

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' Answer to District 204's Second Amended Counterclaim**, 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

Gerald E. Kubasiak  
Barry P. Kaltenbach  
Gretchen M. Kubasiak  
Miller Canfield Paddock & Stone, PLC  
225 W. Washington, Suite 2600  
Chicago, Illinois 60606  
(312) 460-4200  
(312) 460-4201  
Firm No. 44233

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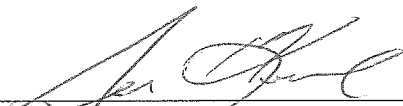
### PROOF OF SERVICE

The undersigned, an attorney, certifies that a copy of the following document, **Township Trustees' Answer to District 204's Second Amended Counterclaim**, 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

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' ANSWER TO  
DISTRICT 204'S SECOND AMENDED COUNTERCLAIM**

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 Answer to the Second Amended Counterclaim filed by Defendant and Counter-Plaintiff, Lyons Township High School Dist. 204 ("District 204" or "LT"), states as follows:

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

**Answer:** Township Trustees admits paragraph 1.

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

**Answer:** Township Trustees admits paragraph 2.

3. The TTO has three elected Trustees. The Trustees select a salaried Treasurer.

**Answer:** Township Trustees admits paragraph 3, except that they "appoint" (not "select") a salaried Treasurer.

4. The Treasurer manages the TTO's office, supervises its support staff, and interfaces with the school districts that are members of the TTO.

**Answer:** Township Trustees denies paragraph 4.

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

**Answer:** Township Trustees admits the first sentence of paragraph 5. The second sentence of paragraph 39 contains an allegation of law to which it is not appropriate to respond. To the extent the second sentence of paragraph 39 can be deemed as containing factual allegations, such allegations are admitted.

6. The TTO holds the funds (received through taxes and other sources) belonging to LT and the other member school districts ("the Other Districts"). The TTO pools the funds of the member districts together and invests those funds on behalf of LT and the Other Districts.

**Answer:** Township Trustees admits paragraph 6.

7. During all relevant times through August 2012, Robert Healy served as Treasurer of the TTO.

**Answer:** Township Trustees denies that at all relevant time through about August 2012, served as "Treasurer of the TTO." Township Trustees admits that Healy served as Treasurer during this time period.

#### **Count I – Setoff**

8. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses and paragraphs 1-7 of the Counterclaim as set forth above.

**Answer:** Township Trustees incorporates its replies to paragraphs 1-51 of District 204's Affirmative Defenses and answers to paragraphs 1-7 of the Second Amended Counterclaim.

9. In the First Amended Complaint, the TTO contends that LT did not pay in full the invoices that the TTO sent LT from 2000 to 2012 for LT's pro rata share of the TTO's expenses. Implicit in the First Amended Complaint is a refusal to acknowledge that the TTO and LT agreed in 2000, and reaffirmed in each subsequent year through 2012, that the TTO would pay the costs of LT's business functions and offset those costs against the pro rata invoices.

**Answer:** Township Trustees admits that in its First Amended Complaint it alleges that District 204 did not pay the invoices that were sent to District 204. Township Trustees denies the remaining allegations in paragraph 9.

10. In its other pleadings in this case, the TTO has claimed that the parties' agreement on the payment of LT's business functions is illegal and unenforceable.

**Answer:** Township Trustees admits that it contends that to the extent any such agreement existed, it was not entered into in accordance with Illinois law and would have violated Illinois law. Township Trustees denies any remaining allegations within paragraph 10.

11. The TTO's position on this agreement is wrong. As detailed above, in 2000, the TTO and LT knowingly entered into a valid and binding written agreement, approved by both boards, in which the TTO agreed to pay the costs of LT's business expenses as set forth in the 2/29/00 Memo (Exhibit B).

**Answer:** Township Trustees denies paragraph 11.

12. In each subsequent year from 2001 to 2012, the TTO and LT reaffirmed this agreement when LT presented the TTO with a written statement of the annual costs that it

proposed the TTO would pay (Exhibit C). In each of those years, the TTO accepted these amounts, as well as LT's offset of those amounts against the annual pro rata expense invoice that the TTO provided to LT. The boards of both parties provided their consents to this arrangement.

**Answer:** Township Trustees denies paragraph 12.

13. In 2013, the TTO terminated this arrangement. LT does not contest the TTO's right to terminate in 2013 for 2013 fiscal year. LT does not assert any claims or seek any damages relating to the TTO's 2013 termination.

**Answer:** Township Trustees admits that it sent a letter to District 204 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. Township Trustees admits the last two sentences of paragraph 13 based upon the current pleadings filed by District 204. Township Trustees denies any remaining allegations within paragraph 13.

14. Under the circumstances of this case, LT is entitled to a setoff, in the amounts set forth in the memoranda attached as Exhibit A, which covers the years 2000 through 2012, against any claim of the TTO relating to the alleged non-payment of the TTO's pro rata expense invoices from 2000 to 2012.

**Answer:** Paragraph 14 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 14 can be deemed as containing factual allegations, such allegations are denied.

15. In asserting this claim for setoff, LT does not seek any affirmative recovery of damages against the TTO.

**Answer:** Township Trustees admits paragraph 15 based upon the current pleadings filed by District 204.

Wherefore, plaintiff and counter-defendant, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court enter judgment in its favor on Count I of Lyons Township High School District 204's Second Amended Counterclaim and award Township Trustees its costs and such other relief as is appropriate.

**Count II – Breach of Fiduciary Duty**

16. LT incorporates by reference the allegations in paragraphs 1-7 of the Counterclaim as set forth above.

**Answer:** Township Trustees incorporates its answers to paragraphs 1-7 of the Second Amended Counterclaim.

17. During the relevant period, in accordance with state law requirements, the TTO purchased fidelity bonds that applied to Healy's services as Treasurer ("the Bonds").

**Answer:** Township Trustees admits paragraph 17, except to state that whether or not its purchases were in accordance with state law is an allegation of law to which it is not appropriate to respond.

18. Liberty Mutual Insurance Company and The Hanover Insurance Company (a/k/a Massachusetts Bay Insurance Company) issued the Bonds to the TTO.

**Answer:** Township Trustees admits paragraph 18.

19. Through their pro rata share payments of the TTO's expenditures, LT and the Other Districts paid the premiums on the Bonds.

**Answer:** Township Trustees admits that the cost of purchasing the bonds was an expense of the Treasurer's office for which all member districts, including District 204, were responsible. Because District 204 failed to pay for a considerable portion of its *pro rata* share during the timeframe in question, including in many years refusing to pay any portion of its *pro*

*rata* share, Township Trustees cannot admit or deny that District 204 paid for or did not pay for specific expenses. Township Trustees denies any remaining allegations within paragraph 19.

20. After Healy resigned from the TTO in 2012, the TTO learned that Healy had stolen more than \$1 million through wrongful wire transfers of funds from the TTO's bank and through wrongful payments for sick and vacation days. This money that Healy stole was money that the TTO held in trust for LT and the Other Districts.

**Answer:** Township Trustees admits that Healy resigned from his position as Treasurer in 2012, after an investigation of his wrongdoing had begun, and that the Township Trustees eventually learned that Healy had stolen more than \$1 million in funds through wrongful wire transfers and through wrongful payment for sick and vacation days. Township Trustees admits that the money Healy stole was money that the Township Trustees was holding for its member districts. Township Trustees denies any remaining allegations within paragraph 20.

21. In 2013, the State of Illinois charged Healy with the crime of Theft in Excess of \$1 million, a Class X felony. Healy pled guilty and received a sentence of nine years in prison.

**Answer:** Township Trustees admits paragraph 20.

22. The TTO made claims on the Bonds. The TTO's claims alleged that Healy had stolen more than in excess of \$1 million through wrongful wire transfers of funds from TTO's bank and through wrongful payments for sick and vacation days.

**Answer:** Township Trustees admits paragraph 21.

23. The TTO recovered \$1,040,000 on its claims on the Bonds.

**Answer:** Township Trustees admits paragraph 23.

24. In an affidavit filed in this case and dated June 5, 2015, the current Treasurer of the TTO, Dr. Susan Birkenmaier, claimed that \$1,040,000 in recovered on the Bonds “has been set aside while Township Trustees continue their efforts to recover additional sums.” Birkenmaier further claimed that the TTO can apply the \$1,040,000 recovery “to pay unrelated expenses of the Treasurer’s office”; that the TTO can “otherwise” use the money in an unspecified manner “in accordance with Illinois law”; and that the TTO has no obligation to allocate the recoveries on the Bonds amongst its member districts.

**Answer:** Township Trustees admits that Dr. Birkenmaier made the quoted statements in her Affidavit dated June 5, 2015. Township Trustees denies any remaining factual allegations within paragraph 24. Township Trustees affirmatively notes that Dr. Birkenmaier’s statements are proper under Illinois law. Whether Township Trustees allocates the bond recovery amongst the member districts and then bills them the full value of it services or instead applies the bond recovery to offset the cost of its services such that it bills a reduced amount, the end result is identical.

25. Since June 5, 2015, the TTO has not distributed to LT any of the recoveries on the Bonds, or explained why it has not made this distribution to LT.

**Answer:** Township Trustees denies paragraph 25.

26. The TTO serves as the fiscal agent of LT and the Other Districts with respect to its possession and investment of the funds of LT and the Other Districts, and as such, owes fiduciary duties to LT.

**Answer:** Paragraph 26 contains an allegation of law to which it is not appropriate to respond. To the extent a response is appropriate, Township Trustees admits that it performs those functions required of it under Illinois law and denies District 204’s characterizations of it duties

to the extent inconsistent with Illinois law. Township Trustees does not deny that in accordance with Illinois law it holds and invests money for the member districts.

27. Among the purposes of the Bonds was to protect LT and the Other Districts from losing money as a result of theft by the Treasurer of the TTO.

**Answer:** Township Trustees answers that the bonds are required by the Illinois School Code and that the School Code does not state the purpose of such bonds. On this basis, Township Trustees lacks sufficient knowledge to either admit or deny the stated allegation.

28. The \$1,040,000 in recoveries on the Bonds is money that rightly belongs to LT and the Other Districts, and that must be used to compensate LT and the Other Districts for Healy's theft of their funds.

**Answer:** Paragraph 28 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 28 can be deemed as containing factual allegations, Township Trustees lacks sufficient knowledge to either admit or deny the allegation that the bond recovery must be used "to compensate" the member districts, because Township Trustees does not understand what District 204 means by this phrase. Township Trustees affirmatively states that the bond recoveries have been or will be used to reduce the monies owed by the member districts. To the extent paragraph 28 contains any remaining allegations of fact, Township Trustees denies such remaining allegations.

29. LT's share of the \$1,040,000 recoveries on the Bonds is determined by its pro rata ownership of the pooled investment fund at the time of the recoveries, which was approximately 25 percent.

**Answer:** Paragraph 29 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 29 can be deemed as containing factual allegations, such

allegations are denied. Township Trustees affirmatively states that the other member districts might also claim some entitlement to the funds in combined percentages that would be at issue with District 204's claim for twenty five percent.

30. Despite LT's repeated demands to the TTO for payment of LT's share of the recoveries on the Bonds, the TTO still has refused to make payment.

**Answer:** Township Trustees denies that District 204 has made such repeated demands. Township Trustees affirmatively states that the bond recoveries have been or will be used to reduce the monies owed by the member districts. Township Trustees denies any remaining allegations within paragraph 30.

31. The TTO has no legal right, as the fiduciary agent of LT, to take LT's share of the recoveries on the Bonds and spend that money on expenses unrelated to the misconduct of Healy that gave rise to the claims on the Bonds.

**Answer:** Paragraph 31 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 31 can be deemed as containing factual allegations, such allegations are denied.

32. The TTO's refusal to pay LT its share of the recoveries on the Bonds in a breach of the TTO's fiduciary duties owed to LT. This breach directly and proximately caused injury to LT in the form of lost funds of about \$250,000.

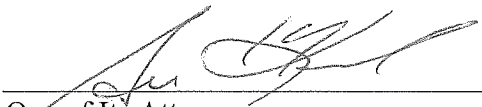
**Answer:** Paragraph 32 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 32 can be deemed as containing factual allegations, such allegations are denied.

Wherefore, plaintiff and counter-defendant, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court enter judgment in its favor on Count

II of Lyons Township High School District 204's Second Amended Counterclaim and award Township Trustees its costs and such other relief as is appropriate.

Respectfully,


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

By:   
One of Its Attorneys

Gerald E. Kubasiak  
Barry P. Kaltenbach  
Gretchen M. Kubasiak  
Miller Canfield Paddock & Stone, PLC  
225 W. Washington, Suite 2600  
Chicago, Illinois 60606  
(312) 460-4200  
(312) 460-4201  
Firm No. 44233

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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