p>10 A. Well, the Healy notes describe the</p> <p>11 percentage ownership that each district owns of</p> <p>12 the fund balance, and that was traced to the</p> <p>13 analysis here to show, yes, here's the thing</p> <p>14 there.</p> <p>15 Except for those periods where</p> <p>16 the amounts that they were ascribed for</p> <p>17 interest don't match what was on those sheets.</p> <p>18 Q. But I guess maybe I can ask a better</p> <p>19 question.</p> <p>20 You are of the opinion that</p> <p>21 Healy's notes state how much interest District</p> <p>22 204 should have received and that the general</p> <p>23 ledger states how much District 204 did</p> <p>24 receive, right?</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Is this a more current version?</p> <p>2 A. I'm assuming it was. I named it that</p> <p>3 because that was the one that was being</p> <p>4 referred to in prior depositions.</p> <p>5 Q. I see. So Ms. Bradshaw had an</p> <p>6 analysis number one, analysis number two, and</p> <p>7 number two corrected number one, so you just</p> <p>8 worked off of her number two?</p> <p>9 A. Right, rather than come up with a</p> <p>10 wildly different format.</p> <p>11 Q. I understand. That makes sense.</p> <p>12 So in looking at Bob Healy's</p> <p>13 notes, were there any -- were there ever any</p> <p>14 quarters during the relevant time period in</p> <p>15 which Bob Healy's notes for given quarter were</p> <p>16 missing?</p> <p>17 A. I don't recall that. I think we had</p> <p>18 the paper sheets for all of them.</p> <p>19 Q. Were there ever any quarters in which</p> <p>20 the general ledger information was missing?</p> <p>21 A. No.</p> <p>22 Q. The summary page contains your summary</p> <p>23 for each fiscal year of what you claim to be</p> <p>24 the overallocation to District 204, right?</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Yes.</p> <p>2 Q. And my question is:</p> <p>3 Somewhere -- you're saying that somewhere</p> <p>4 between Healy's handwritten notes and the</p> <p>5 general ledger entries, District 204's numbers</p> <p>6 in certain years increased and in some years</p> <p>7 decreased, right?</p> <p>8 A. Yes, there were other entries, for</p> <p>9 example.</p> <p>10 Q. Right. So my question is: Do you</p> <p>11 know -- and some of those years go back to 1995</p> <p>12 and 1997 and 1998 and 2000, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And I guess what I'm saying is: Do</p> <p>15 you know as a factual matter how it came to</p> <p>16 occur that these alleged overallocations or in</p> <p>17 some instances underallocations were made?</p> <p>18 A. That would be the person making the</p> <p>19 journal entries. I don't know why they would</p> <p>20 have made those entries when they did that.</p> <p>21 Q. Do you understand my question? I</p> <p>22 thought it was pretty understandable.</p> <p>23 A. Not exactly.</p> <p>24 Q. The documents show what you claim to</p>

27 (Pages 102 to 105)

1 be an over or an underallocation in about half
 2 of the years that you looked at, right?
 3 A. Yes.
 4 Q. My question is: For example, do you
 5 have any idea why in 1995 District 204 was
 6 allegedly overallocated a little over \$5,000?
 7 A. No, I don't know why that was done,
 8 no.
 9 Q. And would your answer be the same for
 10 each year in which you see an over or an
 11 underallocation?
 12 A. Yes, I have no idea why those entries
 13 were made.
 14 Q. Okay. And isn't that something that
 15 you thought was important to ask either Bob
 16 Healy or somebody else who might have knowledge
 17 about this?
 18 A. No.
 19 Q. Did you ever speak with a woman named
 20 Cheryl Sudd, S-U-D-D?
 21 A. Not that I recall.
 22 Q. Do you know who she is?
 23 A. No.
 24 Q. She was Kelly Bradshaw's predecessor

1 as an outside accountant for --
 2 A. Oh.
 3 Q. You don't remember Bob Healy talking
 4 about Sheryl Sudd in his deposition testimony?
 5 A. Not specifically, no.
 6 Q. Okay. Did you ever try to contact any
 7 of the auditors at Baker Tilly?
 8 A. No.
 9 Q. Why not?
 10 A. Well, that wouldn't be something that
 11 would typically be done.
 12 Q. Why not?
 13 A. Because we wouldn't have any -- I
 14 wouldn't have as an expert in this litigation
 15 any standing to contact the auditors about
 16 their work product or their engagement with the
 17 Trustee's Office.
 18 Q. Would you ever ask your client to get
 19 information from Baker Tilly in a situation
 20 like this?
 21 A. No.
 22 Q. Why not?
 23 A. I just wouldn't be -- wouldn't be a
 24 typical procedure.

1 Q. Okay. Fair enough.
 2 In the Bradshaw analysis number
 3 two, which was marked at her deposition as
 4 Bradshaw Exhibit No. 3, let me have you look at
 5 at that. You're familiar with that document?
 6 A. Yes.
 7 Q. So you see like -- your format follows
 8 hers and has a column for RH calculation versus
 9 general ledger plus or minus a thousand dollars
 10 per quarter, right?
 11 A. Yes.
 12 Q. And why did you continue to use the
 13 cutoff of a thousand dollars per quarter as
 14 significant?
 15 A. It's -- anything less than that would
 16 be kind of a nominal amount, just for
 17 simplicity sake.
 18 Q. You were capable of calculating it,
 19 weren't you?
 20 A. Oh, yes.
 21 Q. Why didn't you?
 22 A. Just for a summary analysis that would
 23 be -- just for the sake of brevity really.
 24 Q. This isn't a summary analysis, this is

1 the exact amount of money in Martin Exhibit 7
 2 that the TTO is demanding that LT pay to it,
 3 right?
 4 A. Yes.
 5 Q. Why didn't you -- as long as you had
 6 all the data input, why didn't you go through
 7 for each quarter and determine precisely what
 8 the claimed over or underallocation was so you
 9 could come up with an exact amount? Why didn't
 10 you do that?
 11 A. Just --
 12 MR. KALTENBACH: Objection. Asked and
 13 answered.
 14 BY MR. HOFFMAN:
 15 Q. Why didn't you do that?
 16 MR. KALTENBACH: Same.
 17 THE WITNESS: Just below a thousand dollars
 18 is -- you know, I guess we certainly could
 19 have, but just below a thousand dollars would
 20 be, you know, smaller entries and things like
 21 that.
 22 BY MR. HOFFMAN:
 23 Q. Well, weren't you trying to come up
 24 with the most accurate number possible?

1 I mean you spent \$120,000 to come
2 up with something, and yet you have a concern
3 about brevity. I don't understand why.
4 MR. KALTENBACH: Objection. Argumentative.
5 BY MR. HOFFMAN:
6 Q. You can answer.
7 A. I didn't --
8 Q. You spent \$120,000 in fees and months
9 and months working on this, yet you said you
10 ignored quarters that had anything less than a
11 thousand dollar difference for purposes of
12 brevity.
13 So my question is: Why is
14 brevity important?
15 A. There could be things related to
16 posting, posting entry errors, you know, small
17 transaction, things like that, just to cut it
18 down to the larger material transactions.
19 Q. Well, some of those entries could have
20 been negative amounts that would have lowered
21 this \$1.4 million figure, correct?
22 A. It's possible, I suppose.
23 Q. Okay. In Bradshaw's analysis, there's
24 an additional column for additional differences

1 relating to system reports versus RH figures
2 used, and that totals out to \$97,070.12. Do
3 you see that?
4 A. Yes.
5 Q. And that column is not part of your
6 analysis, correct?
7 A. That's correct.
8 Q. Why did you eliminate that part of
9 Bradshaw's analysis?
10 A. Because I didn't agree with the
11 approach on that.
12 Q. Explain to me why.
13 A. Okay. Well, this, as it says, is
14 differences related to a system report versus
15 the figures that he used on the Healy notes.
16 Q. Right.
17 A. Those systems were just, I don't know
18 why they were -- why they were different or
19 what the source of the difference in that was,
20 but since they were applied in the Healy notes
21 in the same proportion to all the districts,
22 the error would be really meaningless to the
23 allocation of funds.
24 Q. Well, her analysis claimed that

1 -- what she tried to do was she tried to
2 correct Healy's handwritten notes with
3 additional documents relating to fund balances,
4 right?
5 A. Yes, that's my understanding anyway.
6 Q. And those documents were, in fact,
7 documents I am about to put in front of you,
8 which are Bradshaw Exhibit No. 8, which you've
9 seen before, right?
10 A. Yes.
11 Q. Okay. So earlier when you said you
12 weren't sure what documents she used to get
13 this additional column, these documents,
14 Bradshaw 8, these were the additional --
15 A. I believe so.
16 Q. You believe so or yes?
17 Is there any uncertainty?
18 Because you did read her deposition transcript,
19 right?
20 A. Oh, yes, sir.
21 Q. So your conclusion was that we can
22 rely on Healy's -- we can rely on the figures
23 in Healy's notes relating to fund balance
24 amounts, right?

1 A. That's right.
2 Q. And why did you feel that those
3 amounts were amounts you could rely on when Ms.
4 Bradshaw felt that they needed to be adjusted
5 as she did?
6 A. Right. Well, I wasn't opining whether
7 or not they needed to believe adjusted or not.
8 What I was saying, and the reason I excluded
9 this was, if there is a difference between
10 Healy's sheets or the Healy notes and some
11 other report, that under the methodology by
12 which they allocated interest, the error would
13 be attributed in the correct proportion to all
14 the districts and it wouldn't be a damage
15 amount.
16 Q. So how did she come up with a \$97,000
17 figure with those adjustments if -- so the
18 \$97,000 was too much you're saying? It was
19 unjustified?
20 A. Right. I don't believe -- in my
21 opinion, it shouldn't have been treated as a
22 damage. It might have been an error, but it
23 would have been an error applied evenly to all
24 the districts.

1 Q. And then if you turn to page two of
2 Martin Exhibit No. 7, you have a two-page
3 spreadsheet entitled Interest Allocation
4 Compare System Reports to GL and RH
5 Calculations. Do you see that?

6 A. Yes.

7 Q. And this is a spreadsheet you created,
8 correct?

9 A. Um, well this is based on the Bradshaw
10 Exhibit 2.

11 Q. Okay. So you used her spreadsheet,
12 but you made changes to it, correct?

13 A. Yes.

14 Q. I just want to know who -- because
15 there are different spreadsheets in this
16 workbook as we're noting, and I'm just looking
17 at this particular one, and this is something
18 you took from Bradshaw's work, made adjustments
19 do it, and it now is your work, correct?

20 A. Yes.

21 Q. Okay. So the column that's listed as
22 A, or there is an A on top of it -- so I'm on
23 the second page of Martin Exhibit No. 7, and
24 there's a column entitled 204 FB Per RH and

1 that's E, so the column that says E, times the
2 rate, the percentage, that's the 8 percent B
3 column. The first interest column here, the
4 big gray one.

5 Q. Then you come up with a total,
6 calculated interest allocation, and that's what
7 you say is the interest allocation per Healy's
8 notes?

9 A. Yeah, the one that has the G at the
10 top.

11 Q. And does that number in all instances
12 match the calculation that Healy, himself, made
13 in taking the percentages, applying it to the
14 total distribution and getting the number for
15 204?

16 A. Yes.

17 Q. And you didn't use the calculated
18 interest allocation per reports column, right?

19 A. The H, no, that was that report one
20 again.

21 Q. And column F was the allocation per
22 TTO general ledger, correct?

23 A. Yes.

24 Q. And that was the -- and then column I

1 that's fund balance, right?

2 A. Per Robert Healy, right.

3 Q. And then you get a percentage A times
4 B, and that's the percent of the fund balance
5 that belongs to District 204, correct?

6 A. Yes.

7 Q. And then there's a second set of fund
8 balances. It says Fund Balance Per Reports --
9 Total Average Fund Balance Per Reports. That's
10 the additional column that Bradshaw used that
11 you did not use?

12 A. Yes.

13 Q. So you didn't use C or D or the
14 product of C times D, right, the percentage?

15 A. Those ones there are the ones I did
16 not use.

17 Q. Got it. And then the income column is
18 the amount of money that was written in Healy's
19 notes for distribution, correct?

20 A. Total income on the Healy notes, yes.

21 Q. Okay. And what is the calculated
22 interest allocation, is that the -- what is
23 that?

24 A. So that is -- that's at the top,

1 is the difference between Healy's notes and the
2 general ledger, correct?

3 A. Yes.

4 Q. And that became -- is that the number
5 that then became the basis for your summary
6 amounts on page one?

7 A. Well, somewhat. It's the same logic,
8 but I use this page in the back, not this
9 actual schedule.

10 In the electronic one it's the
11 third tab, not the second tab.

12 Q. So the third worksheet is called
13 Interest Allocation Compare RH Calculation to
14 General Ledger Selected Quarters with plus or
15 minus 1,000 difference, right?

16 A. Yes.

17 Q. This is a document you prepared?

18 A. Yes.

19 Q. And this --

20 MR. KALTENBACH: You guys are not looking
21 at the same page.

22 THE WITNESS: I'm sorry. This one here.

23 BY MR. HOFFMAN:

24 Q. Sorry. Let's start over.

1 So the second tab was -- let's go
 2 back.
 3 The first page of Martin 7 is a
 4 summary page, right?
 5 A. Yes.
 6 Q. And then the second and third pages
 7 are -- we were just talking about, they are the
 8 ones where you took Bradshaw's numbers, you
 9 adjusted them and checked them, and you used
 10 some of the information on this worksheet but
 11 not all of it?
 12 A. I didn't use this at all. Some were
 13 redundant. This is a shortened version of this
 14 one actually.
 15 Q. Let's get to that.
 16 So the two pages -- the next two
 17 pages, two and three of this document, we
 18 already talked about.
 19 Page four of this document is
 20 what, where it says compare RH calculation to
 21 general ledger?
 22 A. This is, I think, her comparing it to
 23 the report.
 24 Q. Okay. This is not a document you

1 created?
 2 A. No.
 3 Q. Do you know what the if then number
 4 one and if then number two columns mean on the
 5 right-hand side?
 6 A. I think she was creating a filter, but
 7 I'm not sure.
 8 Q. Isn't -- it seems obvious to me that
 9 they are to track overpayments or
 10 underpayments, yes?
 11 A. Was that a question?
 12 Q. Yes.
 13 A. I don't know. I don't know what she
 14 was trying to set up with that.
 15 Q. Fine. Then the next worksheet is two
 16 pages long, and it says Compare System Reports
 17 to GL and RH Calculations, and it's got a
 18 couple of red boxes in it. Is this a
 19 simplified version of the second spreadsheet
 20 that we looked at previously? What is this?
 21 A. This spreadsheet or this one here?
 22 Q. We're looking at a spreadsheet that
 23 has three red boxes in the middle in Martin
 24 Exhibit No. 7, and it's two pages long,

1 correct?
 2 A. Yes.
 3 Q. What is it?
 4 A. This is the by quarter interest --
 5 comparison interest allocated to 204 versus
 6 what was on the Healy notes.
 7 Q. Okay. And this is a document that you
 8 created, correct?
 9 A. Yes. I modified the one I was given,
 10 but, yes, this is my thing now.
 11 Q. And the three red boxes are the
 12 box -- are the quarters for which you made
 13 changes to Bradshaw's numbers?
 14 A. Yes.
 15 Q. Okay. And there are some of these
 16 rows in which there's no data, and what does
 17 that mean in those rows?
 18 A. That means there was an entry in
 19 the -- in the ledger that wasn't supported by
 20 an amount that's in the Healy sheets. Or Healy
 21 notes. Sorry.
 22 Q. What is the spreadsheet that is the
 23 next spreadsheet where it is a quarterly
 24 interest allocation analysis School District

1 No. 204, and it's a two-page -- strike that.
 2 Three pages, and it's the last three pages of
 3 Martin Exhibit No. 7?
 4 A. This is, I believe, her calculating
 5 the difference between the reports and the
 6 Healy notes, which again I didn't use in
 7 damages.
 8 Q. So this last spreadsheet is a Bradshaw
 9 spreadsheet, the one with the two yellow rows,
 10 and you didn't create this and you didn't use
 11 it?
 12 A. Correct.
 13 Q. Thank you. And on the first page of
 14 Exhibit No. 7 there's two numbers in red. Is
 15 that because these are the two years in which
 16 you made changes to Bradshaw's column in her
 17 spreadsheet or her summary?
 18 A. Yes, exactly.
 19 Q. Okay. Thank you, sir.
 20 Did you personally look at the
 21 audit reports for the TTO during the relevant
 22 time period?
 23 A. Well, I looked at some years. I
 24 didn't look at all the years.

1 Q. What was the purpose at looking at the
2 audit reports?

3 You testified earlier it was to
4 get background information about how the system
5 worked; is that right?

6 A. Exactly right. How they did
7 accounting, what their procedures were, things
8 like that.

9 Q. Did you see in some of the years, in
10 particular in '95 through 2007, that there were
11 statements in the TTO audit reports for the
12 amount of money they took in for interest on
13 the pooled investments and the amount of money
14 they distributed out or at least the net of
15 those two numbers?

16 A. No.

17 Q. But you read these but you didn't
18 notice those entries?

19 A. I didn't read those -- I did not read
20 the audit reports that far back.

21 Q. How far back did you go?

22 A. 2008.

23 Q. It's funny, that's exactly the year
24 where that information ceases to be on the

1 the same page.

2 A. Yes, this one.

3 Q. You see under receipts, the very first
4 line has earnings on investments and then a
5 negative number for earnings on investments
6 distributed to school districts and then a line
7 for net earnings on investments?

8 A. Yes, I see that.

9 Q. Okay. And you see that there's a
10 comparison in this statement for the numbers
11 for 2007 fiscal year to the numbers for 2006
12 fiscal year, correct?

13 A. Yes, that's the column over here.

14 Q. In each year the TTO retained a little
15 over a million dollars in each of those years
16 in net earnings on investments, correct?

17 A. That's what it shows on here, yes.

18 Q. Okay. And do you know of any reason
19 why the -- did anybody from -- do you remember
20 reading in the deposition of Dr. Birkenmaier a
21 discussion about these net earnings on
22 investment figures in the audit reports?

23 A. Vaguely.

24 Q. I mean did reading that make you

1 audit reports.

2 A. Really?

3 Q. Yes. Is that coincidence or did
4 somebody tell you to start looking at them in
5 2008?

6 A. No, I think I looked at the ones that
7 were on the website.

8 Q. Okay. Let's take a -- let's take a
9 look at 2007. I'll hand that to you. I can
10 get you the right page. It's pretty easy.

11 MR. KALTENBACH: Is there an exhibit number
12 on it?

13 MR. HOFFMAN: Yes. So this is TTO
14 Deposition Exhibit No. 19. That's from Susan
15 Birkenmaier's deposition.

16 BY MR. HOFFMAN:

17 Q. Let me get to the page. We're looking
18 at the 2007 audit report, page 13. And
19 statement of revenue expenditures and changes
20 in fund balance for the governmental fund in
21 the TTO audit, right? We're looking at the
22 same page?

23 A. Oh, yeah.

24 Q. I want to make sure you're looking at

1 interested in going back and looking at the
2 audit reports and seeing what they had to say
3 about investment earnings?

4 A. No.

5 Q. Why not?

6 A. Well, again, this is related to the
7 amount that was -- the difference between the
8 actual earnings and the distribution earnings.

9 Q. Right. And so what you're saying, if
10 the TTO over this two-year fiscal period held
11 on to over \$2 million in investment income
12 earned, it doesn't affect your analysis because
13 it would just be money that would be payable to
14 all of the districts proportionately?

15 A. In their proper proportion, yes. Same
16 proportion by all the districts, according to
17 their proportions, yes.

18 Q. So I guess my question is: If this \$2
19 million, for example, is still sitting in an
20 account at the TTO, would that be money that
21 District 204 would be entitled to receive and
22 should be offset against the \$1.4 million
23 damage claim that you came up with?

24 A. I have no idea.

<p style="text-align: right;">Page 126</p> <p>1 Q. Well, is there money at the TTO today</p> <p>2 that's attributable to past investment income</p> <p>3 funds that belong to the districts?</p> <p>4 A. I don't know.</p> <p>5 Q. Would that be important to your</p> <p>6 analysis? Because wouldn't that be an offset</p> <p>7 as to money you claim was overallocated to</p> <p>8 District 204?</p> <p>9 A. No.</p> <p>10 Q. Why not?</p> <p>11 Are you assuming that the TTO</p> <p>12 some day eventually will distribute this money</p> <p>13 it's holding to District 204, is that the basis</p> <p>14 of your assumption?</p> <p>15 A. I have no idea if they are going to</p> <p>16 distribute it or not.</p> <p>17 Q. Don't you think based on everything</p> <p>18 you know about the TTO, isn't it true that when</p> <p>19 they make money on their investments, that are</p> <p>20 the districts' pool fund, that they have an</p> <p>21 obligation to pay that money in proportionate</p> <p>22 shares to the district?</p> <p>23 MR. KALTENBACH: I object to the extent</p> <p>24 it's asking the witness to offer a legal</p>	<p style="text-align: right;">Page 128</p> <p>1 any money at the TTO or any money that the TTO</p> <p>2 might have today that is undistributed</p> <p>3 investment income, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And you do remember a discussion in</p> <p>6 Dr. Birkenmaier's deposition about a fund</p> <p>7 totalling approximately \$1.7 million that</p> <p>8 relates back to those 2013 memos we looked at</p> <p>9 where there's money that may be unallocated</p> <p>10 interest income, do you remember that</p> <p>11 testimony?</p> <p>12 A. I remember the testimony.</p> <p>13 Q. And did you do anything to follow up</p> <p>14 on those amounts to see if there's credits that</p> <p>15 District 204 might be entitled to that would</p> <p>16 impact upon your analysis?</p> <p>17 A. No.</p> <p>18 Q. Why not?</p> <p>19 A. Because that would not impact my</p> <p>20 analysis.</p> <p>21 Q. Because your analysis is strictly</p> <p>22 limited to comparing these two sets of</p> <p>23 documents during the 1995 to 2012 time period,</p> <p>24 right?</p>
<p style="text-align: right;">Page 127</p> <p>1 opinion, but you can answer.</p> <p>2 BY MR. HOFFMAN:</p> <p>3 Q. If you don't know the answer, and you</p> <p>4 don't understand how the TTO works, you can</p> <p>5 tell me that, but I'd like an answer to my</p> <p>6 question. Read it back.</p> <p>7 (Said question was read</p> <p>8 back.)</p> <p>9 Q. Don't you think</p> <p>10 based on everything you</p> <p>11 know about the TTO,</p> <p>12 isn't it true that when</p> <p>13 they make money on their</p> <p>14 investments, that are</p> <p>15 the districts' pool</p> <p>16 fund, that they have an</p> <p>17 obligation to pay that</p> <p>18 money in proportionate</p> <p>19 shares to the district?</p> <p>20 THE WITNESS: I have no idea about the</p> <p>21 obligations of the Trustee's Office to</p> <p>22 pay -- to pay the interest when earned.</p> <p>23 BY MR. HOFFMAN:</p> <p>24 Q. And your analysis doesn't account for</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Not exactly, no.</p> <p>2 Q. Okay. Why not? Why do you say not</p> <p>3 exactly?</p> <p>4 A. My analysis is about the income that</p> <p>5 was ascribed to 204 that was out of proportion</p> <p>6 with the other districts.</p> <p>7 Q. If the TTO still owes money to</p> <p>8 District 204 relating to interest income,</p> <p>9 wouldn't that be relevant to your analysis?</p> <p>10 A. No.</p> <p>11 Q. Do you recall in Healy's testimony</p> <p>12 that he said that he prepared conservative and</p> <p>13 preliminary figures in his notes, and he handed</p> <p>14 all the information over to Cheryl Sudd and to</p> <p>15 the auditors to come up with final interest</p> <p>16 allocations to the districts?</p> <p>17 A. Yes, I remember him saying that.</p> <p>18 Q. And that's different than the</p> <p>19 procedure that you described in your</p> <p>20 disclosure, isn't it?</p> <p>21 A. I don't know.</p> <p>22 Q. What do you mean you don't know?</p> <p>23 In your disclosure you describe a</p> <p>24 procedure where somebody simply takes Healy's</p>

1 notes and manually enters them in without any
2 further changes or analysis or anything in the
3 general ledger, right?

4 **A. Again, I can only see the entries that**
5 **actually end up in the general ledger.**

6 Q. That's not the question I asked. And,
7 frankly, you didn't answer the question.

8 In the disclosure you describe a
9 procedure at the Treasurer's Office during the
10 relevant time period where somebody, whom by
11 the way you don't name, and we'll get to that
12 in a second, somebody takes Healy's notes and
13 simply inputs that in the general ledger,
14 right?

15 **A. Yes.**

16 Q. And who is the person who did that?

17 **A. Does the entry?**

18 Q. Yes.

19 **A. I don't know. I didn't note that.**

20 Q. Okay. So your understanding is that
21 the Healy notes are the final statement of what
22 each district should get, and then it's just
23 simply a matter of mechanically taking those
24 numbers putting them into the general ledger,

1 of the question.

2 BY MR. HOFFMAN:

3 Q. Why is it different?

4 MR. KALTENBACH: Same.

5 THE WITNESS: Because my analysis is based
6 on the review of the general ledger records,
7 which show the four entries for interest, one
8 quarterly entry for the interest four times a
9 year.

10 BY MR. HOFFMAN:

11 Q. Didn't Healy testify that his
12 handwritten notes were preliminary and
13 conservative estimates, and that they were
14 subject to later development by Sudd and the
15 auditors?

16 **A. Yes, he did.**

17 Q. Why would you accept his numbers as
18 the numbers that absolutely should have been
19 paid to the districts in each quarter?

20 **A. Because that showed the allocation of**
21 **the interest and the proper proportions to all**
22 **the underlying districts.**

23 Q. You also saw Healy's testimony that he
24 never overallocated interest to any district at

1 right?

2 **A. Yes, it should be.**

3 Q. But that's not what Healy said in his
4 deposition, was it?

5 **A. No, he said there was a true-up at the**
6 **end of the year.**

7 Q. What Healy said in his deposition was
8 that the accurate -- that his numbers were
9 conservative and preliminary in his notes, and
10 that the exact and accurate figures were what's
11 stated in the general ledger; isn't that what
12 Healy said?

13 **A. That's what he said in his deposition.**

14 Q. Why didn't you pick that up as how you
15 described the procedure in your disclosure?

16 **A. Because I picked up the entries that**
17 **were in the general ledger.**

18 Q. That's not my question. My question
19 is: How come Healy's testimony about this
20 process and how it worked, which is the only
21 factual information you have, is different from
22 how you described the procedure in the
23 disclosure?

24 MR. KALTENBACH: Objection as to the form

1 any time, right?

2 **A. Yes, I think he said that.**

3 Q. And are you saying that is incorrect,
4 that testimony is incorrect?

5 **A. I'm saying that the numbers he had in**
6 **his notes are not the numbers that are**
7 **reflected in the end general ledger numbers.**

8 MR. KALTENBACH: Let's take a two-minute
9 break.

10 MR. HOFFMAN: Sure. No problem.

11 (Recess.)

12 BY MR. HOFFMAN:

13 Q. Sir, I've got a couple of more
14 detail-oriented questions for you about your
15 analysis. And in the event you do need to
16 reference to any of the general ledger reports,
17 which is Bradshaw No. 7, it's right in front of
18 you, in the event you need to refer to any of
19 the Healy handwritten notes, there's Bradshaw
20 Exhibit No. 5 and 6, and those are right in
21 front of you as well.

22 Mark this as Exhibit No. 8.

23 (WHEREUPON, said

24 document was marked as

1 Martin Deposition
2 Exhibit No. 8 for
3 Identification.)

4 BY MR. HOFFMAN:

5 Q. So, we have Martin Exhibit No. 8,
6 right?

7 A. Yes.

8 Q. And this is a general ledger for the
9 period that includes first half of 1995. And
10 as I read your report, the TTO alleges that
11 District 204 was overpaid by \$5,000 for
12 quarterly interest.

13 When we look at the general
14 ledger, what I found was an interest transfer
15 on page 12 in the amount of \$5,000.

16 So my question to you is: Am I
17 looking at the right general ledger entry that
18 is the basis for your opinion? And then if
19 yes, how did you determine that that \$5,000 was
20 quarterly interest?

21 That's actually one question I
22 asked you that is compound.

23 And why don't we start with, is
24 this the right journal entry that you found an

1 somewhere?

2 Q. Right here.

3 A. Thank you.

4 Q. So you're looking for the second
5 quarter of 1995, correct?

6 A. Yes, this line here that's the --

7 Q. We're looking at --

8 A. 260,567.

9 Q. 265 -- 260,567, is what?

10 A. That's the amount of -- that's the
11 amount of the general ledger total. And on
12 here we can see --

13 Q. Let me ask you this: In looking at
14 Martin Exhibit No. 8, which is the general
15 ledger for that time period, so the only
16 interest payments that went into that were the
17 general ledger entries described as quarterly
18 distribution of interest, correct?

19 A. Yeah, it would be -- so you can see
20 here --

21 Q. No, I'm asking you -- pay attention to
22 my question, please.

23 On Martin Exhibit No. 8, there's
24 all kinds of --

1 extra \$5,000 payment, or is it some other
2 general ledger for this year?

3 A. Sure. Could I see the exhibit --

4 Q. You can look at any other exhibit you
5 want to look at.

6 MR. KALTENBACH: Martin 6?

7 THE WITNESS: Oh, yeah, Martin 6.

8 BY MR. HOFFMAN:

9 Q. And I'll look at that with you.

10 A. No, that's not -- I don't pick that
11 one up.

12 Q. Where does that \$5,000 come from?

13 MR. KALTENBACH: Objection to form.

14 THE WITNESS: Where does it come from?

15 BY MR. HOFFMAN:

16 Q. Well, here you got \$5,000 for that
17 year.

18 A. I understand.

19 Q. So which quarter of fiscal year 1995
20 does the alleged \$5,000 overpayment occur, how
21 about that?

22 A. Oh, that's in quarter -- let's see.
23 So it looks like the second quarter 4/30.
24 -- let's see, are the Healy notes here

1 MR. KALTENBACH: Don't reprimand him.

2 BY MR. HOFFMAN:

3 Q. Here's my question: On Martin Exhibit
4 No. 8, there's lots of journal entries related
5 to interest, correct?

6 A. Yes.

7 Q. And so the only ones that you pulled
8 were the ones -- and then put on your
9 spreadsheet Martin Exhibit No. 6, were the
10 quarterly distribution of interest entries,
11 correct?

12 A. Pulled the ones on Martin Exhibit 6,
13 are the ones that are on there. They're the
14 ones from this sheet here.

15 Q. Which ones? That's what I'm trying to
16 ask you. You're not paying attention to the
17 question, with all due respect, sir.

18 Is it the ones that say quarterly
19 distribution of interest, is that the ones you
20 picked?

21 A. Well, let's see.

22 Q. You don't know without checking the
23 math?

24 I mean in terms of the theory of

1 it, I want to know -- how you went about doing
2 this. And so if you're going to go through and
3 add them all up, that implies to me you're not
4 sure whether you did this right or not.

5 So my question is, sir: What was
6 the theory you used in going back and checking
7 the general ledger entries looking for
8 quarterly distributions of interest?

9 MR. KALTENBACH: Objection. Asked and
10 answered. You can answer again.

11 MR. HOFFMAN: I don't know that I got a
12 clear answer.

13 THE WITNESS: Yes, I picked up the ones
14 that say quarterly distribution of interest.

15 BY MR. HOFFMAN:

16 Q. So the one like on page 12, interest
17 transfer, that was not included?

18 A. Specifically I can -- we can see.

19 Q. I'm not saying it was. And then the
20 ones that say interest earned 1993 or interest
21 earned '94, interest earned is also another
22 general description that we got -- general
23 ledger description, none of those were part of
24 your capture, correct?

1 Exhibit No. 8, tell me on page one which of the
2 journal entries you would collect as a
3 quarterly distribution of interest?

4 A. There's the quarterly distribution of
5 interest for 171. Quarterly distribution of
6 interest for 172. Quarterly distribution for
7 177 and quarterly distribution of interest for
8 297.

9 Q. So where there was a description that
10 talked about interest but it didn't
11 specifically reference a quarterly interest,
12 you left it alone?

13 A. That's right.

14 Q. And we looked at one page, but there
15 are many pages like this. Does that theory
16 apply to the other pages as well?

17 A. Yes.

18 Q. That's all I'm asking you.

19 A. Okay.

20 MR. HOFFMAN: Mark this as Exhibit No. 9.
21 (WHEREUPON, said
22 document was marked as
23 Martin Deposition
24 Exhibit No. 9 for

1 A. Specifically on this page, none of
2 those are captured on Martin Exhibit 6.

3 Q. That's not what I asked you. I'm
4 asking the methodology you used, not just this
5 one page or series of pages for this short
6 period of time.

7 Do you understand my question?
8 I'm asking you how you went back and what
9 numbers you went to in the general ledger, and
10 you're going to do a little math problem. I'm
11 not asking you a math problem. I'm asking you
12 based on the descriptions in the general ledger
13 that you've got in front of you, Martin Exhibit
14 No. 8, which of these general ledger
15 descriptions were in on your analysis and which
16 were out in?

17 MR. KALTENBACH: Objection. Compound. You
18 can answer if you understand.

19 THE WITNESS: I don't understand, because
20 you're asking a general-approach question and
21 then detailed questions about specific
22 transactions. And --

23 BY MR. HOFFMAN:

24 Q. Let me ask you, looking at Martin

1 Identification.)

2 BY MR. HOFFMAN:

3 Q. This is another general ledger entry.
4 You'll see on page 11 there's an entry for
5 quarterly interest attributable to October,
6 November and December of 1997 in the amount of
7 \$4,675?

8 A. Yes.

9 Q. And then this entry is actually made
10 on 3/31 of 1998, correct?

11 A. Yes.

12 Q. So this is one of the ones that has an
13 entry in one quarter relating to a prior
14 quarter? Remember we talked about that?

15 A. Yes.

16 Q. So to which quarter did you attribute
17 this \$4,657 in interest?

18 A. All right. Actually I don't pick up
19 that number.

20 Q. Do you pick it up in any other
21 quarter?

22 A. I don't think so.

23 Q. So as far as you know, this quarterly
24 interest entry 10, 11, 12 and 1997 for \$4,675,

1 this is one that you didn't pick up, correct?
 2 **A. This is not picked up.**
 3 Q. Do you know why? I thought you were
 4 picking up the quarterly interest numbers.
 5 **A. This was from a different quarter.**
 6 **And at the time I would say it shouldn't have**
 7 **been in there, so let me check. I don't think**
 8 **I do pick that up.**
 9 Q. Well, let's turn to Martin Exhibit No.
 10 7, page two.
 11 **A. Okay.**
 12 Q. And if you go to the row for
 13 4/30/1998, and you scroll across the column I,
 14 as in India, you have an amount of alleged
 15 overpayment to District 204 of \$4,674.68, don't
 16 you?
 17 **A. Which --**
 18 Q. 4/30/1998. Across the column I. You
 19 claim an overpayment to District 204 of
 20 \$4,674.68. Isn't that within 32 cents of this
 21 entry that I'm asking you about? Is that
 22 coincidence?
 23 MR. KALTENBACH: Objection. Compound
 24 question.

1 MR. HOFFMAN: Please.
 2 MR. KALTENBACH: Jay, don't make commentary
 3 on a very succinct objection.
 4 MR. HOFFMAN: Please.
 5 BY MR. HOFFMAN:
 6 Q. Do you understand my question?
 7 **A. Oh, yeah. I'm just checking into it.**
 8 Q. Okay.
 9 Sir, let the record reflect we
 10 have been sitting here for several minutes.
 11 Are you able to answer my question after
 12 looking through these materials or not?
 13 **A. Oh, yes.**
 14 Q. I don't have an unlimited amount of
 15 time.
 16 **A. I'm just trying to see, because...**
 17 Q. So what are you finding there?
 18 **A. Well, if I didn't pick it up on this**
 19 **sheet, it would actually be -- it's actually**
 20 **the wrong way. So it's not a similar number.**
 21 **It's actually an inverse of the number. Not**
 22 **the same number.**
 23 Q. You're saying it doesn't matter if you
 24 didn't pick it up. I'm asking whether you

1 picked it up or not based on your review?
 2 **A. No, I did not.**
 3 Q. So that journal entry where you
 4 thought you missed that one, you missed that
 5 one?
 6 **A. I didn't miss it, I didn't pick it up.**
 7 Q. What's the difference between
 8 missing -- not missing something and not
 9 picking it up?
 10 **A. I didn't overlook it, so...**
 11 Q. You didn't include it in your
 12 analysis, then under your theory it should have
 13 been included in your analysis, so you did
 14 overlook it, didn't you?
 15 **A. No. Again, I was picking up the**
 16 **quarterly interest numbers. It was something**
 17 **from a prior period. At the time I chose not**
 18 **to pick that one up.**
 19 Q. So that was a conscious decision you
 20 made to ignore that journal entry?
 21 **A. Yes.**
 22 Q. Why did you decide to ignore that
 23 journal entry?
 24 **A. Because in that case it wasn't clear**

1 **what that was.**
 2 Q. Okay. Great. Now I'd like to show
 3 you something else so you can kind of clean up
 4 your work space here, please.
 5 Let's mark this as Exhibit No.
 6 10.
 7 (WHEREUPON, said
 8 document was marked as
 9 Martin Deposition
 10 Exhibit No. 10 for
 11 Identification.)
 12 BY MR. HOFFMAN:
 13 Q. Martin Exhibit No. 10 is one of the
 14 handwritten sheets from Bob Healy's notes,
 15 right?
 16 **A. Yes.**
 17 Q. Great. In which quarter does this
 18 apply to?
 19 **A. This is the quarter -- it says it's**
 20 **December 1997.**
 21 Q. In the upper-right-hand corner
 22 somebody hand wrote that in, but I'm pretty
 23 sure that was Gretchen Kubasiak. I don't want
 24 you to rely on that. But I want you to look at

1 it and figure it out on your own.
 2 Do you see -- do you know what
 3 quarter this was for?
 4 **A. Yes, December 1997.**
 5 Q. See the last page of this document,
 6 it's a fax from William F. Gurrie Bob Healy,
 7 right?
 8 **A. Yes.**
 9 Q. Do you know who Bob H was who sent it?
 10 **A. No.**
 11 Q. Went from Bob H to Bob H obviously,
 12 but he was -- William F. Gurrie was Baker
 13 Tilly -- what became part of Baker Tilly.
 14 **A. I understand that was a predecessor**
 15 **firm.**
 16 Q. Look to the third page of this
 17 document, and there is an interest reallocation
 18 dated June 30th, 1997.
 19 Tell me what this is and what
 20 significance it had for your analysis?
 21 You told me you went through all
 22 of Healy's handwritten notes and this was in
 23 the handwritten notes.
 24 **A. Yeah, I don't know what he's**

1 **suggesting here.**
 2 Q. Why was the auditor suggesting
 3 interest reallocations where there's an actual
 4 amount for each district for each of these
 5 three quarters, and then an adjusted amount and
 6 then a total difference?
 7 **A. I have no idea why he is suggesting**
 8 **that.**
 9 Q. Do you see that the auditor had 204
 10 during this year getting 101 -- over \$101,000
 11 less based on proposed adjustment?
 12 **A. I have no idea if that's what he's**
 13 **saying here.**
 14 Q. Isn't the number on the right that
 15 says total difference and amount that exceeds
 16 \$101,000, isn't it apparent?
 17 **A. Column on the right has \$101,000.**
 18 Q. And if you look on page one, Healy's
 19 handwritten notes, you see there's -- the usual
 20 column for the districts on the left side,
 21 right, correct?
 22 **A. Yes, the district numbers here.**
 23 Q. And then there's an average fund
 24 balance column?

1 **A. Yes.**
 2 Q. And then there is a quarterly interest
 3 column, right?
 4 **A. Yes.**
 5 Q. And you see some of those numbers have
 6 been whited out and restated, right? Like in
 7 district 104 and 106.
 8 **A. I have no idea.**
 9 Q. Some of the lines are gone. You don't
 10 think that's a white-out issue?
 11 **A. I have no idea.**
 12 Q. You see there is additional column
 13 that says W.F. Gurrie adjustment, ADJ?
 14 **A. Yes.**
 15 Q. That's ADJ would mean adjustment,
 16 right, in context?
 17 **A. Assume so.**
 18 Q. And you see how two of the districts
 19 have negative adjustments, including 204, which
 20 is a very big one and 109, which is a small
 21 one, and then all the others have an increase
 22 in that year. Do you see that?
 23 **A. Yes.**
 24 Q. Do you know why William F. Gurrie

1 suggested that adjustment?
 2 **A. I have no idea.**
 3 Q. You see that for District 204, William
 4 F. Gurrie suggested interest adjustment
 5 according to Healy's handwritten notes would
 6 take the quarterly interest from \$618,182 down
 7 to \$516,752, right?
 8 **A. That's what it appears to represent,**
 9 **yes.**
 10 Q. That's what the numbers say?
 11 **A. That's what the numbers say, yes.**
 12 Q. So my question is: In looking at
 13 Healy's handwritten notes, how did you deal
 14 with this William F. Gurrie adjustment to
 15 Healy's figure?
 16 **A. Let's take a look.**
 17 Q. Okay. What document do you need to
 18 look at in order to figure that out? Are you
 19 looking at Martin 7?
 20 **A. Yes.**
 21 Q. And which page?
 22 **A. The one with the red -- that one**
 23 **there.**
 24 Q. The fifth page, right?

1 A. Yes, sir.
 2 Q. Thank you.
 3 A. So I pick up the 618,181, the
 4 unadjusted number.
 5 Q. And where is -- what is the date for
 6 that quarter?
 7 A. That's 1 -- the date on here is
 8 1/31/98, so that would be end of the second
 9 quarter.
 10 Q. So in looking at Martin Exhibit No.
 11 10, why did you choose to use the \$618,000 and
 12 not the \$516,000 number?
 13 A. Well, just for consistency, because
 14 not all the forms had that one.
 15 Q. Wherever there was a column for an
 16 adjustment by William Gurrie, or anyone else,
 17 you ignored that and went with the first line
 18 calculation Mr. Healy did, right?
 19 A. In this case I used the unadjusted
 20 number.
 21 Q. Not just this case. I'm saying
 22 whenever -- you're saying that sometimes these
 23 adjustments occurred. And when there was
 24 adjustment you ignored it and went with the

1 first calculation by Healy, right?
 2 A. Well, in this case I did. I have to
 3 look at the other ones.
 4 Q. I'm not just asking about this case.
 5 My question was very clear. You can say I
 6 don't know. I don't expect you to know the
 7 answer to everything. You told me a second ago
 8 that there were other instances than the one
 9 we're looking at where there were adjustments
 10 in Healy's notes, right?
 11 Is this the only example of an
 12 adjustment in the entire set of Healy's notes?
 13 And if it is, tell me that.
 14 A. I don't know. I have to look.
 15 Q. So what was your -- so your practice,
 16 though, it was to ignore any adjustments and
 17 just simply go with the straight calculation of
 18 quarterly interest that Healy did, even if
 19 there were subsequent adjustments, right?
 20 A. That's right.
 21 Q. Okay. And my question is: Wouldn't
 22 it be important for you to understand why these
 23 adjustments were included here?
 24 A. Not necessarily, no.

1 Q. Well, we looked at an earlier
 2 adjustment from the auditor of one and a half
 3 million dollars. Do you remember looking at
 4 that?
 5 Remember there was an audit
 6 adjustment-interest for over one and a half
 7 million dollars that we looked at?
 8 A. That was the fax from Bob to Bob.
 9 Q. It was -- it was a document that was
 10 used in Thiessen's deposition and Dr.
 11 Birkenmaier's deposition, do you remember that?
 12 A. Yes, we looked at that.
 13 Q. So that was another instance where an
 14 auditor is making an adjustment to the interest
 15 events, right?
 16 A. Well, purportedly, yes. I don't know
 17 if that's what he was suggesting or not, but...
 18 Q. Well, isn't it important to know
 19 whether Healy adopted his auditor's suggestion
 20 as to changing the amount of interest?
 21 A. Not for purposes of this analysis, no.
 22 Q. Why not?
 23 A. Because any adjust -- if he had
 24 adopted these in the general ledger, they'd be

1 in the general ledger.
 2 Q. But how do you know -- for example,
 3 you see in District 109, do you see that
 4 there's a double asterisk next to 109 on Martin
 5 Exhibit 10, and you go down to the bottom and
 6 it says 2 million?
 7 A. Yes.
 8 Q. What does that 2 million represent?
 9 A. I have no idea.
 10 Q. Well, isn't it possible that Healy was
 11 paying more interest in some quarters and less
 12 interest in other quarters based on an
 13 understanding he had with District 109?
 14 A. I have no idea.
 15 Q. Do you see there's a single asterisk
 16 next to District 106 where there is a negative
 17 number of \$693,063.51?
 18 A. Yes.
 19 Q. What does that figure represent?
 20 A. I have no idea.
 21 Q. Well, is it important?
 22 A. It's not important for this analysis,
 23 no.
 24 Q. Well, you made the opinion that all

1 the other districts got uniformly underpaid
2 interest for this relevant time period because
3 District 204 was overpaid, right?

4 **A. I made the opinion that District 204**
5 **received interest out of formula with the**
6 **percentages that were -- should have been**
7 **ascribed to them versus what the other**
8 **districts should have gotten.**

9 Q. That's not my question. That wasn't
10 what I asked you.

11 What I asked you was: You
12 earlier articulated in this deposition an
13 opinion that the other districts got shorted in
14 an equal and proportionate amount because
15 District 204 got too much for the entirety of
16 this period, right?

17 **A. That's what the effect of that would**
18 **be, yes.**

19 Q. But that's not the effect of it if the
20 other districts were not getting paid in a
21 proportionate amount or way; isn't that true?
22 If the other districts got paid
23 disproportionately, like you claim 204 did,
24 then your opinion would be incorrect as to the

1 hours, but I won't object to you going a little
2 longer.

3 BY MR. HOFFMAN:

4 Q. Page four. On page four, sir, you
5 talk about corrections that you made, right?

6 **A. You mean here in the middle paragraph?**

7 Q. First large paragraph.

8 **A. Yes.**

9 Q. You talk about the entry for 6/30/04
10 should be \$147,979,000?

11 **A. Yes.**

12 Q. But you see that further down in the
13 paragraph you don't make an adjustment to
14 fiscal year 2004. Can you explain why not?

15 **A. No, I don't. That's odd.**

16 Q. And this is one of the three
17 corrections you made to Bradshaw, and you're
18 unable to verify -- why don't you tell me what
19 you're finding, sir. You understand the
20 question, right?

21 **A. Oh, yes.**

22 Q. Go ahead and tell me what you're
23 finding and what you're looking at.

24 **A. Well, tracing from Martin 4 to**

1 other districts?

2 **A. Well, no. Those districts would need**
3 **to be adjusted as well theoretically. But for**
4 **those periods where I have identified a**
5 **misallocation in 204, the other districts got**
6 **exactly the percentage that's detailed on the**
7 **Healy notes.**

8 Q. Well, they certainly don't -- that's
9 not what's indicated on this document Martin
10 Exhibit No. 10, is it, based on the Gurrie
11 adjustments?

12 **A. I have no idea what's indicated by the**
13 **Gurrie adjustments.**

14 Q. So you have no idea whether Healy
15 intended to follow these Gurrie adjustments or
16 not, do you?

17 **A. I have no idea if he implemented**
18 **those.**

19 Q. And you have no idea why Gurrie was
20 recommending these adjustments, do you?

21 **A. No, I don't.**

22 Q. Okay. Let's take a look at the
23 disclosure again.

24 MR. KALTENBACH: I think we're over three

1 calculations on Martin 7 to see how that would
2 be, so...

3 Q. Okay. We're looking at your
4 correction for the entry for 6/30/04 which you
5 say should be \$147,979, right?

6 **A. Yes.**

7 Q. Yet, you don't make an adjustment to
8 fiscal year 2004 later on in the disclosure.
9 And the question is why?

10 **A. I think it was just omitted from**
11 **the -- this paragraph here.**

12 Q. Is that what you think or -- is that
13 what you know?

14 **A. That's what I know.**

15 Q. I don't want you to guess.

16 **A. There should be a line in here that**
17 **says the new amount.**

18 Q. So --

19 **A. It was just an oversight.**

20 Q. So tell me how this disclosure should
21 read in order to be correct based on your
22 analysis of the records you just looked at?

23 **A. Right. The disclosure in terms of the**
24 **total, the total damage amount, for lack of a**

1 better thing, is correct, the 1,427,442,
2 because that's the correct total from here. It
3 just should say -- again, this was showing the
4 corrections made to the prior version of this,
5 so it should show -- it should be the total of
6 those four.

7 Q. You're talking -- as you're looking at
8 the documents, you're uttering words, and I
9 don't mean that in an unkind way, but the court
10 reporter isn't writing down what you are saying
11 because it sounds like you're thinking out loud
12 and so that's fine with me.

13 Let the record reflect that I am
14 sitting here patiently waiting for the witness
15 to review his documentation, and I've asked him
16 about one of the three changes that he's made
17 to Bradshaw's analysis and whether it's right
18 or not.

19 A. Oh, no, it's right.

20 Q. It is?

21 A. Yes.

22 Q. How do you know that?

23 A. Because the entry for 6/30/04 went
24 into fiscal year 2005.

1 Q. Say that again.

2 A. Entry for 6/30/04 is included in the
3 fiscal year 2005.

4 Q. And, in fact, is it correct, though,
5 that the entry for 6/30/2004 should be 147,979,
6 or is that 6/30/04 date wrong?

7 A. Repeat the question.

8 Q. Is the 6/30/2004 date in the entry
9 that you corrected correct or incorrect?

10 A. 6/30/04?

11 Q. Yes, on page four of the disclosures
12 that you helped prepare. And you made three
13 changes. You and your firm worked on this
14 project for a number of months and incurred
15 \$120,000.

16 MR. KALTENBACH: Just ask your question.

17 BY MR. HOFFMAN:

18 Q. And ultimately at the end of the day
19 you made three corrections to an existing
20 analysis.

21 Sir, with all due respect, I'm
22 asking you whether you can tell me about the
23 third correction whether it's accurate? If
24 it's accurate, tell me that. If it's

1 inaccurate, tell me how it should be changed.

2 A. It is accurate.

3 Q. Thank you. And you're confident about
4 the other two changes you made as well?

5 A. Yes.

6 Q. Thank you. You're still looking at
7 the document. Do you want me to wait?

8 A. No, I'm good.

9 MR. KALTENBACH: Well, I typed -- I mean
10 obviously the witness -- it's a disclosure
11 counsel drafted, so I actually want to take a
12 break and confer with the witness if there is
13 not a question pending.

14 MR. HOFFMAN: No, this is ridiculous.

15 BY MR. HOFFMAN:

16 Q. What is the statement -- look, if this
17 is a typo, then you can tell by looking at the
18 underlying documents whether it's an error or
19 not, can't you?

20 A. The numbers are correct.

21 Q. Okay.

22 A. Just looking at the dates and that.

23 Q. All right. Look away.

24 A. I believe the dates are correct

1 though.

2 Q. Great. Then do you feel the need to
3 talk to your lawyer at this point?

4 MR. KALTENBACH: You can ask him the
5 question. I can ask to take a break and talk
6 to my witness.

7 MR. HOFFMAN: Of course you can. Do you
8 want to do that?

9 MR. KALTENBACH: Yes. I want to make sure
10 there is not a question pending.

11 MR. HOFFMAN: Take a break. Talk to your
12 witness.

13 (Recess.)

14 MR. HOFFMAN: The floor is yours, Barry.

15 MR. KALTENBACH: I think Mr. Martin will
16 testify to what the typo is.

17 BY MR. HOFFMAN:

18 Q. Go ahead.

19 A. Let's see, in the paragraph starting,
20 Based upon his review and analysis explained to
21 Bob" in Martin 4, on the seventh line it says
22 number three, the differences are number three,
23 the entry for 6/30/04 should say the entry for
24 10/31/04. And why it's not addressed in the

1 changes below because that's in the fiscal year
2 2005.

3 Q. And you said you went through Martin
4 Exhibit No. 4, your disclosures, and apparently
5 you just missed that, right?

6 A. Right, I just missed that date.

7 Q. How confident are you about the
8 correctness of the other two changes that are
9 described in here?

10 A. Yeah, the numbers are absolutely
11 correct. That was just a mistyped date.

12 Q. Okay. Got it. Two out of three ain't
13 bad as they say, right?

14 Let's take a look at the -- when
15 you say the entry for 6/30/06 should be
16 \$569,952, the number one of the three changes
17 described on page four of Martin Exhibit No. 4.

18 A. Yes.

19 Q. Okay. So with reference to the
20 general ledger, what -- describe that change to
21 me and tell me whether -- let's mark
22 this -- why is that -- why did you make that
23 change?

24 A. Oh, again, those changes go back

1 to -- these changes go back to what's described
2 in Martin Exhibit 6, which is the difference
3 between the general ledger -- there's a column
4 on the right that shows the difference between
5 the Healy notes and the general ledger.

6 Q. My specific question is: As for that
7 entry for 6/30/06, what did Bradshaw miss
8 specifically?

9 A. Oh, that was a -- she interpreted a
10 journal entry differently.

11 Q. Which one?

12 A. On 6/30/06?

13 Q. Yes, which one?

14 A. It was a general entry for 31503, that
15 would have been in the 2006 second quarter, so
16 6/30/06.

17 Right, it was the transferred
18 interest entry. There's a transferred interest
19 entry. You can see it here and then in the
20 back.

21 MR. HOFFMAN: Let's mark this as 11.

22 (WHEREUPON, said
23 document was marked as
24 Martin Deposition

1 Exhibit No. 11 for
2 Identification.)

3 BY MR. HOFFMAN:

4 Q. So we got the general ledger for the
5 6/30/2006 quarter, right?

6 A. Yes.

7 Q. So you're making reference on page one
8 to the journal entry transfer
9 interest -- specify which page?

10 A. I'm sorry. On page one, there's a
11 journal entry booked twice 31 -- this actually
12 was a big correction. There's 315 and 315,
13 those would cancel.

14 Q. So those cancel out.

15 A. On page one. Then in the back it's
16 then rebooked. Okay.

17 Then on page number ten of this
18 report, I think those are ten. You can see it
19 comes in -- comes in again.

20 Q. It says transfer interest retro on
21 BDRES, right?

22 A. Yes.

23 Q. You take that to mean board resolution
24 or what? What do you take that to mean?

1 A. I'm not sure.

2 Q. That would be my guess, but you have
3 no idea?

4 A. I don't know. I was just following
5 the entries that transferred this.

6 Q. What does transfer interest mean?
7 Well, you see on this page ten, you see the --
8 the entries on page two cancel out. But on
9 page ten there's an interest --

10 A. There's three on that page.

11 Q. Right. There's a journal entry
12 interest reversed of negative 31,500, right?

13 A. Reversing one of these, I'm assuming.

14 Q. And then there's one that stays
15 interest 31,500, and there is another one that
16 says transfer interest retro on BDRES 31,500,
17 right?

18 A. Yes.

19 Q. So you don't know which one the final
20 journal entry reversed of those two 31,500
21 entries, do you?

22 A. No.

23 Q. Do you know what transfer interest
24 retro on BDRES means?

1 A. No, not specifically.
 2 Q. Do you know where it says the entry
 3 for the same number it just says interest, how
 4 do you know that the entry that just says
 5 interest is quarterly interest?

6 A. Um, I don't know. At the time that's
 7 what I determined that to be.

8 Q. I'm asking you as of today.

9 How do you know that the \$31,500
 10 in ledger entry that says interest and nothing
 11 else is a quarterly interest payment?

12 Let the record reflect that we're
 13 waiting while the witness reviews Martin
 14 Exhibit No. 11 and other documents in this
 15 case.

16 A. I picked that one up because it
 17 started in page one of Martin Exhibit 11 and
 18 then it was reversed to and it ended up in the
 19 other -- in that last fund there.

20 Q. But the entry on page one of Martin
 21 Exhibit 11 says transfer interest retro on
 22 board res, right?

23 A. Yes.

24 Q. But it doesn't say anything about

1 A. Yes.

2 Q. Do you know what fund zero is for?

3 A. No.

4 Q. I'm not about to tell you. I'm asking
 5 you if you know. It doesn't matter what I
 6 know.

7 A. I don't know.

8 This here is the first time which
 9 is why I picked it up as interest.

10 Q. My question is: You testified earlier
 11 that you picked up interest entries on the
 12 general ledger that said quarterly interest
 13 payment. Now we're looking at one that says
 14 interest transfer on BDRES and another place it
 15 just says interest and it has this amount which
 16 you picked up. Why are you picking up that
 17 amount? You still haven't answered my
 18 question.

19 A. Because I determined it was quarterly
 20 interest.

21 Q. How?

22 A. By the description and the context in
 23 the files.

24 Q. What is the description and the

1 quarterly interest, does it?

2 A. Not on that entry specifically.

3 Q. So my question is: Why did you
 4 include the \$31,500 amount which in Martin
 5 Exhibit No. 11 is described as transfer
 6 interest retro on BDRES?

7 A. It was actually the --

8 Q. Or variously at another point just
 9 simply interest. Why is that included in your
 10 quarterly interest analysis? That's my
 11 question. I asked it to you ten minutes ago,
 12 and I'm asking you again now.

13 A. Sure. It's actually -- actually
 14 that's the transfer that moves that to the
 15 other fund. I picked it up because it started
 16 off in this fund under the --

17 Q. Started off in which fund?

18 A. Started off in -- the title here is
 19 zero fund.

20 Q. Started off in the zero fund?

21 A. The fund name is the -- here this one
 22 has a zero. Typically the fund name.

23 Q. Page one, the zero fund on page one of
 24 Martin 11?

1 context of the files that tell you it's
 2 quarterly interest? I want to know. Tell me.

3 A. Well, again, because it was
 4 transferred from here, the first page, is why I
 5 determined it was quarterly interest.

6 Q. The transfer from the first page in
 7 the zero account, which you don't know what it
 8 stands for, why would that suggest that it's
 9 quarterly interest? Why?

10 A. Because originally it came in as an
 11 entry for interest.

12 Q. Where? Show me.

13 A. Right here. And then --

14 Q. It says interest, but it doesn't say
 15 anything about quarterly interest. There's lot
 16 of entries that say interest. We already
 17 determined that, right?

18 A. Yes, we did.

19 Q. So this 31,500, are you willing to
 20 admit you made a mistake, and that the 31,500
 21 should not have been included in your analysis,
 22 because none of these entries that have that
 23 number say anything about quarterly interest?

24 A. I would have to go back and review the

1 documentation.

2 Q. What documentation? It's all right in
3 front of you. What other documentation is
4 there? You relied on the general ledger
5 reports, which are sitting right in front of
6 you, and you relied on Healy's interest sheets,
7 which are sitting right in front of you, too.

8 I've shown you a portion of the
9 general ledger statements. You can look at the
10 corresponding entire thing. It is right in
11 front of you.

12 Are you, sir, willing to admit
13 you made a mistake in adding the 31,500 that we
14 just looked at as quarterly interest because
15 none of the descriptions in Martin Exhibit 11,
16 the general ledger, make any reference to that
17 amount of money being quarterly interest?

18 A. Not without reviewing the documents
19 further.

20 Q. Review them. I'm going sit here and
21 wait again while you do that, because I am
22 entitled an answer. And my expert is entitled
23 to an answer, too.

24 A. Yes.

1 no.

2 Q. And there's lots of entries that say
3 interest, but you didn't pick those up either,
4 right?

5 A. No.

6 Q. So my question is: Why did you -- you
7 made three changes to Bradshaw's analysis and
8 one of them was you added in this \$31,500 in
9 interest, which is described as an interest
10 transfer retro on BDRES, which you don't even
11 know what that means. And why is that
12 quarterly interest. And the answer can't be
13 just because.

14 MR. KALTENBACH: Hold on. Jay, you are
15 arguing with the witness.

16 What is the question you're
17 asking him?

18 THE WITNESS: Can I ask a question? Do you
19 have this for 2005?

20 Thank you.

21 MR. HOFFMAN: Let the record reflect that
22 the witness is looking at Bradshaw Exhibit No.
23 7, which is the entire collection of general
24 ledger reports.

1 Q. So take your time and look at whatever
2 you want to look at to make that determination.
3 You've already looked at that document about
4 eight times.

5 MR. KALTENBACH: Hold on. Jay, ask a
6 question. If you're going to --

7 MR. HOFFMAN: Fine, I asked a question.

8 MR. KALTENBACH: Stop lecturing on the
9 record.

10 MR. HOFFMAN: Fine. Look at it and then
11 let me know.

12 THE WITNESS: It's my opinion it should be
13 in there.

14 BY MR. HOFFMAN:

15 Q. Why?

16 A. Because that's my opinion.

17 Q. I know it's your opinion, but I'm
18 entitled to ask you why it's your opinion.

19 A. Because the description on the
20 entries.

21 Q. But the description on the entries
22 don't say anything about quarterly interest, do
23 they?

24 A. They don't say quarterly specifically,

1 BY MR. HOFFMAN:

2 Q. For the record, Mr. Martin, why don't
3 you tell us what documents you're looking at?

4 A. I was looking at the C5 report for
5 fiscal year 2005, the year prior to this.

6 Q. C5 is the general ledger?

7 A. Yes. The general ledger for fiscal
8 year for 2005, the year prior to.

9 Q. Just want it on the record what you're
10 looking.

11 A. Year prior to Martin Exhibit 11. I
12 was seeing if this was a transfer from the
13 prior year.

14 Q. Take your time. Take as much time as
15 you want. I don't want to rush you.

16 A. Yeah, it's this entry here. The one
17 that says interest.

18 Q. So you're looking at what exactly?

19 A. I'm sorry. I should go back to the
20 other one.

21 Q. Martin Exhibit 11?

22 A. I'm sorry.

23 Q. Hold on a second. So you're looking
24 at the --

1 A. I was looking at the same thing
2 from --

3 Q. Bradshaw Exhibit No. 7, all of the
4 general ledgers?

5 A. Right.

6 Q. So you don't need to look at anything
7 else in Bradshaw Exhibit 11.

8 Put these two back in order so we
9 don't mess up Bradshaw 7, because otherwise
10 that would be bad. Thank you.

11 Okay. I'll take that back. And
12 go ahead in look -- now that you've had time,
13 you're back on Martin Exhibit No. 11.

14 A. Martin Exhibit 11, page number 10,
15 this entry that says interest 31,500, appears
16 to me to be an additional interest payment that
17 should be included as a damage.

18 Q. Why does something that says transfer
19 interest retro on BD RES, why do you take that
20 as a quarterly interest payment?

21 A. I don't. That is not -- that's
22 cancelling the negative here. That's the
23 reversal. It's this interest here.

24 Q. The one that says only --

1 BDRES. Now we know it is the one that just
2 says interest, right?

3 A. Yes.

4 Q. So my question to you is very direct,
5 which is, why would you assume that an amount
6 of money described in the general ledger only
7 as interest without any other description would
8 be a quarterly interest payment, given that
9 previously you testified that you ignored
10 general ledger entries that didn't specifically
11 say quarterly interest?

12 MR. KALTENBACH: Objection. Asked and
13 answered. You can answer again.

14 THE WITNESS: Well, it's picking up the
15 initial interest amounts that were described in
16 204, the ones that were out of formula.

17 BY MR. HOFFMAN:

18 Q. You didn't answer my question, sir,
19 with all due relevance.

20 MR. KALTENBACH: Jay, don't argue with the
21 witness.

22 Mr. HOFFMAN: I'm not arguing with the
23 witness. I can say what I want to say. Stop
24 it.

1 A. Just the word interest, yes. I take
2 that as add -- I assume that as additional
3 interest payment that was prescribed to them.

4 Q. Why would you assume that 31,500
5 general ledger described as interest would be a
6 quarterly interest payment?

7 MR. KALTENBACH: Objection. Asked and
8 answered.

9 THE WITNESS: Well, it could be an extra
10 interest payment, too, on interest amount.

11 BY MR. HOFFMAN:

12 Q. You are not answering my question.
13 I'm not asking you to speculate. I'm not
14 asking you to say what it could be.

15 I'm asking you a very specific
16 question which you have not answered to this
17 point.

18 A. I believe it is an additional --

19 MR. KALTENBACH: Hold on.

20 BY MR. HOFFMAN:

21 Q. Here's my question: Why -- and before
22 you weren't sure whether you were picking up
23 the line item that said interest or the line
24 item that said transfer interest BDRES, retro

1 MR. KALTENBACH: Stop raising your voice.

2 MR. HOFFMAN: You know as well as I do that
3 he is not answering this question.

4 MR. KALTENBACH: He actually has answered
5 the question. You are not understanding his
6 answer is the problem.

7 BY MR. HOFFMAN:

8 Q. Maybe I don't understand your answer.
9 If I don't understand it, do you think the jury
10 is going to be able to understand it?

11 I mean let me ask you this
12 question: How many times have you testified in
13 front of a jury? You can answer that.

14 A. None.

15 MR. KALTENBACH: I think it's funny, Jay.
16 I have been generous --

17 MR. HOFFMAN: Just a second. I'm going to
18 get an answer to this question before we leave.

19 MR. KALTENBACH: You got an answer.

20 BY MR. HOFFMAN:

21 Q. A jury is composed of a group of
22 people who are not experts.

23 A. Yes.

24 Q. And you're an expert. So if you want

<p style="text-align: right;">Page 178</p> <p>1 them to understand what you did, you have to</p> <p>2 explain it in a way that's understandable to a</p> <p>3 normal layperson.</p> <p>4 MR. KALTENBACH: Don't comment.</p> <p>5 MR. HOFFMAN: I'm a layperson.</p> <p>6 MR. KALTENBACH: He is lecturing you.</p> <p>7 MR. HOFFMAN: No, I'm not.</p> <p>8 BY MR. HOFFMAN:</p> <p>9 Q. You testified earlier that in going</p> <p>10 through the general ledger, you picked up</p> <p>11 general ledger entries that say quality</p> <p>12 interest payments, and that's what you put in</p> <p>13 your report. And now we find an instance where</p> <p>14 you have a general ledger entry that says only</p> <p>15 the word interest, and you put that in your</p> <p>16 report.</p> <p>17 So my question is: Why did you</p> <p>18 put that general ledger entry into your report</p> <p>19 given it says only the word interest?</p> <p>20 How did you determine it was a</p> <p>21 quarterly interest payment?</p> <p>22 I've asked the question numerous</p> <p>23 times, and you haven't given me a straight</p> <p>24 answer.</p>	<p style="text-align: right;">Page 180</p> <p>1 How do you know that the \$31,000</p> <p>2 described only as interest in the general</p> <p>3 ledger is interest from the investment pool and</p> <p>4 not some other source, given that there's</p> <p>5 interest payments that come in from multiple</p> <p>6 sources, not just the investment pool.</p> <p>7 A. It is a typical for size, the other</p> <p>8 invest -- the other pools other than</p> <p>9 investments aren't typically that large. But</p> <p>10 that, I believe, is one of the additional</p> <p>11 interest payments that was ascribed to 204.</p> <p>12 Q. And that's based on the size of the</p> <p>13 number, the 31,500?</p> <p>14 A. And my analysis of all the account</p> <p>15 statements, yes.</p> <p>16 MR. HOFFMAN: We're done. That's it. Do</p> <p>17 you have any questions?</p> <p>18 MR. KALTENBACH: No.</p> <p>19 THE COURT REPORTER: Do you want a copy?</p> <p>20 MR. KALTENBACH: Yes, thanks.</p> <p>21 THE COURT REPORTER: Do you know what</p> <p>22 format you want?</p> <p>23 MR. KALTENBACH: Just a PDF is fine.</p> <p>24 (WHEREUPON, the deposition</p>
<p style="text-align: right;">Page 179</p> <p>1 MR. KALTENBACH: Hold on. My objection is</p> <p>2 that is beyond a normal compound question. It</p> <p>3 is significantly compound. I'm not -- Jim, you</p> <p>4 can answer the question.</p> <p>5 BY MR. HOFFMAN:</p> <p>6 Q. Go ahead.</p> <p>7 A. The amounts that's the damage are the</p> <p>8 amounts that were ascribed during the quarterly</p> <p>9 interest process and then also additional</p> <p>10 interest payments that were ascribed to 204</p> <p>11 that were out of percentage formula with the</p> <p>12 other districts.</p> <p>13 I believe that is one of the</p> <p>14 additional interest payments that should be</p> <p>15 included as an overpayment to 204.</p> <p>16 Q. Is that because of the size, the</p> <p>17 amount? Is it the amount, the 31,500 looks</p> <p>18 large to you so you think that it's a quarterly</p> <p>19 interest payment?</p> <p>20 MR. KALTENBACH: Objection.</p> <p>21 BY MR. HOFFMAN:</p> <p>22 Q. Or an investment income payment?</p> <p>23 Maybe I should ask you a better</p> <p>24 question.</p>	<p style="text-align: right;">Page 181</p> <p>1 was adjourned at 4:54 p.m.)</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

46 (Pages 178 to 181)

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF COOK)
 4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT - CHANCERY DIVISION
 5 TOWNSHIP TRUSTEES OF)
 6 SCHOOLS TOWNSHIP 38)
 7 NORTH, RANGE 12 EAST,)
 8 Plaintiff,)
 9)
 -vs-) No. 13 CH 23386
 10)
 11 LYONS TOWNSHIP HIGH)
 12 SCHOOL DISTRICT 204,)
 13)
 14 Defendant.)
 15 I hereby certify that I have read the
 16 foregoing transcript of my deposition given at
 17 the time and place aforesaid, and I do again
 18 subscribe and make oath that the same is a
 19 true, correct and complete transcript of my
 20 deposition given as aforesaid, with
 21 corrections, if any, appearing on the attached
 22 correction sheet(s).
 23 Please check one:
 24 I made no corrections
 Number of Correction
 sheets attached
 JAMES MARTIN
 SUBSCRIBED AND SWORN TO
 before me this day
 of A.D., 2017
 Notary Public

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF COOK)
 4 I, MAUREEN A. WOODMAN, Certified Shorthand
 5 Reporter and Notary Public in and for the
 6 County of Cook and State of Illinois, do hereby
 7 certify that JAMES MARTIN was first duly sworn
 8 to testify the whole truth and that the above
 9 deposition was recorded stenographically by me,
 10 and was reduced to typewriting under my
 11 personal direction.
 12 I further certify that the said deposition
 13 was taken at the time and place specified.
 14 I further certify that I am not a relative
 15 nor employee or attorney nor counsel of any of
 16 the parties, nor a relative or employee of such
 17 attorney nor counsel nor financially interested
 18 directly nor indirectly in this action.
 19 In witness whereof, I have hereunto set my
 20 hand and affixed my seal of office at Chicago,
 21 Illinois, this 4th day of April
 22 A.D., 2017.
 23 MAUREEN A. WOODMAN, C.S.R.
 24 License No. 084-002740

Township Trustees of Schools

TOWNSHIP 38 NORTH, RANGE 12 EAST

www.lyonstts.org

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Fax 708-352-4417

November 7, 2013

Interest Income-Previously Undistributed

Recently the Lyons Township Treasurer's office completed the FY2013 audit field work. This work was done by, *Miller, Cooper, Ltd.*, the firm selected to complete the annual audit on behalf of the TTO.

During this audit process, Miller Cooper determined that there is undistributed investment income held over from prior years. While this interest income had been noted in the FY10-12 TTO audits, no action was taken to distribute this income to member districts. Prior year audits did not distinguish or identify this undistributed interest income.

As the Treasurer's office does not participate in interest income earnings allocations, it has been determined that this interest income should be distributed to the Township districts and agencies. We are therefore distributing \$500,000 in interest income from previous years. The calculation of revenue distribution will be based on the average FY13 annual revenues of each district/agency served by the TTO. Attached is a chart identifying the amount of prior year undistributed interest income that will be credited to your district. Allocation of this investment income was determined by averaging the fund balance for each district over the 2012-13 fiscal year and assigning the corresponding percentage of total interest income to each district based on the total fund balance of all TTO members. If an agency or district did not maintain a positive fund balance over the year, no interest income was paid out.

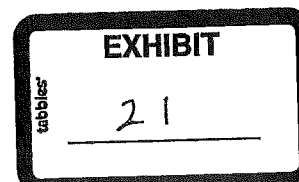
Please note that this is NOT FY13 or FY14 interest income. Further the amount distributed should not be used to trend for anticipated future interest earnings. This should be viewed as a one-time occurrence.

FY13 Interest Income

All FY13 interest earnings have been distributed. In FY13 the interest income distribution in the first three quarters was estimated with an expectation that any earnings settlements would be made in the final fiscal year quarter, Q4. There were no adjustments needed in Q4 related to FY13 interest income. All interest income has already been distributed. It should be noted, that districts, in fact, had monies much earlier in the fiscal year and were able to realize that benefit unlike previous years when earnings were not as timely or forthcoming.

FY14 Interest Income

Due to continued market volatility and a close to zero interest rate environment, limited interest was earned in the first quarter of FY14. We will continue to work with William Blair to maximize our investment earnings. The enclosed letter from Wm. Blair, the Lyons TTO investment manager, provides some additional information regarding this year's investments and specifically the current investment environment.



Portfolio Readjustment

During the first quarter of FY14 the portfolio realized a small loss as reflected in the quarterly summary attached. The TTO and William Blair are continuously realigning the portfolio and we will continue to be affected by market influences and volatility and other items beyond our control.

The Treasurer's office continues to work with William Blair to evaluate our investment portfolio and make adjustments to ensure all invested funds, as allowed in the Illinois School Code, maximize investment earnings. For example, the TTO Board recently made a slight adjustment to the Investment Policy Statement allowing the investment horizon on Corporate Bonds to extend to 270 days vs. 180 days. This action was taken to mirror the State of Illinois and provide greater flexibility to our money managers now and in the future. This process will take time and adjustments will be necessary to place us in the strongest investment position for the future.

Please contact me if you have any questions regarding this prior year interest earnings distribution.

Thank you,

A handwritten signature in cursive script, reading "Susan L. Birkenmaier".

Susan L. Birkenmaier, Ed.D.
Lyons Township School Treasurer

#	Description	DCR #	1993	Y/N	1994	Y/N	1995	Y/N	1996	Y/N	1997	Y/N	1998	Y/N
6	End of Cycle	C1	JUL	N	JUL	N	JUL	N	JUL	Y	JUL	Y	JUL	Y
6	End of Cycle	C1	AUG	N	AUG	N	AUG	N	AUG	Y	AUG	Y	AUG	Y
6	End of Cycle	C1	SEP	N	SEP	N	SEP	Y	SEP	Y	SEP	Y	SEP	Y
6	End of Cycle	C1	OCT	N	OCT	N	OCT	Y	OCT	Y	OCT	Y	OCT	Y
6	End of Cycle	C1	NOV	N	NOV	N	NOV	Y	NOV	Y	NOV	Y	NOV	Y
6	End of Cycle	C1	DEC	N	DEC	N	DEC	Y	DEC	Y	DEC	Y	DEC	Y
6	End of Cycle	C1	JAN	N	JAN	N	JAN	Y	JAN	Y	JAN	Y	JAN	Y
6	End of Cycle	C1	FEB	N	FEB	N	FEB	Y	FEB	Y	FEB	Y	FEB	Y
6	End of Cycle	C1	MAR	N	MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y
6	End of Cycle	C1	APR	N	APR	N	APR	Y	APR	Y	APR	Y	APR	Y
6	End of Cycle	C1	MAY	N	MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y
6	End of Cycle	C1	JUN	N	JUN	N	JUN	Y	JUN	Y	JUN	Y	JUN	Y

EXHIBIT

22

tabbles

EXHIBIT

#2

110289

02917108

http://www.1000books.com

1999	Y/N	2000	Y/N	2001	Y/N	2002	Y/N	2003	Y/N	2004	Y/N	2005	Y/N	2006	Y/N	2007	Y/N
JUL	Y	JUL	Y	JUL	Y	JUL	Y	JUL	Y	JUL	Y	JUL	N	JUL	N	JUL	N
AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y
SEP	Y	SEP	Y	SEP	Y	SEP	Y	SEP	Y	SEP	Y	SEP	Y	SEP	Y	SEP	Y
OCT	Y	OCT	Y	OCT	Y	OCT	Y	OCT	Y	OCT	Y	OCT	Y	OCT	Y	OCT	Y
NOV	Y	NOV	Y	NOV	Y	NOV	Y	NOV	N	NOV	Y	NOV	Y	NOV	N	NOV	Y
DEC	Y	DEC	Y	DEC	N	DEC	Y	DEC	Y	DEC	Y	DEC	Y	DEC	Y	DEC	Y
JAN	Y	JAN	Y	JAN	Y	JAN	Y	JAN	Y	JAN	Y	JAN	N	JAN	Y	JAN	Y
FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y
MAR	N	MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y
APR	Y	APR	Y	APR	Y	APR	Y	APR	Y	APR	Y	APR	Y	APR	Y	APR	Y
MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y
JUN	Y	JUN	Y	JUN	Y	JUN	Y	JUN	N	JUN	N	JUN	Y	JUN	Y	JUN	Y

2008	Y/N	2009	Y/N	2010	Y/N	2011	Y/N	2012	Y/N	2013	Y/N
JUL	Y	JUL	Y	JUL	N	JUL	Y	JUL	N	JUL	Y
AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y	AUG	Y
SEP	Y	SEP	Y	SEP	N	SEP	Y	SEP	N	SEP	Y
OCT	Y	OCT	N	OCT	Y	OCT	Y	OCT	Y	OCT	Y
NOV	Y	NOV	Y	NOV	Y	NOV	Y	NOV	Y	NOV	Y
DEC	Y	DEC	Y	DEC	Y	DEC	Y	DEC	Y	DEC	Y
JAN	Y	JAN	Y	JAN	Y	JAN	Y	JAN	Y	JAN	Y
FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y	FEB	Y
MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y	MAR	Y
APR	Y	APR	Y	APR	Y	APR	Y	APR	Y	APR	Y
MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y	MAY	Y
JUN	Y	JUN	N	JUN	Y	JUN	Y	JUN	Y	JUN	Y

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

Plaintiff and
Counter-Defendant,

VS.

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204,

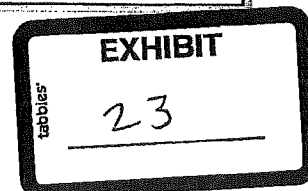
Defendant and
Counter-Plaintiff.

) No. 13 CH 23386

) Hon. Sophia H. Hall

) Calendar 14

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<p style="text-align: right;">Page 2</p> <p>1 PRESENT: 2 MILLER, CANFIELD, PADDOCK AND STONE, P.L.C. 3 BY: MR. BARRY P. KALTENBACH 4 225 West Washington Street, Suite 2600 5 Chicago, Illinois 60606 6 (312) 460-4251 / FAX: (312) 460-4201 7 e-mail: kaltenbach@millercanfield.com</p> <p>8 appeared on behalf of Plaintiff and 9 Counter-Defendant; 10 HOFFMAN LEGAL 11 BY: MR. JAY HOFFMAN 12 20 North Clark Street, Suite 2500 13 Chicago, Illinois 60602 14 (312) 899-0899 15 e-mail: jay@hoffmanlegal.com</p> <p>16 appeared on behalf of the Defendant and 17 Counter-Plaintiff. 18 ALSO PRESENT: 19 Ms. Stephanie A. Battaglia, CSR, RMR, CRR 20 Thompson Court Reporters</p>	<p style="text-align: right;">Page 4</p> <p>1 NANCY SYLVESTER, 2 called as a witness herein, having been first duly 3 sworn was examined and testified as follows: 4 EXAMINATION 5 BY MR. HOFFMAN: 6 Q. Good afternoon, Ms. Sylvester. 7 How are you? 8 A. Good. 9 Q. I understand you recently had a medical 10 procedure. I just want you to know that I will 11 accommodate your needs in any way that you need. If 12 you want to take a break just tell me that, we will. 13 A. Thank you. 14 Q. Just keep me apprised. Fair enough? 15 A. Fair enough, thank you. 16 Q. Have you been deposed before, ma'am? 17 A. Yes. 18 Q. How many times? 19 A. About five, seven, somewhere in there. 20 Q. What types of cases have you been deposed 21 in? 22 A. In all of the cases it has been as an 23 expert witness in parliamentary procedure. 24 Q. Have any of those cases been in Illinois?</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 WITNESS: PAGE 3 NANCY SYLVESTER 4 4 EXAMINED BY: 5 Mr. Hoffman 4 6 Mr. Kaltenbach 90 7 EXHIBITS 8 Sylvester Exhibits 9 (Retained by counsel and not attached) 10 Exhibit 1 Invoice for Professional 10 11 Services to: Township Trustees 12 of Schools vs. Lyons 13 Township H.S. District 204 14 Exhibit 2 Plaintiff's Rule 213(f)(3) 15 15 Expert Disclosure 16 Nancy Sylvester 17 Exhibit 3 Notes from Township Trustees 48 18 of Schools Minutes 19 Exhibit 4 Handwritten notes 57 20 Exhibit 5 Handwritten notes 60 21 Exhibit 6 Handwritten notes 70 22 Exhibit 7 The Complete Idiot's Guide 87 23 to Robert's Rules, Second Edition 24 Nancy Sylvester, PRP, CPP-T 25 Exhibit 8 The Guerrilla Guide to Robert's 88 26 Rules 27 Nancy Sylvester, PRP, CPP-T</p>	<p style="text-align: right;">Page 5</p> <p>1 A. Yes. 2 Q. How many? 3 A. Probably as much as 20 years ago, 4 15 years ago, I did one for a hospital in Sycamore, 5 Illinois. 6 Q. What type of case was that, please? 7 A. I am not sure how to answer what type of 8 case. 9 Do you want me to describe what it was 10 about? 11 Q. Yes. 12 A. The issue was that the board chairman had 13 decided that he didn't like what was going to be the 14 outcome of the meeting and so he got up, said the 15 meeting was adjourned, left, and the other people who 16 were the rest of the board members who were there and 17 they stayed and did -- and followed procedure and then 18 continued the meeting. 19 Q. Okay. 20 And your expert opinion had to do with 21 the validity of the continued meeting? 22 A. Yes. 23 Q. And did you believe that it was valid? 24 A. Absolutely.</p>

2 (Pages 2 to 5)

1 Q. And you said that was 15 to 20 years ago.
 2 A. Yes, something like that. It has been a
 3 long time.
 4 Q. You gave a deposition in that case?
 5 A. Yes.
 6 Q. You said the hospital was in Sycamore,
 7 Illinois.
 8 Was the lawsuit in Sycamore, Illinois, as
 9 well?
 10 A. I don't remember.
 11 Q. Fair enough.
 12 You live in Rockford Illinois, correct?
 13 A. Yes, I do. Actually Loves Park but, yes.
 14 Q. Do you have a dog?
 15 A. Yes.
 16 Q. There is the most wonderful dog park in
 17 Rockford my wife and I went to.
 18 A. My husband hasn't taken me to, I will
 19 have to tell him.
 20 Q. It is a whole \$3 to go.
 21 A. I will tell my husband, it is his, not
 22 mine.
 23 Q. It is the same park that had the world's
 24 largest Easter egg hunt according to the Guinness Book

1 of World Records, it is on the sign as you enter the
 2 park, that is how you will find it.
 3 A. I will look for it.
 4 Q. The Illinois case where you testified for
 5 the hospital in Sycamore, Illinois, did that case go
 6 to trial?
 7 A. I don't remember.
 8 I did not. I did not --
 9 Q. You did not testify at trial?
 10 A. I did not testify in a trial. So that is
 11 -- I don't know how -- I know the final end result,
 12 but, I am sorry, too many years.
 13 Q. Do you know why it was that you weren't
 14 called to testify at trial?
 15 A. I think they settled soon after that. As
 16 I understand it they settled soon afterwards now that
 17 I think about it.
 18 Q. Soon after the deposition you mean?
 19 A. Yes.
 20 Q. And did the court in that case make any
 21 determination as to whether it would allow you to
 22 testify at trial as an expert to your knowledge?
 23 A. I don't know.
 24 Q. Any other case in Illinois in which you

1 have given a deposition?
 2 A. I did give -- the case was not in
 3 Illinois, but I did a video conference deposition once
 4 and so I was in Illinois obviously for that part of
 5 it.
 6 Q. Where was the case?
 7 A. The case was in Hawaii.
 8 Q. The approximately three other times in
 9 which you were deposed, were those cases all out of
 10 state as well like the Hawaii case?
 11 A. Yes, I think so.
 12 Q. And --
 13 A. I am sorry, I didn't realize you were
 14 going to ask this or I could have looked up
 15 information.
 16 Q. Quite all right.
 17 I am just -- let me run through a couple
 18 -- even though you are a veteran of depositions.
 19 I am going to ask you questions. It is
 20 important for you to answer yes or no rather than
 21 uh-huh or uh-uh. Does that make sense?
 22 A. Yes, of course it does.
 23 Q. You are going to provide me with the best
 24 answer you can give me today, and if you have to

1 approximate that is fine. Do you understand that?
 2 A. Uh-huh.
 3 Q. Yes?
 4 A. Yes.
 5 Q. You broke Rule 1 there, you broke Rule
 6 No. 1 there.
 7 A. It is probably not the last time.
 8 Q. I will give you a mulligan on that one.
 9 A. How about a few?
 10 Q. We will see about that.
 11 If I ask you a question and you don't
 12 understand it will you be kind enough to tell me that,
 13 please?
 14 A. There is no question, you will know.
 15 Q. Otherwise I will assume that you
 16 understand my question. Is that fair?
 17 A. That is fair.
 18 Q. In any of the cases in which you have
 19 been deposed as an expert witness have you ever
 20 testified subsequently at trial?
 21 A. No.
 22 Q. In any case in which you have been
 23 deposed as an expert witness has any court ever made a
 24 determination as to whether or not you would be

1 allowed to testify at trial?
 2 A. Not that I know of.
 3 (Document marked Sylvester Exhibit 1 for
 4 identification.)
 5 BY MR. HOFFMAN:
 6 Q. Ma'am, Sylvester Exhibit No. 1 is a
 7 three-page document containing two invoices as well as
 8 a statement of a work in progress that I received from
 9 your counsel or the counsel who is here today for the
 10 Plaintiff, Mr. Kaltenbach.
 11 Do you recognize this document?
 12 A. Yes, I do.
 13 Q. Is Page 1 a correct copy of the
 14 February 28, 2017 invoice that you provided for this
 15 matter?
 16 A. I honestly believe so. I didn't -- it
 17 looks exactly like what I gave him, yes.
 18 Q. There is going to be a lot of questions
 19 like that.
 20 A. I will try to give the best guesstimate.
 21 MR. KALTENBACH: If I believe a document
 22 has been altered, I will let you know. You can assume
 23 that what Mr. Hoffman is showing you has not changed
 24 in any way.

1 BY MR. HOFFMAN:
 2 Q. Is Page 2, Sylvester Exhibit 1, the
 3 March, 2017 invoice?
 4 A. Yes.
 5 Q. And to whom did you send these two
 6 invoices?
 7 A. To Jerry, he has been my contact through
 8 the entire --
 9 Q. Is that Jerry Kubasiak?
 10 A. Yes, K-u-b-a-s-i-a-k.
 11 Q. How did you get connected with Jerry with
 12 respect to work on this case?
 13 A. I received a phone call from Jerry.
 14 Q. Had you done any prior work with him or
 15 his law firm?
 16 A. No.
 17 Q. Did Jerry tell you how he found you,
 18 Internet search, referral from some other means?
 19 A. I don't remember.
 20 You know what, I think he told me that it
 21 was a referral from another parliamentarian.
 22 Q. Do you remember who that was?
 23 A. It might have been Judy Reynolds, but I
 24 am not positive on that. I think that is what he said

1 on that.
 2 Q. Did you ever talk to Judy Reynolds about
 3 this matter?
 4 A. No.
 5 Q. Call her and thank her for the referral?
 6 A. No, I haven't.
 7 Q. Did Jerry tell you why he had talked to
 8 Judy Reynolds --
 9 A. No.
 10 Q. -- before talking with you?
 11 A. No.
 12 Q. And just for the sake of clarity, it is
 13 going to be helpful --
 14 A. Wait, he may have --
 15 Q. Go ahead.
 16 A. I think he said that she said she was not
 17 -- that this was not something she felt comfortable
 18 doing and so recommended me.
 19 Q. Did he say anything about why she didn't
 20 feel comfortable doing it?
 21 A. I think lack of experience. She is a
 22 Professional Registered Parliamentarian, but for
 23 nowhere near as long as I have been.
 24 Q. I totaled the two invoices and the work

1 in progress on -- I am sorry, on the third page the
 2 third section that is not highlighted, I take it that
 3 is a more current billing that has not been billed out
 4 --
 5 A. That's correct.
 6 Q. -- in an invoice, right?
 7 A. That's correct.
 8 Q. And it is going to flow better with the
 9 court reporter if you wait until I am done asking my
 10 question before you give your answer.
 11 A. Good, thank you.
 12 Q. This is a little different than ordinary
 13 conversation, unfortunately.
 14 A. Yes.
 15 Q. I added those numbers up, I came to
 16 \$10,812.50. I am not asking you to add them yourself.
 17 A. Good.
 18 Q. Does that sound right?
 19 A. It sounds about right.
 20 Q. And that is the work you have done
 21 through -- this includes all the work you have done
 22 through April 17th of 2017?
 23 A. Correct.
 24 Q. And your work on this began on

1 February 3, 2017, correct?
 2 A. Correct.
 3 Q. When did you get the first communication
 4 or you said phone call from Jerry?
 5 A. Sometime before the 3rd of February, I
 6 don't know exactly when.
 7 Q. Was it a matter of days, weeks, months,
 8 years, what?
 9 A. Not years, not months, maybe weeks at the
 10 most.
 11 Q. Okay.
 12 So sometime in 2017 you started work on
 13 this probably?
 14 A. I could look at my schedule and figure
 15 out the date that I first met with him because I was
 16 coming back from one of my clients and he wanted to
 17 meet me in person and we met at O'Hare.
 18 Q. I see.
 19 And that was a matter of weeks before
 20 February 3, 2017?
 21 A. Yes.
 22 Q. All right, fair enough.
 23 A. As I remember, yes.
 24 Q. Tell me all of the people that you met in

1 discussed with one of the attorneys for the Plaintiff
 2 on this case before it was filed?
 3 A. Yes.
 4 Q. And does all of the information -- is all
 5 of the information in this disclosure accurate with
 6 respect to your background, your review of documents,
 7 your opinions, and anything else contained herein?
 8 A. Yes.
 9 MR. HOFFMAN: Off the record.
 10 (A discussion was held off the record.)
 11 BY MR. HOFFMAN:
 12 Q. And so Page 1 and 2 describes your
 13 background, correct?
 14 A. Yes.
 15 Q. And on Page 2 there is two books that you
 16 wrote.
 17 A. Uh-huh.
 18 Q. The Complete Idiot's Guide to Robert's
 19 Rules and the Guerrilla Guide to Robert's Rules, is
 20 that correct?
 21 A. Yes.
 22 Q. On Page 3 it talks about what you relied
 23 on in forming your opinions in this case, correct?
 24 A. Correct.

1 person with in connection with your work on this
 2 assignment, please.
 3 A. Jerry, Gretchen, and Barry.
 4 Q. And Gretchen is Gretchen Kubasiak?
 5 A. Yes.
 6 Q. And Barry is Barry Kaltenbach, the
 7 gentleman who is here today?
 8 A. Yes.
 9 Q. Other than those three individuals have
 10 you ever other met with or spoken with any other
 11 person in connection with this case, obviously not
 12 including myself?
 13 A. No.
 14 (Document marked Sylvester Exhibit 2 for
 15 identification.)
 16 BY MR. HOFFMAN:
 17 Q. Sylvester Exhibit No. 2 is Plaintiff's
 18 Rule 213(f)(3) Expert Disclosure for Nancy Sylvester.
 19 It is a document that was sent to me by e-mail
 20 according to the certificate of service on March 15,
 21 2017.
 22 Do you recognize this document, ma'am?
 23 A. Yes, I do.
 24 Q. Is this a document that you read and

1 Q. And one of the things you relied on was
 2 Robert's Rules of Order, Newly Revised 2011, is that
 3 right?
 4 A. Correct.
 5 Q. Is that --
 6 A. Referred to as the 11th Edition, but,
 7 correct.
 8 Q. Is the 11th Edition the book that is in
 9 front of you right now at the deposition?
 10 A. That is correct.
 11 Q. Do you always take it with you wherever
 12 you go?
 13 A. I don't sleep with it.
 14 Q. Okay.
 15 There is a list of materials that you
 16 received from the lawyers in this case, the
 17 Plaintiff's lawyers in this case, correct?
 18 A. Yes.
 19 Q. And this list includes -- The plaintiff
 20 has got a very long and unwieldy name, it sometimes is
 21 called the Township Trustees of Schools.
 22 Would it be all right with you if I
 23 referred to it as the TTO?
 24 A. I would love it if you did, that is what

1 I referred to it as.
 2 Q. And the Defendant has a little bit of a
 3 lock name as well and most people have been calling it
 4 either LT or District 204.
 5 Is that acceptable with you?
 6 A. I would like to do 204, if you don't
 7 mind.
 8 Q. That is fine.
 9 You received from the Plaintiff's lawyers
 10 the TTO meeting minutes from 1993 to 2010, including
 11 agenda and attachments where available, except for
 12 three sets of minutes that were not available. Am I
 13 right?
 14 A. That is correct.
 15 Q. In how many instances were the agenda
 16 and/or the attachments for the minutes that you
 17 received from 1993 through 2010 unavailable?
 18 A. Would you repeat the question, please?
 19 Q. Sure.
 20 In how many circumstances were either the
 21 agenda or the attachments to TTO minutes from 1993
 22 through 2010 not available or missing?
 23 A. Well, there were --
 24 Q. Do you understand the question?

1 Let me ask a better question.
 2 A. Are you asking --
 3 Q. Let me ask a better question.
 4 A. Okay.
 5 Q. It says here in the disclosure that you
 6 reviewed the TTO minutes from 1993 through 2010, and
 7 it says including agenda and attachments where
 8 available. Right?
 9 A. Yes.
 10 Q. So what I am trying to figure out is --
 11 and then you go on to list there are three sets of
 12 minutes where the minutes were not available entirely,
 13 right?
 14 A. Correct.
 15 Q. So in how many instances were there
 16 minutes but missing agenda and/or missing attachments
 17 to the minutes?
 18 A. I don't recall any of them missing that,
 19 just the full set of minutes from those meetings.
 20 Q. Well, why did you say that it included
 21 the agenda and attachments where available?
 22 A. Well, because I don't know what all they
 23 have, what all they do include, and so it is what I
 24 was given.

1 Q. Okay.
 2 A. I wanted to make it clear is what I was
 3 given.
 4 Q. Do you know whether all of the minutes
 5 that you got from 1993 until 2010 had all of the
 6 agendas and attachments that they were supposed to
 7 have or not?
 8 A. As I said, I don't recall missing -- of
 9 the minutes I got I don't recall missing any documents
 10 that -- finding any that were missing either the
 11 agenda or the minutes or attachments.
 12 Q. Okay.
 13 Do you know why some of the TTO meeting
 14 minutes for the period that you looked at were not
 15 available?
 16 A. I know what the answer -- explanation was
 17 given to me.
 18 Q. What was that?
 19 A. When I asked the answer was those are --
 20 what we have given you is the only set that we got
 21 from them and that they had asked -- they had asked
 22 for all of the minutes and this is what they got.
 23 Q. Okay.
 24 A. And, frankly, a couple of those cases the

1 only way I knew it is because I am reading minutes and
 2 I am finding there is a different board member here,
 3 there must have been a meeting in between, things like
 4 that.
 5 Q. I see.
 6 You were able to discern from looking at
 7 the minutes there were missing meeting minutes from
 8 the TTO?
 9 A. Yes, thank you.
 10 Q. You also reviewed -- why did you review
 11 meeting minutes starting in 1993, why didn't you go
 12 back earlier?
 13 A. Because that was what was given to me.
 14 Q. Why didn't you review meeting minutes of
 15 the TTO ending in 2010?
 16 A. As you are saying this I am thinking that
 17 in that packet we might have a few beyond that.
 18 Can I go check that?
 19 MR. KALTENBACH: I can't give you the
 20 answer to that. And if --
 21 THE WITNESS: Can I walk over and check
 22 and make sure?
 23 BY MR. HOFFMAN:
 24 Q. Sure, of course, take your time.

1 A. It is until '10, correct. The minutes
2 that were jumping around in my head with different
3 dates were the ones for the 204.

4 Q. Why didn't you review minutes of the TTO
5 in the years after 2010?

6 A. Because these are what were given to me
7 and what -- I was told this is all that they were
8 given. They asked -- what I was told is that they
9 asked for all of the minutes that had anything to do
10 with -- anything to do with the lawsuit. Or is that
11 -- this is what I was given.

12 Q. Well, I understand you might have been
13 given something, but it is up to you to decide what
14 you need in order to do your work properly, correct?

15 A. I did not feel -- there was no reason I
16 knew that I needed beyond this and I trusted those who
17 gave it to me to make that judgment.

18 Q. Why didn't you think it would be
19 meaningful for you to look at the TTO minutes that
20 came after 2010?

21 A. Because as I understood it the heart of
22 the lawsuit was during the time before that, but that
23 was maybe a misunderstanding, I don't know.

24 Q. You also reviewed meeting minutes from

1 that is what they were given. When I asked why there
2 weren't other ones, that was the answer.

3 BY MR. HOFFMAN:

4 Q. Do you think that your opinion was in any
5 way limited by the inability to review a broader set
6 of District 204 meeting minutes?

7 A. I did not feel that way, no.

8 Q. You also received the transcripts of the
9 depositions of Robert Healy, Russell Hartigan, and
10 Dr. Timothy Kilrea.

11 A. Yes.

12 Q. That is K-i-l-r-c-a.

13 Was it that the attorneys just gave you
14 these three documents and told you these were the
15 relevant ones or were these something you requested?

16 A. No, they gave those to me.

17 Q. Do you know how it was that they decided
18 that these were the three important ones that you
19 should read?

20 A. I do not recall.

21 Q. Okay.

22 A. No -- that's right, never mind, go on.

23 Q. Go ahead.

24 A. I am just trying to remember. I got one

1 the Board of Education of District 204, correct?

2 A. Yes.

3 Q. And that was from June of 2010
4 through 2012?

5 A. Yes.

6 Q. Is there any reason --

7 A. But only the June meeting minutes of each
8 of those years, that is all I was given.

9 Q. Why didn't you think it was important to
10 review any of the District 204 board meeting minutes
11 other than the ones in June of each year?

12 MR. KALTENBACH: Objection as to the form
13 of the question.

14 You can answer.

15 BY MR. HOFFMAN:

16 Q. Go ahead.

17 A. The question was why do --

18 MR. HOFFMAN: Go ahead, read it back,
19 please.

20 (Record read as requested.)

21 THE WITNESS: Because the attorney had
22 indicated to me that these were the minutes -- that
23 they had asked 204 to give them all of the minutes
24 that had anything to do with this issue in them and

1 by electronic later, but it is one of those three,
2 never mind.

3 Q. So these are the only three deposition
4 transcripts that you read, correct?

5 A. Correct.

6 Q. And so is it fair to say that you did not
7 read the transcript of the deposition of Todd Shapiro
8 who was the board president for District 204 in June
9 of 2000?

10 A. That's correct.

11 Q. And you did not read the deposition of
12 Lisa Beckwith, who was the business manager of
13 District 204 in June of 2000, correct?

14 A. That's correct.

15 Q. And you did not read the deposition
16 transcript of Dr. Dennis Kelly who was the
17 superintendent of District 204 in June of 2000, did
18 you?

19 A. That's correct.

20 Q. And are you aware of how many of those
21 three individuals, Mr. Shapiro, Ms. Beckwith, and
22 Dr. Kelly, attended the June, 2000 District 204 board
23 meeting that you analyzed?

24 A. No, because it is the first time I heard

1 the name so, no. But -- go ahead.

2 Q. Well, if Todd Shapiro, for example, was
3 in attendance at the June, 2000 District 204 board
4 meeting and testified about what happened at that
5 meeting, why is it that you are unaware of his
6 testimony and didn't consider it important enough to
7 ask for?

8 A. Because the minutes were a record of what
9 occurred at a meeting. They are the official record
10 of what occurred at a meeting and it isn't dependent
11 upon what somebody remembers occurred at that meeting.
12 It is what was documented in the minutes and approved.

13 Those minutes have been approved by the
14 trustees, and that is what I needed. The other
15 information was not significant -- would not affect my
16 opinion because what was -- it is not what the intent
17 is, it is what is in the minutes.

18 Q. Did any of the testimony that Robert
19 Healy gave in his deposition have any impact upon your
20 opinions in this case?

21 A. No.

22 Q. Did any of the testimony that Judge
23 Russell Hartigan gave at his deposition in this case
24 have any impact on your opinions given in this case?

1 expected to testify then in accordance with Robert's
2 and parliamentary practice an organization may have a
3 custom that certain words such as accept, adopt, and
4 approve as having meanings specific to that
5 organization."

6 Is that your opinion?

7 A. Yes.

8 Q. How was that opinion in accordance with
9 Robert's?

10 A. There is a hierarchy of rules, and in
11 that list of hierarchy Robert's began in the 10th
12 Edition to include custom because it was vague before
13 that. So in Robert's you see specific direction on
14 what custom -- what impact custom has upon the rules.

15 Q. What year was the 10th Edition?

16 A. It was '00.

17 Q. 2000?

18 A. Yes.

19 Q. When in 2000?

20 A. When in 2000?

21 Q. Yes.

22 A. Probably -- I don't know for a fact.

23 I would have to go back and look, but my
24 guess is it was September of 2000, September or

1 A. No.

2 Q. Did any of the testimony that Dr. Timothy
3 Kilrea gave in his deposition in this case have any
4 impact on your opinions in this case?

5 A. My answer is yes.

6 I am not sure that it is accurate to say
7 it had an impact on my opinion, but it solved for me
8 one of the issues I needed to know, and that is that
9 it is clear that Robert's Rules of Order is their
10 parliamentary authority.

11 Q. Anything else in his deposition that was
12 significant to you?

13 A. No.

14 I found a lot of it interesting, but
15 making an opinion -- having an impact on the opinion,
16 no, because it is based upon the facts, not what
17 somebody thinks happened.

18 Q. Okay.

19 Did you read the deposition of Dr. Susan
20 Birkenmaier who was the official representative of the
21 TTO for purposes of this case and her testimony that
22 she gave in this case?

23 A. No.

24 Q. It says here on Page 3 "Ms. Sylvester is

1 October.

2 Q. Which edition do you have with you here
3 today?

4 A. The 11th Edition.

5 Q. I see.

6 And what does the 11th Edition say about
7 this custom issue that you have testified about?

8 A. There is quite a bit said, more than
9 this, but here are the key things.

10 Q. Tell me what page you are on.

11 A. I am on Page 19.

12 Q. Terrific.

13 A. Custom is the heading.

14 "In some organizations a particular
15 practice may sometimes come to be followed as a matter
16 of established custom so that it is treated
17 practically as if it were prescribed by a rule. If
18 there is no contrary provision in the parliamentary
19 authority or written rules of the organization, the
20 established custom should be adhered to unless the
21 assembly by a majority vote agrees in a particular
22 instance to do otherwise. However, if a customary
23 practice is or becomes in conflict with the
24 parliamentary authority or any written rule and a

1 point of order citing the conflict is raised at any
2 time, the custom falls to the ground and the
3 conflicting provision in the parliamentary authority
4 or written rule must thereafter be complied with."

5 Q. Is that the entirety of the statement
6 about custom in the 11th Edition that you believe is
7 relevant to this issue?

8 A. Yes.

9 There is another sentence after that that
10 I didn't -- I can read it if you like.

11 Q. Do you believe it is significant?

12 A. I don't believe it is pertinent.

13 Q. If you don't think it is pertinent then
14 we don't need to read it.

15 A. Okay.

16 MR. HOFFMAN: Off the record.

17 (A discussion was held off the record.)

18 BY MR. HOFFMAN:

19 Q. You reviewed the TTO's meeting minutes
20 and formed the opinion that the trustees used the word
21 accept as the equivalent of receives, is that correct?

22 A. That's correct.

23 Q. Did you speak with any of the former or
24 current trustees concerning whether or not they had

1 But, remember, the definition from
2 Robert's --

3 Q. I didn't ask you to argue with me, I just
4 asked whether it was written down or not.

5 A. Sorry.

6 Q. So the answer is no, right?

7 A. The answer is no.

8 Q. If this custom was not written down do
9 you know how it was handed down from trustee to
10 trustee from 1993 through 2010?

11 A. By practice.

12 Q. Okay.

13 Was there perhaps a briefing that each
14 trustee received when they came in as to how the TTO
15 uniquely followed Robert's Rules of Order and what
16 their particular customs were to your knowledge?

17 A. I have no way of knowing that.

18 Although, it is typical for boards to do
19 some kind of training in between when they have new
20 board members, but it is not always done by any means.

21 Q. With respect to whether it is typical for
22 boards to train new members, you have absolutely no
23 idea as to the TTO whether they did that?

24 A. That's correct. That's correct.

1 this custom that you felt they did?

2 A. No.

3 Q. Why not?

4 A. I didn't feel I needed to.

5 Q. Why not?

6 A. Because there was enough documentation in
7 the minutes to demonstrate that beyond what I believed
8 was a shadow of a doubt.

9 Q. Well, the meeting minutes you reviewed
10 for the TTO were 1993 through 2010, correct?

11 A. Yes.

12 Q. Were the trustees the same in all of
13 those years?

14 A. No.

15 Q. Do they change every few years?

16 A. Yes.

17 Q. And were the trustees who started in 1993
18 the same trustees who were there in 2010?

19 A. No.

20 Q. And can you tell me if there was this
21 custom that you are testifying to was it written down
22 anywhere in any policy, procedure, rule book of the
23 TTO?

24 A. No, it is not.

1 MR. HOFFMAN: I move to strike the prior
2 answer as speculative.

3 BY MR. HOFFMAN:

4 Q. Tell me again if the trustees turned over
5 completely from 1993 through 2010 and there was no
6 written statement of the TTO as to the TTO's custom as
7 to how they used the word accept in their minutes, how
8 did the trustees know about this custom as the years
9 went by?

10 A. I have no way of knowing that, how.

11 Q. Wouldn't you be interested to know
12 whether Russell Hartigan who was a trustee in March of
13 2000 when the critical meeting occurred believed that
14 there was the type of custom of the TTO that you claim
15 there was?

16 A. I believed that I had enough information
17 in the minutes to draw the conclusion that I drew and
18 did not feel the need to search that out.

19 Q. That didn't answer my question.

20 A. Try it again.

21 Q. Wouldn't it be interesting to you to know
22 whether Judge Hartigan would say today that the custom
23 you found by looking through the minutes actually did
24 or did not exist at the TTO?

1 A. Interesting at best. I don't believe it
2 would have affected my opinion.
3 Q. So hypothetically if Judge Hartigan said
4 that he was unaware of any custom at the TTO whereby
5 the use of the word accept in the board minutes was
6 the equivalent of receives, if he said he was unaware
7 of that custom would that have any impact on your
8 opinions in this case?

9 A. No.

10 Q. Why not?

11 A. Because when I did the analysis -- first
12 of all, this may be more than you need to know, but --

13 Q. I need to know everything, my dear,
14 please.

15 A. It is very, very common for the general
16 public to believe that the words accept, adopt, and
17 approve do not mean the same thing.

18 Most people get -- think that accept and
19 receive is -- means the same thing.

20 Q. What are you basing that on, that most
21 people think accept and receives means the same thing?

22 A. The phenomenal amount of training that I
23 have done, helped groups throughout the country, and
24 been in meetings watching them practice what we are

1 Q. And your testimony is that when
2 District 204 used the term accept in the board minutes
3 of District 204 that what District 204 really meant
4 was receives, is that your opinion?

5 A. Yes.

6 Q. Now, you also say later on on Page 4 of
7 your disclosure about five lines down "based on custom
8 and usage the trustees" -- that is of the TTO -- "used
9 adopt and approve interchangeably." Do you see that?

10 A. Yes, I do.

11 Q. What is the difference between custom and
12 usage, if there is one?

13 A. Custom is when you are repeatedly doing
14 something as a group as if it were a rule written in
15 the book.

16 Q. As opposed to usage which means what?

17 A. I looked up all of their minutes and I
18 paid close attention to when they used each of those
19 three words and it was clear that they were using
20 adopt and approve interchangeably.

21 Q. So I don't understand the difference in
22 your mind between custom on the one hand and usage on
23 the other hand. Explain it to me better, please.

24 A. I will try. I thought I -- custom is

1 talking about.

2 And when I train many times when I say
3 those three words mean the same thing I don't remember
4 a time when there wasn't at least one person in the
5 group, but usually many, who had this shocked look on
6 their face and I had to proceed to explain.

7 Q. So from a parliamentary standpoint the
8 words accept, adopt, and approve all mean the same
9 thing, correct?

10 A. That's correct.

11 I don't know if this is, again, more than
12 you need, but it is ironic that --

13 Q. Let me just say, there is nothing you are
14 going to say that is more than I need, so don't worry
15 about that, please.

16 A. It was -- it is ironic to me that I found
17 that the other -- that the 204 trustees had the same
18 custom.

19 Q. And, again, you were able to determine
20 what District 204's custom was in its board minutes
21 without speaking with anybody associated with
22 District 204 that was actually involved in those
23 meetings, correct?

24 A. That's correct.

1 when you using something -- when you do something as
2 if it were a rule but it is not written in your rules,
3 we do it so consistently that it is done as if it were
4 a written rule and yet it is not in the rules.

5 Q. The trustee's use of the word accept is
6 the equivalent of receives, was that a custom or was
7 that something you saw based on the usage or both?

8 A. That was a custom that I judged to be a
9 custom based upon their usage.

10 Q. So something can be a usage and in your
11 opinion it is elevated to the equivalent of a written
12 rule then it becomes a custom, am I summarizing your
13 testimony correctly?

14 A. Would you repeat that question again?

15 Q. Sure.

16 MR. HOFFMAN: Go ahead, please.

17 (Record read as requested.)

18 MR. HOFFMAN: When it becomes.

19 THE WITNESS: It is not making sense.

20 BY MR. HOFFMAN:

21 Q. Let me ask the question again.

22 Please tell me if I am summarizing your
23 testimony accurately, I am not trying to misstate it
24 in any way.

1 You can look at a group of minutes and
 2 find a usage of a term and that is how you perceive
 3 the board to be using a particular term like the word
 4 accept. But that usage can become a custom if the
 5 usage of that term in your view is the equivalent to a
 6 written rule that the organization has.
 7 A. Yes. And that is based on Robert's.
 8 Q. Okay.
 9 A. I would not have said anything about
 10 adopt and approve being used interchangeably as a
 11 custom because it is in the rules.
 12 Q. It is in what rules?
 13 A. Robert's.
 14 Q. So they don't need to have a custom to
 15 use adopt and approve interchangeably because that is
 16 already in Robert's Rules of Order, correct?
 17 A. Yes.
 18 Q. Does Robert's Rules of Order also state
 19 that adopt, approve, and accept can all be used
 20 interchangeably and all have the same meaning?
 21 A. Yes, those are not the exact words.
 22 Would you like the exact words?
 23 Q. Sure, that would be awesome.
 24 MR. KALTENBACH: If you are going to read

1 from it make sure the page number.
 2 THE WITNESS: Page 508, beginning on line
 3 number 11, I am going to read just one of the
 4 paragraphs on this. "Equivalence of terms incorrect
 5 motions as applied to an assembly's action with
 6 respect to board or committee reports or any of their
 7 content the expression adopt, accept, and agree are
 8 all equivalent. That is the text adopted becomes in
 9 effect the act or statement of the assembly. It is
 10 usually best to use the word adopt, however, since it
 11 is the least likely to be misunderstood."
 12 MR. KALTENBACH: I think there might have
 13 been -- I think you might have misread a word in
 14 there.
 15 MR. HOFFMAN: Just read back her answer
 16 and he can check it, please.
 17 MR. KALTENBACH: Something didn't sound
 18 right.
 19 (Record read as requested.)
 20 MR. KALTENBACH: I am sorry, that was
 21 correct. It sounded funny to me.
 22 BY MR. HOFFMAN:
 23 Q. So is the words adopt --
 24 A. Accept and approve.

1 Q. And approve.
 2 A. That particular sentence I am now
 3 realizing did not refer to approve. I am sorry, did
 4 not --
 5 Q. Adopt, accept, and agree.
 6 A. That's correct.
 7 Q. Is there anything in Robert's Rules of
 8 Order that says that adopt and approve are
 9 interchangeable?
 10 A. I am -- yes, there is, but I am -- don't
 11 have it marked. Do you want me to go find it?
 12 Q. No, thank you.
 13 You don't have a law degree, do you?
 14 A. I don't what?
 15 Q. You don't have a law degree, do you?
 16 A. No, I do not.
 17 Q. What makes you more qualified to
 18 interpret the meaning of board minutes in this case
 19 than a judge or the jury?
 20 MR. KALTENBACH: I object as to the form
 21 of the question and argumentative, but you can answer.
 22 THE WITNESS: I am a student of and know
 23 extremely well Robert's Rules of Order, which is the
 24 parliamentary authority of the organizations --

1 actually about 95 percent of the organizations in the
 2 United States, and those that use that I am an expert
 3 on them.
 4 The judge and most law students have
 5 never had a course in parliamentary procedure. And,
 6 yet, that is the rule book that is in the bylaws and
 7 that must be followed.
 8 BY MR. HOFFMAN:
 9 Q. What told you that the TTO follows
 10 Robert's Rules of Order?
 11 A. What I said earlier in the deposition
 12 that I read from the current superintendent.
 13 Q. The current superintendent was from
 14 District 204, Dr. Kilrea. My question had to do with
 15 TTO.
 16 A. I am sorry, TTO.
 17 Q. Yes, ma'am.
 18 A. I think I asked the attorney for that
 19 information and was given that, but I honestly don't
 20 remember.
 21 Q. So the only reason you think that the TTO
 22 followed Robert's Rules of Order is because you might
 23 have asked --
 24 A. No, I asked -- I did some checking into

1 it at one point.
 2 Q. What did you do to check into it?
 3 A. I asked the attorney, I am sure.
 4 Q. Which attorney?
 5 A. It would have been Jerry at that stage.
 6 Q. Jerry Kubasiak?
 7 A. Yes.
 8 Q. And what did Jerry Kubasiak tell you
 9 about whether or not the TTO followed the Robert's
 10 Rules of Order?
 11 A. He indicated it was. I think it is
 12 somewhere in their rules, but I don't know.
 13 Q. There is no statement on Page 3 that you
 14 were ever provided with the rules of the TTO.
 15 A. That's correct, I went by -- I am sorry.
 16 Q. Go ahead, finish.
 17 A. I went by what he told me.
 18 I also went by the fact that
 19 approximately 95 -- 90 to 95 percent of the
 20 organizations in the United States use Robert's as
 21 their parliamentary authority, and in my experience I
 22 have not run into any, and I have worked with a lot of
 23 government bodies.
 24 Q. What do the other 5 to 10 percent of the

1 organizations use if not Robert's Rules of Order?
 2 A. About three or four percent use a book
 3 written by a woman named Sturgis. It has been since
 4 rewritten because she has passed and it has been
 5 rewritten by the American Institute of
 6 Parliamentarians. There is a few other books, Demeter
 7 is one that some have used. I just have to go back on
 8 his name. Those are the most common.
 9 Q. On Page 5 it says at the bottom of the
 10 page, Ms. Sylvester -- by the way, I am on -- let me
 11 start over.
 12 Looking at Sylvester 2, which is the
 13 disclosure for your opinions in this case, on Page 5
 14 in the last full paragraph it says "Ms. Sylvester will
 15 offer her opinion that in accordance with Robert's and
 16 parliamentary practice entering into a new contract
 17 such as the one alleged here is not within the purpose
 18 of the consent agenda." Do you see that?
 19 A. Yes.
 20 Q. So you also concluded that the agreement
 21 that -- it says "the agreement alleged was not routine
 22 business for District 204." Do you see that
 23 statement?
 24 A. Yes.

1 Q. And is that opinion based solely on your
 2 review of District 204's minutes or is it based on
 3 anything else?
 4 A. It is also based upon my experience with
 5 governmental bodies and other deliberative assemblies.
 6 Q. You also say on Page 6 "It would be
 7 inappropriate for the Board of Education to enter into
 8 the alleged consent through the use of the consent
 9 agenda." Do you see that?
 10 A. Yes.
 11 Q. When you say inappropriate, what do mean
 12 by that?
 13 A. Well, because of the Open Meetings Act if
 14 they do not have the discussion in the meeting then a
 15 group of people who were given a decision -- given the
 16 government's ability of that particular organization
 17 would be entering into a contract without any
 18 opportunity to have a discussion amongst themselves.
 19 They are a deliberative assembly, and
 20 Robert's is very, very clear that a deliberative
 21 assembly does not have individual conversations. But
 22 in order to be -- to properly follow what is
 23 appropriate for a deliberative assembly they would
 24 have to be in a meeting and have a discussion about

1 it.
 2 Q. So does that mean that you believe that
 3 if the -- that it would be illegal for the Board of
 4 Education in June of 2000 to have entered into the
 5 alleged contract through the use of the consent
 6 agenda?
 7 A. It is not my place to judge legality. I
 8 am talking from a parliamentary point of view.
 9 Q. But you are saying that the Board of
 10 Education in June of 2000 entered into the alleged
 11 contract through the use of the consent agenda in your
 12 opinion --
 13 A. Would --
 14 Q. Let me finish my question.
 15 -- would violate the Open Meetings Act,
 16 am I correct?
 17 A. No.
 18 I said if they had any discussion before
 19 this, before that meeting, that was not covered in the
 20 minutes of the previous meetings --
 21 Q. Yes.
 22 A. -- then they would have to be entering
 23 into a contract without any discussion of it
 24 whatsoever as a deliberative assembly.

1 Q. And would that action in your opinion
2 violate the Open Meetings Act?

3 A. The violation -- I do not give an opinion
4 on the Open Meetings Act, as you know it is a law. It
5 is not --

6 Q. Yes, I do.

7 A. It is not a parliamentary.

8 Q. But what you --

9 A. But what I am saying is -- go on.

10 Q. You brought up the Open Meetings Act.

11 A. Yes.

12 Q. I did not, correct?

13 A. Yes.

14 Q. So I am trying to figure out what your
15 opinion is with respect to the Open Meetings Act
16 because that is not an opinion that is set forth in
17 this disclosure, correct?

18 This disclosure doesn't say anything
19 about the Open Meetings Act, does it?

20 A. No.

21 Q. So I am asking you are you saying that
22 the Open Meetings Act in your opinion would require
23 the Board of Education to approve a contract through
24 means other than the consent agenda?

1 inappropriate.

2 Q. When you say inappropriate, do you mean
3 that may not be the best practice, but are you saying
4 -- were you going so far to say not only is that not
5 the best practice, not only is it not consistent with
6 Robert's Rules of Order, but it is void, invalid, or
7 illegal because of that?

8 A. I am not in a position to judge that.

9 Q. So you do not take the view that any
10 contract that is approved on the consent agenda is
11 somehow invalid, do you?

12 A. No, never said it.

13 Q. Do you need to take a break?

14 A. Yes, I have to.

15 MR. KALTENBACH: Why don't we.

16 (Recess taken.)

17 (Document marked Sylvester Exhibit 3 for
18 identification.)

19 BY MR. HOFFMAN:

20 Q. Ms. Sylvester, I am handing you Sylvester
21 Exhibit No. 3, which are some notes that you created,
22 correct?

23 A. Correct.

24 Q. And can you tell me what these are,

1 A. Absolutely not, that is not what I have
2 said.

3 Q. So what is your point with respect to the
4 Open Meetings Act?

5 A. In order for a deliberative assembly, a
6 governing body, to make a decision on something like a
7 contract that had first year over \$100,000 involved
8 that deliberative assembly should have discussed that
9 and talked about it in their meeting.

10 There is, to my understanding, no record
11 of them discussing that in their meeting.

12 Q. Fair enough.

13 Just so I am clear, you have no opinion
14 at all as to whether the Board of Education entering
15 into the alleged contract through the use of a consent
16 agenda would be legal or illegal because that is not
17 your area?

18 A. That is correct.

19 Q. And you are not saying that it would
20 either be consistent with or violative of the Open
21 Meetings Act for the same reason, correct?

22 A. I am saying that if they follow the Open
23 Meetings Act and they made a decision without any
24 discussion in a meeting that is, in my judgment,

1 please?

2 A. I went through the minutes of the
3 Township Trustees and I marked them, highlighted when
4 they used any of these three terms, accept, adopt, or
5 approve.

6 The accept is any time it was used in
7 relationship to the making of a motion. And there
8 were eight of those times.

9 Something wrong?

10 Q. Yes, I am sorry.

11 MR. HOFFMAN: Would you mark this one?
12 Here we go, that is a better copy.

13 BY MR. HOFFMAN:

14 Q. I am sorry, ma'am, you were saying?

15 A. That accept I went through, I read
16 through the minutes and highlighted any time -- and
17 made note of any time that the word accept was used at
18 all.

19 I then -- I also made notes to myself of
20 when the word adopt or approved were used in
21 relationship to a resolution. There were many, many
22 other times that those two words were used, but these
23 are notes of when it was used in relationship with a
24 resolution.

1 Q. And in the column that says accept, one
2 of the entries is for the March 21, 2000 TTO meeting
3 that is central to this case, correct?
4 A. **That's correct.**
5 Q. Now, in the other instances that you
6 listed where there was the use of the word accept, in
7 any of those instances was a vote taken?
8 A. **I believe there was, but I would have to**
9 **look again at the minutes.**
10 Q. Okay, go ahead and look, please.
11 A. **Can I get over there?**
12 Q. Sure, do whatever you need to do.
13 MR. KALTENBACH: The box is over here.
14 THE WITNESS: Yes.
15 BY MR. HOFFMAN:
16 Q. Which vote are you looking at?
17 A. **At that moment I was looking at the**
18 **November of '93 vote.**
19 Q. Right.
20 A. **And if I look at --**
21 Q. Let me see that, so I can see the same
22 thing you are looking at.
23 A. **Okay.**
24 **Right there.**

1 Q. And in this particular instance when we
2 are looking it says a motion was made by Donna Milich.
3 Do you know who she is?
4 A. **She is a trustee.**
5 Q. Is she still alive?
6 A. **I have no idea.**
7 Q. A motion was made by Donna Milich and
8 seconded by Joseph Nicola.
9 How about him, is he a trustee?
10 A. **Yes.**
11 Q. Alive or dead?
12 A. **I don't know.**
13 Q. It says to accept the canvass and
14 proclamation and file the resolution in abstract votes
15 with the Cook County Central Office. There was a roll
16 call taken and the motion was carried, correct?
17 A. **Correct.**
18 Q. What was the canvass and proclamation
19 referred to in the meeting minutes dated November 5,
20 1993 of the TTO?
21 A. **It is an official report that -- and this**
22 **is not a parliamentary thing, but it is an official**
23 **report that they get.**
24 **If I would compare it to a parliamentary**

1 **thing it is similar to a teller's report that is**
2 **provided to the presiding officer.**
3 Q. Well, is the canvass and proclamation
4 attached to the minutes of the TTO meeting?
5 A. **Right here they are. So it is very**
6 **similar to a teller's report.**
7 Q. Okay.
8 And when you say a teller's report, what
9 do you mean by that? You don't mean a bank teller, do
10 you?
11 A. **If you are having a vote of some kind in**
12 **a meeting and there are a large number of people in**
13 **the meeting and you need assistance in counting them**
14 **then you appoint a teller's committee and the teller's**
15 **committee -- or also if you are doing a ballot vote**
16 **you appoint a teller's committee. The teller's**
17 **committee comes up with the conclusion -- comes up**
18 **with the numbers and gives -- in a form provided by**
19 **Robert's gives the number of votes cast, the number of**
20 **votes needed to pass, and then the number of votes**
21 **that each either person or each concept that was being**
22 **voted on received.**
23 Q. So in this instance here the TTO voted to
24 accept the canvass and proclamation and file the

1 resolution, correct?
2 A. **That's correct.**
3 Q. And did they have to take a vote on
4 accepting the canvass and proclamation or did they
5 take a vote to file the resolution or both?
6 A. **As far as --**
7 Q. Because those are two separate actions,
8 correct?
9 A. **As far as have to, I don't know that I**
10 **can answer that question without going more into --**
11 **because that is something that is specific to a --**
12 **this particular -- to a governmental body.**
13 Q. So you don't know from your review of the
14 TTO board minutes whether it was necessary for the TTO
15 to vote solely to accept the canvass and proclamation
16 or whether it was necessary to vote --
17 A. **I --**
18 Q. Ms. Sylvester --
19 A. **I stopped myself.**
20 Q. -- I would appreciate if you would let me
21 finish my questions, please.
22 A. **I stopped myself.**
23 Q. So you don't know -- am I correct that
24 you do not know based upon your review of the TTO

1 board minutes whether it was necessary for the board
2 to take a vote in order to accept the canvass and
3 proclamation or whether it was necessary to take a
4 vote to file the resolution or whether it was
5 necessary to take a vote for both of those things, do
6 you?

7 A. There would be no reason to have to have
8 a vote to file a resolution.

9 And so one would assume then from that --
10 could conclude from that that to accept the canvass
11 and proclamation is what they were doing and they were
12 receiving it in essence saying they received it.

13 Q. Why would you need to take a vote in
14 order to acknowledge receiving something?

15 A. Because then it is made official record
16 in your minutes.

17 Q. But didn't they receive it when they
18 received it, isn't that a factual matter of when the
19 TTO board receives something?

20 A. But --

21 Q. Why do they need to take a vote to
22 acknowledge the receipt of something?

23 A. Because then it goes in their minutes
24 that they as a group have received it, not that the

1 do with an election and that election needs to be
2 entered. All of that information on that election
3 should be entered in the minutes so that down the road
4 that can be checked in their minutes.

5 Q. Why didn't the TTO vote to accept the
6 canvass and proclamation in 1994?

7 A. I do not --

8 Q. Why didn't the TTO vote to accept the
9 canvass and proclamation in 1996?

10 A. Because --

11 Q. Do you know?

12 A. Are you finished with the question?

13 Q. Yes.

14 A. I assumed when I read it because of the
15 length of their terms that they didn't have elections
16 in those years, and as you can see there are some
17 changes in when the elections occurred over the time.

18 Q. So you believe it was every other year?

19 A. There -- my conclusion -- I believe that
20 I have every single one of those motions -- of the
21 motion to accept represented here having to do with
22 canvass and proclamation.

23 Q. Well, not only that, but you believe that
24 you have every usage here of the term accept by the

1 TTO office somewhere received it, but that in their
2 meeting they as a group have received that document.

3 Q. But from 1993 through 2000 isn't it fair
4 to say that the TTO board received lots of documents
5 and proposed contracts and other written information?

6 A. Yes.

7 Q. And so the instances that you found in
8 which they mention in their board minutes that they
9 accepted something were these eight instances spanning
10 18 years, correct?

11 A. Correct.

12 Q. So why didn't they regularly -- why
13 didn't the TTO regularly state in its own minutes that
14 it accepted and thereby acknowledged the receipt of
15 something many more times over these 18 years if your
16 testimony about the use of the word accept is correct?

17 A. I don't know that I can make a judgment
18 of why they did what they did. It is --

19 Q. Well, you already have.

20 A. This is --

21 Q. You already have.

22 A. Can I finish my question?

23 Q. Yes, go ahead.

24 A. This is an official document that has to

1 TTO board in the 1993 through 2000 time period,
2 correct?

3 A. Yes, 2001, yes.

4 Q. How come some of the meetings listed here
5 from 2001 and -- I am sorry, strike that.

6 Why didn't the -- if the TTO every other
7 year voted to accept the canvass and proclamation how
8 come the last year you have is 2003, what about 2005,
9 '07, and '09?

10 A. It was not in there. That may be a
11 custom or law that they had to follow at that time. I
12 do not know that.

13 Q. And further down you have every instance
14 you found anyway in which the TTO board either adopted
15 or approved a resolution according to the minutes,
16 correct?

17 A. Correct.

18 Obviously there are some added in that I
19 didn't -- going back found, but, yes, those are only
20 having to do with resolutions.

21 Q. Okay.

22 MR. HOFFMAN: Let's mark this.

23 (Document marked Sylvester Exhibit 4 for
24 identification.)

1 BY MR. HOFFMAN:

2 Q. Sylvester Exhibit No. 4 was given to us
3 by your lawyer. Are these your notes?

4 A. Yes.

5 Q. And I see a heading accept and adopt and
6 resolution.

7 Are these the handwritten notes that you
8 made prior to typing them up in the form that we see
9 as Sylvester Exhibit 3?

10 A. Correct.

11 Q. And on Page 4 it says exception -- let me
12 make sure you get there first.

13 Page 4 it says exception, accept and
14 approve legal bills 65 '01.

15 Why is that an exception, what is that an
16 exception to?

17 A. It is an exception to using only one or
18 the other of those words and so, therefore, it stuck
19 out in my mind and further demonstrated that those two
20 words do not mean the same thing to them because you
21 wouldn't say accept and accept if they meant the same
22 thing.

23 Q. Did you find any other instance in all
24 the minutes you looked through of the TTO in which

1 and special meetings, they left off the roll call and
2 attendance information, and the start and finish time
3 was not possible, you see that?

4 A. Yes.

5 Q. And I read those correctly?

6 A. Yes.

7 Q. Does this in any way impact on your view
8 as to whether the TTO followed Robert's Rules of
9 Order?

10 A. No.

11 Q. Is it fair to say if they did follow
12 Robert's Rules of Order they did not strictly adhere
13 to the requirements of Robert's Rules of Order?

14 A. I would phrase it more as they followed
15 Robert's and they didn't pay as close of attention
16 when they were reviewing their minutes. It is an
17 issue I see on a regular basis.

18 Q. Okay, thank you.

19 A. Done with that?

20 Q. Yes, ma'am.

21 (Document marked Sylvester Exhibit 5 for
22 identification.)

23 BY MR. HOFFMAN:

24 Q. Ms. Sylvester, Exhibit No. 5, are these

1 they used the phraseology accept and approve?

2 A. All of the times when I saw them use the
3 word accept, whether it was by itself or with some
4 others, is documented in these notes and here.

5 Q. Let me ask you the same question again.
6 Did you use any other instance other than --

7 A. No.

8 Q. This 65, 2001, in which the TTO trustees
9 in their board minutes used the phraseology "accept
10 and approve"?

11 A. No.

12 Q. In the third to last page, it says in the
13 top, if I am reading the handwriting correctly,
14 "minutes get sloppy in later years."

15 What did you mean by that?

16 A. There were some mistakes made in them.

17 They were the kind of mistakes that I
18 frequently see made whenever you pull up an old
19 document and you then instead of starting with a fresh
20 document you start with the old one, and I found that
21 to be what I considered sloppy.

22 If you want me to --

23 Q. When you say later years -- these are
24 specific examples, you list here they mixed up regular

1 more of your notes?

2 A. Yes, they are.

3 Q. You reviewed the District 204 meeting
4 minutes for the June 19, 2000 meeting, correct?

5 A. Yes.

6 Q. And you also saw the agenda and
7 attachments, correct?

8 A. Yes.

9 Let me correct that, I saw the agenda and
10 attachments that were provided to me.

11 Q. Right.

12 And those weren't all the attachments,
13 correct?

14 A. No, that's correct, they were not.

15 Q. You see, you quoted from the minutes the
16 statement "Board of Education action is to approve the
17 payment in the net amount of 59,073." Do you see
18 that?

19 A. Yes.

20 Q. And what is your understanding of what
21 that net amount of 59,073 represents?

22 A. There was -- they were charged a
23 particular amount of money, given credit for some
24 money that they had spent, and then this was the

1 amount left.

2 Q. When you say they were given credit for
3 some money they had spent, who gave them the credit
4 and what was the credit for?

5 A. I will answer the second question first.

6 The credit was for personnel who were
7 doing work that was many times for others in some
8 cases done by the township trustee, the TTO.

9 What was the first half of the question?

10 Q. And who granted them that credit?

11 MR. KALTENBACH: I object to the extent
12 the witness is being asked to offer an opinion beyond
13 her disclosure.

14 You can answer the question.

15 MR. HOFFMAN: It is not an opinion, I am
16 following up on her understanding what the facts are.

17 MR. KALTENBACH: You don't have to
18 comment on my objection.

19 MR. HOFFMAN: It is not a reasonable
20 objection, stop coaching the witness.

21 BY MR. HOFFMAN:

22 Q. Go ahead and answer.

23 MR. KALTENBACH: I am not coaching, I am
24 making my objection.

1 briefs or legal papers that the parties filed in this
2 case?

3 A. The briefs I read – if I remember
4 correctly, I read the briefs after I read the minutes
5 and – but I don't remember that, that is not fair.

6 I don't think that there was any
7 interchange there.

8 Q. When you have the words "not contract"
9 next to the quoted statement, what did you mean by not
10 contract?

11 A. The way in which it was phrased was in my
12 mind not an ongoing contract, not a contract.

13 Q. Was it a contract for one year or was it
14 not a contract at all?

15 A. I can't make that judgment.

16 Q. Why not?

17 A. Because what they did was so vague.

18 Q. What who did was so vague?

19 A. What –

20 Q. District 204, the TTO, or both?

21 A. Right now I am talking about the TTO,
22 what was done on March 21st.

23 Q. Okay.

24 Go ahead, tell me, why do you say it was

1 THE WITNESS: I don't need coaching, I am
2 a big girl.

3 BY MR. HOFFMAN:

4 Q. That is terrific.

5 A. I forgot the question.

6 Q. You said that there was an offset or
7 credit actually against the amount that they were
8 being billed.

9 A. Yes.

10 Q. And you said they were given that and
11 used the passive tense. I am asking you in your
12 understanding who granted the credit?

13 A. I can't answer that question because I am
14 not sure that I believe anyone gave that credit.

15 Q. Okay.

16 And that is based on your review of the
17 documentation?

18 A. That is based upon what I read in the
19 minutes and what I know as a professional
20 parliamentarian, yes.

21 Q. Is that based on what Jerry Kubasiak told
22 you about the facts in this case?

23 A. Absolutely not.

24 Q. Is it based on what you read in the

1 vague, explain what you mean.

2 A. Let me gather my thoughts, just a second.
3 They were given a document.

4 Q. "They" who?

5 A. The TTO, the trustees, were given a
6 document that expressed a proposal and they then
7 accepted that proposal.

8 The proposal was in my mind not ongoing,
9 it was at best for that current year, and because it
10 was a motion to accept in my mind they in essence took
11 this issue and put it in limbo and never came back to
12 it again.

13 Q. Isn't it true that the TTO by its conduct
14 for the next 12 years, from 2000 to 2012, conducted
15 itself as if there was an understanding as to a credit
16 or offset for District 204's business function costs?

17 MR. KALTENBACH: Hold on, I am going to
18 object as being beyond the scope of her opinion and
19 argumentative.

20 BY MR. HOFFMAN:

21 Q. Go ahead, you can answer.

22 A. Would you repeat it again?

23 (Record read as requested.)

24 THE WITNESS: I have no way of being able

1 to support that statement because nowhere in the
2 minutes in the next -- from the time -- in all of the
3 minutes I read after this is there a motion and is
4 there some decision to pay a bill, to have them
5 understand what that exchange was.

6 So there is no way that I can answer that
7 they -- that their conduct did anything because there
8 is no evidence in the minutes to demonstrate it.

9 BY MR. HOFFMAN:

10 Q. Let me ask you about the vote that the
11 TTO trustees took on March 21, 2000.

12 Do you agree or disagree that that vote
13 they took on District 204's proposal was inconclusive?

14 MR. KALTENBACH: Objection as to form.

15 THE WITNESS: I used the word that it put
16 the issue in limbo, and I prefer to phrase it that
17 way.

18 BY MR. HOFFMAN:

19 Q. Well, Susan Birkenmaier testified in her
20 deposition as the representative of the TTO that the
21 vote was inconclusive, and I am asking you whether you
22 agree or disagree with that statement.

23 MR. KALTENBACH: Same objection.

24 THE WITNESS: I don't know what the

1 they did not approve, adopt, accept, they did not do
2 anything with an ongoing contract.

3 That is why in my mind it was vague in
4 that they put it in limbo because it was to accept,
5 which was not giving direction having to do with any
6 kind of a contract.

7 Q. That wasn't the question I asked you.

8 A. I am sorry.

9 Q. It specifically focused on the meaning of
10 the word accept in the minutes of the March 21, 2000
11 meeting. Answer this question, please.

12 Am I correct that if a person only looked
13 at the meeting minutes for the TTO's meeting on
14 March 21, 2000 that person could not be clear as to
15 the meaning of the word accept as used in those
16 minutes?

17 A. Are you saying that is the only thing
18 they looked at --

19 Q. Correct.

20 A. -- is one set of minutes?

21 Q. Just that document.

22 A. There would be some vagueness to it, yes.

23 Q. And in your opinion it is necessary to
24 look at a much broader collection of meeting minutes

1 basis, she was saying it was inconclusive. There was
2 a quorum there.

3 BY MR. HOFFMAN:

4 Q. Do you agree with Dr. Birkenmaier's
5 testimony that the meaning of the word accept as used
6 in the March 21, 2000 minutes is "unclear"?

7 MR. KALTENBACH: I am going to object as
8 to form and lack of foundation, but you can answer.

9 THE WITNESS: I did not agree that it is
10 clear -- that it is unclear because there are some
11 conclusions one can draw from that.

12 BY MR. HOFFMAN:

13 Q. Well, you couldn't look solely at the
14 meeting minutes of March 21, 2000 and come to an
15 opinion as to what the TTO trustees meant when they
16 used the word accept, am I right about that?

17 A. Can I phrase it another way?

18 Q. No. Answer my question. You can't avoid
19 the question.

20 A. I don't know.

21 Q. What do you mean you don't know?

22 A. I would like to explain what I am saying.

23 Q. Go ahead.

24 A. It is clear to me from that vote that

1 in order to be able to properly interpret the meeting
2 minutes of March 21, 2000, right, right?

3 A. It is not only my opinion, but it is the
4 opinion of the parliamentary authority, Robert's, that
5 that is the responsibility to do that, to determine
6 what is their custom.

7 Q. Where does it say in Robert's Rules of
8 Order that in order to ascertain the meaning of a
9 particular set of meeting minutes that a person can
10 and should go back and look at a whole bunch of other
11 meeting minutes?

12 A. What it says in Robert's on that is that
13 here are the rules and that section that I read to you
14 says that an organization can have a custom and that
15 custom unless it is a point of order is made
16 continues, and in this case they continued with that.

17 Q. Is there anything that specifically
18 stated in Robert's Rules of Order that a proper way to
19 interpret a particular set of meeting minutes involves
20 going back and looking at, you know, ten-plus years of
21 other meeting minutes, is there anything that said
22 that?

23 A. Robert's does not give any of that kind
24 of guidance, kind of specific guidance --

1 Q. Thanks for answering --
 2 A. He simply tells the custom.
 3 Q. Thanks for answering my question.
 4 A. You are welcome.
 5 Are we finished with this?
 6 Q. Give me one second.
 7 A. Do you want me to put it over?
 8 Q. Give me a second, please.
 9 A. Sure.
 10 Q. Okay, we are done, thank you.
 11 (Document marked Sylvester Exhibit 6 for
 12 identification.)
 13 BY MR. HOFFMAN:
 14 Q. Ms. Sylvester, are these more minutes --
 15 excuse me, I am sorry.
 16 Are these more notes from your file
 17 concerning meeting minutes?
 18 A. That is accurate.
 19 MR. KALTENBACH: Jay, can you hand me the
 20 one next to you?
 21 MR. HOFFMAN: Sorry.
 22 MR. KALTENBACH: Thanks, No. 6.
 23 BY MR. HOFFMAN:
 24 Q. On Page 1 of Sylvester 6, you wrote

1 The one on Page 42, the one on Page 43
 2 are examples where I am saying there that don't think
 3 this statement is supported by the minutes.
 4 Q. And so do you have any opinion as to the
 5 credibility of Mr. Healy's testimony that he gave in
 6 this case? Yes, no?
 7 A. Would you restate the question?
 8 Q. Do you have any opinion as to the
 9 credibility of the testimony that Healy gave in this
 10 case?
 11 A. Without putting any judgment on it I do
 12 think this did affect my judgment of his credibility.
 13 Q. And what is your judgment of his
 14 credibility?
 15 A. That he didn't get --
 16 MR. KALTENBACH: I am sorry --
 17 BY MR. HOFFMAN:
 18 Q. Just answer the question.
 19 MR. HOFFMAN: Let her answer the
 20 question.
 21 MR. KALTENBACH: Jay, I am stating an
 22 objection, you don't have to argue with me.
 23 I am going to object it is beyond the
 24 scope.

1 "Minutes don't support what Healy said in his
 2 deposition." Do you see that?
 3 A. Yes.
 4 Q. And what is the basis for your statement
 5 there?
 6 A. I had -- after I had read all the minutes
 7 I went and read the deposition and it was a note to
 8 myself that I did not believe some of the things he
 9 said in his deposition were supported by the minutes.
 10 Q. In particular what?
 11 A. Oh, wow. I would have to take a few
 12 moments and go through that.
 13 Q. So you would need to actually reread
 14 Mr. Healy's deposition in order to figure out what
 15 areas --
 16 A. I would have to go to my copy of it
 17 and --
 18 Q. Does it help you to look at the last page
 19 of these notes where you have got some notes from the
 20 Healy deposition and ask whether these are the
 21 instances in which you felt that his deposition
 22 testimony was contrary to the minutes? Or maybe there
 23 is something different, you tell me.
 24 A. There is some examples there.

1 You can answer, Ms. Sylvester.
 2 THE WITNESS: What was the question?
 3 MR. HOFFMAN: Read it back, please.
 4 (Record read as requested.)
 5 THE WITNESS: He was stating things that
 6 he may have believed to be true, but there is
 7 absolutely no support for them in the minutes.
 8 BY MR. HOFFMAN:
 9 Q. So does that lead you to believe that
 10 Mr. Healy's testimony on those points is not
 11 believable?
 12 MR. KALTENBACH: Same.
 13 THE WITNESS: I believe the minutes over
 14 what he said so I guess the answer is yes.
 15 BY MR. HOFFMAN:
 16 Q. Isn't it up to the jury to decide whether
 17 the witnesses are believable and not up to you?
 18 MR. KALTENBACH: Objection,
 19 argumentative, calls for a legal conclusion.
 20 You can answer, Nancy.
 21 THE WITNESS: As I understand it I am
 22 called in to give an expert opinion on the minutes.
 23 Most of your jury will not have read -- I
 24 can guarantee you that no one in your jury has read

1 the number of minutes I have read in my professional
 2 career and worked with in as many circumstances as I
 3 have in my professional career, and so I then bring
 4 some expertise that they do not have.
 5 BY MR. HOFFMAN:
 6 Q. Thank you.
 7 A. You are welcome.
 8 Q. Have you ever heard of the concept of
 9 offer and acceptance with respect to contract
 10 formation?
 11 A. Vaguely.
 12 Q. What do you mean vaguely?
 13 A. Well, don't ask me to define it for you.
 14 If you want to talk about it you will
 15 need to redefine it for me. You asked me if I ever
 16 heard of it, I have, but I am not sure I could give
 17 you.
 18 Q. Have you ever heard the phrase offer and
 19 acceptance with respect to --
 20 A. Yes, I have.
 21 Q. -- contracts?
 22 A. Yes, I have.
 23 Q. Do you have any understanding as to what
 24 that phrase means with contracts "offer and

1 acceptance"?
 2 A. Is the question do I have any
 3 understanding from a legal point of view what it
 4 means?
 5 Q. If you have any understanding of any kind
 6 yourself, what do you think, what do you think?
 7 A. I think that when people refer to that
 8 they say that if an offer was made and someone has
 9 accepted that offer then you together have a contract.
 10 Whether it is accurate or not, I don't know.
 11 Q. Have you ever heard of the phrase offer
 12 and approval with respect to contract formation?
 13 A. I don't know if I have.
 14 Q. Have you ever heard the phrase offer and
 15 adoption with respect to contract formation?
 16 A. I haven't heard of any of this enough to
 17 give you that much knowledge of it to know --
 18 Q. You have heard the phrase offer and
 19 acceptance, right?
 20 A. And I may have heard --
 21 Q. Yes?
 22 A. I may have heard --
 23 Q. Hello?
 24 MR. KALTENBACH: Hold on a minute. Hold

1 on a minute.
 2 MR. HOFFMAN: I want an answer.
 3 MR. KALTENBACH: That was a sarcastic
 4 remark, knock it off
 5 MR. HOFFMAN: It is not sarcastic.
 6 MR. KALTENBACH: Hello?
 7 MR. HOFFMAN: I want an answer to that
 8 question.
 9 MR. KALTENBACH: That is fine. That is
 10 fine. She will state an answer. And if you don't
 11 feel it was a responsive answer you can reask the
 12 question or ask her to answer it again. I don't need
 13 the sarcastic arguing with the witness.
 14 MR. HOFFMAN: It is not sarcastic.
 15 MR. KALTENBACH: It was sarcastic.
 16 MR. HOFFMAN: She was changing her
 17 testimony.
 18 MR. KALTENBACH: I think saying hello to
 19 a witness is sarcastic in the middle of an answer.
 20 MR. HOFFMAN: I said it in order to
 21 interrupt the witness and if that was rude I
 22 apologize.
 23 THE WITNESS: Your apology is accepted.
 24

1 BY MR. HOFFMAN:
 2 Q. Ms. Sylvester, please continue.
 3 A. I have heard the concept of an offer and
 4 accept, but whether I have heard -- whether they have
 5 used the word adopt or approve, I have not paid enough
 6 attention to it, but I have heard it to understand
 7 which one of those words they were meaning.
 8 Q. Did you ever review any of the
 9 communications between the TTO and District 204 that
 10 preceded the March 21, 2000 board meeting of the TTO?
 11 A. Any communication between the TTO and
 12 204.
 13 Q. Do you want to hear the question again?
 14 A. Please.
 15 Q. The court reporter would be happy to read
 16 it back, that is why she is here.
 17 (Record read as requested.)
 18 THE WITNESS: I do not recall seeing any.
 19 MR. KALTENBACH: Do you want to take a
 20 break?
 21 MR. HOFFMAN: Let's do it. We haven't
 22 been going that long, I think it would be a good time.
 23 MR. KALTENBACH: It has been a little
 24 over a half hour, that is fine.

1 MR. HOFFMAN: It has been 37 minutes,
 2 let's take a break.
 3 (Recess taken.)
 4 BY MR. HOFFMAN:
 5 Q. Do you know who Michael Cainkar is,
 6 C-a-i-n-k-a-i-r?
 7 A. **Not off the top of my head.**
 8 Q. Do boards like the TTO sometimes have
 9 lawyers who attend board meetings and provide legal
 10 advice to the board from time to time?
 11 A. **Yes.**
 12 Q. And are those lawyers for a board
 13 sometimes helpful in being able to explain or
 14 interpret the actions that the board takes from time
 15 to time at its meetings?
 16 A. **They are very competent and very good in**
 17 **my experience at being able to make judgements in**
 18 **regard to the law but not necessarily in regard to**
 19 **parliamentary procedure.**
 20 Q. I see.
 21 Are you aware that there is a letter
 22 dated May 2, 2000 that attorney Michael Cainkar sent
 23 to Robert Healy, the treasurer of the TTO, "Regarding
 24 proposed agreement with Lyons Township High School"?

1 A. **No, I am not.**
 2 Q. Gretchen, Barry, and Jerry never told you
 3 about a lawyer letter that came about six weeks after
 4 the March 21, 2000 TTO board meeting?
 5 A. **Not that I recall.**
 6 Q. Would you want to -- a letter like that
 7 does exist, but I don't have a copy of it, and the TTO
 8 asked the Court to prevent me from receiving it and
 9 the Court agreed with that position so I do not have
 10 it.
 11 A. **Okay.**
 12 Q. Would you as a parliamentarian believe it
 13 is relevant for your analysis to see Michael Cainkar's
 14 May 2, 2000 letter regarding the proposed agreement
 15 with Lyons Township High School?
 16 A. **No.**
 17 Q. Why not?
 18 A. **Because his would be a legal answer to it**
 19 **and mine would be a parliamentary.**
 20 Q. And is it that the legal answer is just
 21 not your bailiwick or that the legal answer is not
 22 important as far as you are concerned?
 23 A. **They are both of equal importance. No, I**
 24 **am not saying it is not important.**

1 I am saying that I am here to testify
 2 regarding the parliamentary procedure, and what the
 3 attorney says about it does not -- it doesn't have an
 4 influence on what I would have as a judgment with it
 5 because mine is based upon Robert's and their official
 6 documents.
 7 Q. Are you aware from reviewing the TTO
 8 board minutes that Michael Cainkar frequently attended
 9 the TTO board meetings?
 10 A. **I probably when I went through them**
 11 **because I have a habit of looking at who attended, but**
 12 **do not recall that, that was months and months ago.**
 13 Q. Would Michael Cainkar, assuming he did
 14 attend the board meetings, which I assume the minutes
 15 do in fact show, would that mean that he would be
 16 knowledgeable about the board's customs?
 17 A. **Not necessarily.**
 18 Q. And why is that, because -- why is that?
 19 A. **Because he doesn't -- because he most**
 20 **likely does not understand parliamentary procedure and**
 21 **the customs have to do with what is based on Robert's.**
 22 **So he would have to understand what is in Robert's to**
 23 **understand the customs, and my experience is that they**
 24 **usually don't.**

1 Q. Your opinion in this case is that there
 2 was no contract approved by either the TTO board or
 3 the District 204 board in 2000 relating to the payment
 4 of District 204's business functions, correct, based
 5 on the minutes, correct?
 6 A. **Let me just take a moment and check**
 7 **something, if I could.**
 8 Q. Sure.
 9 A. **Keep in mind the answer I would like to**
 10 **make sure.**
 11 Q. Tell us what it is you are looking at.
 12 A. **I am looking at information from the**
 13 **minutes.**
 14 MR. KALTENBACH: Let us know which
 15 minutes when you find the right one.
 16 THE WITNESS: Okay.
 17 Could you restate the question for me,
 18 please?
 19 MR. HOFFMAN: Read it back, please.
 20 (Record read as requested.)
 21 THE WITNESS: I believe that there was
 22 definitely no ongoing contract in either of those
 23 minutes.
 24

1 BY MR. HOFFMAN:

2 Q. Well, was there a contract for one year
3 on either of those minutes?

4 A. In the TTO it is hard to understand how
5 what they did would be considered a contract.

6 In the case of the school board it is my
7 judgment that this is not a contract, it is they are
8 agreeing to pay a -- make a payment, and to me that is
9 different than a contract.

10 Q. And this is based on your review what you
11 are looking at right now --

12 A. Yes, which is --

13 Q. Let me finish.

14 What you are looking at right now, if I
15 am correct, is Exhibit T to the agenda and minutes of
16 the June 19, 2000 District 204 minutes, correct?

17 A. Correct.

18 Q. And that is a memo from Lisa Beckwith to
19 the board dated June 14, 2000, right?

20 A. Correct.

21 Q. I am going to show you just a very small
22 portion of a document already marked in this case as
23 Healy Exhibit No. 1.

24 And if you turn, there is --

1 Q. And that is written by Bob Healy who was
2 the treasurer in 2000, right?

3 A. Yes.

4 Q. And does this letter give any indication
5 in your mind as to whether the funding of LT's or
6 District 204's business functions was an ongoing
7 process between the parties?

8 A. Absolutely not.

9 Q. Why not?

10 A. Because -- and this is one of the things
11 I was talking about in my notes when we went over
12 these notes about Healy is drawing conclusions that
13 are not documented in the minutes. He is telling them
14 that the trustees will continue.

15 There is no basis in their minutes in
16 which he can draw the conclusion -- that I have seen
17 that he can draw the conclusion that the trustees will
18 continue funding.

19 Q. He testified that the trustees were aware
20 that they were continuing to fund District 204's
21 business functions from 2000 through 2012.

22 Do you have any factual basis to disagree
23 with his testimony?

24 A. Would you repeat the first part of the

1 MR. HOFFMAN: It is chronological, so,
2 Barry, turn to September 7, 2000.

3 BY MR. HOFFMAN:

4 Q. Within Healy Exhibit No. 1 there is a
5 letter dated September 7, 2000 that Robert Healy sent
6 to Dennis Kelly. And I just ask you to take a minute
7 and read that letter.

8 Have you read the letter, ma'am?

9 A. Yes.

10 Q. Have you ever seen this letter before
11 today?

12 A. I think it might be in my documents, but
13 I am not 100% positive.

14 If you want me to look at what I was
15 looking at I can see, but --

16 Q. Well, let's talk about it right now
17 because you just read it, I don't need you to go back
18 through your documents and tell me for sure whether
19 you have seen it before.

20 A. Okay.

21 Q. It says on the second paragraph "As was
22 done last year, the trustees will continue funding
23 certain business expenses." Do you see that?

24 A. Yes.

1 question?

2 Q. Sure.

3 (Record read as requested.)

4 THE WITNESS: I have no factual basis to
5 disagree with his testimony, but the fact that they
6 were aware of it does not make it a contract.

7 BY MR. HOFFMAN:

8 Q. And what makes it a contract would be
9 formal approval each and every year --

10 A. No.

11 Q. -- in the minutes, no?

12 A. Not of a governing body who is going in
13 to a continual -- into a contract that is over a
14 period of time.

15 The responsibility of that governing body
16 is to make that decision, get that decision in the
17 minutes, and then the actions of the treasurer would
18 follow what was decided in those minutes, similar to
19 how they did with District 69.

20 Q. And what did they do with respect to
21 District 69?

22 A. Every single year there was a contract --
23 an agreement they called it between District 69 and
24 the TTO and every single year there was a vote on that

1 to continue it. There was a report on what kind of
2 percentage increase it was from the year before, that
3 kind of thing.

4 Q. Okay.

5 And what is the date that you are looking
6 at on the -- how many years did you find these
7 discussions about an agreement between District 69 and
8 the TTO?

9 A. Every year from 1993 to 2004, and the
10 word that was used in those motions was approve.

11 And in every one but the last three years
12 they gave the percentage of change or the amount of
13 dollars of change.

14 Q. Okay.

15 I need this document.

16 A. That is mine.

17 Q. You are okay.

18 Let's go to the fun part. You have got
19 some royalties coming to you.

20 MR. KALTENBACH: She thanks you.

21 BY MR. HOFFMAN:

22 Q. I have both of your books.

23 MR. KALTENBACH: Just happenstance, I am
24 sure.

1 confirm, adopt, or accept, the text becomes an act or
2 statement of the assembly."

3 Q. Would you also, please be kind enough to
4 read what it says in the glossary in your book as to
5 the word "adopt".

6 A. "To accept or approve a motion or report,
7 the text becomes an act or statement of the assembly."

8 Q. And would you also, please, read the
9 definition of "accept" in your glossary.

10 A. "To adopt or approve a motion or report,
11 the text becomes an act or statement of the assembly."

12 (Book marked Sylvester Exhibit 8 for
13 identification.)

14 BY MR. HOFFMAN:

15 Q. You also have the same glossary online at
16 your website nancysylvester.com.

17 A. Correct.

18 Q. And the glossary also appears -- let's go
19 through this.

20 Sylvester Exhibit No. 8 is The Complete
21 Idiot's Guide to Robert's Rules, Second Edition, with
22 a copyright of 2010, correct?

23 A. Correct.

24 Q. And this is a book you wrote?

1 THE WITNESS: You probably had them
2 before this.

3 MR. HOFFMAN: They call me the Library of
4 Congress, Chicago location.

5 (Book marked Sylvester Exhibit 7 for
6 identification.)

7 BY MR. HOFFMAN:

8 Q. Am I correct that Sylvester Exhibit No. 7
9 is the book you wrote called the Guerrilla Guide to
10 Robert's Rules?

11 A. That is correct.

12 Q. Am I also correct that this book has a
13 copyright of 2006 on the left-hand side?

14 A. I am looking.

15 Yes.

16 Q. Is there any prior edition of this book?

17 A. No.

18 Q. There is a glossary of parliamentary
19 terms at the back, yes?

20 A. Yes.

21 Q. And that is Appendix A.

22 Would you read what it says under the
23 word "approve" in your glossary?

24 A. "This word is synonymous with ratify,

1 A. Yes.

2 Q. Ma'am, what was the year of the first
3 edition?

4 A. 2004, I believe.

5 Q. And there is a glossary that is Appendix
6 A to this book as well, correct?

7 A. Yes.

8 Q. And do the definitions of "approve",
9 "adopt", and "accept" in the glossary of your second
10 book have the same definitions essentially?

11 A. Essentially, yes.

12 I guess I should look to make sure they
13 do, but my memory is they do. Let me go back.

14 Q. Please, take your time.

15 A. Let me not rush to judgment.

16 Yes. My yes answer stays.

17 Q. Having read the definitions in the
18 glossary of your second book they are substantially
19 the same as in the first book?

20 A. Correct.

21 MR. HOFFMAN: I have no further
22 questions, thank you.

23 MR. KALTENBACH: Why don't I just take a
24 minute with the witness, I may have a couple.

(Recess taken.)

EXAMINATION

BY MR. KALTENBACH:

Q. Ms. Sylvester, I have a couple of follow-up questions for you.

To clarify, your determination of custom was based on your review of the official records of the deliberative bodies at issue, correct?

A. Yes.

My judgment of what is their custom was by going to their documents and reviewing how they were used.

Q. And you did not feel it was appropriate to review what individual members of that deliberative body may have thought or recalled, correct?

A. That is correct.

Q. Or -- sorry, for a parliamentarian.

A. The only time that would be of any value is if you had inconsistency. But the consistency in this case was so overwhelming that there is not -- and also as we all know there is a change -- there is a difference in view at the moment, there is a difference in view later, you know, what did you mean by "accept" 20 years later, it is hard to recall.

don't mean to be rude in posing an objection, nor am I in any way trying to stop you from answering the question.

THE WITNESS: Okay.

Now I need you to repeat it.

BY MR. KALTENBACH:

Q. So you testified you are not offering an opinion on whether District 204 complied with an Open Meetings Act or not?

A. That's correct, absolutely. That is outside of my --

Q. You are offering an opinion on whether or not they complied with Robert's, correct?

A. Correct.

Q. Based --

A. As a deliberative assembly whether or not they followed what Robert's says is the process for a deliberative assembly, yes.

Q. And your opinion is that based on the records you have reviewed if District 204 entered into the contract alleged through the consent agenda without having previously discussed it as a deliberative body that would violate Robert's, correct?

Q. If the Township Trustees did not have an official policy of following Robert's Rules of Order would that impact the opinions that you have expressed in this case?

A. No, it would not.

Q. To clarify, you are not offering an opinion on whether District 204 complied with any sort of open meeting laws, correct?

A. Absolutely not.

Q. Okay.

Your opinion is that if District 204 entered into the agreement alleged through the use of the consent agenda and had not previously discussed it as a deliberative body, that that would violate Robert's, correct?

MR. HOFFMAN: Objection, leading.

BY MR. KALTENBACH:

Q. You can answer.

MR. HOFFMAN: You can answer.

It is just -- let me explain to the witness. If I think there is something wrong with the question that he is asking I have to state an objection on the record and I am supposed to do it before you answer the question if I can. And so I

MR. HOFFMAN: Objection, leading.

THE WITNESS: Yes.

BY MR. KALTENBACH:

Q. Ms. Sylvester, your testimony regarding the meaning and usage of the words "accept", "adopt", and "approve" is how the deliberative bodies in this lawsuit used them based on Robert's and based on their custom, correct?

MR. HOFFMAN: Objection, leading.

THE WITNESS: Absolutely. It does not -- they use them in a different way than Robert's -- they used at least one of them in a different way than what Robert's gives the term -- defines the term and so their custom trumps Robert's.

MR. KALTENBACH: No further questions.

THE WITNESS: No according to Robert's.

MR. KALTENBACH: No further questions.

MR. HOFFMAN: No questions, we are done.

MS. REPORTER: Signature?

MR. HOFFMAN: Do you want to reserve signature?

MR. KALTENBACH: Sure.

MR. HOFFMAN: And I need solely electronic, PDF and then the PTX.

1 MS. REPORTER: Are you taking a copy?
 2 MR. KALTENBACH: Yes, I am. If you can
 3 e-mail me a PDF, full, and mini.
 4 (WHICH WERE ALL OF THE PROCEEDINGS HAD OR
 5 TAKEN PLACE IN THE ABOVE-ENTITLED MATTER.)
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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF DUPAGE)
 3 I, STEPHANIE A. BATTAGLIA, CSR and Notary
 4 Public in and for the County of DuPage and State of
 5 Illinois, do hereby certify that on April 20, 2017, at
 6 1:00 p.m., at 20 North Clark Street, Suite 2500,
 7 Chicago, Illinois, the deponent NANCY SYLVESTER
 8 personally appeared before me.
 9 I further certify that the said NANCY
 10 SYLVESTER was by me first duly sworn to testify and
 11 that the foregoing is a true record of the testimony
 12 given by the witness.
 13 I further certify that the deposition was
 14 terminated at 3:23 p.m.
 15 I further certify that I am not counsel for
 16 nor related to any of the parties herein, nor am I
 17 interested in the outcome hereof.
 18 In witness whereof, I have hereunto set my
 19 hand and seal of office this 28th of April, 2017.
 20 Stephanie Battaglia
 21 Notary Public
 22 CSR No. 084-003337 - Expiration Date: May 31, 2017.
 23
 24

1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF COOK)
 3 IN THE CIRCUIT COURT OF COOK COUNTY
 COUNTY DEPARTMENT-CHANCERY DIVISION
 4
 5 TOWNSHIP TRUSTEES OF)
 SCHOOLS TOWNSHIP 38 NORTH,)
 6 RANGE 12 EAST,)
)
 7 Plaintiff and)
 Counter-Defendant,)
 8)
 vs.) No. 13 CH 23386
 9)
 LYONS TOWNSHIP HIGH SCHOOL) Hon. Sophia H. Hall
 10 DISTRICT 204,)
) Calendar 14
 11 Defendant and)
 Counter-Plaintiff,)
 12)
 13 I, NANCY SYLVESTER, being first duly
 14 sworn, on oath say that I am the deponent in the
 15 aforesaid deposition taken on April 27, 2017; that I
 16 have read the foregoing transcript of my deposition,
 17 consisting of pages No. 1 through No. 91, inclusive,
 18 and affix my signature to same.
 19
 20
 21
 22 NANCY SYLVESTER
 23
 24 Subscribed and sworn to
 before me this day of
 , 2017

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

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

-vs-

) No. 13 CH 23386
)

LYONS TOWNSHIP HIGH)
SCHOOL DISTRICT 204,)
)
Defendant.)

The discovery deposition of RUSSELL
HARTIGAN, taken before MAUREEN A. WOODMAN, a
Certified Shorthand Reporter and Notary Public
in and for the County of Cook and State of
Illinois, pursuant to the Illinois Code of
Civil Procedure and the Rules of the Supreme
Court thereof, pertaining to the taking of
depositions for the purpose of discovery at 20
North Clark Street, Chicago, Illinois, on
November 22, 2016, at the hour of 12:00
o'clock p.m.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MILLER CANFIELD</p> <p>4 BY: MR. BARRY P. KALTENBACH</p> <p>5 225 West Washington Street</p> <p>6 Suite 2600</p> <p>7 Chicago, Illinois 60606</p> <p>8 312.460.4251</p> <p>9 Kaltenschach@millercanfield.com,</p> <p>10</p> <p>11 On behalf of the Plaintiff,</p> <p>12</p> <p>13 HOFFMAN LEGAL</p> <p>14 BY: MR. JAY HOFFMAN</p> <p>15 20 North Clark Street</p> <p>16 Suite 2500</p> <p>17 Chicago, Illinois 60602</p> <p>18 312.899.0899,</p> <p>19 On behalf of the Defendant.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 (Witness was duly</p> <p>2 sworn.)</p> <p>3 RUSSELL HARTIGAN,</p> <p>4 called as a witness herein, after having been</p> <p>5 first duly sworn, was examined and testified as</p> <p>6 follows:</p> <p>7 THE WITNESS: I do.</p> <p>8 EXAMINATION</p> <p>9 BY MR. HOFFMAN:</p> <p>10 Q. Would you please state your name for</p> <p>11 the record.</p> <p>12 A. Russell W. Hartigan. H-A-R-T-I-G-A-N.</p> <p>13 Q. And, sir, what is your place of</p> <p>14 business and what is your business address?</p> <p>15 A. I'm an elected Judge of Cook County,</p> <p>16 Circuit Court Judge, and I'm currently assigned</p> <p>17 to the Fifth Municipal District, Bridgeview,</p> <p>18 Illinois.</p> <p>19 Q. What types of cases do you hear?</p> <p>20 A. Civil jury the last few years.</p> <p>21 Q. The gentleman sitting next to you,</p> <p>22 Barry Kaltenbach, is he your lawyer for</p> <p>23 purposes of this deposition here today?</p> <p>24 MR. KALTENBACH: Yes.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 RUSSELL HARTIGAN</p> <p>4 Examination by Mr. Hoffman..... 4-63</p> <p>5</p> <p>6 -----</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 DEPOSITION EXHIBIT PAGE</p> <p>10 Exhibit 1 11</p> <p>11 Exhibit 2 15</p> <p>12 Exhibit 3 48</p> <p>13 Exhibit 4 57</p> <p>14 (NOT ATTACHED)</p> <p>15 (Retained by Attorney Hoffman)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 THE WITNESS: Okay. I was unclear, but I</p> <p>2 think yes.</p> <p>3 BY MR. HOFFMAN:</p> <p>4 Q. Sir, I know as a judge and former</p> <p>5 attorney, you're very familiar with the</p> <p>6 litigation process. Nevertheless, I want to</p> <p>7 ask you whether you've ever had your deposition</p> <p>8 taken before?</p> <p>9 A. I don't believe so. I've done a</p> <p>10 number of depositions but never sat on the</p> <p>11 other side.</p> <p>12 Q. I guess there's a first for</p> <p>13 everything.</p> <p>14 Sir, I will do my very best to</p> <p>15 ask questions that make sense, that are</p> <p>16 understandable and clear. If for any reason</p> <p>17 you do not understand my question, will you be</p> <p>18 kind enough to let me know that? Otherwise I</p> <p>19 will assume you did understand it.</p> <p>20 A. Sure.</p> <p>21 Q. The court reporter, as you know, can</p> <p>22 only take down yeses and nos and verbal</p> <p>23 answers, so nods of the head and uh-uh or uh-uh</p> <p>24 are all bad for us. Agreed?</p>

2 (Pages 2 to 5)

<p style="text-align: right;">Page 6</p> <p>1 A. Agreed.</p> <p>2 Q. If at any time you want to take a</p> <p>3 break, please inform me, you will be allowed to</p> <p>4 do so.</p> <p>5 Do you need anything in the way</p> <p>6 of coffee, water?</p> <p>7 A. I've got it.</p> <p>8 Q. Terrific.</p> <p>9 Sir, by now you are familiar that</p> <p>10 there is a lawsuit for which we are here. It</p> <p>11 was filed by the plaintiff in this case which</p> <p>12 goes by a few different names. Some people</p> <p>13 call it the Treasurer's Office, some people</p> <p>14 call it the Township Trustees, some people call</p> <p>15 it the TTO. Which do you feel most comfortable</p> <p>16 with?</p> <p>17 A. Probably the Township Trustees, I</p> <p>18 think, of Schools.</p> <p>19 Q. Township Trustees of Schools. How</p> <p>20 about if I shorten that to TTO?</p> <p>21 A. That's fine.</p> <p>22 Q. The defendant in this case is the</p> <p>23 Lyons Township High School District 204, some</p> <p>24 people call that Lyons, some people call that</p>	<p style="text-align: right;">Page 8</p> <p>1 THE WITNESS: Yeah.</p> <p>2 BY MR. HOFFMAN:</p> <p>3 Q. And did you meet with Barry Kaltenbach</p> <p>4 or anybody else representing the TTO in</p> <p>5 preparation for this deposition?</p> <p>6 A. I did. It was a brief meeting.</p> <p>7 Q. Whom did you meet with?</p> <p>8 A. Barry.</p> <p>9 Q. And when did that occur?</p> <p>10 A. God, a couple of weeks ago. And your</p> <p>11 partner was there, too.</p> <p>12 Q. Was that Mr. Kubasiak?</p> <p>13 A. Yeah.</p> <p>14 Q. Gerald?</p> <p>15 A. Yes.</p> <p>16 Q. Did they show you any documents in</p> <p>17 connection with this lawsuit?</p> <p>18 A. I don't recall that. I think maybe</p> <p>19 you had sent me some documents.</p> <p>20 Q. Yes. And you got a letter from me as</p> <p>21 well as some attached documentation, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Along with a subpoena?</p> <p>24 A. Yeah.</p>
<p style="text-align: right;">Page 7</p> <p>1 LT, some people call it District 204. What are</p> <p>2 you most comfortable with?</p> <p>3 A. 204 or LT, either way. I hear it both</p> <p>4 ways.</p> <p>5 Q. Thank you. When were you -- when did</p> <p>6 you first become aware of the existence of this</p> <p>7 lawsuit?</p> <p>8 A. Probably maybe month and a half ago.</p> <p>9 Possibly two months.</p> <p>10 Q. How did you become aware of the</p> <p>11 lawsuit, sir?</p> <p>12 A. I got a call from the attorney</p> <p>13 regarding the fact that there may possibly be a</p> <p>14 deposition forthcoming. And I might have read</p> <p>15 something in the paper, local paper, too, but I</p> <p>16 can't recall that at this time. There might</p> <p>17 have been an article in the paper.</p> <p>18 Q. So you got a call from an attorney for</p> <p>19 the TTO, correct?</p> <p>20 A. Right.</p> <p>21 Q. And do you recall who that was?</p> <p>22 A. You or your partner.</p> <p>23 MR. KALTENBACH: I can't tell you. I can't</p> <p>24 give you the answer.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. And you were testifying here pursuant</p> <p>2 to that subpoena; am I right, sir?</p> <p>3 A. Correct.</p> <p>4 Q. Did you review the documents that I</p> <p>5 sent you?</p> <p>6 A. You know, I can't say I reviewed them</p> <p>7 line item by line item. I have a pretty heavy</p> <p>8 call. And I skimmed them is probably the best</p> <p>9 way to say it.</p> <p>10 Q. Did those documents help refresh your</p> <p>11 memory about the issues involved in this</p> <p>12 lawsuit?</p> <p>13 A. A little bit.</p> <p>14 Q. And so am I correct that up until</p> <p>15 about two months ago, you had not gotten any</p> <p>16 communications from either people at the TTO or</p> <p>17 attorneys representing the TTO asking you about</p> <p>18 issues involved in this case?</p> <p>19 A. No, only what I may have read in the</p> <p>20 paper is all I can recall.</p> <p>21 Q. And there's an issue where the</p> <p>22 question and the answer may not have matched</p> <p>23 up. I asked if I was correct that you hadn't</p> <p>24 gotten communications as I described to you and</p>

3 (Pages 6 to 9)

1 then you answered no.

2 A. No.

3 Q. So let me ask you a question that's
4 better.

5 Prior to two months ago, did you
6 get any communications of any kind from anyone
7 at the TTO or attorneys representing the TTO
8 about the matters involved in this lawsuit?

9 A. No.

10 Q. Thank you.

11 Have you had -- when, sir, did
12 you serve as a trustee of the TTO?

13 A. That's a good question.

14 Q. Thank you. Would it help you to
15 remember, sir, if I showed you --

16 A. I think I can recall vaguely.

17 Q. Okay.

18 A. I think I was appointed, perhaps, in
19 the late '90s. And I believe I ran unopposed.
20 And I think it's a six-year term. So I am
21 thinking it may be late '90s, '96 maybe, when I
22 got appointed to fill a vacancy and then I ran.
23 I may be off on these years, but I ran in like
24 '98 for a six-year term.

1 Q. Assuming that the six-year term you
2 described ended in 2004, did you run for a
3 subsequent term?

4 A. No.

5 Q. So as best you can recall, you were
6 trustee of the TTO from 1996 to 2004?

7 A. Somewhere like that, yeah.

8 MR. HOFFMAN: Let's mark this document as
9 Hartigan Exhibit 1, please.

10 (WHEREUPON, said
11 document was marked as
12 Hartigan Exhibit No. 1
13 for Identification.)

14 BY MR. HOFFMAN:

15 Q. Sir, in an effort to speed up this
16 deposition, I'm showing you a candidate profile
17 from 2012 from the Daily Herald, and I believe
18 this is from when you were running as -- for a
19 Circuit Court judicial vacancy.

20 Would you be kind enough to take
21 a look at the bio portion of this document and
22 tell me if that information in it is correct.

23 A. Appears to be correct.

24 Q. Okay. And there's a number of

1 positions noted in terms of civic involvement
2 and elected offices held, and obviously you
3 gave a lot of your time and effort to your
4 community. Would you be kind enough to tell me
5 which of these is your service as a trustee of
6 the TTO?

7 A. I don't follow you. It says elected
8 offices held.

9 Q. Right. And so did you serve -- let's
10 talk about the different positions you've held,
11 because it looks like you were --

12 A. I can help you on that. The Trustee
13 of Schools was the first elected position for
14 me and then I think followed by the township
15 and the village.

16 Q. So you were a Trustee of Schools, in
17 other words a TTO, then you became Trustee of
18 Lyons Township, and then you became trustee --
19 did you say the village?

20 A. Right.

21 Q. And that was the village of what, sir?

22 A. Western Springs.

23 Q. Did you hold all of those positions
24 simultaneously at some point?

1 A. I think one of them I might have.
2 Perhaps it might have been the township
3 trustee, perhaps.

4 Q. And you're also on Board of Governors
5 for the Illinois State Bar Association as well?

6 A. Right, that's a volunteer position.

7 Q. It says here elected Lyons Township
8 School Trustee 1998 through 2005. Is that
9 information correct?

10 A. I would hope so. I would think so.

11 Q. Okay. It looks like you were on quite
12 a few boards and other legal and civic
13 organizations. Did you find that you had
14 enough time to devote to your position as
15 trustee of the TTO?

16 A. Well, with that it meets only
17 quarterly; it wasn't really a real
18 time-consuming-type job.

19 Q. Tell me, sir, what you did in
20 connection with that job?

21 A. Showed up at meetings, looked
22 over -- usually they had a listing of the banks
23 who had funds deposited with them. The
24 meetings were fairly brief. I wouldn't think

1 they lasted more than a half hour.

2 Q. What did you understand your
3 responsibility for oversight to be?

4 A. Well, basically it was to -- well, you
5 had the money that was invested, would go to
6 the banks for -- and through the treasurer
7 would be put into safe funds. There's
8 also -- we dealt with personnel, the checks of
9 personnel of the various school districts
10 issuing them, besides the funds and depositing
11 those and investing those. I think there's
12 also school land that they had to come to us if
13 there was any sale of the land or any boundary
14 change.

15 Q. Did you also review and approve the
16 expenses of the TTO?

17 A. I believe so. I'm not totally sure.
18 It's been over sixteen years.

19 Q. Now, sir, I have to mention to you
20 that in this lawsuit, my client, District 204,
21 has been sued based on events that go back as
22 far as 1994.

23 So while I understand that a lot
24 of these subject matters we're talking about

1 schools such as yourself?

2 A. Looks like it.

3 Q. And you can see from the notes below
4 that this is the law that was in place at the
5 time you were a trustee based on the revisions,
6 correct?

7 A. Okay.

8 Q. And my question, sir, is: Did you
9 comply with the statutory obligations stated in
10 this Section 5-20 during the time you were
11 trustees of schools?

12 MR. KALTENBACH: I will object as it calls
13 for the witness to make a legal conclusion
14 which in his capacity today Judge Hartigan
15 should not be doing. But nonetheless you can
16 answer despite my objection.

17 THE WITNESS: I would certainly hope so.
18 BY MR. HOFFMAN:

19 Q. I'm not asking whether you hope so,
20 I'm asking, based on your recollection of what
21 you did, did you, in fact, do the things that
22 are set out in this statute?

23 A. I would think so.

24 Q. Okay. So --

1 here today occurred a long time ago, that's
2 because the lawsuit stretches back that far.
3 Do you understand that?

4 A. Yes.

5 Q. And you will do your best to provide
6 me with your full recollection as best you can.

7 A. Whatever I recall.

8 Q. Okay.

9 MR. HOFFMAN: Mark this as No. 2.
10 (WHEREUPON, said
11 document was marked as
12 Hartigan Deposition
13 Exhibit No. 2 for
14 Identification.)

15 BY MR. HOFFMAN:

16 Q. Sir, I'm handing you a document which
17 is a printout of an Illinois statute, it's 105
18 ILCS 5/5-20. It's from the school code and the
19 article that relates to trustees of schools.
20 Would you take a moment to read that paragraph
21 to yourself, please.

22 A. Okay.

23 Q. Am I correct, sir, that this statute
24 sets forth the obligations of trustees of

1 A. If they're brought to our attention,
2 then yes.

3 Q. Okay. So it says in this section,
4 sir, "The trustees of schools," and I'm
5 starting midway through the first
6 sentence -- well, why don't I read the whole
7 thing. "At each regular meeting, and at such
8 other meetings as they may think proper, the
9 Trustee of Schools shall examine all books,
10 notes, mortgages, securities, papers, monies
11 and affects of the corporation, and the
12 accounts and vouchers of the township treasurer
13 or other township school officer," and then it
14 goes on from there.

15 And your best recollection, sir,
16 is that you did those things while you were a
17 school trustee?

18 A. If they were brought to my attention
19 and we reviewed them, we had legal counsel, we
20 had auditors, if they're brought to our
21 attention, then yes, at the meeting.

22 Q. Have you spoken with any of your
23 fellow trustees such as Donna Milich,
24 M-I-L-I-C-H, or any other of the gentlemen or

1 ladies you served with as Trustee of Schools
 2 about the matters involved in this lawsuit?
 3 **A. I have not. Donna Milich my**
 4 **understanding has moved out of the area.**
 5 Q. She lives in Arizona, correct?
 6 **A. Yeah, I think so.**
 7 Q. Was it your understanding that the TTO
 8 acted as the agent and fiduciary for the
 9 various school districts, including District
 10 204, with respect to investment of their funds
 11 and accounting functions and other related
 12 business issues?
 13 **A. Yes, I mean we worked through our**
 14 **treasurer and worked through our auditor, and**
 15 **mainly treasurer would do whatever necessary to**
 16 **make sure that the funds were invested and**
 17 **secure funds. I think designated by statute.**
 18 **I think you couldn't do anything beyond what's**
 19 **in the statute.**
 20 Q. And what was the treasurer's
 21 responsibilities with respect to expenditures?
 22 **A. Well, I think he got money through,**
 23 **you know, taxing money, and then he would make**
 24 **payroll to the various school districts, and**

1 **also do the investing of funds, as mentioned,**
 2 **and deposit funds with local banks.**
 3 Q. So --
 4 **A. Or CDs or whatever it might be.**
 5 Q. And, sir, the entire time that you
 6 were a trustee at schools, am I correct that
 7 Robert Healy was the treasurer?
 8 **A. I believe so.**
 9 Q. What was his professional background?
 10 **A. I think he worked for the court system**
 11 **at one time in his life. I believe he had a**
 12 **degree, bachelor's degree, but I don't know if**
 13 **he had anything further, anything advanced.**
 14 Q. Do you know whether or not he was a
 15 CPA?
 16 **A. I don't believe so.**
 17 Q. Do you know whether or not he had any
 18 investment-related training or credentials?
 19 **A. I don't know that.**
 20 Q. And you were involved in extending
 21 Robert Healy's contract from time to time; am I
 22 correct about that?
 23 **A. That's correct.**
 24 Q. And tell me why you believe that

1 Robert Healy was capable of performing his
 2 duties as treasurer during your time as
 3 trustee?
 4 **A. Well, I mean given the fact we had**
 5 **auditors, given the fact we had a board, given**
 6 **the fact that the -- kept saying that the --**
 7 **things were going well, through the auditor and**
 8 **through legal counsel and through our board, we**
 9 **had no reason to suspect otherwise.**
 10 Q. Sir, Hartigan Exhibit No. 1 sets forth
 11 your undergraduate and law degree; am I
 12 correct?
 13 **A. Yes.**
 14 Q. And do you have any training or
 15 education as an accounting or investment
 16 professional?
 17 **A. I have a B.S. in commerce from DePaul**
 18 **and took some courses in the M.B.A. program.**
 19 **I'm not a CPA, but I did have a business**
 20 **degree. Did have accounting and finance in it.**
 21 Q. Do you know where -- you know a
 22 gentleman, of course, named Joseph Nekola,
 23 N-E-K-O-L-A; am I correct?
 24 **A. Yeah.**

1 Q. He was a fellow trustee with you,
 2 correct?
 3 **A. He was the president and trustee.**
 4 Q. He is now deceased?
 5 **A. Yes.**
 6 Q. Did Mr. Nekola have any accounting or
 7 investment background to your knowledge?
 8 **A. I doubt that.**
 9 Q. Same question for Ms. Milich?
 10 **A. No, I don't think so.**
 11 Q. Sir, I'd like to show you a document
 12 that's previously been marked as Healy Exhibit
 13 No. 1, and it's a compilation of a series of
 14 documents. We're not going to go through all
 15 of them, however I'm going to have you look at
 16 a few of them. So let me hand you that stack.
 17 I'd like you to turn to the third page, please.
 18 **A. Third page here?**
 19 Q. Yes. This is an April 29, 1999,
 20 letter that Bob Healy wrote to Lisa Beckwith,
 21 the business manager at District 204. Do you
 22 see that?
 23 **A. Yes.**
 24 Q. And have you ever had any

1 communications with Dr. Beckwith?

2 **A. No.**

3 Q. Sir, if you look at the last page of
4 this letter, it shows you and your fellow
5 trustees as carbon copies of this letter on
6 page nine. Do you see that?

7 **A. I do.**

8 Q. And is this a letter that you believe
9 you received on or about the date that it
10 bears?

11 **A. I couldn't say one way or the other.**

12 Q. You don't remember this letter?

13 **A. I do not.**

14 Q. Do you have any reason to doubt that
15 you received it?

16 **A. No.**

17 Q. And you see in here in the very first
18 paragraph on the first page, sir, that it talks
19 about an analysis of the duties and
20 responsibilities of the TTO and specific
21 services provided by the office. Do you see
22 that?

23 **A. Yes.**

24 Q. Do you recall back in 1999 discussions

1 **with the computer program. And they felt they**
2 **could do a better job on their own.**

3 Q. And anything else you remember about
4 that?

5 **A. Possibly personnel, but I don't recall**
6 **specifically.**

7 Q. When you say possibly personnel, sir
8 what do you mean by that?

9 **A. I don't remember.**

10 Q. And you recall, am I correct, that
11 District 204 could not leave the TTO without a
12 state statute being passed?

13 **A. That's correct.**

14 Q. And you also recall that the TTO
15 opposed District 204's departure from the TTO?

16 **A. That I don't think I -- I'm not sure I**
17 **was around for that.**

18 Q. Do you remember any involvement by
19 Mr. Landek to attempt to keep District 204 in
20 the TTO?

21 **A. I don't. That may have been past me.**

22 Q. Do you know who Mr. Landek is?

23 **A. Sure, I know him.**

24 Q. And I'd like you, sir, to turn in this

1 between the TTO and District 204 about
2 financial issues?

3 **A. About what issues?**

4 Q. Financial issues or really any issues.

5 **A. Only I would say from hearsay, not**
6 **specifically with me.**

7 Q. Well, regardless of whether you were
8 personally involved in those discussions, sir,
9 am I correct that you do remember there being
10 discussions around this 1999 time period
11 between the TTO and District 204, correct?

12 **A. All I know there was some**
13 **dissatisfaction with the treasurer's office,**
14 **that's all I know.**

15 Q. And what dissatisfaction did you
16 understand there to be?

17 **A. I don't know if it was in 1999 or**
18 **subsequent thereto. I think they wanted, as I**
19 **recall -- again, this is almost 20 years ago.**
20 **I think they wanted to handle things themselves**
21 **and something with computers. They wanted -- I**
22 **don't know if it was an upgrade of the computer**
23 **in the treasurer's office or something and**
24 **whether they were compatible or not. Something**

1 April 29th, 1999, letter you received based on
2 the CC here to page six, and you'll see there
3 is a reference to annual audit. Do you see
4 that?

5 **A. Yes.**

6 Q. And you recall that there was a firm
7 called William F. Gurrie, G-U-R-R-I-E, that
8 then became Virchow Krause, or maybe you don't
9 remember them becoming Virchow Krause, but they
10 did, then they became part of Baker tilly,
11 which is an even bigger accounting firm. Are
12 you familiar with that firm?

13 **A. I am to the former that you mentioned.**

14 Q. Gurrie?

15 **A. Yeah.**

16 Q. Let's call it Gurrie. And Gurrie was
17 the auditor of the TTO as well as the school
18 districts within the TTO, correct?

19 **A. That is correct.**

20 Q. And it says in this letter that Bob
21 Healy wrote, "The trustees hire and pay for the
22 audit of the school districts and the
23 treasurer's office in Lyons Township." Is that
24 consistent with your understanding of what the

1 trustees did?

2 **A. I believe so.**

3 Q. And then it says, "This office has
4 assumed the cost of Lyons Township High
5 School's audit, even though the functions were
6 in-house." Is that also consistent with your
7 understanding?

8 **A. I believe so.**

9 Q. On the last page of this letter, sir,
10 page nine, there's a reference to a statute
11 that says, "Requires that all school districts
12 pay their proportionate share of the expenses
13 of the treasurer's office. The contribution
14 formula is prescribed by statute and allows for
15 no variation."

16 Do you see that statement?

17 **A. Yes, I do.**

18 Q. Are you familiar with that statute
19 having to do with pro rata expenses of the
20 treasurer's office?

21 **A. All I can vaguely recall is that the
22 pro rata share was based on money, I believe,
23 and I don't think population, I think it was
24 based on money.**

1 Q. It was based on the -- if I may, was
2 it based on the amount of money that each
3 district had maintained at the treasurer's
4 office and invested through the treasurer's
5 office?

6 **A. I believe that's correct.**

7 Q. Okay. So each district paid a share
8 of the TTO's expenses based on the amount of
9 money they had rather than the amount of
10 services they received from the TTO?

11 **A. Well, they kind of went hand in hand.
12 I guess if they paid, they got certain
13 services. But I think that's generally true.**

14 Q. Okay. Sir, I'd like you to skip ahead
15 a few pages and you'll see an agenda for a TTO
16 meeting for July 29th of 1999.

17 MR. KALTENBACH: Is there a Bates number on
18 it?

19 MR. HOFFMAN: These are not Bates numbered
20 because we got them from you.

21 MR. KALTENBACH: 27 you said?

22 MR. HOFFMAN: Yes.

23 THE WITNESS: I got it.

24 BY MR. HOFFMAN:

1 Q. TTO's documents were not Bates
2 numbered when we received them.

3 **A. That's fine.**

4 Q. Sir, you recognize this as an agenda
5 and then right behind it the minutes of a board
6 meeting during the time you were a trustee as
7 indicated in the upper-left-hand corner of the
8 agenda where your name appears; am I correct?

9 **A. That's correct.**

10 Q. All right. And on the minutes of the
11 meeting of July of 27th, 1999, it indicates you
12 were present at the meeting; am I correct?

13 **A. That's correct.**

14 Q. And then on page two at the very
15 bottom, sir, it says, "There was a discussion
16 regarding the Lyons Township High School and
17 the problems the district has with the pro rata
18 billing system. The trustees discussed with
19 the Treasurer Healy several options to improve
20 relations with the high school. Some of the
21 items discussed are for the treasurer's office
22 to assume more duties, possibly fund certain
23 business functions, computer sharing and
24 legislation." Do you see that?

1 **A. I do.**

2 Q. Can you tell me what you recall about
3 the discussion at that meeting other than
4 what's stated here in these minutes?

5 **A. You're going -- no, obviously I can't
6 recall back then. This is 1999, you're talking
7 almost 20 years.**

8 MR. HOFFMAN: Off the record.
9 (Discussion off the
10 record.)

11 MR. HOFFMAN: Back on the record.
12 BY MR. HOFFMAN:

13 Q. So, sir, you don't remember anything
14 about this meeting other than what's set forth
15 in the minutes?

16 **A. Well, certain -- possibly fund certain
17 business functions. I don't know if there
18 was -- I don't know necessarily what that
19 meant. Computer sharing --**

20 Q. Can I interrupt you on that one?

21 **A. Yeah.**

22 Q. Does it help you to remember -- does
23 it refresh your recollection to ask you whether
24 District 204 at this time in 1999 was

1 performing its own business functions with its
2 own staff rather than having the treasurer's
3 office do that work like the other districts
4 did, does that help you to remember?

5 **A. That could be, uh-huh. Yes.**

6 Q. And so do you remember anything about
7 this possibly funding certain business
8 functions?

9 **A. I do not.**

10 Q. And because it's in the minutes, you
11 don't have any reason to believe this
12 conversation did not occur as it's written
13 here, do you?

14 **A. I assume they're accurate.**

15 Q. That's the point of having minutes,
16 right?

17 **A. Yes.**

18 Q. Let's take a look at the next document
19 which is an August 18th, 1999, letter to Dr.
20 Beckwith at District 204 from Robert Healy, and
21 I'll note for you on the third and final page
22 of this letter there's a CC to Lyons Township
23 Trustee of Schools. Do you see that?

24 **A. Yes.**

1 Q. And is it fair to say that you
2 received a copy of this letter on or about the
3 date it bears, sir?

4 **A. Well, the CC says trustees, so I
5 assume I did.**

6 Q. You see that this letter talks about
7 five different proposals following up on the
8 discussion of a month earlier at the trustees
9 meeting. Do you see that?

10 **A. I see that.**

11 Q. And you see that there's -- in the
12 very first sentence it talks about proposed
13 possible solutions. In the very first page of
14 this paragraph. Do you see that?

15 **A. I do.**

16 Q. And were these the proposals that Bob
17 Healy had discussed with you and the other
18 trustees?

19 **A. I'm not sure he discussed them with
20 us. I think we may have gotten a copy it looks
21 like of the letter, but it's possible that he
22 did, but I certainly don't recall any specific
23 conversation.**

24 Q. And so you don't remember getting this

1 letter and calling Bob Healy and asking him
2 further information or details about this?

3 **A. We may have got the letter. I don't
4 recall calling him, no.**

5 Q. So the first proposal is "Deviation
6 From Pro Rata Billing." Do you see that?

7 **A. Yes.**

8 Q. And then it basically says that there
9 would be -- under this first proposal that
10 there would be a reduction in District 204's
11 pro rata share, and it goes on to say that all
12 of the other districts in the TTO would have to
13 approve that change. Do you see that?

14 **A. I do.**

15 Q. And it talks about the necessity for
16 an intragovernmental agreement among all 12
17 taxing bodies in the township. Do you see
18 that?

19 **A. I do.**

20 Q. Does that help you to remember the
21 discussions that were had at that time about
22 this proposal?

23 **A. It does not.**

24 Q. Is that consistent with your

1 understanding if there was a change in the pro
2 rata billing that the treasurer issued to
3 District 204, it would require an
4 intragovernmental agreement?

5 **A. I do not recall that.**

6 Q. Do you know anything in particular
7 about intragovernmental agreements? Are you
8 verse in what requires an intragovernmental
9 agreement and what does not?

10 **A. Only through the Village of Western
11 Springs when I was trustee, but I don't
12 remember if it was fire or police or something.**

13 Q. And what was that situation in which
14 the Village had an intragovernmental agreement?

15 **A. I'm not sure. I think they talked
16 about an intragovernmental agreement. I'm not
17 sure. It was sharing maybe a fire or
18 ambulance. I don't think it ever came to pass
19 though.**

20 Q. The idea was that different taxing
21 bodies would --

22 **A. Right.**

23 Q. -- kind of share responsibilities for
24 fire and police?

1 A. Exactly.

2 Q. And because that -- okay.

3 Turn the page, please, to page
4 two of the August 18th, 1999, letter. There's
5 a proposal number two that's, quote, "Funding
6 by township school treasurer of some district
7 functions." Do you see that

8 A. Yes.

9 Q. And it discusses in the first
10 paragraph, "If the responsibilities for the
11 accounts payable and payroll production were to
12 be returned to the school treasurer's office,
13 it would mean higher operating costs for the
14 treasurer's office in the form of salaries and
15 benefits for increased staff and higher related
16 expenses to accommodate the increase in
17 workload." Do you see that?

18 A. Yes.

19 Q. Is that consistent with your
20 recollection that if the TTO had taken in-house
21 the business functions that District 204 was
22 performing for itself, that the TTO's costs
23 would have increased?

24 A. I don't remember that.

1 letter?

2 A. From looking at this, again, I don't
3 have any specific recall, but if it was in a
4 letter sent out to us, then, fine.

5 Q. Then fine?

6 A. I mean fine as far as accurate.

7 Q. So you believe it to be accurate
8 because it's set forth in this letter?

9 A. Right. Not that I have a recall, as I
10 mentioned.

11 Q. I got you.

12 Sir, I'd like to skip ahead to a
13 notice and agenda of a Township Trustees of
14 Schools meeting March 21, 2000.

15 A. Got it.

16 Q. And you've seen this document before,
17 correct?

18 A. Many years ago. Unless you sent it to
19 me.

20 Q. Did your attorneys show you this
21 document, do you recall?

22 A. They possibly did.

23 Q. Okay. So you see on the agenda item
24 number eight there's a listing for the District

1 Q. But you have no reason to doubt that
2 that is true, do you?

3 A. Well, if it's in the letter and it was
4 sent out by Healy, I suspect that's accurate.

5 Q. And then in the next paragraph of
6 proposal number two it says, "I would expect
7 that when the Trustee of Schools takes into
8 consideration these necessary increases, they
9 would logically conclude that a partial funding
10 by the treasurer's office to cover District
11 204's costs for the business functions District
12 204 now performs would be reasonable.
13 Especially in light of the fact that the
14 treasurer's office is currently performing the
15 same business functions for the 11 other school
16 districts."

17 Is that consistent with your
18 recollection of this proposal and the
19 discussions at the TTO?

20 A. I don't have a recollection. If it's
21 in here and it was sent us to us, then it is
22 what it is.

23 Q. Do you believe it to be accurate as
24 the prior paragraph because it's in Mr. Healy's

1 204 business office, correct?

2 A. Is it on the second page or first?

3 Q. Turn back one more page, sir.

4 A. Sorry. On the agenda.

5 Q. On the agenda on point eight, there's
6 the District 204 business office listed.

7 A. Correct.

8 Q. And then if you look at the minutes on
9 the following page, it reflects that you were
10 present at this March 21, 2000, trustees'
11 meeting, correct?

12 A. Correct.

13 Q. And Bob Healy was there as well?

14 A. That's right.

15 Q. And then on the very last paragraph of
16 the first page of minutes, Healy submitted to
17 the trustees the proposal from District 204
18 stating that this office absorb certain
19 payroll, accounts payable and computer
20 processing expenditures by District 204." Do
21 you see that?

22 A. Yes.

23 Q. And attached to these minutes was --
24 if you turn a couple of pages, as we received

1 them, was the February 29th, 2000, memo from
2 Lisa Beckwith to Robert Healy. Do you see
3 that?

4 **A. Yes.**

5 Q. Are you familiar with that Lisa
6 Beckwith memo setting forth the proposal of
7 District 204?

8 **A. Not really. I don't recall it.**

9 Q. Do you have any reason at all to doubt
10 that this memo was something you received at
11 this meeting as the minutes indicate?

12 **A. It appears that way.**

13 Q. And you don't remember anything about
14 this memo independently?

15 **A. No.**

16 Q. And then this -- the minutes go on to
17 say, "As these costs would be incurred by the
18 treasurer's office if the Lyons Township High
19 School were to totally utilize the facilities
20 of the treasurer's office. These costs would
21 certainly be incurred."

22 Is that consistent with your
23 recollection of the discussions that were had
24 regarding District 204's proposal?

1 **A. I have no recollection.**

2 Q. Do you have any reason to doubt that
3 those were discussions that were had?

4 **A. If it's in the minutes, I assume
5 that's accurate.**

6 Q. It also says, "A further
7 recommendation by Trustee Hartigan is that the
8 trustees be given an evaluation of the
9 employee's performance for those aforementioned
10 personnel employed at the high school." Do you
11 see that?

12 **A. I do.**

13 Q. Is that something that you
14 recommended?

15 **A. Sounds logical.**

16 Q. And you have no reason to doubt it
17 based on the --

18 **A. No.**

19 Q. Let's turn to page two of the March
20 21, 2000, minutes, please. It says, "A motion
21 was made by Russell Hartigan, seconded by
22 Joseph Nekola to accept the proposal given to
23 the Lyons Township Trustees of Schools by Cook
24 County High School District number 204." And

1 then it has you and Mr. Nekola voting aye and
2 no one voting nay, correct?

3 **A. Correct.**

4 Q. Is that the motion that you made, sir?
5 Did you make that motion at that meeting?

6 **A. Apparently.**

7 Q. Based on the minutes, you believe that
8 the trustees voted to accept the proposal of
9 District 204, whereby the TTO would pay for
10 business functions at District 204, correct?

11 **A. Appears that way.**

12 Q. And it appears that way because it's
13 set forth in the minutes, correct?

14 **A. Yes.**

15 Q. Okay. Now, sir, do you recall that
16 the way that the TTO's payments for District
17 204's business functions -- actually, let me
18 take that from you. I'll take that exhibit
19 back.

20 Sir, do you recall that what
21 would happen in practice was that the TTO would
22 bill District 204 for its share of pro rata
23 expenses and District 204 would deduct the cost
24 of the business functions at District 204 that

1 the TTO was paying for and then District 204
2 would pay the balance?

3 **A. I don't recall the financial
4 interworkings, but it sounds somewhat accurate.**

5 **I think there was, what, a
6 general account or something. General fund,
7 maybe that's it.**

8 Q. Right, and the payments were more in
9 the nature of adjustments or line items because
10 District 204 wouldn't pay the treasurer because
11 the treasurer already had District 204's money,
12 right?

13 **A. I believe so.**

14 Q. So in showing you a document, which is
15 a June 14th, 2000, memo from Lisa Beckwith to
16 the Board of Education, and that by the way is
17 the Board of Education of District 204.

18 MR. KALTENBACH: Is it part of the packet?

19 MR. HOFFMAN: Yes, it is.

20 BY MR. HOFFMAN:

21 Q. I don't have any reason to believe
22 you've ever seen that memorandum, but the
23 question I'm asking you, sir, does this -- the
24 June 14th, 2000, memo from Lisa Beckwith talks

<p style="text-align: right;">Page 42</p> <p>1 about the pro rata billing from the TTO, then a</p> <p>2 deduction for the TTO's payment of Lyons'</p> <p>3 business functions and then a net payment by</p> <p>4 the District 204.</p> <p>5 Does that memo refresh your</p> <p>6 recollection as to the process by which this</p> <p>7 agreement was implemented by the parties?</p> <p>8 A. Well, as I mentioned, I've never seen</p> <p>9 this.</p> <p>10 So, again, I was not involved</p> <p>11 heavily with the interworkings of who gets paid</p> <p>12 to any great degree.</p> <p>13 So I would assume that that seems</p> <p>14 accurate.</p> <p>15 Q. And you were aware, sir, that from the</p> <p>16 year 2000 through the remainder of your term as</p> <p>17 trustee, that the TTO was paying for certain</p> <p>18 business functions performed at District 204,</p> <p>19 correct?</p> <p>20 A. I think so.</p> <p>21 Q. And that is an expenditure that you</p> <p>22 and the other trustees approved on a regular</p> <p>23 basis when you approved the expenses of the</p> <p>24 TTO?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. When you look back at the</p> <p>2 August 19th, 1999, letter that Bob Healy sent</p> <p>3 to Lisa Beckwith, and there's a proposal number</p> <p>4 two for the payment by the TTO of certain</p> <p>5 District 204 business functions, nothing in</p> <p>6 that letter suggests that this was somehow only</p> <p>7 an agreement applicable to one fiscal year,</p> <p>8 does it?</p> <p>9 A. I'm sorry. I didn't get the latter</p> <p>10 part of your question.</p> <p>11 MR. HOFFMAN: You can read it back, please.</p> <p>12 (Said question was read</p> <p>13 back.)</p> <p>14 MR. KALTENBACH: I'm sorry. This is Healy</p> <p>15 I still?</p> <p>16 MR. HOFFMAN: Yes.</p> <p>17 THE WITNESS: I mean the paragraph reads,</p> <p>18 you know -- includes a partial funding by the</p> <p>19 Treasurer's Office to cover the 204 costs.</p> <p>20 BY MR. HOFFMAN:</p> <p>21 Q. And it was -- the purpose of this</p> <p>22 proposal was to deal with District 204's</p> <p>23 concerns that it was paying too much because it</p> <p>24 was doing its own business functions and paying</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Again, you know, if it was brought</p> <p>2 before us and we had an auditor and an attorney</p> <p>3 present, we would generally approve those.</p> <p>4 Q. Okay. Am I also correct that there</p> <p>5 was never any issue during the time you were a</p> <p>6 trustee with District 204 not paying its pro</p> <p>7 rata share of the treasurer's expenses?</p> <p>8 A. I don't think so.</p> <p>9 Q. Did you ever hear from anyone whether</p> <p>10 District's 204's Board of Education approved</p> <p>11 the agreement between the TTO and District 204</p> <p>12 that the trustees had approved in March of</p> <p>13 2000?</p> <p>14 A. I did not.</p> <p>15 Q. And this agreement that you and the</p> <p>16 trustees approved in March of 2000, this was</p> <p>17 not intended as a one year only for the 2000</p> <p>18 fiscal year agreement, was it?</p> <p>19 MR. KALTENBACH: Objection. I think it</p> <p>20 misstates the witness' prior testimony.</p> <p>21 Subject to that, you can answer.</p> <p>22 THE WITNESS: Yeah, I mean I don't know</p> <p>23 what the nature of the longevity of it was.</p> <p>24 BY MR. HOFFMAN:</p>	<p style="text-align: right;">Page 45</p> <p>1 for its own business functions, yet it was also</p> <p>2 paying a full share of the pro rata expenses of</p> <p>3 the Treasurer's Office, correct?</p> <p>4 MR. KALTENBACH: Objection. Lack of</p> <p>5 foundation.</p> <p>6 THE WITNESS: Yeah, I don't know what -- if</p> <p>7 any or what business functions they were doing,</p> <p>8 204.</p> <p>9 BY MR. HOFFMAN:</p> <p>10 Q. Doesn't it refer to accounts payable</p> <p>11 and payroll here?</p> <p>12 A. It says that in the letter, but --</p> <p>13 Q. But you don't know?</p> <p>14 A. No, I didn't hear from 204 about that.</p> <p>15 Q. Are you aware of any instance from</p> <p>16 2000 until the end of your term as trustee,</p> <p>17 sir, in which the TTO ever rejected District</p> <p>18 204's net payment or statement of net payment</p> <p>19 to the TTO?</p> <p>20 A. I'm not aware.</p> <p>21 Q. And you understand what I mean by net</p> <p>22 payment, that it's the pro rata expenses minus</p> <p>23 the cost of District 204's business functions?</p> <p>24 A. Yeah, I don't recall. I'm not aware.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. You're not aware of any instance in 2 which the TTO ever said that's not the right 3 amount, we won't accept that?</p> <p>4 A. Correct. That's more internal.</p> <p>5 Q. Well, let me show you what we marked 6 previously, sir, in this case as Connolly 7 Exhibit No. 3. I'm not going to ask you to go 8 through and read every page in this exhibit, 9 but you'll see here, sir, that the first 10 document is that February 29th, 2000, Beckwith 11 memo that we saw earlier that was presented to 12 the trustees in March of 2000, correct?</p> <p>13 A. It looks like the same one.</p> <p>14 Q. And then if you turn the page, sir, 15 there's a similar memorandum for 2001?</p> <p>16 A. Okay.</p> <p>17 Q. And if you turn the page again, 18 there's a similar memorandum for 2002. And 19 again if you keep going, for each subsequent 20 year there's a memorandum that lays out the 21 costs of District 204's business functions that 22 the TTO will bear under their agreement. Do 23 you see that?</p> <p>24 A. I do.</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. HOFFMAN: Let's mark this as Exhibit 2 No. 3.</p> <p>3 (WHEREUPON, said 4 document was marked as 5 Hartigan Deposition 6 Exhibit No. 3 for 7 Identification.)</p> <p>8 BY MR. HOFFMAN:</p> <p>9 Q. Sir, I marked as Hartigan Exhibit No. 10 3 the deposition transcript of Robert Healy 11 taken in this case on November 14th of 2016. 12 Because some of your recollection is a little 13 limited, I'm going to run through some of the 14 testimony that Mr. Healy gave, and I'm going to 15 ask you whether you agree with that testimony 16 or if you don't have a basis to agree with it, 17 I'm going to ask you whether you have any basis 18 to disagree with it. And we'll just kind of 19 run through this that way.</p> <p>20 Then, along the way, if you have 21 any independent recollection of any of these 22 issues, please be kind enough to tell me that, 23 but I don't want to ask you a lot of 24 unnecessary questions.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. And have you seen these memoranda, 2 sir?</p> <p>3 A. Have I seen them?</p> <p>4 Q. Ycs.</p> <p>5 A. No. Unless you sent them to me.</p> <p>6 Q. Okay. But at the time they were 7 issued, you don't remember getting these 8 contemporaneously?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you remember being told at the time 11 by Bob Healy about the information contained in 12 these memos?</p> <p>13 A. No.</p> <p>14 Q. Do you have any reason to believe that 15 the TTO ever rejected these statements of 16 expenses to be borne by the TTO?</p> <p>17 A. I don't remember one way or the other. 18 I doubt it.</p> <p>19 Q. You doubt --</p> <p>20 A. I don't know.</p> <p>21 Q. Very well, sir.</p> <p>22 MR. HOFFMAN: Off the record. 23 (Discussion off the 24 record.)</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Sure.</p> <p>2 Q. It sounds like you were a higher level 3 on some of these issues.</p> <p>4 On page nineteen, sir, of 5 Mr. Healy's deposition --</p> <p>6 MR. KALTENBACH: The actual transcript 7 page, not the exhibit page, right?</p> <p>8 MR. HOFFMAN: Right.</p> <p>9 BY MR. HOFFMAN:</p> <p>10 Q. Mr. Healy testified on lines 12 11 through 16:</p> <p>12 "Question: So the 13 trustees paid for the 14 audits for not just LT 15 but the other school 16 districts? 17 Answer: Right." 18 Is that consistent with your 19 understanding of who paid for the --</p> <p>20 A. I think it is. I think we did pay for 21 the audits of others, as far as I recall.</p> <p>22 Q. On page 33, sir, when we were 23 discussing with Mr. Healy whether the TTO had 24 the capacity to take in-house the business</p>

<p style="text-align: right;">Page 50</p> <p>1 functions that District 204 was performing for</p> <p>2 itself, unlike the other districts, Mr. Healy</p> <p>3 testified in line ten:</p> <p>4 "It would have been</p> <p>5 additional cost.</p> <p>6 Question: You couldn't</p> <p>7 have done the work with</p> <p>8 the staff on hand?</p> <p>9 Answer: Not if LT would</p> <p>10 was to come back. I</p> <p>11 would have had to higher</p> <p>12 a few more people."</p> <p>13 Is that consistent with your</p> <p>14 recollection that the -- or do you simply not</p> <p>15 recall?</p> <p>16 A. I don't recall.</p> <p>17 Q. And when it says on page 34 of the</p> <p>18 transcript starting with line one, and this is</p> <p>19 Healy's testimony:</p> <p>20 "If 204 were to come</p> <p>21 back full force, we</p> <p>22 would have no choice but</p> <p>23 to have to hire more</p> <p>24 people to accommodate</p>	<p style="text-align: right;">Page 52</p> <p>1 that additional work, are you?</p> <p>2 A. I assume that there might be</p> <p>3 additional personnel needed.</p> <p>4 Q. Fair enough. On page 44 of the</p> <p>5 deposition testimony of Mr. Healy, sir, on line</p> <p>6 six, I note a reference in a letter that Healy</p> <p>7 wrote to 105 ILCS 5/8-4 regarding pro rata</p> <p>8 share billing, which we talked about earlier in</p> <p>9 the deposition. Do you recall that provision?</p> <p>10 A. I recall you mentioning it in the</p> <p>11 deposition, yes.</p> <p>12 Q. And starting on line 13, Healy</p> <p>13 testified:</p> <p>14 "Question: And is it</p> <p>15 correct that LT was</p> <p>16 complying with this</p> <p>17 provision for paying its</p> <p>18 pro rata share because</p> <p>19 it paid its pro rata</p> <p>20 share but it simply</p> <p>21 deducted the amount of</p> <p>22 the business functions</p> <p>23 that the trustees had</p> <p>24 agreed to fund in a</p>
<p style="text-align: right;">Page 51</p> <p>1 the increase in</p> <p>2 workload."</p> <p>3 You have no reason to disagree</p> <p>4 with that statement, do you?</p> <p>5 A. Disagree or agree, I don't recall.</p> <p>6 Q. Okay. Well, you do recall that</p> <p>7 District 204 was by far the largest school?</p> <p>8 A. That's correct.</p> <p>9 Q. It was one of two high schools and it</p> <p>10 was much bigger than Argo, right?</p> <p>11 A. I believe so.</p> <p>12 Q. And so LT accounted for about -- a pro</p> <p>13 rata share about 25 percent of the TTO?</p> <p>14 A. If you say so.</p> <p>15 Q. Well, that's what the records</p> <p>16 indicate. I don't think Barry is going to</p> <p>17 disagree with that.</p> <p>18 A. I agree that I think they're the</p> <p>19 largest, as I recall.</p> <p>20 Q. So if by far the largest school, if</p> <p>21 all of their business and accounting functions</p> <p>22 suddenly came into the TTO, you're not</p> <p>23 suggesting that the TTO's current personnel</p> <p>24 would have had enough capacity to deal with all</p>	<p style="text-align: right;">Page 53</p> <p>1 separate agreement?</p> <p>2 Answer: Yes."</p> <p>3 Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. Do you have any reason to doubt the</p> <p>6 accuracy of that testimony?</p> <p>7 A. I don't recall, again, the intricacies</p> <p>8 of the financial on that.</p> <p>9 I assume that they did some of</p> <p>10 it, yeah. Seems logical.</p> <p>11 Q. Skipping ahead quite a bit here.</p> <p>12 On page 116, sir, of Bob Healy's</p> <p>13 deposition testimony -- let's make it 115 of</p> <p>14 Bob Healy's testimony beginning on line 12, it</p> <p>15 says?</p> <p>16 "Question: Now, even if</p> <p>17 there aren't specific</p> <p>18 votes taken in the year</p> <p>19 2001 and 2002 and 2003</p> <p>20 and subsequent years, am</p> <p>21 I correct that the</p> <p>22 trustees were aware</p> <p>23 during the 2001 to 2012</p> <p>24 time period that the</p>

<p style="text-align: right;">Page 54</p> <p>1 trustees were paying for</p> <p>2 LT's business functions</p> <p>3 during that time?"</p> <p>4 And there's an objection and</p> <p>5 colloquy. On line fifteen:</p> <p>6 "Answer: We told them.</p> <p>7 Question: You told who,</p> <p>8 the trustees?</p> <p>9 Answer: Trustees."</p> <p>10 And then it says on line 22:</p> <p>11 "That we were picking up</p> <p>12 some of the costs for</p> <p>13 204 to process the</p> <p>14 regular business</p> <p>15 functions of which we</p> <p>16 were paying a hundred</p> <p>17 percent for the other</p> <p>18 districts, so, yes."</p> <p>19 Do you recall -- is it true that Healy</p> <p>20 discussed with you and the other trustees in</p> <p>21 2001 and subsequent years the fact that the TTO</p> <p>22 was paying for certain business functions at</p> <p>23 District 204?</p> <p>24 MR. KALTENBACH: I'm going to object. I</p>	<p style="text-align: right;">Page 56</p> <p>1 treasurer's jobs was to figure out how</p> <p>2 much -- well, strike that question.</p> <p>3 We talked earlier about the TTO</p> <p>4 holding a considerable amount of money for the</p> <p>5 school districts and investing that money</p> <p>6 pursuant to statute, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And so the TTO held over \$200 million</p> <p>9 in funds during the time you were trustee; is</p> <p>10 that fair to say?</p> <p>11 A. I know it was a large amount. I don't</p> <p>12 know 200 or not. But a very large amount.</p> <p>13 Q. It doesn't sound out of proportion,</p> <p>14 does it?</p> <p>15 A. I don't think so.</p> <p>16 Q. And whose job was it to figure out --</p> <p>17 if you know, whose job was it at the TTO to</p> <p>18 figure out how much money the districts earned</p> <p>19 on their investments and how much money each</p> <p>20 district should be credited with for its</p> <p>21 investment income?</p> <p>22 A. I think that was Healy and his office</p> <p>23 staff and the auditor and -- those are people</p> <p>24 we generally look to.</p>
<p style="text-align: right;">Page 55</p> <p>1 think it's a compound question. I think you</p> <p>2 didn't read all of the transcript. And I think</p> <p>3 it was asked and answered.</p> <p>4 Subject to that, your Honor can</p> <p>5 answer.</p> <p>6 THE WITNESS: I don't recall. And some of</p> <p>7 these years I wasn't a trustee either.</p> <p>8 BY MR. HOFFMAN:</p> <p>9 Q. Right.</p> <p>10 A. So I don't know if he had discussions</p> <p>11 with other trustees.</p> <p>12 Q. On page 117 there's a discussion</p> <p>13 generally speaking about trustees and a broader</p> <p>14 time period than you served, so there's nothing</p> <p>15 specific to you, and it has to do with some</p> <p>16 complaints or questions some of the trustees</p> <p>17 might have raised with respect to District</p> <p>18 204's business function costs.</p> <p>19 Do you recall anything like that</p> <p>20 being discussed by you or the other trustees?</p> <p>21 A. No.</p> <p>22 Q. Okay. Let's set this document aside,</p> <p>23 sir.</p> <p>24 Now, am I correct that one of the</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. And you didn't get -- you and the</p> <p>2 other trustees didn't get personally involved</p> <p>3 in the specifics of that issue, did you?</p> <p>4 A. Personally involved in what?</p> <p>5 Q. In the specifics of that issue, did</p> <p>6 you, in terms of how much money was made and</p> <p>7 what each district would get?</p> <p>8 A. Not at all.</p> <p>9 Q. And if Bob Healy testified that the</p> <p>10 accurate statements of the amounts due to each</p> <p>11 district in investment income are set forth in</p> <p>12 the general ledger of the TTO, do you have any</p> <p>13 reason to doubt the accuracy of that testimony?</p> <p>14 A. I wouldn't know one way or the other</p> <p>15 on that.</p> <p>16 Q. Okay.</p> <p>17 MR. HOFFMAN: Let's mark this as Exhibit</p> <p>18 No. 4.</p> <p>19 (WHEREUPON, said</p> <p>20 document was marked as</p> <p>21 Hartigan Deposition</p> <p>22 Exhibit No. 4 for</p> <p>23 Identification.)</p> <p>24 BY MR. HOFFMAN:</p>

1 Q. Sir, I'm handing you a document dated
2 November 1st, 2012, from the website of the
3 Better Governmental -- excuse me. The Better
4 Government Association which is also known as
5 BGA. Are you familiar with that organization?

6 A. I've heard of them.

7 Q. And at the time this document was
8 prepared, you were already no longer a trustee,
9 right?

10 A. Right.

11 Q. And are you familiar with the BGA
12 doing a report on the TTO?

13 A. No.

14 Q. Have you ever seen a copy of either
15 the letter or the reform suggestions that are
16 part of this exhibit?

17 A. I have never.

18 Q. On page three of this document, sir,
19 under solutions, it says, "The trustees should
20 consider the following reform proposals," then
21 it says, "The two trustees who were on the
22 board when the now former treasurer was
23 engaging in questionable conduct should resign,
24 and they should be replaced by people with

1 yeah.

2 Q. And was it your understanding that the
3 surety bond that if the treasurer or anybody
4 else at the TTO engaged in any kind of
5 misconduct, that the losses to the district and
6 their funds would be covered by the surety bond
7 to the extent that they weren't in excess of a
8 million dollars?

9 A. I'd have to look at the bond and
10 what's covered.

11 I would assume that's for
12 anything wrong that the treasurer did.

13 Q. Would you be surprised to learn that
14 TTO recovered a million dollars on a surety
15 bond but did not distribute those funds to the
16 member districts that were affected by Healy's
17 fraud?

18 A. I don't know one way or the other.

19 Q. How was it that Bob Healy was able to
20 steal so much money from the TTO without being
21 detected for so many years?

22 In hindsight you had to have
23 asked yourself that question.

24 MR. KALTENBACH: Objection. Compound. You

1 financial experience." Do you see that?

2 A. I do.

3 Q. Do you think that's a fair criticism
4 of the trustees that they should be people who
5 have financial experience?

6 A. I don't know. I mean it's -- first of
7 all, that's a job that, you know, kind of a --
8 little bit of an archaic office. I'm not sure
9 people are even aware about how to run for it
10 or if they really want to engage in that type
11 of office.

12 Q. Well, it's an --

13 A. It would help, put it that way. It
14 would help. I don't think it's an absolute
15 requirement, but it would help.

16 Q. One of the problems that the TTO ran
17 into was that Bob Healy stole over a million
18 dollars from the TTO in school district funds,
19 you're aware of that?

20 A. Shocking, I'm aware. I know we did
21 have a surety bond. I do recall that.

22 Q. And you had a -- do you recall it
23 being a million dollars?

24 A. I do recall I think it was a million,

1 can answer.

2 THE WITNESS: I wish I knew. We had an
3 auditor. We had an attorney. Appeared to be
4 reputable on the surface. I think everybody
5 was shocked.

6 BY MR. HOFFMAN:

7 Q. Okay. And you're aware that Bob Healy
8 currently is serving a nine-year sentence for a
9 class X felony of theft of school funds at the
10 Taylorville Correctional Center?

11 A. I'm aware he is in jail, yes.

12 Q. And you haven't had any contact or
13 communications with Bob Healy since you were a
14 trustee, have you?

15 A. Not at all.

16 Q. Is there anything else I haven't
17 covered with you, sir, that has to do with the
18 claims involved in this lawsuit or the issues
19 involving Gurrie's invoices or payment of
20 investment income or pro rata expenses or
21 payment by the TTO of District 204's business
22 functions that you can tell me about that I
23 haven't asked you?

24 A. The only thing I can recall

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CHANCERY DIVISION
6 TOWNSHIP TRUSTEES OF)
7 SCHOOLS TOWNSHIP 38)
8 NORTH, RANGE 12 EAST,)
9 Plaintiff,)
10 vs.) Case No. 13 CH 23386
11 LYONS TOWNSHIP HIGH)
12 SCHOOL DISTRICT 204,)
13 Defendant.)
14

15 The deposition of DENNIS KELLY, called
16 for examination, taken pursuant to the provisions
17 of the Code of Civil Procedure and the Rules of the
18 Supreme Court of the State of Illinois pertaining
19 to the taking of depositions for the purpose of
20 discovery taken before WENDY A. KILLEN,
21 CSR No. 84-003772, a Certified Shorthand Reporter
22 of said state, on January 18, 2017, at the hour of
23 1:05 p.m. at 225 West Washington Street,
24 Suite 2600, Chicago, Illinois, pursuant to notice.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 MILLER, CANFIELD, PADDOCK and STONE, PLC,</p> <p>3 by MR. BARRY P. KALTENBACH</p> <p>4 225 West Washington Street, Suite 2600</p> <p>5 Chicago, Illinois 60606</p> <p>6 (312) 460-4251</p> <p>7 kaltenbach@millercanfield.com</p> <p>8 Appeared on behalf of the Plaintiff;</p> <p>9</p> <p>10 HOFFMAN LEGAL, by</p> <p>11 MR. JAY R. HOFFMAN</p> <p>12 20 North Clark Street, Suite 2500</p> <p>13 Chicago, Illinois 60602</p> <p>14 (312) 899-0899</p> <p>15 jay@hoffmanlegal.com</p> <p>16 Appeared on behalf of the Defendant.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 REPORTED BY: WENDY A. KILLEN, CSR</p> <p>24 LICENSE NO.: 084-003772</p>	<p style="text-align: right;">Page 4</p> <p>1 (Whereupon, the witness was duly</p> <p>2 sworn.)</p> <p>3 MR. KALTENBACH: This is the discovery</p> <p>4 deposition of Dennis Kelly.</p> <p>5 Thank you for coming to our office today,</p> <p>6 sir. I appreciate that and I appreciate your</p> <p>7 agreement to show up without making me have a</p> <p>8 process server find you and issue you a subpoena.</p> <p>9 It makes it easier on everyone, including, I am</p> <p>10 sure, you.</p> <p>11 DENNIS KELLY,</p> <p>12 having been first duly sworn, was examined and</p> <p>13 testified as follows:</p> <p>14 EXAMINATION</p> <p>15 BY MR. KALTENBACH:</p> <p>16 Q. Have you ever been deposed before,</p> <p>17 Mr. Kelly?</p> <p>18 A. I think twice, many years ago.</p> <p>19 Q. Other than those two depositions, have you</p> <p>20 ever testified at a trial or a hearing before?</p> <p>21 A. Yes.</p> <p>22 Q. What were those trials?</p> <p>23 How many times did that occur?</p> <p>24 A. Trial was once and it was over -- I was</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 WITNESS EXAMINATION</p> <p>3 DENNIS KELLY</p> <p>4 By Mr. Kaltenbach.....4</p> <p>5 By Mr. Hoffman.....73</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 EXHIBITS</p> <p>13 NUMBER MARKED FOR ID</p> <p>14 Kelly Deposition</p> <p>15 Exhibit No. 1.....22</p> <p>16 Exhibit No. 2.....25</p> <p>17 Exhibit No. 3.....49</p> <p>18 Exhibit No. 4.....54</p> <p>19 Exhibit No. 5.....59</p> <p>20 FIRST REFERENCED</p> <p>21 Conway Deposition</p> <p>22 Exhibit No. 3.....51</p> <p>23 (ALL EXHIBITS WERE RETAINED BY MR. KALTENBACH)</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 representing a school district in litigation over</p> <p>2 administrative appointments.</p> <p>3 Q. Are you a licensed attorney, sir?</p> <p>4 A. Absolutely not.</p> <p>5 Q. Were you at the time?</p> <p>6 A. No.</p> <p>7 Q. You said you were representing a school</p> <p>8 district. I took that to mean you were an</p> <p>9 attorney.</p> <p>10 A. Superintendent.</p> <p>11 Q. So you testified in your capacity as a</p> <p>12 superintendent?</p> <p>13 A. Absolutely, yes.</p> <p>14 Q. Did that have anything at all whatsoever</p> <p>15 to do with the Township Trustees of Schools in this</p> <p>16 case?</p> <p>17 A. No.</p> <p>18 Q. Fair enough. Then I won't ask any more</p> <p>19 about it.</p> <p>20 The two depositions that you gave, what</p> <p>21 kind of cases were those in?</p> <p>22 A. Those were in cases involving school</p> <p>23 positions and appointments.</p> <p>24 Q. Fair enough. I'm not going to ask more</p>

<p style="text-align: right;">Page 6</p> <p>1 about that.</p> <p>2 I'm not going to go through all of the</p> <p>3 rules. If you want to take a break at some point</p> <p>4 today, please let me know. The washroom is across</p> <p>5 the hall. If you want to get more water, if there</p> <p>6 is a phone call you need to take, something like</p> <p>7 that, that's fine. I just ask you answer whatever</p> <p>8 the question is that is pending before you take the</p> <p>9 break. Fair enough, sir?</p> <p>10 A. Yes.</p> <p>11 Q. Is Mr. Hoffman your attorney today?</p> <p>12 A. Yes, he is.</p> <p>13 Q. Fair enough.</p> <p>14 If Mr. Hoffman objects to my questions,</p> <p>15 which is not uncommon to happen during a deposition</p> <p>16 for any attorney to do, you should go ahead, let</p> <p>17 him state his objection, and then answer the</p> <p>18 question anyway. The judge will rule on the</p> <p>19 objection at a later time, if need be.</p> <p>20 The exception is if he objects and then</p> <p>21 instructs you not to answer the question -- I don't</p> <p>22 think that's going to happen today -- if it does,</p> <p>23 we will cross that bridge when we come to it.</p> <p>24 Okay?</p>	<p style="text-align: right;">Page 8</p> <p>1 your bachelor's in English from Wayne State?</p> <p>2 A. '69.</p> <p>3 Q. And then when did you get your master's in</p> <p>4 education?</p> <p>5 A. '72.</p> <p>6 Q. So did you go straight through?</p> <p>7 Did you work for a little?</p> <p>8 A. At the time I was working full-time in the</p> <p>9 Detroit Public Schools.</p> <p>10 Q. At the time you got your master's?</p> <p>11 A. Yes.</p> <p>12 Q. So you began working in the Detroit Public</p> <p>13 Schools after you graduated from Wayne State in</p> <p>14 '69?</p> <p>15 A. Yes.</p> <p>16 Q. And then while you were a full-time</p> <p>17 employee, you went back and got your master's?</p> <p>18 A. Yes.</p> <p>19 Q. When did you get your Ph.D. from Michigan?</p> <p>20 A. 1977.</p> <p>21 Q. And were you still an employee at the</p> <p>22 Detroit public school system at that point?</p> <p>23 A. No. In 1977, I was an administrator for</p> <p>24 the Homewood-Flossmoor School District in</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 Q. Finally, it's important that we both not</p> <p>3 talk over each other because the court reporter can</p> <p>4 only take down what one person is saying at a time.</p> <p>5 And, also, it's important that we make sure</p> <p>6 questions and answers and comments are spoken out</p> <p>7 loud. She can't do things like reflect nodding of</p> <p>8 the head or uh-uh or uh-huh. On the transcript,</p> <p>9 you can't tell what it is. So if I re-ask you or</p> <p>10 ask you to clarify an answer, it might just be</p> <p>11 because I'm concerned about how it appears on the</p> <p>12 transcript. Please don't be offended at that.</p> <p>13 Okay?</p> <p>14 A. I won't.</p> <p>15 Q. Thank you very much.</p> <p>16 I'd like to get a little bit of background</p> <p>17 information to start. What is your educational</p> <p>18 background, sir?</p> <p>19 A. I have two degrees from Wayne State</p> <p>20 University; a bachelor's degree in English and a</p> <p>21 master's degree in education. I have a Ph.D. from</p> <p>22 the University of Michigan in school</p> <p>23 administration.</p> <p>24 Q. And ballpark is fine. When did you get</p>	<p style="text-align: right;">Page 9</p> <p>1 Flossmoor, Illinois.</p> <p>2 Q. Before I jump into your work history, just</p> <p>3 to make sure, are you a member of any professional</p> <p>4 organizations, sir?</p> <p>5 A. Not currently.</p> <p>6 Q. Were you at some point in your career?</p> <p>7 A. Yes.</p> <p>8 Q. What were you a member of, to the best of</p> <p>9 your recollection?</p> <p>10 A. The American Association of School</p> <p>11 Administrators, Association for Schools Curriculum</p> <p>12 Development, which is ASCD. Early on, I was in the</p> <p>13 English Teachers Association.</p> <p>14 Q. Were you in those pretty much the entirety</p> <p>15 of your professional career?</p> <p>16 A. I think I always belonged to at least one</p> <p>17 organization, yes.</p> <p>18 Q. Have you ever had any professional</p> <p>19 licenses?</p> <p>20 A. No.</p> <p>21 Q. Have you ever had any professional</p> <p>22 certifications?</p> <p>23 A. No.</p> <p>24 Q. So after you graduated in '69 with your</p>

<p style="text-align: right;">Page 10</p> <p>1 bachelor's of English, I take it you began working 2 as an English teacher initially? 3 A. Yes. It's a complicated issue. I 4 actually taught full-time two years while I was 5 going to -- my junior and senior year at Wayne 6 State, I taught full-time in Detroit. 7 Q. Okay. That's interesting. 8 So did you continue in that position after 9 you graduated? 10 A. I continued in a position teaching junior 11 high school English, yes, in Detroit. 12 Q. And roughly how long did that last? 13 A. I worked for the Detroit Public Schools 14 for five years. 15 Q. So that takes us up to about '74 or so? 16 A. The fall of '72. 17 Q. Okay. 18 A. Yes. 19 Q. So after you received your master's in 20 education? 21 A. Uh-huh. 22 Q. And then what did you do? 23 A. I taught English at Algonac High School in 24 Algonac, Michigan.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Homewood-Flossmoor? 2 A. Yes. 3 Q. Was there a particular school district, 4 like a numbered district that that was? 5 A. 99 Kedzie Avenue in Flossmoor. I'm 6 blocking on their district number. It's 7 Homewood-Flossmoor High School. It's a high school 8 district. 9 Q. What did you do at Homewood-Flossmoor High 10 School? 11 A. I was the director of instruction for 12 English, which means I was department chair for two 13 buildings and had 42 teachers that I supervised. 14 Q. How long did you hold that position? 15 A. Three years. 16 Q. So up until about the early '80s? 17 A. '79. I was there from '76 to '79. 18 Q. Did you begin working at 19 Homewood-Flossmoor while you were still finishing 20 up your Ph.D.? 21 A. Yes. 22 Q. I'm sorry. You had said that earlier. 23 So in '79, how did your career change 24 then?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. How long did you hold that position? 2 A. Three years. 3 Q. So now we're at about '75? 4 A. Uh-huh. 5 Q. What did you do in '75? 6 A. Took a leave of absence and worked two 7 positions; one for the Metropolitan Detroit Bureau 8 of School Statistics and then I also was a teaching 9 fellow at the University of Michigan. I had those 10 two positions while I did my campus residency. 11 Q. And then you got your Ph.D. in '77? 12 A. Uh-huh. 13 Q. And then what did you do after receiving 14 your doctorate? 15 A. I worked at Homewood-Flossmoor High School 16 as the director of instruction for English. 17 Q. Is there a particular reason that -- it 18 sounds like your education and career up until that 19 point were in Michigan, which I'm sure will make my 20 firm very happy because that's where it's primarily 21 located, but what brought you to Illinois? 22 A. The opportunity to work at what at the 23 time was one of the top school districts in the 24 country.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. I got a position as the principal of 2 University High School in Normal, Illinois, which 3 is a part of the Lab Schools for Illinois State. 4 Q. How long did you hold that position, sir? 5 A. About four years. 6 Q. So that takes us to about '83, '84, 7 somewhere in that time. 8 Then what did you do? 9 A. Uh-huh. 10 Q. I know this can be exhausting. 11 A. They made me the superintendent director 12 of the Lab Schools. 13 Q. So was that more than just University High 14 School then? 15 A. Yes. It's preschool through 12th grade. 16 Q. How long were you the superintendent of 17 the Lab Schools? 18 A. Five years. 19 Q. So we are now in '87, '88, somewhere in 20 that ballpark? 21 A. '88. 22 Q. What did you do in '88, sir? 23 A. In '88, I went to Ewing Township in 24 New Jersey as their superintendent.</p>

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1 MR. HOFFMAN: Can you spell Ewing for the court
 2 reporter?
 3 THE WITNESS: E-w-i-n-g.
 4 BY MR. KALTENBACH:
 5 Q. Just like Patrick?
 6 A. Uh-huh.
 7 Q. What prompted that move?
 8 A. There were a number of reasons. The first
 9 is it was professional advancement. The second, I
 10 wanted my children to be able to experience the
 11 East Coast. I had lived there previously on two
 12 different occasions. The third was I doubled my
 13 salary.
 14 Q. Fair enough.
 15 How long were you out in New Jersey then?
 16 A. Four years, from '88 to '92.
 17 Q. You came back in '92.
 18 Did you then go to Lyons Township 204?
 19 A. Yes.
 20 Q. In this case, my client's full name is a
 21 bit of a mouthful. If I just refer to them as the
 22 Township Trustees, would you know who I'm referring
 23 to?
 24 A. Yes.

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1 Q. Rather than the full name.
 2 And it's my understanding that the --
 3 well, first, let me do this. The name of
 4 Mr. Hoffman's client is Lyons Township High School
 5 District 204.
 6 Can we just refer to that as either LT or
 7 District 204?
 8 A. LT is fine.
 9 Q. That's what you're used to calling it?
 10 A. Yes.
 11 Q. I will try to call it LT. If you are
 12 confused as to what I -- if I slip or something and
 13 you don't understand, please let me know.
 14 So the setup, as I understand it from my
 15 client, is there are three elected trustees and
 16 that they appoint or hire a treasurer. Then the
 17 treasurer has some staff underneath him or her.
 18 Is that your rough understanding?
 19 A. Pretty much.
 20 Q. I know from looking through correspondence
 21 and such that you had communications with the
 22 Treasurer at various points during your tenure at
 23 LT.
 24 So fair to say you've communicated with

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1 Mr. Healy at various points, correct?
 2 A. Yes, I did.
 3 Q. Did you ever communicate with any of
 4 Mr. Healy's staff?
 5 A. No.
 6 Q. Did you ever communicate with any of the
 7 elected trustees?
 8 A. Only after I retired, and I don't know
 9 whether Russ Hartigan was still a trustee at that
 10 point, but he gave me a ward in Township offices
 11 after I retired. That would have been in probably
 12 the fall of 2009.
 13 Q. So you were -- I guess we'll clarify. You
 14 were at LT from '92 until 2009?
 15 A. Yes, I was, 17 years.
 16 Q. Did you hold the same position that entire
 17 time?
 18 A. Yes, I did.
 19 Q. Was that superintendent?
 20 A. Yes.
 21 Q. What were your job duties as
 22 superintendent?
 23 A. To oversee the supervision of 562
 24 employees, to indirectly monitor a \$61 million

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1 budget, to cause 1.4 million square feet of
 2 buildings to be maintained, and to shepherd and
 3 nurture and counsel 4,000 students. I think my real
 4 job description had 41 items on it, but the major
 5 responsibility was overseeing the total operations
 6 of the school district.
 7 Q. Did you think of yourself as kind of a
 8 CEO?
 9 A. I never have because I've known CEOs and
 10 there's a substantial difference between a CEO for
 11 a public entity and a superintendent of a school
 12 district. In my opinion, it's not the same.
 13 Q. As superintendent, were you a member of
 14 the Board of Education for LT?
 15 A. No, no. I am an employee of the Board,
 16 but, no. The board members are elected. Mine is
 17 an appointed position. And I served under the
 18 Board of Education and at their directive.
 19 Q. The Board of Education had various
 20 committees, correct, sir?
 21 A. Yes.
 22 Q. One of them in particular relevant to this
 23 lawsuit is the finance committee, correct?
 24 A. Correct.

<p style="text-align: right;">Page 18</p> <p>1 Q. Were you a member of the finance 2 committee? 3 A. No. 4 Q. Did you regularly attend finance committee 5 meetings? 6 A. I attended all meetings. I attended all 7 board meetings and helped run them. But I also sat 8 in and attended quite often as either a participant 9 or an observer on finance committee meetings, 10 curriculum meetings, buildings and grounds 11 meetings. 12 Q. But you were not, to your knowledge, 13 formally a member of those committees? 14 A. No. 15 Q. You didn't get a vote on those committees? 16 A. Oh, no, no. 17 Q. Generally speaking, who prepared the 18 minutes for the committee meetings or the Board of 19 Education meetings? 20 A. The agenda for committee meetings was 21 typically set by the chairperson of the committee 22 under the direction of the board president. 23 Q. And what about then the meeting minutes of 24 what was discussed?</p>	<p style="text-align: right;">Page 20</p> <p>1 Treasurer's Office? 2 A. I think LT, because of its size and scope 3 and staffing, performed more business operations 4 than any other school district in the co-op and had 5 for a number of years. 6 Q. So that was the situation that you 7 inherited, so to speak? 8 A. It had already been established, yes. 9 Q. After you came aboard, did you discuss 10 with anyone -- strike that. 11 Was LT unhappy at that point with the 12 amount it was paying each year to the Treasurer's 13 Office? 14 A. I think there was a general feeling on the 15 part of many of the board members that the fees 16 didn't represent the level of service that they 17 got. 18 Q. That is to say the LT share of the annual 19 pro rata wasn't commensurate with what they were 20 getting for that dollar value? 21 A. Occasionally there would be a question -- 22 typically not to me, but to the business manager -- 23 and it was always when we reviewed budgets -- of 24 the budget line for the Township Treasurer's Office</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Meeting minutes would have been prepared 2 by the board secretary who attended all of the 3 committee meetings. She would take the minutes, 4 typically send them out to the chair for his or her 5 approval, and then have them published at a future 6 board meeting. 7 Q. You did not take those meeting minutes? 8 A. No. 9 Q. When you started at LT in 1992 as 10 superintendent, generally speaking, what was the 11 relationship with the Township Trustees? 12 A. I think there had already been a history 13 by the time I got there. I think the Board 14 understood that they had to be a part of the 15 organization. Some of them clearly did not want to 16 be a part of the organization, but they were 17 required to. I think most of the board members had 18 questions about the operations of the Township 19 office and its responsiveness to the Board, its 20 sharing of information, just its general 21 professionalism. 22 Q. At the time you began, was LT performing 23 business functions that were the type of functions 24 that normally would have been performed by the</p>	<p style="text-align: right;">Page 21</p> <p>1 seems to be growing, and, yet, we providing all of 2 the services. So there was a general discussion of 3 it, but not any action taken for the first few 4 years. 5 Q. Was action eventually taken? 6 A. Well, eventually, in '99 -- and forgive me 7 if I can't tell you the exact date -- 8 Q. We'll probably look at some documents that 9 might refresh your memory, but I don't want to 10 march you through them extensively right away. 11 A. It was probably 17 years ago. 12 Q. Sure. 13 A. There was a conversation leading into the 14 budget for budget year 2000, and at that time, oh, 15 the line item was probably 164,000, 165,000. At a 16 finance committee meeting, there was a general 17 discussion of, wow, are we getting anything for our 18 money. 19 At that time, I think Lisa Beckwith was in 20 the final end of her tenure. She was asked, along 21 with myself, to -- I was asked to share with Bob 22 Healy some concern on the part of the Board that 23 they didn't feel like they were getting their full 24 \$165,000 worth, and directed Lisa to perhaps sit</p>

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<p style="text-align: right;">Page 22</p> <p>1 down with Bob and see if anything could be done to 2 modify costs or to share services.</p> <p>3 Q. Okay. I know this was a long time ago and 4 I appreciate that. I'm not trying to give you a 5 memory quiz, Dr. -- it is Dr. Kelly, correct?</p> <p>6 A. It's Dennis.</p> <p>7 Q. It's Dennis. I'm probably going to call 8 you Mr. Kelly or Dr. Kelly nonetheless.</p> <p>9 (Whereupon, Kelly Deposition 10 Exhibit No. 1 was marked for 11 identification.)</p> <p>12 BY MR. KALTENBACH:</p> <p>13 Q. I'm going to hand you what we've marked as 14 Kelly Deposition Exhibit Number 1, which is some 15 finance committee meeting minutes that we have kind 16 of just put in order and stapled together as a 17 group exhibit, beginning with a meeting on May 28th 18 of 1999. It indicates that you were one of those 19 in attendance at this meeting.</p> <p>20 Reviewing this first meeting minute, which 21 is a page and a half, sir, does it kind of cause 22 you to remember this particular meeting?</p> <p>23 A. As much as I could a committee meeting. I 24 do remember that -- and I don't know whether this</p>	<p style="text-align: right;">Page 24</p> <p>1 is the reason that Mr. Shapiro asked Mr. Healy and 2 Dr. Beckwith to look at options for the Board to 3 review to perhaps modify the cost.</p> <p>4 BY MR. KALTENBACH:</p> <p>5 Q. And at the time of the next page, you'll 6 see the minutes reflect that Dr. Beckwith -- and 7 she was the business manager, correct?</p> <p>8 A. Yes. Lisa Beckwith at that time was the 9 business manager.</p> <p>10 Q. She reported to the committee on several 11 options, and then it lists four options.</p> <p>12 Do you recall discussing those options at 13 all?</p> <p>14 A. No, I don't. My recollection would be 15 Lisa presented them, but that they weren't really 16 discussed.</p> <p>17 Q. But is it fair to say your takeaway from 18 this is that Dr. Beckwith and Mr. Healy were going 19 to try to come up with some options to address 20 Mr. Shapiro's concern?</p> <p>21 A. Yes.</p> <p>22 Q. Before we jump to the next committee 23 minute, which is September 29th of '99, we're going 24 to mark a memorandum that's not a committee meeting</p>
<p style="text-align: right;">Page 23</p> <p>1 was the first meeting that Bob Healy had attended 2 with the Board or not, but I remember sometime 3 prior to this calling him and inviting him to a 4 committee meeting and it might have been this one.</p> <p>5 Certainly I remember that both Healy and 6 Dr. Beckwith were asked to review options or 7 prepare options for the Board.</p> <p>8 Q. If you see the paragraph at the bottom of 9 the first page, it mentions that Mr. Shapiro was 10 reviewing the percentages and it looks like that 11 year LT was paying about 26 percent of the pro rata 12 and it indicated his unhappiness with paying that 13 much.</p> <p>14 Is that consistent with your recollection 15 at that time, sir?</p> <p>16 MR. HOFFMAN: Well, I object to the form of the 17 question in that it provides counsel's 18 interpretation of what this says. I have no 19 objection to the witness being asked about it.</p> <p>20 THE WITNESS: While I would never have 21 remembered the 26 percent, I know that during the 22 course of my lifetime at LT the percentage varied 23 from, oh, a little over 20 percent, 26. So this 24 probably would have been the peak, and I think this</p>	<p style="text-align: right;">Page 25</p> <p>1 minute, but we're going to mark it as Kelly Exhibit 2 Number 2.</p> <p>3 (Whereupon, Kelly Deposition 4 Exhibit No. 2 was marked for 5 identification.)</p> <p>6 BY MR. KALTENBACH:</p> <p>7 Q. Do you recognize Exhibit Number 2, sir?</p> <p>8 A. Anything that I have signed and initialed, 9 I better acknowledge that I recognize, yes.</p> <p>10 Q. And the initials by your name, that is, in 11 fact, your initials, sir, that you placed there?</p> <p>12 A. DG Kelly, DGK, yes.</p> <p>13 Q. Is this a memo you wrote to the Board of 14 Education on or about June 4th of '99?</p> <p>15 A. Yes.</p> <p>16 Q. What was the purpose of this memo, sir?</p> <p>17 A. I believe it was to clarify that Mr. Healy 18 had been spoken to and that he was going to try to 19 cooperate with us because I think the initial 20 conversation with Mr. Healy was quite defensive.</p> <p>21 Q. When you say the initial conversation, are 22 you referring to the meeting on May 28th of '99 or 23 is that a different conversation?</p> <p>24 A. I think it's one in the same, May 28th.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. So your recollection is that Mr. Healy was 2 defensive at the finance committee meeting? 3 A. Yeah. I think one of the things that 4 Mr. Healy was operating under was his fear that 5 Lyons Township High School was going to try to go 6 nuclear on him and close down his operation. So 7 that was one of the things that when I talked to 8 Bob and when the Board responded to him, they tried 9 to assure him that we're not trying to close down 10 your operation, we're trying to make it more cost 11 efficient for Lyons Township High School. 12 Q. Why did you refer to closing down his 13 operation -- I guess what do you mean by closing 14 down his operation? 15 A. Well, closing it down for Lyons Township 16 High School. Periodically in just about every one 17 of the school districts in Lyons Township, there 18 would be discussion as to whether the district 19 wanted to stay in the Township Treasurer's Office. 20 It always came down to the same thing. It's not an 21 easy thing to do. It takes legislative actions. 22 It's extremely political. It's contentious. 23 I think the majority of my board members 24 at the time felt it was easier and better to try to</p>	<p style="text-align: right;">Page 28</p> <p>1 several other superintendents who mentioned to Bob 2 the fact that one or two of their board members 3 might have been saying the same things. It was not 4 just Lyons Township High School. Bob realized it 5 would get to a point quickly that he would not have 6 a job, the Township office wouldn't exist. 7 BY MR. KALTENBACH: 8 Q. I'm just curious. Are these things that 9 Mr. Healy expressed to you or is that kind of your 10 own -- and I'm not questioning the logical steps 11 involved. Was that kind of just your own belief of 12 what he was concerned with? 13 A. I don't ever remember having a 14 conversation with Bob about closing down the 15 Township offices. That is my own personal belief 16 based on the reactions I saw from him and on my 17 conversations with board members. 18 Q. Your June memo then, the second paragraph, 19 you state, "I spoke with Bob Healy this past 20 weekend and he was very apologetic about his 21 behavior and lack of cooperation." 22 So I guess the weekend between May 28th 23 and June 4th, fair to say you must have had a 24 conversation with Mr. Healy?</p>
<p style="text-align: right;">Page 27</p> <p>1 get a resolution. They weren't that interested in 2 trying to get a legal solution. They just didn't 3 see that as something they wanted to try to do at 4 the time. 5 Q. When you say legal solution, do you 6 mean -- 7 A. In Springfield. 8 Q. -- a legislative solution? 9 A. Uh-huh, in Springfield. 10 Q. And then you described closing down his 11 operation as -- you've described that as the 12 nuclear option. What did you mean by that? 13 A. Well, LT would leave. There were no other 14 options. If you leave the organization, you no 15 longer belong to it. That's what I would call a 16 nuclear option. 17 Q. And did Mr. Healy ever explain to you why 18 that was not something he wanted to have happen? 19 A. Well, yeah. 20 MR. HOFFMAN: I apologize for laughing. Go 21 ahead and answer the question. It is funny, but go 22 ahead. 23 THE WITNESS: I think Bob realized if LT, 24 because of its size and influence -- there were</p>	<p style="text-align: right;">Page 29</p> <p>1 A. I believe it was probably on a Friday 2 afternoon. 3 Q. Out of curiosity, why would you believe it 4 was on a Friday afternoon? 5 A. Because that's when Bob usually called. 6 Q. Was that a weekly occurrence? 7 A. No, no. 8 Q. How often was that? 9 A. One of the problems in dealing with Bob 10 was your conversations and your contact with him 11 were very sporadic. 12 Q. Did he not return your calls? 13 A. No. I don't think that was the case. I 14 think he would eventually return calls. But I 15 think Bob's management style was to fly under the 16 radar screen. 17 Q. Do you recall the conversation on that 18 Friday with Mr. Healy? Does that stand out 19 particularly in your mind? 20 A. No, no. 21 Q. Do you recall him being apologetic about 22 his behavior at some point? 23 A. Well, I just remember in looking at 24 whether -- I'm reading the memo twice now.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Sure.</p> <p>2 A. I do remember he called me up basically to</p> <p>3 try to mend fences and to see what could be done.</p> <p>4 He wanted me to know that he was going to try hard</p> <p>5 to keep my board happy.</p> <p>6 Q. And part of that was coming up with a</p> <p>7 solution, along with Dr. Beckwith, right?</p> <p>8 A. Yes.</p> <p>9 Q. In the next paragraph you mention that</p> <p>10 Mr. Healy then dropped off a revised billing</p> <p>11 statement, and you say today, so I assume that that</p> <p>12 would have been on June 4th.</p> <p>13 Are you referring to the annual pro rata</p> <p>14 billing?</p> <p>15 A. I really don't know. One could assume</p> <p>16 that that would be all I would be referring to.</p> <p>17 Q. Well, would you think that's a fair</p> <p>18 assumption based on --</p> <p>19 A. I think it would be.</p> <p>20 Q. -- based on the dollar amount involved</p> <p>21 also?</p> <p>22 A. Yes. I'm looking at 155.8. That's a</p> <p>23 ballpark figure, yes.</p> <p>24 Q. And you note that it was \$24,000 lower.</p>	<p style="text-align: right;">Page 32</p> <p>1 new invoice that's \$24,000 less?</p> <p>2 A. Well, let me correct you. The nuclear</p> <p>3 option was not discussed. We never really clearly</p> <p>4 discussed Lyons Township High School leaving the</p> <p>5 Township Treasure's Office, so that wasn't on the</p> <p>6 table. It did appear curious to me that he came up</p> <p>7 with lowering the bill \$24,000 after there was a</p> <p>8 discussion of it being too high.</p> <p>9 Q. Did you voice that curiosity to anyone</p> <p>10 within LT, any of the board members, for instance,</p> <p>11 is what I mean?</p> <p>12 A. I don't think so. I think if it had been</p> <p>13 the other way around, if the bill had been \$24,000</p> <p>14 higher, I would have had a lot of explaining to do,</p> <p>15 but the fact that it was less spoke for itself. I</p> <p>16 quite often avoided stating the obvious.</p> <p>17 Q. What was the obvious to you here?</p> <p>18 A. The obvious was that the bill would have</p> <p>19 been changed to hopefully help Lyons Township High</p> <p>20 School.</p> <p>21 MR. HOFFMAN: Excuse me.</p> <p>22 MR. KALTENBACH: Jay, I don't know that it's</p> <p>23 proper for you to in the middle of questioning lean</p> <p>24 over and direct the witness' attention to another</p>
<p style="text-align: right;">Page 31</p> <p>1 Would that have been lower than the other</p> <p>2 billing statement for that same period of time?</p> <p>3 A. Probably the original billing statement</p> <p>4 that he gave us was 179.</p> <p>5 Q. And then you conclude that paragraph by</p> <p>6 saying, "He admitted that his office had made a</p> <p>7 mistake in calculating our fees."</p> <p>8 What did you mean by that, sir?</p> <p>9 A. Just exactly what it says. I would have</p> <p>10 asked Bob what's this change about. It wasn't any</p> <p>11 revisions. It was the fact that he said there was</p> <p>12 a miscalculation made.</p> <p>13 Q. He did explain the miscalculation, that is</p> <p>14 kind of a line item, if you will?</p> <p>15 A. No.</p> <p>16 Q. Based on what the record isn't going to</p> <p>17 reflect, which is your facial reaction, I would say</p> <p>18 that you feel that was pretty typical of Mr. Healy,</p> <p>19 that detail might be lacking?</p> <p>20 A. Sometimes details were lacking, yes,</p> <p>21 that's correct.</p> <p>22 Q. Did it cause you any concern that after a</p> <p>23 meeting in which the threat of a nuclear option was</p> <p>24 discussed, Mr. Healy shows up at your office with a</p>	<p style="text-align: right;">Page 33</p> <p>1 document.</p> <p>2 MR. HOFFMAN: I don't know what you consider</p> <p>3 proper or not, but I was pointing out to the</p> <p>4 witness that the exact question that you are asking</p> <p>5 him about is discussed in Kelly Exhibit Number 1.</p> <p>6 Perhaps you should be aware of that given your</p> <p>7 question seems to indicate you don't know what your</p> <p>8 own documents say. I thought it was only fair to</p> <p>9 direct the witness to take a look at a document you</p> <p>10 have already introduced into evidence.</p> <p>11 MR. KALTENBACH: I haven't introduced anything</p> <p>12 into evidence, but..</p> <p>13 THE WITNESS: He explains the difference here.</p> <p>14 It becomes a part of it. It's not a</p> <p>15 miscalculation. It's that the original bill</p> <p>16 included the revenue for bonds that should not have</p> <p>17 been included. So that \$24,000 would have been</p> <p>18 revenue for bonds that he pulled back out.</p> <p>19 MR. HOFFMAN: For the record, the witness is</p> <p>20 pointing at Page 1 in the middle of Kelly Exhibit</p> <p>21 Number 1.</p> <p>22 MR. KALTENBACH: Mr. Hoffman, please feel free</p> <p>23 when you have an opportunity to question Dr. Kelly</p> <p>24 to ask him things like that. Don't interrupt my</p>

<p style="text-align: right;">Page 34</p> <p>1 questioning of the witness because you don't like 2 his answer and you want to direct him back to other 3 documents. I'm not trying to ambush the man. He 4 had the documents in front of him. But, 5 nonetheless, I don't think that was proper 6 behavior. 7 MR. HOFFMAN: Barry, I disagree with you. When 8 your question expresses an ignorance of the record 9 and documents you've introduced, I'll do what I 10 need to do. Next question. 11 MR. KALTENBACH: We're going to put in a little 12 asterisk on that page. I think Judge Hall may have 13 to get into this. 14 MR. HOFFMAN: That's fine. 15 BY MR. KALTENBACH: 16 Q. Sir, you conclude by saying, with 17 reference to Kelly Exhibit 2, "As a result of our 18 conversation and the latest memo, I am feeling much 19 more positive about the situation," and then you 20 continue. 21 What memo were you referring to there, if 22 you recall, sir? 23 A. I have no idea. All I can tell you is I 24 was positive because I thought the problem at hand</p>	<p style="text-align: right;">Page 36</p> <p>1 finance committee meeting. This is now 2 September 29th of '99. 3 I guess before we do that, how often did 4 the finance committee meet? 5 A. Most of the board committees met on a 6 needs basis. Quite often they met monthly, but if 7 there was not a need, meetings weren't held. 8 Q. Do you think it's possible there would not 9 have been a meeting -- and I don't know, maybe 10 there is a meeting minute and I don't have it here. 11 Do you think it's possible given it was 12 summer break there wasn't a meeting during June, 13 July, or August? 14 A. I should have mentioned that. Typically 15 during the summer, the board committees did not 16 meet unless there was -- 17 Q. Particular -- 18 A. -- a particular issue. Buildings and 19 grounds, for instance, would meet in the late 20 summer to go over all of the things that were to 21 have been put in place for the start of the school 22 year. But that's an exception. Most of them did 23 not meet. 24 Q. Okay. Thank you.</p>
<p style="text-align: right;">Page 35</p> <p>1 with Dr. Beckwith and Bob Healy having to meet 2 throughout the summer -- I was looking for a 3 positive resolution to it, but I don't know what 4 the latest memo -- in 17 years at Lyons Township 5 High School, I wrote over 40,000 memos. That one 6 I -- 7 Q. I'm wondering if you might -- I'm sorry. 8 I didn't mean to cut you off. 9 A. Go ahead. 10 Q. I'm wondering if you might be referring to 11 a memo that Mr. Healy gave you? 12 A. I have no idea. 13 Q. Fair enough. 14 You had mentioned Dr. Beckwith and 15 Mr. Healy working over the summer. 16 Was there kind of a time at which you were 17 expecting them to report back on their progress? 18 A. I don't think there was a set date 19 established. I think their directive was to come 20 up with options, and when you have them, present 21 them at a finance committee meeting. 22 Q. Turning back to Kelly Exhibit Number 1 23 then, if we can go to the third page of that 24 exhibit, that's what I believe to be the next</p>	<p style="text-align: right;">Page 37</p> <p>1 At this meeting, again, it indicates your 2 attendance and Mr. Healy's attendance on 3 September 29th of 1999. Certainly take a minute to 4 review the document. But my question is going to 5 be: Do you recall this particular meeting? 6 A. I don't recall specifics about it. I just 7 remember that Healy and Beckwith were there. I 8 think Mark Pera and Todd Shapiro had asked them to 9 kind of start to break out costs for the business 10 office. They were looking at the relationship 11 between our business office and the Township 12 Treasurer's Office where there was overlap or where 13 we were duplicating services. That's what they 14 were looking at, I think, in this particular 15 meeting. 16 Q. It seems like at this point in time a 17 direction had kind of been chosen and that was that 18 certain costs that LT was incurring for business 19 functions would be billed to the Treasurer's 20 Office; is that a fair characterization, sir? 21 A. I think what they were talking about was 22 the LT business office, the services we were 23 providing there, the question became what would 24 happen if we stopped providing those services and</p>

<p style="text-align: right;">Page 38</p> <p>1 they got extended into the Townships Treasurer's 2 Office, it would create a staffing need and a big 3 additional cost for them. So I think those two 4 merged together. 5 Q. Do you recall at this meeting -- and, 6 again, I'm just sort of kind of not trying to make 7 you guess. 8 At the end of that third paragraph, beyond 9 the attendance list, it says, "Mr. Healy indicated 10 the Township Board of Trustees is supportive of 11 this method." 12 Do you, by happenstance, recall him 13 expressing that in particular? 14 A. All I remember is, I believe, Todd Shapiro 15 asked him if the Township -- if the information was 16 being shared with the Board of Trustees and what 17 they thought about it. And Bob's response, I 18 believe, was very short and said, yeah, they 19 support it. 20 Q. Is that a recollection from this 21 particular meeting to the best of your ability? 22 A. I remember more Shapiro asking the 23 question because he was very particular about 24 details.</p>	<p style="text-align: right;">Page 40</p> <p>1 will discuss the Treasurer charges at a later 2 meeting." 3 Directing your attention to that, does 4 that jog anything at all, sir? 5 A. No, no. 6 Q. You are not sure what additional 7 information was provided by Mr. Healy? 8 A. No. And it would have -- I don't know 9 where it would have come from, whether it would 10 have been a memo to me or a memo to Lisa Beckwith. 11 Q. Fair enough. 12 The final page on Kelly Exhibit 1 is a 13 committee meeting minute from March 22nd of 2000, 14 which is a few months later, although the start of 15 the next school semester. 16 Was LT on the semester system when you 17 were there, sir? 18 A. Yes. The semester for LT in the year 2000 19 would have ended the second week of January. 20 Q. I'm sorry. It would have ended the second 21 week or begun the second week? 22 A. No. The first semester would have ended 23 the second week of January, and then March would 24 have been about two months into the second</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. And Mr. Healy -- 2 A. A general response of, yeah, they know and 3 they support it. 4 Q. If we can turn to the next page of Kelly 5 Exhibit 1, we see now a finance committee meeting 6 minute from November 4th of '99, which is about a 7 month later, a little bit over a month, but not by 8 much. This indicates your attendance, again, sir. 9 It does not indicate Mr. Healy's attendance this 10 time. 11 Do you recall this meeting? 12 A. Boy, I don't. I remember the September 13 meeting ironically not so much because of the 14 Township Treasurer's Office, but I was there to 15 talk about the possible sale of Willow Springs 16 property, and that was at the time the much bigger 17 of the two issues. So I -- boy, I'm just -- I'm 18 not remembering this very much from this one. 19 Q. Let me direct your attention to an item 20 and see if that jogs it at all. 21 From the bottom up, the third paragraph, 22 it states, "The committee received additional 23 information provided by the Township Treasurer," 24 and then the next sentence, "The Finance Committee</p>	<p style="text-align: right;">Page 41</p> <p>1 semester. 2 Q. Okay. Again, it's possible there is a 3 meeting minute that isn't in here, so I'm not going 4 to represent to you there isn't one in between. 5 Would it strike you as unusual if the 6 finance committee had met on November 4th and then 7 did not meet again until March 22nd? 8 A. I don't think it would be totally unusual. 9 It would depend on issues being discussed at full 10 board meetings. Quite often, in lieu of small 11 finance committee meetings or curriculum committee 12 meetings, they would discuss a singular issue at a 13 full board meeting. I think it would be a little 14 unusual for that amount of time to pass. 15 Q. Okay. Starting with the -- so you have 16 the members present paragraph and then Mr. Pera 17 calling it to order. Then you have the first 18 substantial paragraph. It states, "The Committee 19 reviewed the recommended changes in the Township 20 Treasurer billing." 21 Do you recall that being discussed at this 22 meeting, sir? 23 A. I think Lisa and Bob Healy had come up 24 with four or five options for the Board. The first</p>

<p style="text-align: right;">Page 42</p> <p>1 option that was never really considered was to 2 terminate the relationship. The second option was 3 the one that both Lisa and Bob agreed upon, and 4 that was a restructuring and reallocation, kind of 5 a cost-back system where some of the salaried 6 positions and benefits in LT's office would be 7 charged against the pro rata. So this would have 8 been the second option, I believe. 9 Q. And it goes on for the next couple of 10 sentences to describe a little bit more about what 11 that change is, so I don't want to -- you certainly 12 should feel free to read that in terms of jogging 13 your memory or something along those lines. 14 It states a few sentences, "This will be 15 effective for the 1999 to 2000 school year." 16 Do you see that, sir? 17 A. Yes. 18 Q. To you, when would the 1999 to 2000 school 19 year be in terms of on a calendar? 20 A. Good question. I'm not certain at the 21 time whether we were going on a January 1st to 22 December 31st calendar or not. I don't think so. 23 I think our calendar started -- our budget calendar 24 started new July the 1st.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. I have no idea. 2 Q. Well, for instance, he's not reflected as 3 being in attendance at this meeting, so it 4 presumably would not have been at this meeting. 5 Was it before the meeting? Was it after 6 the meeting? Are you able to place that temporally 7 at all? 8 MR. HOFFMAN: What is it that we're talking 9 about; when the Trustees -- 10 MR. KALTENBACH: When Bob told him the Trustees 11 agreed. 12 MR. HOFFMAN: Okay. And he said he didn't 13 know. The question is: Does that help you to 14 remember in any way the date? 15 Right, that's the question? 16 THE WITNESS: No, I don't. 17 MR. KALTENBACH: Fair enough. 18 THE WITNESS: You need to know the lack of 19 communication that we had. I never got minutes 20 from the Board of Trustees. Bob would have always 21 received copies of our minutes and our -- he was on 22 the roster, you see, for all of the board meetings 23 and minutes from Lyons Township High School. We 24 never got anything from him. I'm kind of in the</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. I believe that's the fiscal year that the 2 Treasurer's Office was using, July 1st through 3 June 30th. So you would understand the agreement 4 or the recommended change. 5 Do you recall if that was when it was 6 going to come into effect for the school year, I 7 guess, that would have then been ending on 8 June 30th of 2000? 9 A. I think what this indicates to me is that 10 when that billing would come out, there would be an 11 adjustment made prior to the new fiscal year in 12 2000, which would have been July 1st of 2000. 13 Q. As of this meeting on March 22nd of 2000, 14 to your knowledge, had District 204 and the 15 Township Trustees entered into an agreement 16 regarding the billing change? 17 A. I'm not quite certain what you mean by an 18 agreement because the Board had met and agreed upon 19 this option, and the understanding was that Bob had 20 met with the Township Trustees and that they had 21 voted on it. So that would suggest to me that 22 there was an agreement made. 23 Q. When did Bob let you know that the 24 Township Trustees had agreed?</p>	<p style="text-align: right;">Page 45</p> <p>1 dark on that one. 2 BY MR. KALTENBACH: 3 Q. Did you have discussions yourself with 4 Mr. Healy about the topic of the Trustees paying 5 for certain of the business functions of LT? 6 A. No, no. It wasn't my job and it was very 7 clear from the board director, from both Mark Pera, 8 the board president, and Todd Shapiro, the head of 9 the finance committee, that they wanted Lisa to 10 communicate directly and to develop the 11 relationship and come up with the options and 12 present the final plan. 13 I wasn't really involved in that, so that 14 would have almost been inappropriate for me to do 15 at the time. 16 Q. Because you wouldn't have wanted to 17 interject yourself given that Dr. Beckwith -- 18 A. No. He might have had the question who am 19 I really dealing with; am I dealing with Kelly or 20 Beckwith or who. 21 Q. Fair enough. 22 Ultimately, is it your understanding, 23 Dr. Kelly, that there was an agreement between LT 24 and the Township Trustees on that topic?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. It was my understanding, it was 2 Dr. Beckwith's understanding, and certainly was the 3 Board's understanding, the agreement from 4 '99/2000 -- and I'm saying this in retrospect, 5 because after that, it seemed like every year there 6 was an additional agreement for the year going 7 through. So it was not a one-year agreement. It 8 looked to me like it was still in place when I left 9 in 2009.</p> <p>10 Q. What is your basis for saying it wasn't a 11 one-year agreement?</p> <p>12 Where are you getting that from?</p> <p>13 A. Well, I'm getting it from the board 14 minutes and the billings from Bob Healy that 15 included the pro rata for the services we provided. 16 Typically that came from -- oh, gosh, the first 17 year it was Lisa and then Lisa left. Right as this 18 was all being put into place, she retired and -- 19 well, she didn't retire. She went and took care of 20 her child, which was more important for her.</p> <p>21 Harold Huang came in and he was involved 22 in it. I remember his memos. And then the latter 23 four years David Sellers was involved. Eventually 24 somebody set up a spreadsheet and the positions</p>	<p style="text-align: right;">Page 48</p> <p>1 saw some of the memos. So we talked about the 2 arrangement and what his role was in it.</p> <p>3 I told him at the time this is coming out 4 of the business office, this is not the 5 superintendent's office, so if you have questions, 6 ask me, but this is part of your responsibility.</p> <p>7 Then, oh, five years later when Sellers 8 started, I remember having the same conversation 9 with him, but to a limited degree, because David 10 had already been a part of LT before in a different 11 position, so he knew a lot more than Harold would 12 have coming in.</p> <p>13 Q. What was the agreement that was reached 14 with the Township Trustees insofar as you were 15 aware of it?</p> <p>16 A. Well, my understanding was the prorated 17 amount, which is based on actually the amount of 18 money that the school district had for investing, 19 services that LT was providing, rather than stop 20 those services and return them to the Township 21 Treasurer and having that expense, Lyons Township 22 High School was able to charge back those against 23 the fee. And it was typically, I think, the first 24 year -- oh, goodness -- it was \$106,000 or</p>
<p style="text-align: right;">Page 47</p> <p>1 were listed with benefits.</p> <p>2 Q. I don't want to walk you through more 3 paperwork than I have to. You mentioned these 4 memos and we've looked at those before. These are 5 memos generated annually by the business manager to 6 Mr. Healy.</p> <p>7 Is that what you're referring to, sir?</p> <p>8 A. I believe it came out of the business 9 office, yes.</p> <p>10 Q. Did you receive copies of those memos?</p> <p>11 A. Typically I would have gotten a copy at 12 the finance committee meeting.</p> <p>13 Q. Did you ever discuss those memos with 14 Mr. Healy?</p> <p>15 A. Probably not.</p> <p>16 Q. Did you discuss them with the business 17 manager that drafted them in any given year?</p> <p>18 A. The one discussion I remember having -- 19 well, I had actually two discussions. The first 20 one was because it was a relatively new arrangement 21 when Harold Huang came in in July of 2000, I 22 remember sitting down with him in my office and 23 that was one of his questions was tell me what's 24 been going on. He had gone through the files and</p>	<p style="text-align: right;">Page 49</p> <p>1 \$105,000, and over time it grew as salaries grew 2 and different people assumed different positions in 3 the business office.</p> <p>4 MR. KALTENBACH: Let's mark this as Kelly 5 Exhibit 3.</p> <p>6 (Whereupon, Kelly Deposition 7 Exhibit No. 3 was marked for 8 identification.)</p> <p>9 BY MR. KALTENBACH:</p> <p>10 Q. This looks to be a letter from Mr. Healy 11 to you, sir, on September 7th of 2000.</p> <p>12 Do you recall getting this letter from 13 Mr. Healy on or about that date?</p> <p>14 A. Well, I must have because I remember the 15 \$106,000. I couldn't have told you what the offset 16 was against it. I remember getting this from -- I 17 don't know whether I got this from Bob every year 18 thereafter or whether he sent it to the business 19 office instead. But, yeah, this would have been to 20 commemorate the first year.</p> <p>21 MR. HOFFMAN: I would ask the witness to take a 22 moment and read it.</p> <p>23 THE WITNESS: Okay.</p> <p>24</p>

<p style="text-align: right;">Page 50</p> <p>1 BY MR. KALTENBACH:</p> <p>2 Q. Have you had a --</p> <p>3 A. Yeah. This was actually the second year.</p> <p>4 The first year would have ended about June 30th.</p> <p>5 Q. June 30th?</p> <p>6 A. So this is the second year that it was</p> <p>7 done. I stand corrected. I'm sorry.</p> <p>8 Q. So this would have been during the</p> <p>9 2000/2001 year, correct?</p> <p>10 A. It would have had to be because Lisa was</p> <p>11 gone by then, as he's referring to Harold, yes.</p> <p>12 Q. Yeah, at the end he mentions Harold.</p> <p>13 A. Yes.</p> <p>14 Q. So he states that funding last year</p> <p>15 totaled \$106,403, which brought -- maybe there's</p> <p>16 some bad grammar here -- which brought the</p> <p>17 District's -- apostrophe S -- a net payment to</p> <p>18 \$59,073.</p> <p>19 What was your understanding of what he was</p> <p>20 communicating to you there, sir?</p> <p>21 A. Well, funding last year would have been</p> <p>22 '99/2000 then. If you do the math, you are looking</p> <p>23 at about a \$47,000 payback that they gave the</p> <p>24 school district credit for.</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. KALTENBACH:</p> <p>2 Q. I'm going to show you the first page of</p> <p>3 Conway Exhibit 3, sir, just so you've got that in</p> <p>4 front of you.</p> <p>5 That purports to be a memo from</p> <p>6 Dr. Beckwith to Bob Healy on leap day of 2000.</p> <p>7 A. Okay.</p> <p>8 Q. Do you recall seeing that memo before,</p> <p>9 sir?</p> <p>10 MR. HOFFMAN: Why don't you give him a minute</p> <p>11 to look it over?</p> <p>12 MR. KALTENBACH: Sure. That's fine.</p> <p>13 THE WITNESS: I don't recall it. But knowing</p> <p>14 Lisa Beckwith, I'm sure I saw it before she sent it</p> <p>15 out.</p> <p>16 BY MR. KALTENBACH:</p> <p>17 Q. Fair enough. I'll take that back.</p> <p>18 So she comes up with the \$106,403 and</p> <p>19 that's where that's from.</p> <p>20 A. Okay.</p> <p>21 Q. So given that, sir, maybe that puts a</p> <p>22 little bit of context onto the \$106,403 number that</p> <p>23 Mr. Healy writes.</p> <p>24 So is it your understanding then that for</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. I'll try to avoid doing it if I can. I</p> <p>2 will represent to you that the first memo that</p> <p>3 Dr. Beckwith prepared where she sent it to</p> <p>4 Mr. Healy and said this is the amount of our</p> <p>5 services, that totalled \$106,403.</p> <p>6 MR. HOFFMAN: I'd like you to show -- instead</p> <p>7 of representing it, I would like you to show it him</p> <p>8 to it, please.</p> <p>9 MR. KALTENBACH: That's fine.</p> <p>10 THE WITNESS: And this is from '99/2000?</p> <p>11 MR. HOFFMAN: You'll see.</p> <p>12 MR. KALTENBACH: It's part of Conway Exhibit 3,</p> <p>13 as I'm going to hand it to him that way.</p> <p>14 MR. HOFFMAN: That's fine. I don't think there</p> <p>15 is any dispute over the numbers.</p> <p>16 MR. KALTENBACH: No, but you asked me to show</p> <p>17 it to him.</p> <p>18 MR. HOFFMAN: You are asking him to explain</p> <p>19 these numbers. I think we all know what they mean.</p> <p>20 You can ask him whatever questions you want. If</p> <p>21 you ask him the questions, I'm going to make sure</p> <p>22 that they're fair.</p> <p>23 MR. KALTENBACH: That's fine.</p> <p>24</p>	<p style="text-align: right;">Page 53</p> <p>1 last year, which would have been the year ending</p> <p>2 June 30th of 2000, LT would have paid \$59,073</p> <p>3 because it had gotten a credit, so to speak, for</p> <p>4 the \$106,000?</p> <p>5 A. Even with the atrocious grammar here, I've</p> <p>6 come to that conclusion that the total would have</p> <p>7 been somewhere about 174-something, and of that, we</p> <p>8 paid 59.</p> <p>9 Q. Okay. You had earlier mentioned a</p> <p>10 47,000-something number and I just wanted to make</p> <p>11 sure that -- I was wondering if you were maybe</p> <p>12 subtracting the 59 from the 106, as opposed to</p> <p>13 maybe adding it to the 106?</p> <p>14 A. No. I think the total would have been the</p> <p>15 106,000, plus the 59.</p> <p>16 Q. In other words, that would have been the</p> <p>17 total bill send to LT?</p> <p>18 A. Yeah.</p> <p>19 Q. Fair enough.</p> <p>20 Do you recall getting a similar letter,</p> <p>21 such as this, every year from Mr. Healy?</p> <p>22 A. No. It might have gone to the business</p> <p>23 office or it might have been one of those</p> <p>24 flow-through things where I get it, I look at it</p>

<p style="text-align: right;">Page 54</p> <p>1 and put HH on it and send it down to the business 2 office. 3 MR. KALTENBACH: We've been going about an hour 4 now. If you want to take a couple minutes, it's as 5 good a time as any. 6 MR. HOFFMAN: That works for me. 7 (Whereupon, a break was taken.) 8 (Whereupon, Kelly Deposition 9 Exhibit No. 4 was marked for 10 identification.) 11 BY MR. KALTENBACH: 12 Q. Dr. Kelly, I'm going to show you a letter 13 that has been marked as Kelly Exhibit 4. It is 14 fairly long and I'm not going to ask you a ton of 15 detailed questions about it, but it purports to be 16 a January 12, 2001 letter to you from Mr. Healy. 17 Take a moment. I'm not going to tell you 18 you can't read the whole thing. I'm going to tell 19 you you don't need to, but certainly familiarize 20 yourself with it and let me know when you have. 21 MR. HOFFMAN: Off the record. 22 (Whereupon, a discussion was had 23 off the record.) 24 THE WITNESS: Okay.</p>	<p style="text-align: right;">Page 56</p> <p>1 about that time, we were going through with 2 Hinsdale School District 86 a de-annexation of a 3 two-block property parallel to the expressway, to 4 294. When I got to the bottom of Page 5, I 5 thought, well, maybe that was part of the 6 motivation also. It was uncontended, but Bob still 7 had to -- he was responsible for hosting the 8 meetings and monitoring them. 9 Q. Sir, I can show it to you if you want, but 10 I will represent to you an extremely similar letter 11 was sent to Dr. Beckwith in -- 12 MR. HOFFMAN: 1999. 13 BY MR. KALTENBACH: 14 Q. -- 1999. It's not word for word, but it's 15 very similar. 16 So I guess what I'm wondering is knowing 17 that, does that help you maybe figure out at all 18 what the purpose of this letter was any better than 19 you've already testified? 20 A. Not at all. 21 Q. Do you recall ever asking Bob Healy for an 22 analysis or a summary of what it was the 23 Treasurer's Office did? 24 A. No, no.</p>
<p style="text-align: right;">Page 55</p> <p>1 BY MR. KALTENBACH: 2 Q. You've had a moment now to look through 3 the letter, sir? 4 A. Uh-huh. 5 Q. Do you recall receiving this letter from 6 Mr. Healy on or about January 12th of 2001? 7 A. No. 8 Q. Does the letter ring a bell at all to you? 9 A. I was trying to think of the reasons for 10 him sending me this letter. Obviously if he says 11 Dear Dennis, I requested it. I didn't request it 12 on my behalf. I would have requested it on the 13 school district's behalf. 14 The motivation behind it probably had to 15 do with information we weren't getting relating to 16 our funds. We were anticipating getting quarterly 17 summations of our investments, and we were lucky to 18 get an annual. That was probably the motivation 19 behind it. 20 Q. It seems like the letter covers a lot more 21 topics than just the investment of district funds. 22 So you are not sure, for lack of a 23 better -- 24 A. I'm not certain because on Page 5 -- on or</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. I take it, based on your general lack of 2 recollection of the specific letter, you don't 3 recall discussing this letter with anyone at LT or 4 with Mr. Healy? 5 A. No, I don't. 6 Q. You had mentioned the investment of funds. 7 One of the functions the Treasurer's 8 Office performed for all districts was to invest 9 funds to generate interest income, correct, sir? 10 A. Yes. 11 Q. Before we go too much further, let me ask 12 you this: Can I ask what you did to prepare for 13 your deposition today? 14 A. I had general conversations with my 15 counsel. 16 Q. I certainly don't want to know the 17 substance of those. 18 A. No, just general. 19 Q. Did you review any documents in 20 preparation for your deposition? 21 A. A small number, and, honestly, I flipped 22 through them. 23 Q. Do you, by chance, remember what they 24 were?</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 Were there any deposition transcripts?</p> <p>2 A. No.</p> <p>3 Q. Were there pleadings, that is an answer or</p> <p>4 complaint or counterclaim?</p> <p>5 A. I don't think so.</p> <p>6 Q. Were they, to the best of your</p> <p>7 recollection, documents that were kind of just</p> <p>8 generated in the course of business from either of</p> <p>9 the parties?</p> <p>10 A. I think most of them had either Lisa</p> <p>11 Beckwith's name on them or my name on them, and</p> <p>12 there were a few from Bob Healy.</p> <p>13 Q. Roughly when did you review those? Was it</p> <p>14 real recently? Was it a few months ago?</p> <p>15 A. I had my first meeting with counsel in</p> <p>16 July and that was kind of a get-to-know-you, where</p> <p>17 he provided me general directions on where the case</p> <p>18 was going, what was involved. We had a followup</p> <p>19 phone conversation the following week. I've</p> <p>20 obviously talked to him a couple of times to set</p> <p>21 this up, and then today for about an hour.</p> <p>22 Q. Okay. Fair enough.</p> <p>23 Did you discuss the fact that you are</p> <p>24 being deposed or the substance of your anticipated</p>	<p style="text-align: right;">Page 60</p> <p>1 Cicero.</p> <p>2 Q. You mention four banks. You say they have</p> <p>3 been financially supportive to LTHS.</p> <p>4 You mean Lyons Township High School?</p> <p>5 A. Yes, the monies involved student</p> <p>6 scholarships.</p> <p>7 Q. So these banks provide --</p> <p>8 A. They were involved in scholarship</p> <p>9 programs.</p> <p>10 Q. For high school students?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Does this relate to investment to</p> <p>13 generate interest income?</p> <p>14 A. Well, the idea was in the future he could</p> <p>15 look at these banks and add them to the list of</p> <p>16 possible places to get CDs.</p> <p>17 Q. Sure.</p> <p>18 Do you know, did he take you up on this</p> <p>19 recommendation?</p> <p>20 A. I have no idea.</p> <p>21 Q. Did he specifically ask you to recommend</p> <p>22 some banks?</p> <p>23 A. Yes. And from my conversations with other</p> <p>24 superintendents, he asked them also.</p>
<p style="text-align: right;">Page 59</p> <p>1 testimony with anyone from LT?</p> <p>2 A. Oh, absolutely not.</p> <p>3 MR. KALTENBACH: I'm going to mark a document</p> <p>4 as Kelly Exhibit Number 5.</p> <p>5 (Whereupon, Kelly Deposition</p> <p>6 Exhibit No. 5 was marked for</p> <p>7 identification.)</p> <p>8 BY MR. KALTENBACH:</p> <p>9 Q. This purports to be a May 2, 1996 letter</p> <p>10 from yourself to Mr. Healy. It's one page with</p> <p>11 some handwritten notes on the second page of the</p> <p>12 exhibit, in any event.</p> <p>13 Do you recognize this exhibit, sir?</p> <p>14 A. Yes. Bob had requested that I provide him</p> <p>15 some information.</p> <p>16 Q. What information did he request that you</p> <p>17 provide?</p> <p>18 A. He told me he did it with all school</p> <p>19 districts. He would ask them for any local banks</p> <p>20 that he might approach for involvement in the</p> <p>21 funding plan. The idea there was if there are</p> <p>22 community banks that have been supportive of the</p> <p>23 high school or Lyons Township in general, he wanted</p> <p>24 to include them, rather than go to Berwyn or</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Was it a one-time request or was it a</p> <p>2 periodic request?</p> <p>3 A. No. It was pretty much one time. That's</p> <p>4 all I remember, one time.</p> <p>5 Q. The second page has some handwritten</p> <p>6 notes.</p> <p>7 Is that your handwriting?</p> <p>8 A. That would be my scratching, yes.</p> <p>9 Q. There's kind of three circled blurbs and</p> <p>10 then there's some other stuff.</p> <p>11 Just in terms of helping me understand,</p> <p>12 what are the three circled blurbs?</p> <p>13 A. I think what I did was use the \$1,000</p> <p>14 scholarship as a cutoff. And if you look, the four</p> <p>15 banks that I recommended all had contributed \$1,000</p> <p>16 or more to scholarship funds.</p> <p>17 Q. So State Bank of Countryside had</p> <p>18 contributed \$1,000; is that your note?</p> <p>19 A. Yes.</p> <p>20 Q. Prairie Bank had done \$1,000, correct?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Bank One of LaGrange had done \$5,000?</p> <p>23 A. Yes.</p> <p>24 Q. And First National Bank of Brookfield had</p>

<p style="text-align: right;">Page 62</p> <p>1 done \$2,500?</p> <p>2 A. Yes.</p> <p>3 Q. So the other banks are banks that had</p> <p>4 contributed money to the scholarship?</p> <p>5 A. Smaller amounts.</p> <p>6 Q. But smaller amounts?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And then you have a handwritten note</p> <p>9 beneath that that says board meeting Thursday</p> <p>10 night; is that what that says?</p> <p>11 A. Yes.</p> <p>12 Q. And what's the -- it looks like maybe the</p> <p>13 word mess or --</p> <p>14 A. I think it was going to be message, but I</p> <p>15 never completed that. And Janet, for your</p> <p>16 information, would have been my secretary. I was</p> <p>17 probably going to put message and something and</p> <p>18 then decided not to do it.</p> <p>19 Q. I'll take that back. I was just curious</p> <p>20 what that was.</p> <p>21 Are you aware, sir, that one of the issues</p> <p>22 in this case relates to whether or not LT was</p> <p>23 allocated the correct amount of interest income</p> <p>24 from investments?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Did you get that report, to your</p> <p>2 knowledge?</p> <p>3 When I say you, I mean LT.</p> <p>4 A. Usually we did; quite often, only after</p> <p>5 requesting it multiple times. And we were not the</p> <p>6 only school district. When I would meet monthly</p> <p>7 with the other superintendents in Lyons Township,</p> <p>8 there was always a discussion about the lack of</p> <p>9 information that we got. We would say, wow, over</p> <p>10 \$200 million in investments and we're getting no</p> <p>11 information back on it.</p> <p>12 Q. That was frustrating?</p> <p>13 A. Very.</p> <p>14 Q. Is that something you directed your</p> <p>15 business managers to follow up on?</p> <p>16 A. I usually didn't have to. I was blessed</p> <p>17 with really good, competent business managers, and</p> <p>18 I didn't have to talk basic details to them.</p> <p>19 Usually they would come to me and say I've already</p> <p>20 made two phone calls and we're going to have a</p> <p>21 come-to-Jesus phone call and you can expect to have</p> <p>22 some information within the next 30 days.</p> <p>23 Q. That's what the business managers would</p> <p>24 tell you, to expect that information?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. I think I was told that, yes.</p> <p>2 Q. Did you ever discuss that issue with</p> <p>3 Mr. Healy?</p> <p>4 A. No, no. It never came up.</p> <p>5 Q. Do you have --</p> <p>6 MR. HOFFMAN: Wait, wait. I'm sorry. Did you</p> <p>7 ever discuss the issue of the amount that was</p> <p>8 correct or did you never discuss investment issues</p> <p>9 with him at all?</p> <p>10 THE WITNESS: We used to complain all the time</p> <p>11 about not receiving information. It was just on --</p> <p>12 I don't think we ever got to the point where we</p> <p>13 were arguing the exact return. Quite often we</p> <p>14 didn't have the information to even have that</p> <p>15 argument.</p> <p>16 BY MR. KALTENBACH:</p> <p>17 Q. That was my question, sir, and I think you</p> <p>18 answered it, was did you discuss specifically the</p> <p>19 issue of was District 204 underallocated or</p> <p>20 overallocated interest income.</p> <p>21 You never discussed that with Mr. Healy,</p> <p>22 correct?</p> <p>23 A. No. We were doing our best to give an</p> <p>24 annual report of what the investment amounts were.</p>	<p style="text-align: right;">Page 65</p> <p>1 A. Yes, uh-huh.</p> <p>2 Q. When you took over as superintendent in</p> <p>3 '92 and thereafter, every year LT had an annual</p> <p>4 audit done, correct?</p> <p>5 A. Uh-huh, yes.</p> <p>6 Q. And it's your understanding that that</p> <p>7 audit is one that's required by the school code,</p> <p>8 correct?</p> <p>9 A. I believe it's statutory, yes.</p> <p>10 Q. What was your role in getting that audit</p> <p>11 performed each year?</p> <p>12 A. I actually had very little to do with it.</p> <p>13 It was typically done through the business office.</p> <p>14 I'm trying to think of the name of the -- Gurry was</p> <p>15 the original firm that did it for years and years.</p> <p>16 I think they are using somebody different now.</p> <p>17 They would typically have -- the initial</p> <p>18 audit would be presented -- well, you'd know when</p> <p>19 they were in because there would be three young</p> <p>20 people all dressed in black.</p> <p>21 Q. Accountants are stylish.</p> <p>22 A. It looked like a car had been lost at a</p> <p>23 funeral and they decided to rest in the business</p> <p>24 office. They would be there for a week making</p>

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1 everyone way too nervous.

2 Then usually the following month, Bob

3 what's-his-name from Gurry would come in to a

4 finance committee meeting and present the initial

5 audit, and he would do that as a courtesy. Then at

6 the next board meeting, he would be there and

7 present it in public.

8 Q. And this was the audit of LT itself,

9 correct?

10 A. Of the high school, only District 204.

11 Q. And it's your recollection that when you

12 took over, it was an accounting firm by the name of

13 Gurry that was doing the audit?

14 A. I think it was, yes.

15 Q. And later, for instance, does the name

16 Baker Tilly ring a bell?

17 A. No. That was after I left, I think.

18 Q. Did you play any role in the selection of

19 the audit firm that was going to do the audit?

20 A. Absolutely not.

21 Q. When you took over, was District 204

22 paying for its audit each year?

23 A. To the best of my recollection, no. My

24 recollection is that all of the school districts in

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1 Lyons Township, the audit was supplied through the

2 Township Treasurer's Office. My first business

3 manager would have been Leon Eich. And I think I

4 remember Leon Eich telling me, that it was unusual

5 for him, and he said the Township pays all of the

6 audits for the school districts as part of

7 financial payback.

8 Q. Was Mr. Eich Dr. Beckwith's predecessor?

9 A. Yes.

10 Q. And he was the business manager when you

11 began?

12 A. Yes, he was.

13 MR. HOFFMAN: You may know this, but for the

14 record, he's deceased.

15 MR. KALTENBACH: Okay. I did not know that.

16 THE WITNESS: He died at the beginning of my

17 third year there.

18 BY MR. KALTENBACH:

19 Q. So Mr. Eich informed you that the audit

20 for 204 was supplied through the Treasurer's

21 Office?

22 A. Yes.

23 Q. And what was your understanding? What do

24 you mean supplied through?

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1 What do you mean by that?

2 A. How I read it was when it came time for

3 Gurry to send out the bill, they sent it to the

4 Township Treasurer's Office for 204, for 101, for

5 102, for all of the school districts.

6 Q. So it's your belief or your understanding

7 that the Treasurer paid the bill out of the

8 Treasurer's funds for each school district audit,

9 correct?

10 A. Yes.

11 Q. And I just want to make sure -- I'm not

12 trying to be repetitive. I just want to make sure

13 I nail it down.

14 That's what Mr. Eich informed you,

15 correct?

16 A. I believe that's what he said, yes.

17 Q. Did you -- and I'm not trying to make you

18 think it's not true. Do you recall hearing that

19 from anyone else?

20 I think Mr. Healy may have said that in

21 letters. I think he said it in the letter we just

22 looked at a little bit ago. You can certainly look

23 at that. I have no problem with that.

24 A. No. I'm thinking I heard other

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1 superintendents say it.

2 MR. HOFFMAN: Just so you know, this is what he

3 is referring to.

4 MR. KALTENBACH: Yeah. And so for the record,

5 can you --

6 MR. HOFFMAN: Referring to Kelly Exhibit 4,

7 Page 5, Annual Audit, quote, Trustees hire and pay

8 for the audit of the school districts -- that's

9 plural -- and the Treasurer's Office in Lyons

10 Township.

11 BY MR. KALTENBACH:

12 Q. I know that that's something Mr. Healy at

13 least said in a letter to you. It's something

14 Mr. Eich told you.

15 I'm just trying to figure out did you hear

16 that from anyone else?

17 A. I believe I heard it from my friend and

18 fellow superintendent at District 105, Ed Olds,

19 told me about it.

20 MR. HOFFMAN: What is it, so we're clear?

21 THE WITNESS: About the audits being paid for

22 through the Township Treasurer's Office.

23 BY MR. KALTENBACH:

24 Q. I'm not going to exhaustively ask you who

Page 70

1 is everyone that told you that. But is your source
 2 of that understanding what other people have told
 3 you?
 4 A. That, and I don't believe I have ever seen
 5 a line item in the LT budget for an audit. The
 6 first year, I actually ran the business office for
 7 six months. I was there for five months or so, and
 8 Leon Eich went down with a serious illness and he
 9 was out for three or four months. And so that
 10 first major budget I got not only to prepare, but
 11 to present, and I don't recall seeing any line item
 12 for an audit in it.
 13 Q. Do you know why the Treasurer's Office
 14 paid for LT's annual audit?
 15 A. No idea.
 16 Q. Did you reach an agreement with Mr. Healy
 17 that the Treasurer's Office would pay for that
 18 audit?
 19 A. I wouldn't have because it was already
 20 placed when I got there.
 21 Q. How was it your understanding that it was
 22 already in place?
 23 MR. HOFFMAN: Other than what he has already
 24 testified to?

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1 THE WITNESS: Because Leon Eich had told me
 2 that in the past it had been paid for through the
 3 Township Treasurer's Office.
 4 BY MR. KALTENBACH:
 5 Q. Did Mr. Eich tell you that him and
 6 Mr. Healy reached an agreement to that effect?
 7 A. No.
 8 Q. That's what had been done, correct?
 9 A. (Nodding head affirmatively)
 10 Q. You are nodding your head. I want to make
 11 sure.
 12 A. Yes. That is what had been done in the
 13 past before 1992.
 14 Q. And did Mr. Eich tell you why the
 15 Treasurer was doing that?
 16 A. I don't recall specifically. He probably
 17 just said --
 18 MR. HOFFMAN: Just a second. Don't speculate
 19 and don't guess. If you remember what he said to
 20 you, that's fine.
 21 THE WITNESS: Okay. I don't really remember,
 22 and I can't call Leon on the phone and ask him.
 23 BY MR. KALTENBACH:
 24 Q. I don't want you to guess. But if you

Page 72

1 have a belief based on logic, logical inferences
 2 you've drawn, I would like to know that.
 3 MR. HOFFMAN: That's fair.
 4 THE WITNESS: No. All of my beliefs are not
 5 based on logic. I'm a Cubs fan and a Catholic, so
 6 nothing I believe has to do with logic. Sorry.
 7 BY MR. KALTENBACH:
 8 Q. Did you ever discuss with Mr. Healy
 9 himself the topic of the Treasurer's Office paying
 10 for LT's annual audit?
 11 A. It never came up.
 12 Q. Did you discuss with Mr. Healy the topic
 13 of the Treasurer's Office paying for any other
 14 districts' annual audits?
 15 A. It never came up for LT or for the other
 16 districts in our conversations.
 17 MR. KALTENBACH: I think I might be done. Can
 18 we take a couple minutes?
 19 MR. HOFFMAN: Sure. No problem.
 20 (Whereupon, a break was taken.)
 21 MR. KALTENBACH: I have no further questions,
 22 Dr. Kelly. Obviously your counsel may have some
 23 followup, and based on what he asks you, that may
 24 prompt followup of my own. But thank you, again,

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1 for coming down here today. I appreciate it, sir.
 2 THE WITNESS: Thank you very much. I
 3 appreciate it.
 4 EXAMINATION
 5 BY MR. HOFFMAN:
 6 Q. Dr. Kelly, you testified about discussions
 7 you had with Ed Olds, who was the superintendent of
 8 District 105.
 9 Do you remember that testimony?
 10 A. Yes, I do.
 11 Q. What did you learn from speaking with him
 12 about TTO's payments for the annual audits of any
 13 of the school districts?
 14 A. I don't think we talked about other school
 15 districts, just about 105 and 204. But I believe
 16 our assumption at the time would have been that if
 17 they are paying for 105 and 204, they are probably
 18 are also paying for the other school districts.
 19 Q. Just backing up a step, what did you learn
 20 from your discussions about who paid for District
 21 105's audits at that discussion?
 22 A. Well, Ed had mentioned that the Township
 23 Treasurer's Office was paying for the audit of his
 24 school district, also.

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1 Q. As best as you can, tell me when this
2 discussion with Mr. Olds took place. I understand
3 it was a long time ago, but I have to ask you that.
4 A. Somewhere in the mid 1990s probably.
5 Q. And is this a conversation that you would
6 have had with him face to face?
7 A. Over lunch.
8 MR. HOFFMAN: I have no further questions.
9 MR. KALTENBACH: We're done.
10 MR. HOFFMAN: Thank you. Signature reserved.
11 FURTHER DEPONENT SAITH NOT.
12 (The deposition concluded at
13 3:05 p.m.)
14
15
16
17
18
19
20
21
22
23
24 (RESERVED)

Page 75

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4
5 I, Wendy A. Killen, a certified shorthand
6 reporter in the State of Illinois, do hereby
7 certify:
8 That previous to the commencement of the
9 examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;
12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction
15 and constitutes a true record of the testimony
16 given and the proceedings had;
17 That the said deposition was taken before
18 me at the time and place specified;
19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in
23 the outcome of this action.
24

Page 76

1 IN WITNESS WHEREOF, I do hereunto set
2 my hand at Chicago, Illinois, this 23rd of
3 January 2017.
4
5 *Wendy A. Killen*
6 Certified Shorthand Reporter
7 CSR Certificate No. 84-003772
8
9
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1 Veritext Legal Solutions
2 1 North Franklin Street - Suite 3000
3 Chicago, Illinois 60606
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5
6 January 31, 2017
7 To: Jay R. Hoffman, Esq.
8
9 Case Name: Township Trustees of Schools Township 38 North, Range 12
10 East v. Lyons Township High School District 204
11 Veritext Reference Number: 2516119
12 Witness: Dennis Kelly Deposition Date: 1/18/2017
13
14 Dear Sir/Madam:
15
16 Enclosed please find a deposition transcript. Please have the witness
17 review the transcript and note any changes or corrections on the
18 included errata sheet, indicating the page, line number, change, and
19 the reason for the change. Have the witness' signature at the bottom
20 of the sheet notarized and forward errata sheet back to us at the
21 address shown above, or email to production-midwest@veritext.com.
22
23 If the errata is not returned within thirty days of your receipt of
24 this letter, the reading and signing will be deemed waived.
25
26 Sincerely,
27
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20 (Pages 74 - 77)

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1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

2 ASSIGNMENT NO: 2516119

3 CASE NAME: Township Trustees of Schools Township 38 North,
Range 12 East v. Lyons Township High School District 204

4 DATE OF DEPOSITION: 1/18/2017

5 WITNESS' NAME: Dennis Kelly

6 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

7 I have made no changes to the testimony
as transcribed by the court reporter.

8

9 Date _____ Dennis Kelly

10 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
11 the referenced witness did personally appear
and acknowledge that:

12 They have read the transcript;

13 They signed the foregoing Sworn
Statement; and

14 Their execution of this Statement is of
their free act and deed.

15 I have affixed my name and official seal
16 this _____ day of _____, 20____.

17

18 Notary Public _____

19 Commission Expiration Date _____

20

21

22

23

24

25

Page 80

1 ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST

2 ASSIGNMENT NO: 2516119

3 PAGE/LINE(S) / CHANGE /REASON

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 Date _____ Dennis Kelly

21 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____

22 DAY OF _____, 20____.

23 _____

24 Notary Public _____

25 Commission Expiration Date _____

Page 79

1 DEPOSITION REVIEW
CERTIFICATION OF WITNESS

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Range 12 East v. Lyons Township High School District 204

4 DATE OF DEPOSITION: 1/18/2017

5 WITNESS' NAME: Dennis Kelly

6 In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

7 I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
8 well as the reason(s) for the change(s).

9 I request that these changes be entered
as part of the record of my testimony.

10

11 I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
12 testimony and be incorporated therein.

13

14 Date _____ Dennis Kelly

15 Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
16 and acknowledge that:

17 They have read the transcript;

18 They have listed all of their corrections
in the appended Errata Sheet;

19 They signed the foregoing Sworn
Statement; and

20 Their execution of this Statement is of
their free act and deed.

21 I have affixed my name and official seal
22 this _____ day of _____, 20____.

23

24 Notary Public _____

25 Commission Expiration Date _____

21 (Pages 78 - 80)

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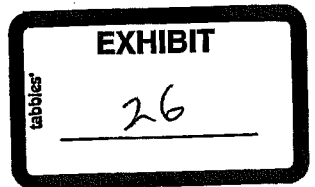
Legislation would allow districts to withdraw from township school treasurer's office



Lyons Township School Treasurer Susan Birkenmaier (left) and office manager Lauralee Conway at an August 2015 meeting at the agency's office in La Grange. (Jane Michaels/Pioneer Press)

By Jane Michaels

MAY 26, 2017, 2:16 PM



The third time could be the charm for state legislation allowing Lyons Township High School to chart its own financial future and withdraw from control of the Lyons Township School Treasurer's Office.

A bill introduced May 10 by House Minority Leader Jim Durkin, a Republican from Western Springs, also allows five surrounding elementary districts and the La Grange Area Department of Special Education cooperative to break from the treasurer's office and appoint or elect their own treasurers.

Durkin has sponsored two similar bills since 2014, which passed the House but were blocked by Democrats in the Senate.

But the latest version stipulates that any changes as a result of districts withdrawing will not affect legal

action pending against LTHS.

High school officials have been seeking to leave the treasurer's office since 2014, soon after the district was sued by the treasurer's office for \$4.4 million, including \$2.6 million in back fees for financial services.

The legal outcome, which remains unresolved, was a sticking point for Sen. Steve Landek, a Bridgeview Democrat, who held the first bill in committee and amended the second bill to require the high school to set aside \$6.5 million in escrow in case it lost.

Although a Senate version hasn't been introduced, Landek said he has met with Durkin and agreed to work on legislation "amenable to all" over the summer. "We are both committed," he said.

The lawsuit followed charges in 2013 that former Treasurer Robert Healy stole more than \$1.5 million in school funds during his 24 years on the job. A Better Government Association investigation uncovered a host of financial irregularities and a glaring lack of oversight by a three-member elected board charged with managing the office.

Healy pleaded guilty in 2015 to stealing \$100,000 and is serving a nine-year sentence at the Taylorville Correctional Center.

The school treasurer's office is responsible for investing more than \$280 million in assets and managing payroll and expenses for 13 school districts in La Grange, Western Springs, Burr Ridge and surrounding towns.

LTHS officials contend no money is owed, because an agreement was reached in 1999 in open session with Healy so that the high school would process its own payroll and accounts receivable and payable, and receive a credit from the treasurer's office to avoid paying twice for the same function.

Both the high school and treasurer's office boards approved operating procedures based on the agreement, LTHS officials have said.

Township School Treasurer Susan Birkenmaier said negotiations are continuing in the lawsuit and no trial date has been set. The treasurer's office legal expenses are more than \$1 million, she said.

Birkenmaier said the treasurer's office offers member districts greater returns by pooling money for investments, providing financial expertise and offering services smaller districts may not be able to afford, as well as economies of scale in processing financial transactions.

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In addition to LTHS, La Grange elementary districts 102 and 105, as well as the La Grange Area Department of Special Education, are on record seeking to withdraw from the treasurer's office and handle their own finances.

Durkin's bill also names Western Springs District 101, LaGrange Highlands District 106 and Pleasantdale District 107 in Burr Ridge as eligible to withdraw if those school boards choose to do so.

Birkenmaier said it's unclear whether the treasurer's office could remain viable if more than half the member districts leave.

"It would be speculative at this point," she said. "The legislation would have to pass first before we're in a position to see how the districts or this office would be impacted."

Durkin noted most township school treasurer offices were eliminated in the 1960s, except for Cook County, and area districts should have the option of exercising local control over their finances.

State law requires township treasurer offices in Cook County to handle all financial transactions. Districts may withdraw only if an amendment is passed, or by a lengthy process contingent on whether other school boards in the township agree and a majority of township residents approve the matter by referendum.

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This article is related to: High Schools, James B. Durkin

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