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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
Plaintiff,	)	**No. 13 CH 23386**
vs.	)	**Judge Jerry A. Esrig**
LYONS TOWNSHIP HIGH SCHOOL DISTRICT NO. 204,	)	**Commercial Calendar S**
Defendant.	)	

PLAINTIFF'S MOTION TO VOLUNTARILY DISMISS
INTERST ALLOCATION CLAIM

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (the "TTO"), by and through its undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, requests that this Court allow the TTO to voluntarily dismiss its request for declaratory relief with respect to the TTO's claim that its former Treasurer, Robert Healy, improperly over-allocated interest income to Defendant, Lyons Township High School Dist. No. 204 ("District 204").

I. INTRODUCTION AND BACKGROUND

The TTO filed its Second Amended Complaint on September 17, 2019 (the "Complaint"). A copy of the Complaint is attached as **Exhibit A**. In this Complaint, the TTO alleges that during the period Fiscal Years 1995-2012, then-Treasurer Robert Healy over-allocated to District 204 $1,574,636.77 in interest income generated from pooled investments. (See Compl., ¶ 38–47.) The TTO seeks declaratory relief that (a) this amount was not properly allocated to District 204, and (b) that the current Treasurer may re-allocate this amount among all of the member districts.

After this lawsuit commenced, and in August 2018, the State of Illinois enacted Public Act 100-0921, which allows District 204 to withdraw from the jurisdiction of the TTO upon the conclusion of litigation. District 204 has stated its desire, repeatedly, to withdraw from the TTO at the earliest time permitted by law. In order to effectuate that inevitable withdrawal, the TTO must liquidate assets from the TTO's pooled investment portfolio (the Agency Fund) and determine fund balances for all member districts (including those who are not withdrawing). Since the hundreds of pooled investments are not separated by school district, in order to minimize losses, the liquidation process will likely occur over time and require determinations to be made by the TTO and the Treasurer.

Trial of this matter began on November 9, 2020. The TTO's forensic accounting expert, James Martin, testified regarding the TTO's interest allocation claim, and the Court qualified Mr. Martin as an expert with no objection from District 204. See Trial Tr. 150:13–17 (Nov. 10, 2020) attached as **Exhibit B**. Mr. Martin testified that he could determine the amount of interest income overallocated to District 204 to a reasonable degree of certainty. *See* Ex. B, Trial Tr. 157:20–158:4 (Nov. 10, 2020); *see, e.g.*, *id*. at 158:19–168:6, 180:11–19, 240:1–242:4 (Nov. 10, 2020).

After the TTO rested, District 204 moved for a directed finding regarding the interest income claim. See Trial Tr. 72:20–23 (Nov. 17, 2020) attached as **Exhibit C**. In considering District 204's motion, the Court stated that the interest income claim may "not [be] [ripe]." Ex. C, Trial Tr. 110:3–4 (Nov. 17, 2020).[1] The Court stated that it did not "understand how this problem [regarding interest income] can be resolved without looking at the fund from beginning to end and deciding who owes what to whom." Ex. C, Trial Tr. 108:17–21 (Nov. 17, 2020).

[1] The transcript reflects that the Court said, "My concern is that it's just not *right*…." (See Ex. C, Trial Tr. 110:3–4) (emphasis added).) The TTO submits this was an error in transcription and that the Court said "ripe" instead of "right."

The Court also stated that it did not "understand how [District 204's] separation [from the TTO] could be accomplished without an audit that would determine 204's share and probably everyone else's share of the then-existing pooled income." Ex. C, Trial Tr. 90:6–10 (Nov. 17, 2020). The Court then denied District 204's motion for a directed finding, stating "there's sufficient evidence from which the Court could make a very limited ruling and get around the problems which [it has] described as [ripeness]." Ex. C, Trial Tr. 119:2–6 (Nov. 17, 2020).[2]

Having listened to the Court's statements, particularly with an eye towards District 204's repeated affirmations of its intent to leave the jurisdiction of the TTO once this case concludes, and in an attempt to streamline the remainder of the trial,[3] the TTO moves for leave of this Court, pursuant to 735 ILCS 5/2-1009, to voluntarily dismiss its interest income claim.

II. THE TTO SHOULD BE PERMITTED TO VOLUNTARILY DISMISS ITS INTEREST INCOME CLAIM

Section 5/2-1009 of the Code of Civil Procedure provides that "[t]he plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared…and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice…." 735 ILCS 5/2-1009(a). Once trial begins, as here, the plaintiff may voluntarily dismiss any part of its action "(1) upon filing a stipulation to that effect signed by the defendant,[4] or (2) on motion specifying the ground for dismissal, which shall be supported by affidavit or other proof." 735 ILCS 5/2-1009(c). Courts routinely permit plaintiffs to voluntarily dismiss some, but

[2] Again, though the transcript reflects that the Court said, "which I've described as rightness," the TTO submits the Court used the word "ripeness."

[3] The trial has already been extended once and the Court noted at the last hearing date that it appears the trial date may need to be extended again, beyond the scheduled February 3, 2021 conclusion. The Court asked the parties to determine how many additional days might be needed and follow up with the Court's clerk.

[4] District 204 has advised it will not stipulate to a voluntary dismissal.

not all, parts of an action. *See, e.g.*, *Hudson v. City of Chi.*, 228 Ill. 2d 462, 467–80 (2008); *Lane v. Kalcheim*, 394 Ill. App. 3d 324, 331 (1st Dist. 2009). After trial begins, "[t]he trial court is vested with discretion to fix terms concerning a voluntary dismissal." *In re Marriage of Manns*, 222 Ill. App. 3d 338, 343 (5th Dist. 1991).

The TTO seeks leave to voluntarily dismiss its interest income claim in order to accommodate the Court's concerns about ripeness, and its related concern that it would not be appropriate to grant relief by looking solely to the over-allocation of interest income to District 204 (as opposed to all of the member districts), and to streamline the remainder of the trial. In denying District 204's motion for a directed finding, the Court suggested that the claim may not be ripe, and that it may be inappropriate to look only at District 204 when calculating the amount of misallocated interest income at issue; the Court also stated that it believed such an analysis might need to be performed in connection with District 204's departure from the TTO in the near future. *See* Ex. C, Trial Tr. 90:6–10, 102:19–103:20 (Nov. 17, 2020).

The Court noted, further, that even if the Court awarded the requested relief, the TTO may have to undertake future allocations (or re-allocations) of interest income when District 204 leaves the TTO. *See* Ex. C, Trial Tr. 102:19–23 (Nov. 17, 2020) ("I don't understand how that resolution comes out of this lawsuit absent a winding up, at least with respect to 204, of all the affairs of this organization."); Ex. C, Trial Tr. 108:17–21 (Nov. 17, 2020) ("I don't understand how this problem can be resolved without looking at the fund from beginning to end and deciding who owes what to whom."); *see also* Sidebar Trial Tr. 12:20–13:6 (Jan. 13, 2021) ("[M]y view was that it can't be done or shouldn't be done for some finite period within the relationship. At some point in time somebody's going to have to do it for the entire relationship. But until all of the debits and credits are balanced out it doesn't seem to me – it seems to be an exercise in futility for me to rule that,

for example, there's going to be a debit to the school district's account. The only way I'd ever rule that is it would be subject to some adjustment later on in time after all these things are equaled out."); Sidebar Trial Tr. 13:21–24 (Jan. 13, 2021) ("[District 204]'s desire is to leave this arrangement. In order to do that somebody is going to have to prepare an accounting as to what they're entitled to take when they do that."). (A transcript of the pertinent January 13, 2021 sidebar is attached as **Exhibit D**.)

The TTO recognizes that, upon District 204's departure from the TTO, the TTO will have to analyze the districts' respective ownership shares of the Agency Fund to ensure that District 204 does not receive more monies (or less) than District 204 is entitled to receive under the Illinois School Code and that no harm befalls the other member districts who stay within the TTO's jurisdiction. Because, regardless of the relief the Court may order here, the TTO may have to perform this analysis in the future, voluntarily dismissing this claim represents the most efficient way for the TTO to address the issue of interest income owed from (or to) District 204. Moreover, dismissing the claim now would streamline the trial by obviating the need to call Martin Terpstra, who is District 204's expert witness on this issue. The Court, of course, would also not be asked to devote further resources to this aspect of the lawsuit.

The TTO believes that it has asserted a viable claim for declaratory relief, based upon both its own internal analysis, and the expert analysis and opinion of James Martin. The TTO is not seeking to voluntarily dismiss its interest income claim because the claim was not brought in good faith, or because the TTO wishes to avoid an unfavorable outcome; nor does the TTO wish to refile this claim as part of a future lawsuit *See* Affidavit of Barry P. Kaltenbach, attached as **Exhibit E**. Even if this Court were to deny the declaratory relief the TTO seeks on the basis that the claim is not ripe, such a result would not operate as an adjudication on the merits, because if a claim is not

ripe it cannot be decided on the merits in the first instance. *Pekin Ins. Co. v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966, ¶ 84. Moreover, even if this Court were to exercise its inherent discretion to deny declaratory relief, regardless of the proofs at trial, such denial would not prohibit the TTO and Treasurer from fulfilling the statutory duty to accurately account for the funds of the member districts in connection with District 204's withdrawal.

Finally, to comply with Section 5/2-1009, the TTO must agree to pay District 204's "costs" incurred in connection with the interest allocation claim. Such costs do not include District 204's attorneys' fees. *State Farm Fire & Cas. Co. v. Miller Elec. Co.*, 231 Ill. App. 3d 355, 359 (2d Dist. 1992); *Gilbert-Hodgman, Inc. v. Chicago Thoroughbred Enterprises, Inc.*, 17 Ill. App. 3d 460, 461 (1st Dist. 1974). Likewise, District 204's "costs" do not include expert witness fees. *Falkenthal v. Pub. Bldg. Comm'n of Chicago*, 111 Ill. App. 3d 703, 710–11 (1st Dist. 1982). Nor do "costs" include deposition transcripts, unless those depositions are "necessarily used" during trial, which typically means as a substitute for live testimony. *Galowich v. Beech Aircraft Corp.*, 92 Ill. 2d 157, 162–66 (1982). Rather, "costs" is construed to mean court costs, such as filing fees or statutory witness fees. *In re Marriage of Tiballi*, 2014 IL 116319, ¶ 25. Because the TTO is not seeking to voluntarily dismiss its entire case, District 204 would have incurred court costs, such as filing fees, regardless of this voluntary dismissal, and so the TTO does not believe that there are any court costs that District 204 incurred solely in connection with the interest income allocation claim.

III. CONCLUSION

For these reasons, the TTO respectfully requests that the Court grant this Motion and grant the TTO leave to voluntarily dismiss, pursuant to 735 ILCS 5/2-1009, the over-allocation of

interest income claim (alleged within Paragraphs 38-47 of the current Complaint) without prejudice.

Respectfully submitted,

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

By: s/ Barry P. Kaltenbach
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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2021 I emailed a copy of the attached motion to counsel of record for Defendant, Jay R. Hoffman, at jay@hoffmanlegal.com, from my own email address, kaltenbach@millercanfield.com.

/s/Barry P. Kaltenbach

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EXHIBIT

A

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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
Plaintiff,	)	**No. 13 CH 23386**
vs.	)	**Hon. Thomas R. Mulroy**
LYONS TOWNSHIP HIGH SCHOOL DISTRICT NO. 204,	)	**Commercial Calendar I**
Defendant.	)	

SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, by its undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, for its Second Amended Verified Complaint for Declaratory Relief against the defendant, Lyons Township High School District No. 204, states as follows:

THE PARTIES, JURISDICTION AND VENUE

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

2. Defendant, Lyons Township High School District No. 204 ("LT"), is a public school district organized under the laws of the State of Illinois with its principal office in La Grange, Cook County, Illinois.

3. LT is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

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

THE ROLE OF THE 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 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 Trustees are responsible.

6. These school and other educational districts for which the Trustees are responsible, and for which the Treasurer provides financial services (the "Districts"), include LT 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.

7. The Districts contain thirty-eight schools servicing almost 20,000 students.

8. The Districts comprise a Class II county school unit within the meaning of the School Code.

9. The duties of the Trustees and the Treasurer are set out in Articles 5 and 8 of the School Code, respectively.

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 (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, whether such payments are for payroll or other purposes.

11. The obligation of the Treasurer to serve the financial needs of the 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."

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 Districts in furtherance of their obligation to provide for the education of students within Lyons Township.

13. Pursuant to Section 8-7 of the School Code, the Treasurer is, "the only lawful custodian of all school funds…."

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."

15. In accordance with Section 8-6, the Treasurer is required to maintain cash balances, by fund, for each district and the Treasurer is obligated to reconcile such balances with the respective cash balances shown by each district.

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 Districts.

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 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…."

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.

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.

20. In order to make payments as lawfully instructed by the Districts, the Treasurer utilizes what are called "Agency Accounts" at local banks.

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.

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.

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.

LT'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, 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.

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."

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."

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.

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.

29. In accordance with the statutory requirements of the School Code, on an annual basis the Treasurer determines LT's *pro rata* share of the Treasurer's operational expenses and submits an invoice to LT for payment thereupon.

30. As alleged more particularly above, in order for LT to pay these invoices, LT 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.

31. Prior to fiscal year 2000, LT paid the full amount of the invoices submitted for its *pro rata* share.

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices to LT for its *pro rata* share, but LT did not pay those invoices in full and instead only made a partial payment. For these fiscal years LT failed to pay $381,169.

33. In fiscal years 2003 through 2012, the Treasurer submitted invoices to LT for its *pro rata* share. LT, however, failed to pay any portion of the amount it owed. For these fiscal years LT failed to pay $2,143,289.66.

34. In fiscal years 2013 through 2018, the Treasurer submitted invoices to LT for its *pro rata* share, but LT again did not pay those invoices in full and only made a partial payment. For these fiscal years LT failed to pay $642,702.94.

35. In total, for fiscal years 2000 through 2018, the amount of LT's unpaid *pro rata* share totals $3,167,161.60.

36. LT'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.

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 LT and making certain bookkeeping entries so that the other districts the Treasurer serves will not suffer harm.

THE ERRONEOUS ALLOCATION OF INTEREST TO LT

38. Sections 8-7 and 8-8 of the School Code govern the depositing and investing of school funds.

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."

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."

41. Pursuant to the authority of the School Code, the Treasurer comingles funds for investment purposes from the Districts and allocates the interest earned on these investments among the districts.

42. The Treasurer allocates interest on a quarterly basis or as more frequently as is appropriate.

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.

44. In fiscal years 1995 through 2012, the Treasurer erroneously allocated $1,574,636.77 in interest on investments to LT.

45. This over-allocation to LT 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.

46. To the extent LT 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.

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.

LT'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.

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.

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.

51. Between 1993 and 2012, LT 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.

52. LT's auditors sent their invoices to LT.

53. Between 1993 and 2012, each district except LT paid for its audit through their Agency Account, with just a few isolated exceptions. The Treasurer did not pay for those districts' audits from its General Fund.

54. Between 1993 and 2012, however, the Treasurer improperly advanced money from its General Fund and paid $511,068.60 for LT's audit expenses.

55. The Treasurer has requested that LT reimburse the costs of LT's audit expenses from 1993 to 2012, but LT has failed and refused to do so.

56. Since 2012, LT has paid its own audit expenses.

57. Because the Treasurer's General Fund is funded by the *pro rata* payment of all of the Districts, the practical effect of LT's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of LT's audits. This violates the School Code's requirement that LT pay for its own audit, but it also violates the School Code because LT's audit is not an expense of the Treasurer's office; it is an expense of LT.

58. In order to reimburse the Treasurer, LT 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 LT's Agency Account. The funds at issue remain and have always been within the Treasurer's custody.

59. The Treasurer has not incurred a loss through LT'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.

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

LT so that the other districts it serves will not suffer harm and to make those bookkeeping entries necessary to properly allocate the funds at issue.

THE TRUSTEES SEEK A DECLARATORY JUDGMENT

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

WHEREFORE, Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully prays that this Court enter a declaratory judgment in its favor and against the Defendant, Lyons Township High School District No. 204 and that this Court make the following findings as a matter of law:

A. Under Section 8-4 of the School Code, LT is required to pay its *pro rata* share of the Treasurer's compensation and expenses;

B. Between 2000 and 2018, LT has failed to pay its *pro rata* share of the Treasurer's compensation and expenses as required by Section 8-4 of the School Code; LT's unpaid share of its *pro rata* share of the Treasurer's compensation and expenses for fiscal years 2000 through 2018 is $3,167,161.60, or such other amount as may be proven at trial;

C. The Trustees are authorized to have the Treasurer debit $3,167,161.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to LT, or from funds otherwise allocated to LT, in payment of LT's *pro rata* share of the Treasurer's compensation and expenses incurred during fiscal years 2000 through 2018, and authorized to have the Treasurer credit the unallocated deficit by this same amount;

D. In the fiscal years 1995 through 2012, LT was erroneously allocated $1,574,636.77, or such other amount as may be proven at trial, of interest on investments to which it was not entitled

E. The Trustees are authorized to have the Treasurer reallocate the $1,574,636.77 erroneously allocated to LT and properly allocate that sum amongst the districts;

F. LT is obligated to pay $511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that LT performed and that was paid by the Treasurer from the Treasurer's General Fund;

G. The Trustees are authorized to have the Treasurer debit $511,068.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to LT, or from funds otherwise allocated to LT, in payment of LT's audit expenses, and to make certain bookkeeping entries necessary to reallocate the payments made by the Districts during the time period 1993 through 2012 ; and

H. Such other findings as may be equitable and appropriate.

Respectfully submitted,

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

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

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2019, I electronically filed **SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY RELIEF** with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/Barry P. Kaltenbach

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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 Second Amended Verified Complaint for Declaratory Relief are true and correct.

Dated: Sept 13, 2019

Michael Thiessen, on behalf of Plaintiff

EXHIBIT

B

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

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

TOWNSHIP TRUSTEES OF)
SCHOOLS TOWNSHIP 38)
NORTH, RANGE 12 EAST,)
Plaintiff,)
vs.) Case No. 13 CH 23386
LYONS TOWNSHIP SCHOOL)
DISTRICT 204,)
Defendant.)

REPORT OF PROCEEDINGS at the trial of the above-entitled cause before the Honorable Jerry A. Esrig, Judge of said Court, on November 10, 2020, at the hour of 9:35 a.m.

Reported by: Jennifer D. Riemer, CSR
License No.: 084-003901

APPEARANCES:

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I N D E X

E X H I B I T S

the last one, the one on page 3 in front of me, and the motion was, "A motion was made by Russell Hartigan, seconded by Joseph Nekola, to adjourn." So if you take out the name, the motion was to adjourn.

MR. KALTENBACH: I have no further questions. Thank you, Ms. Sylvester. Thank you, your Honor.

THE COURT: Ms. Sylvester, you're excused. Thank you very much.

THE WITNESS: Okay.

THE COURT: I can tell you this is one judge who learned something about parliamentary procedure today.

THE WITNESS: Well, I'm glad to hear that. Thank you. I learned a lot about law, too.

MR. KALTENBACH: Thank you, Ms. Sylvester.

THE COURT: Mr. Kaltenbach, what's next?

MR. KALTENBACH: Your Honor, our next witness will be Jim Martin who's another expert witness. I told him to be ready by 2:00, so I just need to -- if we can take a few minutes and I can give him a call so he can log in.

THE COURT: Why don't we take ten minutes.

Back at 2:30.

MR. KALTENBACH: Sounds good. Thank you.

THE COURT: Thanks.

(Whereupon, a short recess was taken.)

JAMES MARTIN,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KALTENBACH:

Q. Sir, could you please state your name and spell your name for the record.

A. James Martin, M A R T I N.

Q. What do you do for a living, Mr. Martin?

A. I'm a forensic accountant for Cendrowski Corporate Advisors.

Q. What does a forensic accountant do?

A. It involves a lot of different things, but it typically involves looking at historical documents and retelling a set of facts or circumstances based on the documentation that still exists at the time.

Q. Do you have any professional certifications that help you examine cases like this?

A. Yes, I do.

Q. What are those?

A. One is a certified management accountant. That's from a group called the Institute of Management Accountants. One is called a certified fraud examiner. That's from the Association of Certified Fraud Examiners. And then I'm also a certified internal auditor, which is from the Association of Certified Internal Auditors.

Q. How did you obtain these certifications?

A. Those require -- well, back when I took them, they required, and I assume that the qualifications are similar today, but back then you needed to have either a degree or work experience. And then there was an exam you had to sit for, and at the time it was a written out exam. I don't know anymore what the exam's like.

Q. Are you required to do anything in

order to maintain your certifications?

A. Yes.

Q. What do you do?

A. There's a CPE requirement for each of them. It's between 20 and 30 hours a year annually. And you have to make a certification of that, and then keep records on your CPE and everything.

Q. Could you let us know what the acronym CPE is?

A. I'm sorry. Continuing professional education. It's very much like the CLE in the law world, except it's for CPAs, accountants and other governing bodies.

Q. Are you a member of any professional organizations or associations?

A. Yes. I'm a member of the American Institute of Certified Public Accountants and the Illinois Association of Certified Public Accountants and the Michigan Association for Certified Public Accountants as well.

Q. You mentioned you're employed by a company called Cendrowski?

A. Cendrowski Corporate Advisors.

Q. And just so we have it in the record for the court reporter, can you spell Cendrowski, please?
A. Yes. C E N D R O W S K I.
Q. And what is your title or position there, sir?
A. Managing director.
Q. And what sorts of things do you do for Cendrowski?
A. Well, I do analysis for litigation cases. I do anything that has to do with risk management or evaluation of internal controls and how internal controls can be improved to make sure that results are more accurate. I do analysis of bank transfers and fund transfers and trace journal entries, depending on what the case is like.
I also get involved with -- typically with anything that has to do with IT, so either electronic discovery productions around, you know, gathering documents from people's phones or work stations or tablets, and analyzing that data to see if there's anything relevant to the matters that I might be engaged for.

Q. Other than working at Cendrowski, do you do anything other for employment?
A. Not -- not for employment that I get paid for, no.
Q. Do you teach or lecture?
A. Oh, yes, I do. I do teach sometimes. Not this semester, with the way things are with education, but I do teach at -- sometimes at University of Detroit Mercy, which is in Detroit, Michigan, and then sometimes at Walsh College, which is in Troy, Michigan.
Q. What kind of courses do you teach there?
A. Those are -- those are -- they vary from -- sometimes everything from intermediate accounting. I've taught corporate governance classes. Fraud examination is a course. And those -- when I do teach those, I do receive a stipend for those, when I do have a class, but it's not a recurring thing.
THE COURT: Mr. Kaltenbach, you've muted yourself.
MR. KALTENBACH: I'll get this figured out by the time the whole thing's over.

BY MR. KALTENBACH:
Q. Mr. Martin, I'm sorry if I missed it. Were those graduate or undergraduate level courses?
A. MBA, so graduate level courses.
Q. Other than teaching those classes, do you lecture professionally?
A. I do speak at certain CPEs, continuing professional education conferences that are sponsored by the different state associations that I mentioned, Illinois, Michigan, and some other ones, too, if I get invited to. I've spoken at, you know, Tennessee and Minnesota before, and then also sometimes at the national conferences for those organizations, where I'm a member, too. They look for speakers around, you know, different topics, cutting edge things, what might be going on.
And, again, they have -- well, they used to, of course not anymore, but they would have sort of those -- the week-long programs sometimes with different tracts and lectures throughout the day that people could come from all over the country to obtain their CPE and

professional education type things.
Q. How long have you been with Cendrowski, Mr. Martin?
A. Almost 20 years. Just about 20 years.
Q. Can you very briefly summarize your work history prior to joining Cendrowski 20 years ago?
A. Sure. Prior to joining Cendrowski, I worked at Deloitte, what was called Deloitte and Touche at the time. I was a senior manager in the risk management department, and I was looking at internal controls and latent journal entries, doing investigation at the time of major accounting frauds, I guess would be a good word for it.
For example, Rite-Aid. That's a public case, but Rite-aid had a significant misstatement of their financial statements, and Deloitte got the audit, and I was assigned to a team to go out, for example, in that case, look at all the journal entries that were booked over time and look at what was reliable and what wasn't and quantify the amount of the loss.
So a lot of cases like that. Some

internal audit work, though, too, looking at different transactions, looking at internal controls, and then also proactive risk management in that case as well.

Prior to that I was at Chrysler Corporation. Directly before leaving there for the last year and a half, I worked in dealer accounting, which was looking at dealer accounting symptoms. Their journal entries, their financial statements, and evaluating them for capital loan performances and things like that. There were different metrics and things the dealers had to make. So I was looking at their accounting and how they did their systems.

And prior to that, for the eight years prior to that, or eight and a half years prior to that, I operated different accounting systems for Chrysler Financial. I ran the general ledger for about six years. After implementing the new general ledger and converting the old general ledger into the new one, implemented an accounts payable system and accounts receivable, and then ran those systems for several years after that.

Q. Mr. Martin, can you let us know what educational degrees you have?

A. Yes, I have an undergrad in accounting and a master's degree in accounting information systems, both from Eastern Michigan University.

Q. Are you being compensated for your work and your testimony in this lawsuit, sir?

A. Yes.

Q. Is that compensation dependent at all on the outcome of the lawsuit?

A. No, it's not. It's at my normal hourly billing rate.

MR. KALTENBACH: Your Honor, I would move to qualify Mr. Martin as an expert in forensic accounting.

MR. HOFFMAN: No objection.

THE COURT: All right.

BY MR. KALTENBACH:

Q. Mr. Martin, you were engaged as an expert in this litigation; is that accurate?

A. Yes.

Q. What were you asked to do?

A. I was asked to look at, again, historical accounting records and determine if

one certain district that was a member of the Township Trustees office, specifically District 204, had received -- had received distributions from income earned in excess of what they should have received under the -- under their percentage ownership of the pool.

Q. Okay. Can we -- let's just talk for a moment about the ownership. When you're talking about the pool, what are you talking about?

A. So the trustee fund uses a commingled investment accounting. So the different districts will have revenue that flows into the trustee's office. And it's all -- instead of being kept in actual, separate, physical bank accounts, it's kept in one large account. And the trustee's office maintains a virtual account balance. So at any moment in time, they can point to it and say that this is the amount, the specific amount, that each district owns of the pool.

And so at any given time, each district has that amount, and importantly in this case, they have a percentage ownership of the pool. And the Trustees will then invest all that money

in various interest-bearing things, you know, interest -- a little bit, but it's mostly interest.

When that revenue comes in, that revenue also belongs to those districts in that exact same percentage. So it was looking at when interest came into the office, figuring out what each district's share and specifically what 204's share of that interest was, and then seeing if that was the amount that was allocated to them in that quarter.

Q. Can you kind of -- we're going to look at some documents in a minute that are examples, but can you kind of at an eye level, give us an overview of the steps you took to form an opinion in this case?

A. Sure. So it was looking for historical documents that, you know, would be reliable. And they reflect these different things. We tried to but could not come up with a recreation of what the -- what the actual interest was just because of a lack of records that they had at the trustee's office.

But we did find a work paper that

Mr. Healy kept on a regular basis that was, you know, a very complete set. That had numbers on there that reflected both the -- both 204's average fund balance for the quarter, the total fund balance on the -- on -- as of that quarter. That was for everybody, the total, all the districts together. And then also an amount that was -- it appeared that he was attempting or the amount he selected for interest to be allocated out to all the districts for that quarter.

So I used those sheets to pull those data up, recalculated the ownership percentage to reflect ownership percentage of the total. That was applied against the total of -- the total pool amount, and the amount he was apparently attempting to allocate out to recalculate their share of what that payment should have been.

Q. Did you review general ledger entries at all?

A. Oh, yes, that's right. That was -- that was the end -- the end comparison of that was to say, then, so based on this distribution,

that they were -- that they were trying to make to everybody, they should have gotten X. And then looked at the general ledger detail records to see what was actually recorded during that period to see what they actually received for interest that quarter.

Q. So are entries in the general ledger, is that the record of what actually happened?

A. That would be the important one because that's the record that would be then audited by the auditors, would be used to do everything after that. So that's very key that it gets recorded in the general ledger, yes.

Q. And, Mr. Martin, were you specifically asked to only look at overallocations of income to 204?

A. Oh, no. I was really looking at, and there was a number of examples where following that method and calculating it out, that 204 was undercharged, was underallocated at times, and they should have received more income than they did. And those are on my analysis as well. Those periods that they received too little are on there as well.

Q. All the records you reviewed, Mr. Martin, can you just give us an idea, what was the volume of those? Was it a box? Was it 20 boxes?

A. That's a good question. They were all produced to me electronically. And it would be several boxes of stuff between -- between all those records plus other records that, you know, I did review but didn't necessarily rely on. There was a lot of documents in this case.

Q. Did your -- your document summary, I think it was a 63-page list. Does that sound right?

A. I think that's right. I think I recall that.

Q. Are the types of documents that you reviewed to do your job to form your opinion in this case, are those the types of documents that forensic auditors look at every day when doing their job?

A. Yes. It typically involves something like that. Something that -- in this case, it appeared to be a work paper that was used to create a journal entry. We were taking a look

for things like that. We would look at certainly the general ledger, where we were able to get those things. But, yeah, very typical documents for a case of that type.

Q. Did you also review any deposition transcripts?

A. Yes, I did.

Q. For what purposes?

A. Just to see -- well, the deposition of Mr. Healy, I read that to see if he had any description about his process as he went through and described what he was doing. And then also the different -- different depositions from members of the trustee's office, just to see if they had any -- any comments or any explanation for how this process might work.

Q. Okay. Did you look at any districts other than District 204?

A. Yes, I did.

Q. For what purposes?

A. Specifically it was for, when I mentioned the green bar, and there's a number at the bottom that is an interest amount that apparently was determined by Mr. Healy as the

amount he was going to allocate out to the district, I assumed that that was the amount that he was trying to send out.

And to be sure that that was a valid assumption, I scheduled out for -- I can't remember -- it was from one district for all periods, and then it was several districts for -- it was about eight or nine periods, to see if they were receiving their relative share of that distribution amount.

So in essence, was that amount that was written on the lower right-hand corner of his green bar report, was that a number that was actually a good journal for the amount that he was intending to send out to everybody. And I didn't complete it for all the districts, but it was enough to show that, yes, that was -- that was a valid assumption that that was the amount he was intending to send out.

Q. Mr. Martin, were you able to form an expert opinion to a reasonable degree of accounting certainty?

A. Yes.

Q. And before we walk through that, what

was your opinion, sir?

A. That 204 was overpaid by about 1.432. About a million. I don't have it in front of me, but about a million-four-320-something.

Q. Why don't we look at Exhibit 54B, Mr. Martin.

A. Yes.

MR. KALTENBACH: And, your Honor, I did, I believe, on Friday, e-mailed it around. It might be useful to look at a hard copy of Exhibit 54B. No one has to, but it -- it might make it a little bit easier.

THE COURT: I have it in front of me.

MR. KALTENBACH: Mr. Hoffman, are you good?

MR. HOFFMAN: Yes, Barry, I have it.

BY MR. KALTENBACH:

Q. And do you have that, Mr. Martin?

A. Yes, sir, I do.

Q. What is Exhibit 54B?

A. This is a summary of my analysis of the green bar sheets, if we can call them the green bar sheets, or his note sheets, that summarize the amount that I determined that 204 was net overpaid over, let's see, a several-year period,

between 19 -- the fiscal years 1994 and 2012.

Q. I just want to make sure, did you say not overpaid or net overpaid?

A. I'm sorry. Net overpaid. Because, again, it includes both the -- it includes both the periods in which they were overpaid and the periods in which they were underpaid.

Q. Does it include periods in which they were properly paid?

A. Yes. There was quite a good number of periods where it came out even, yes.

Q. When you say paid, Mr. Martin, how did -- mechanically, how did Robert Healy, who was the treasurer, how did he go about giving interest income to the districts? Did he actually pay them?

A. No. That's a good point of clarification. There's not really a transfer of interest between party agreement and bank account. Again, it's just -- the journal entry is just making -- making adjustment to the virtual balance within the master account. So when I said paid, that is a bit of a misbeat there. It's allocating the interest into each

district's respective subledger account.

Q. If the -- if we imagine this pooled interest account as a pie, in essence, does each district have an ownership slice of that pie?

A. Yes, that's right.

Q. Now, Mr. Martin, the first page of Exhibit 54B, did you create this?

A. Yes, I did.

Q. And can you just briefly explain what this is for us?

A. So this is a summary of the -- of the amounts in the differences column that's a couple pages back. I just made this as an overall summary just to simplify it because the other one's somewhat cumbersome to go through and that.

So this is a summary by quarters of those quarters where the net difference between the percentage that Healy was trying to send out per the recalculated ownership percentage, versus the general ledger entries, was, you know, greater or plus or minus within $1,000, either way. Because, again, there was a lot of what would look like calculation and rounding

errors and things. So that excludes any of those.

And then this is just a summary by fiscal year of those amounts from the detailed schedule, which we'll look at in a minute.

Q. So your opinion runs from fiscal year 1995 through fiscal year 2012; is that accurate?

A. Yes.

Q. And just so we make sure we're interpreting it, is your opinion that the net effect in fiscal year '95 is that 204 was over allocated $5,000.34?

A. Yes, that's right.

Q. And let's just look at 1998. Is it your opinion that in fiscal year 1998, the net allocation of the quarterly allocations is that 204 was actually underallocated by $95,000 that year?

A. That's right. They should have received $95,000 more in 1998.

Q. And you tracked -- in reaching your final opinion, is that the number down there at the bottom?

A. Yes, that's exclude anything that's

within plus or minus of $1,000. But, yes, that's the summarized number.

Q. And, again, this includes all proper allocations, overallocations, and underallocations?

A. Yes, it does.

Q. Just so we're clear, the second column says RH calculation. What is RH, Mr. Martin?

A. I'm sorry. Have we moved off the first page?

Q. We're still on the first page.

A. I see. Yes. So that is -- so that is the -- so that's the calculation of -- recalculating, based on the information, from the -- from the Robert Healy note sheets, pulling the -- pulling the -- pulling the fund balance amounts, calculating the percentages, and applying that against the amount per the green bar sheet he was intending to send out to the districts.

Q. Is RH Robert Healy?

A. Yes, that was.

Q. Mr. Martin, let's lust kind of make sure where we're at. The next two pages of

Exhibit 54B, pages 2 and 3, did you create that or does that contain your opinion?

A. Those I did not. And that does not contain my opinion, no.

Q. Mr. Martin, these were an Excel file that you gave to us to produce; is that accurate?

A. That is right.

Q. And the fourth page, Mr. Martin, is that your work product or does this contain your opinion?

A. The fourth page is not, no.

Q. What about pages 5 and 6?

A. 5 and 6 is my analysis, and that does contain the detail of my opinion, yes.

Q. And then just so we're clear what we're looking at, how about the last three pages, 7, 8, and 9?

A. Those pages do not -- are not mine, and they don't either, no.

Q. So let's look at page 5 and 6. Did you create pages 5 and 6?

A. Yes.

Q. And did you have kind of a starting

template that you were using? Why is it that this looks kind of familiar to some of the other pages?

A. Well, yes. The trustee's office, they did an analysis that was like that. And I kept the same format as I redid their work and went through and analyzed underlying documentation. Just for clarity, I didn't want to change the columns around or delete stuff would be confusing later. So I really maintained the same format.

Q. To be clear, though, is Exhibit -- are pages 1, page 5, and page 6, that is your work product and your opinion, correct?

A. That's correct. These are my opinions, that's correct.

Q. When you looked at this analysis the trustee's office did, did you assume that that analysis was correct?

A. No, I did not.

Q. Did you assume it was incorrect?

A. No, I did not.

Q. Did you -- although you used their format, did you do your work from scratch?

A. Yes.
Q. Mr. Martin, there are a couple cells -- if we look at page 5, there are three cells in red. Do you see that, sir?
A. Yes, I do.
Q. Why are those in red?
THE WITNESS: I apologize, your Honor. This is somewhat of a vision test, this exhibit, if you haven't printed it out.
THE COURT: I can tell you, I'm failing it.
THE WITNESS: That is a couple that -- that is a column that contains the -- the summary of the trustee's GL entries for those quarters. And as I went through and looked at the different -- the different analyses here, one of the analysis was pulling the actual GL entries and summarizing those in this column.
And most of the entries that -- that I look at that were relevant, all were tagged with the same -- the same title. It said quarterly interest on that. As we went through this and attempting to come back to see where we were, it was looking at any discrepancies that were between this analysis and the things that I

looked at, and the total that the trustee's office came with, too. And that was a check of my work, my team's work, to say did you pick something up, was something wrong, was there really an anomaly in there.
When there was something unexplained that just didn't come out, I could not see where they got their number from, we would make a note and have a call with the trustee's office to review what we were missing or what their theory is of why we picked something else up and that.
There were a number of things like that that were differently labeled, and we talked about why they believe it should be ascribed to as interest payments to 204.
In these three cases, in these three rows that are marked in red, the general ledger entries included an amount that said interest transfer. And they all had similar descriptions.
And so when we pulled that, we had to call up the trustee's office. They all appeared to be relatively similar subjects because they all had similar descriptions.

We talked through what those things were, and I did agree with the trustee's office that they -- that their treatment was correct. So I adjusted it for that. One of them increased 204's balance -- 204's receipts or were payments that they were described or increases to their balance by $31,000.
The other one was fairly stable. It was only about $6,000. But the last one, it reduced the 204 -- it reduced the 204 income that they had been ascribed. So it was a positive for that analysis. They reduced their overall allocation by about $57,000. So the three together net reduced the 204 allocated income by about $50,000.
Q. So Mr. Martin, when you formed your opinion, did you end up determining that 204 was overallocated less than the trustee's office determined when they did their analysis?
A. Yes, that's right. My -- my determination was that the trustee's office had, between those three transactions, had allocated $50,000 net to the trustee's office that they should not have. That should be removed from

the -- that should be removed from the overallocated total.
Q. And that's why your opinion of $1.427 million might be lower than the trustee's own internal opinion?
A. That's right, by about $50,000, yes.
Q. Okay. Mr. Martin, did you use all of the columns on pages 5 and 6?
A. Not -- not -- I didn't rely on all the columns to formulate my opinion, no.
Q. Okay. Which columns -- we're going to look at how you filled these out, but what columns did you -- did you use for your opinion?
A. Okay. So starting at the top, and kind of counting over from the left, it's got the fiscal year and then, of course, the date. And then the -- the 204 fund balance per RH, that is a number that I picked up off the green bar sheets. Again, Healy's -- Healy's quarterly work paper.
So on there, he has a -- he lists out the fund balance for each of the districts, so I picked up the 204 fund balance from that green bar.

And then the next column over says total average FB, I picked that up as well. That's the total from Healy's green bar sheet. So that's the number at the bottom of Healy's sheet.

And then that percent column, the next one over there, that's the calculated column. That one is the -- is the -- the number directly to -- I'm sorry -- it's the No. 2 over. It's the 204 RH divided by the total fund balance is. So that's a recalculation of the percent ownership that 204 had for that order, on average.

And then the next three columns where it says FB per reports, total FB per reports, and then percent based on reports, the reports they're referring to was a monthly summary report that was available for some months, although I did not rely on those.

The next column to the right, though, income, that is the number, then, that was pulled from the Healy green bar sheets or his work papers. That's on the lower right-hand side of that report, and it's the amount that --

that I determined was that he was intending to allocate out to the districts. So it was an amount that he selected for that quarter to allocate out to districts.

Then continuing along, the calculated interest allocation is that income amount multiplied by the calculated percentage in column 6, over that far. And then the interest calculation, that's, again, for the reports, so I didn't do anything -- didn't rely really on the numbers in those.

And then -- and then the allocation per TTO GL, so it's the column that has those three red cells in it, that is the summary of the general ledger entries that actually were made in that quarter on the 204 internal ledger.

So then the difference between, then, the -- what was the -- what was the calculated interest allocation and the allocation per the TTO GL account is in that next column over that says difference RH to TTO GL, and the sum of that column is what totals up to my damages.

So, again, the difference RH to TTO GL shows -- that's the column at the very top row

of it has the negative 15,000 in it. Just for clarity. If you look, it's got negative 15,000. Because, again, in the last quarter of 2012, 204 was again underallocated by $15,000. So that would be minus 15 in my damage totals. And the total of that column will be by damage total.

But on this sheet, that column includes everything to the penny. It doesn't exclude anything that's than $1,000.

Q. Let's look at an example so we understand it better. Mr. Martin, could you look at Exhibit 56D, please.

A. Okay. I have that here.

Q. What is the first page of Exhibit 56D?

A. This is --

Q. I'm sorry. Hold on. I don't know that everyone's there yet.

THE COURT: I've got it.

THE WITNESS: This one here, this is an example of one of the Healy green bar sheets, or his work paper sheet. And if you can -- it should correspond to a line here. So this is how this all kind of hangs together is. This is January of 2011. And if you look on the -- on

the sheet that we just went over in Exhibit 54B, there will be a row that says January 2011. So we've got --

Q. Is that the -- let's just stop for a minute. So if we look on page 5 of Exhibit 54B, and we look at the seventh line down.

A. Yes, the seventh line down. And it should be one of the white lines, not the gray ones, thankfully.

Q. Okay.

A. Make it a little easier to read anyway.

Q. Okay. So this is the green bar, or what you call the Healy work paper, for this row going across; is that accurate?

A. This was the sheet that was the source for that line in my analysis, yes.

Q. Okay. And Mr. Martin, the next row after that, 204 FB per report, that is $24,795,502?

MR. HOFFMAN: Barry, which page are we on? I'm sorry.

MR. KALTENBACH: We're on page 5 of Exhibit -- we're comparing to --

MR. HOFFMAN: On page 5 of Exhibit 56D as in

David?
MR. KALTENBACH: No. Sorry. We're looking at --
MR. HOFFMAN: We're back to 54B?
MR. KALTENBACH: We're kind of looking at two at once so we can see where numbers came from.
MR. HOFFMAN: Thank you.
MR. KALTENBACH: So we've got Exhibit 56D, page 1. It's the sheet that accounts, I guess, call these green bars. And then if we look at the spreadsheet that Mr. Martin prepared, the entry for 1/31/2011, which I think is the seventh one down.
THE WITNESS: Yep, that's right.
BY MR. KALTENBACH:
Q. So Mr. Martin, on your spreadsheet, for the column that says 204 FB per RH?
A. That's right. Yep.
Q. Where did you get that number from?
A. So that number is right from the green bar sheet. It's the average fund balance column. So it's the -- it's the right-hand column. It's this one right here. Can I hold this up like that? So it's the right-hand

column on this sheet on the row that says 204.
Q. Okay. So if we look at the green bar, and we look towards the top, the columns are numbered, right?
A. That's right.
Q. And if we look at column 1, and you go down, it says -- it looks like average FD balance. Is that what you're talking about?
A. That's right. And so that should be the average fund balance for this quarter. And I would have recorded the amount that's in the row for District 204.
Q. Which is $24,795,502?
A. Yes, that's correct.
Q. So that's where that number came from?
A. That's right.
Q. And then the next number is total average FB. Where did you get that number from?
A. So that's the total on the green bar of column No. 1.
Q. Okay.
A. That's at the very, very bottom of the green bar.
Q. Where Mr. Healy wrote total and then

160,926,622?
THE COURT: Can I just jump in here for a minute?
MR. KALTENBACH: Absolutely, your Honor.
THE COURT: Why are we talking about average fund balance?
THE WITNESS: Good question. They allocated the interest on a quarterly basis. So this -- this green bar that we're looking at on 56D, if you look at the top, this is January 2011, and it's for the months of October, November, December 2011.
So Healy would -- they would receive interest, receive interest, and then on a quarterly basis he would allocate this interest out to the districts. He would use their average balance.
So he would -- the fund balance for all the months would go up and down as revenues come from their taxes, and then expenditures. So he would calculate the average fund balance over that quarter. And it really was a simple average of that fund balance over the quarter.
THE COURT: So now I'm very confused.

Because is this really October, November, December of 2010?
THE WITNESS: Oh, this would be -- this would be -- right. This would be -- this would be the months prior to that because this says 1/31/11. So yes.
THE COURT: Okay. All right. Okay. Sorry.
THE WITNESS: That's okay.
BY MR. KALTENBACH:
Q. So Mr. Martin, the -- we were talking about the pooled investments being a pie and each district having a slice. Is the pie the 160,926,000 at the bottom of this work paper?
A. Yes. That would be the total average fund balance for the -- for this quarter that was out there, yes.
Q. And 204's slice of the pie, that would be the $24 million number?
A. That's right. That's their relative ownership percent over that quarter.
Q. And then on your spreadsheet, there is a percentage of, if we go to the next column over, I believe it's 15.408 percent?
A. Yep, that's right.

Q. Where do I find that percentage on here?
A. That's not on the green bar sheet. That's a calculated number that's -- it's the 204 fund balance divided by the total fund balance.
Q. So 15.408 percent of $160 million is 204's $24 million?
A. Yep, that's right.
Q. So they had 15.408 percent of the pie, as of this January 2011 allocation; is that right?
A. Yes, that's right. They had 15 percent -- they had 15.408 percent of the total amount, yes.
THE COURT: I'm sorry. I'm going to interrupt you one more time.
MR. KALTENBACH: Feel free.
THE COURT: Did I understand you to say that these green bar sheets tied out to some number somewhere?
THE WITNESS: Yes. They -- yes. These were based on underlying general ledger reports that Mr. Healy also kept. And it's -- actually, it's

the next page in that exhibit, too.
THE COURT: The next page in which exhibit?
MR. KALTENBACH: Exhibit 56D, your Honor.
THE COURT: Is this a printout from a computer?
THE WITNESS: This, I believe, is an Excel sheet that they made by taking numbers from the general ledger system.
THE COURT: Well, I don't want to get ahead of Mr. Kaltenbach here, but I guess what I'm really asking is, let's take this $160 million number. Is that reflected on some bank statement, or does it tie into any objective number aside from Mr. Healy's?
THE WITNESS: Yes, that would tie into the reports from the general ledger system.
MR. HOFFMAN: I object and move to strike the answer as nonresponsive. That doesn't have any -- his answer doesn't have anything to do with bank statements, which was the question.
THE COURT: Again, I don't want to preempt Mr. Kaltenbach, but you're telling me all this MONEY is kept in a pooled account, right?
THE WITNESS: Yes.

THE COURT: And there's a total average fund balance of $160 million and some odd dollars as of January -- or presumably December 31st, 2011?
THE WITNESS: Yes, sir.
THE COURT: So there should be some bank account, I'm assuming, that has a balance of roughly $160 million during this period?
THE WITNESS: That's correct. There should be a lot of different bank accounts and investment accounts at different brokerage houses and investment management companies that should support that number as well, yes. All that money should be invested somewhere and be good money.
THE COURT: So did you analyze whether or not that $160 million roughly ties out to the total being held in all those accounts as of that date?
THE WITNESS: I was not able to verify the actual investment account balances because the trustee's office didn't have complete records of all those investment accounts. So I tried to look at that. That was not an analysis I could complete, though.

THE COURT: Were you able to do that analysis for any month for which you have a green bar sheet?
THE WITNESS: I was not able to complete that for any of the months, no.
THE COURT: Okay. Sorry, Mr. Kaltenbach. Go ahead.
MR. KALTENBACH: That's all right, your Honor.
BY MR. KALTENBACH:
Q. Mr. Martin, were you able to recreate the total amount of income that was earned during this time period?
A. I was -- I was not able to verify that against underlying investment account balances, no.
Q. Does that impact your opinion?
A. It would not impact my opinion because, again, they were -- whatever interest that these investments made, it really gets to the whole -- on the actual side is that there were actual investments at some level, and they were generating some level of interest, and I was not also able to determine what the actual amount of

interest for any particular quarter was, either. Because, again, there was no records of that.

But the number that I did rely on and I did -- and I did utilize, and it's the number at the bottom. It's the lower -- it's the number here at the bottom corner on this -- and this is the same green bar, your Honor. In this case, it's $500,000. But that was the amount that Healy was intending to allocate to the district.

That was, as he said in his deposition, that was an estimate, and it was obviously an estimate at half a million dollars. The odds that their investment for that quarter was $500,000 even, that would be very, very slim. But no matter what the amount of interest actually was, whether it was a half million dollars, whether it was a million, whether it was $400,000, whatever interest was allocated or earned or not allocated all belongs to the districts in that same relative percentage.

So as we -- as I take that number and say, again, I did do the proof to show that he was intending to send that out to the underlying districts, 204 would get -- whatever amount he

determined to allocate, in this month, it would be the 15.4 percent.

Q. So Mr. Martin, in essence, on this green sheet, you looked at the total average fund balance that Mr. Healy wrote down; is that correct?

A. Yes.

Q. You looked at 204's average fund balance?

A. Yes.

Q. You used that to determine 204's percentage of the pie in this particular quarter?

A. Yes.

Q. And then you looked at the amount that Mr. Healy wrote, the $500,000. And so I think to clarify -- to make sure we're on the same page, you don't believe that that is just by happenstance the total amount of income actually earned that quarter?

A. No, I don't. I think that was an estimate.

Q. And what you were doing was seeing, was the $500,000 allocated in the right percentages?

A. Yes, to 204, yes.

Q. Okay. Let's look at page 5 of Exhibit 56D. Did you prepare page 5, Mr. Martin?

A. Yes, I did.

Q. What does page 5 show?

A. So this shows -- this is a summary of the general ledger entries that were made to the trustee's office general ledger for District 204 in that period.

Q. So are these the actual allocations that Mr. Healy made at that time to 204?

A. Yes. These are the actual amounts reported to the general ledger.

Q. Okay. So if we -- if we scroll down, sir, let's go to page 6. And there is a highlight there for $60,493. Is that your highlight?

A. Yes, it is. I highlighted that.

Q. Does that tie up, for example, to the summary on page 5?

A. Yes, it does. It's the -- it's the first line under the education fund. And so as you read these statements, the fund is in the --

about the fourth row. It's a column header. It will say education. And that means that this amount, the $60,493, was a quarterly interest for the fund.

Q. Mr. Martin, we talked about a pie that was the total pool, and each district had a slice of the pie. Do you remember that?

A. Yes.

Q. Was each district's slice of the pie kind of further sliced into sub pieces?

A. Oh, yes. Underneath the overall district there's a number of sub funds as well. And it's basically the list that's on -- I'm back on page 5 of Exhibit 56D, that column on the left is basically a listing of, you know, the funds that were typical recipients of interest during -- during the quarter.

Q. So this is 204's slice of the pie. This is where -- within 204's slice of the pie, this is where that income was put; is that accurate?

A. That's right, yes.

Q. So if we scroll down to page 6, we see that you've highlighted that $60,493. Is that

the allocation for that quarter to District 204?

A. Yes. And so the -- if you go back to the prior page, the sum of that prior page, the sum of page 5, the $77,040 is -- that's the total amount of interest that 204 was allocated in that period, per the general ledger system. So that's the full amount of interest ledger entries they received during that period.

Q. And is page 6, is that from the general ledger?

A. Page 6, yes, this is -- this is an actual general ledger.

Q. And page 7, we have another number highlighted. That would also tie back in. So these are -- what you've done is highlight all the different entries comprising that $77,000 amount; is that accurate?

A. That's right. Just to make it more apparent where the numbers on page 5 came from.

Q. Okay. So if we scroll all the way down, let's jump to page 16 of Exhibit 56D, Mr. Martin.

THE COURT: Will you hold on one minute?

MR. KALTENBACH: Absolutely, your Honor.

THE COURT: All right. Go ahead.

MR. HOFFMAN: I have an objection to the use of page 16 in this trial.

THE COURT: Page 16 of Exhibit 56?

MR. HOFFMAN: Yes.

THE COURT: Let me get there. Okay.

MR. HOFFMAN: So there are a number of pages in this exhibit and similar exhibits as well that the plaintiff has sought to introduce in this case that were not disclosed with the expert disclosures, and they were not produced in response to document requests. And we received them for the first time on October 7 of 2020.

I discussed this with Mr. Kaltenbach. It is our position that these are not merely demonstrative exhibits that show information that's already on a different document in a more digestible way. And that's also particularly true in some other instances where it's not just a color pie chart but it's a color diagram.

We view these as substantive. They're material that we haven't had an opportunity to cross-examine the witness about or discuss fully

with our expert. So I don't think these and others like it -- and, again, some of them look like these pie charts. Some of them have arrows and diagrams and other language and verbiage.

So it's a lack of disclosure objection for this page. We have other objections as to this exhibit as a whole, but I don't believe that page should be the subject of testimony.

THE COURT: Let me just -- you received these when? With the trial exhibits in October?

MR. HOFFMAN: October 7, 2020.

THE COURT: And I can only take this one up. If there are others that may have different information, I'd have to take those one at a time.

Mr. Kaltenbach, did you want to respond with respect to this exhibit?

MR. KALTENBACH: Your Honor, this is a demonstrative exhibit. We're not seeking to introduce it into evidence. It is to aid the expert's testimony to help visually depict something the expert is saying. Demonstrative exhibits are not usually prepared during the course of discovery. They're prepared in

advance of trial, and this was produced on the date that the Court set for the parties to produce demonstrative exhibits.

MR. HOFFMAN: Your Honor, this -- excuse me. This is a document that the plaintiffs have -- my understanding is this is a document, 56D, that the plaintiffs have sought to introduce into evidence. So I don't --

THE COURT: We haven't moved it into evidence yet, right?

MR. HOFFMAN: Well, yes, but they identified it as a document that they wanted to use in evidence, not because we -- we separately set aside exhibits that were just demonstrative so that we wouldn't have objections necessary to those.

THE COURT: I understand. But right now, the only thing in front of me is whether or not he can show this to the witness and use it for illustrative purposes.

MR. HOFFMAN: Fair enough.

THE COURT: So the only thing I'm considering right now is whether or not this discloses an opinion or a basis of an opinion that wasn't

properly disclosed under 213. That's what I understand to be at issue before me right now.

And I don't know this, but looking at the pie chart, it seems to me to be a percentage allocation of the pool ownership as of a certain date. Was that information not provided to you?

MR. HOFFMAN: The 15.41 is on other documents. In fact, it's on the page after that. But I'm not -- so we received the percentages, but not in this format.

THE COURT: Well, if you received the percentages, but not in this format, unless there's some other information on here that was not disclosed to you, then I don't find a Rule 213 violation.

MR. HOFFMAN: Fair enough.

THE COURT: So that objection's overruled. You can proceed.

BY MR. KALTENBACH:

Q. Mr. Martin, where did you -- what document did you use to calculate the percentages shown on the pie chart on page 16?

A. Oh, it's -- if you flip to the -- they're from the next sheet. That's the source

of the data. So, again, these are -- these were the -- the recalculation of percentages.

And you can see the 204 line, which is probably the only -- the only line on there that really is -- is really the line from my opinion. So that is the same -- that's all information that's included on Exhibit 54B on page 5. It's really just pulling those -- that's really for 204 pulling those key numbers that I relied on to form my opinion.

So, again, the 24 -- again, back on 56D, page 17, the 24,795 was the 20 -- the fund balance for -- for Healy. The ownership percentage was from the -- was recalculated. And the amount -- the percent should be 77,040, and in that case, the -- the sheet per that district is 77,040. There's no difference there.

BY MR. KALTENBACH:

Q. Mr. Martin, the -- let's go back for a moment to the pie chart on page 16. The 15.41 percent for 204's slice of the pie, is that -- did you use the numbers on the green bar to calculate that?

A. Yes.

Q. Okay. Did you use the numbers on the green bar to calculate the other percentages for the other districts?

A. Yes.

Q. Now, Mr. Martin, looking at page 17, we've got on the left a listing of all the different districts, and in this particular quarter, there's some kind of special accounting districts. If you look, there's a 106.5, for example. The FB per RH sheet, that is all numbers you pulled from the green bar, correct?

A. Yes.

Q. And the calculated ownership, the next column, which is all the percentages, that's the same -- are those the same numbers from the pie chart we just looked at?

A. Yes. Those are the numbers that feed into the pie chart. The pie chart's actually just a chart of those numbers.

THE COURT: The ownership count, right?

THE WITNESS: Actually, it's the realized percent -- yeah, it's a pool ownership. So this chart, yes, it's the calculated ownership, yes.

THE COURT: I'm sorry. You just lost me.

THE WITNESS: I'm sorry. The chart on page 16 is the percentage in the calculated ownership column.

THE COURT: Okay.

MR. HOFFMAN: Excuse me. Just as a point of reference, was -- Barry, was page 17, is that also new?

MR. KALTENBACH: Yeah, it's just calculations -- it's just showing calculations that Mr. Martin made as part of his opinion.

MR. HOFFMAN: Okay. I just want to establish for the record.

THE COURT: Let me -- just so I'm clear with regard to Mr. Hoffman's objection. The calculated ownership is a percentage that you derived from the green bar sheet, right?

THE WITNESS: Yes, sir.

THE COURT: It's a mathematical calculation based on knowing the total amount of the fund per Healy and the allocation Healy made?

THE WITNESS: Yes.

THE COURT: Understood. Okay.

BY MR. KALTENBACH:

Q. Now, the calculated allocation, Mr. Martin, you see the bottom of that, the sum is $500,000?

A. Yes.

Q. Did you get that from the green bar sheet?

A. No. That is from -- that's applying that calculated ownership, which is, again, the numbers from the green bar are the left-hand column, fund balance per RH.

Calculated ownership is each line divided by the total, so that's a calculated column. And then calculated allocation is the total amount that he was sending, $500,000, times their relative percent.

Q. So the calculated allocation, is that -- assuming that Mr. Healy allocated $500,000 in the appropriate percentages, that's what the allocation should have been?

A. That's right.

Q. Okay. And then the allocation per RH sheet, what is that?

A. So that's the -- that's the right-hand

column on the green bar sheet. Those are the numbers that are in, in this case, the interest column on this one. Which, again, I didn't -- I didn't rely on for my opinion, but just to make the exhibits, to show how this interest would get allocated, I pulled it onto this in order to graph that number as well.

Q. And then the difference is just the difference between the calculated allocation as opposed to the allocation per Robert Healy's sheet?

A. That's right. Because this period is an example where the amount in recalculating the ownership percent times the amount that Healy was allocating came out exactly to what he had written in the right-hand column, his detail calculations on that sheet.

Q. Okay. So 204's ownership percentage in January '11 was 15.41 percent. Is that accurate?

A. That was the -- the calculated average ownership percentage, yes.

Q. Okay. And if Mr. Healy allocated $500,000 and 204's percentage was 15.41 percent,

is that the $77,040?

A. Yep. That's the amount they should have received, $500,000.

Q. And the amount they actually received in this quarter also happened to be $77,040. Is that accurate?

A. Yes, but, again, that's not on this sheet. That's per the sum that was booked to the general ledger.

Q. That is the summary of all the highlights that were above this?

A. That's right. That's right. In this case, it just happens to be the same number. But for the purpose of pulling numbers to make the graphs, this is not the GL total, this is the number from his written out sheet.

Q. Okay. So in this quarter, you did this analysis, and you determined that District 204 was allocated the same amount of money it should have been allocated; is that accurate?

A. Yes. It received a correct percentage -- it received a correct proportion of the $500,000 that Healy was allocating out.

Q. So 204 owned 15.41 percent of the pool?

A. Yes.

Q. And 204 got 15.41 percent of the amount that was actually allocated?

A. That's exactly so, yes.

Q. Regardless of whatever amount was actually earned?

A. That's right.

Q. Let's look at another example, Exhibit 56C. Do you have that, Mr. Martin?

A. Yes.

Q. Does everybody have that?

THE COURT: Yes.

MR. KALTENBACH: Great.

BY MR. KALTENBACH:

Q. Mr. Martin, what quarter is this?

A. This is the November 2007.

Q. Okay. And the -- did you kind of do the same analysis for this quarter?

A. Yep, it's -- yep. They're all exactly the same. So the 204 average fund balance, pulled the --

Q. Which is -- so the numbers you looked at here were the 204 average fund balance, is that --

A. Yep. It's the $29,343,381.75.
THE COURT: I'm on the wrong exhibit. What number are we on?
MR. KALTENBACH: Sorry, your Honor. We're on 56C, page 1.
BY MR. KALTENBACH:
Q. Okay. So if we're on page 1 of 56C, Mr. Martin, so, again, we have a green bar?
A. Yep.
Q. And we have a total average fund balance at the bottom, correct?
A. That's right.
Q. And that's the 140 million and change?
A. Yes, that's right.
Q. $140 million and change?
A. That's right.
Q. And then above that are what Healy calculated as the average fund balance per each district that quarter; is that correct?
A. That's correct.
Q. And then this time, instead of a $500,000 distribution, it looks like a $1 million distribution; is that correct?
A. That's right.

Q. And that's that bottom right number?
A. Yes, that's right. That's the million dollars in the bottom right.
Q. So if we scroll down to page 2, Mr. Martin, is this your summary of what was actually allocated to District 204 in this quarter?
A. Yes, it is. Based on the ledger records, yes.
Q. So $308,538?
A. Yes, that's right.
Q. Okay. And if we scroll through the next several pages, you will see -- we will see again highlighted entries; is that correct?
A. That's correct.
Q. And that's just you letting us know that that corresponds with the entry you picked up on the summary?
A. That's just to try to make it a bit easier to follow, yes.
Q. Okay. So if we go down to page 14, Mr. Martin, we see another pie chart; is that accurate?
A. Yes.

Q. And what is the pie chart?
A. Okay. So that is, again, just like in the prior one, that is the -- that's the calculated ownership percentages based on Healy's green bar sheet of the average pool balances by district.
Q. So 204's slice of the pie was 20.85 percent?
A. In this quarter, yes.
Q. Okay. And if we go to the next sheet, page 15.
A. Yes.
Q. So we have the districts on the left-hand column again, correct?
A. Yes, that's right.
Q. And then we have FB, which is fund balance, per sheet, correct?
A. That's right.
Q. And those numbers are pulled from the green bar?
A. That's correct.
Q. And then you have the calculated ownership, and those are percentages?
A. That's correct.

Q. And that is the percentage ownership that each district had of the pooled fund at that time, correct?
A. At that time, right. And it's the -- it's the column directly to the left of that divided by the total at the bottom, in that case.
Q. Okay. So 28.85 percent of $140 million roughly is roughly $29 million?
A. That's right.
Q. Now, let's look at the calculated allocation column, which is the next one over, Mr. Martin.
A. Yes.
Q. What is that?
A. So that is -- that is the calculation -- that's the amount -- that's the percentage -- I'm sorry.
That's the amount that 204 should have received if Healy was allocating out a million dollars. And as you can see, thank goodness in this case, it was a million dollars, because it's 20.85 percent of a million dollars.
Q. And that is $208,538?

A. That's right.
Q. So if Healy is allocating out -- regardless of how much money was actually earned, if Mr. Healy is allocating out a million dollars, is it your opinion, then, as displayed here, that 204 should have received $208,538?
A. Yes, they should. And that, I would also point out, corresponds in my total summary schedule on page 54B for that line for 204.
Q. Okay. And then what is the allocation per sheet column?
A. So in this case, when you look at the green bar sheet, again, even though -- even though for 204 Healy had written in $208,538, looking at the general ledger total, and that general ledger summary on page -- page 2 of this exhibit, the accuracy, $308,538. So they actually received $100,000 more.
Q. And with that $100,000 more, is that final column, then, the percentage that they actually got?
A. That's right. And so if you -- if you look at it that way, again, this is -- you know, it's sort of the same church, different pew view

of that is, you know, if they really did allocate out a million dollars, they should have gotten 208. If you look at it one way, they really got a million dollars more. They really allocated out $1,100,000. Or said another way, in this case, they would have realized 28 percent of the total.
Q. So in this instance, did all of the districts except District 204 get the proper percentage allocation?
A. Yeah, in this case, they did not receive the proper percentage allocation.
Q. The other districts?
A. Well, the other districts would have received -- would have received their share of the million dollars, yes.
Q. Okay. How much did Mr. Healy actually allocate this quarter?
A. Well, looking at it one way, he allocated out a-million-one because he gave a million dollars to everybody, and then apparently gave an extra $100,000 to 204.
Q. Okay. Now, if we look back at the green bar, at the start of this exhibit, and we

look at the row for 204, there is a $100,000, we see the $208,538, correct?
A. Yes.
Q. And then we see that there's another $100,000 written in next to that, correct?
A. Yes, it appears so.
Q. Now, your calculations are that in this quarter, 204 actually got not $208,538, but $308,538; is that right?
A. That's right.
Q. Okay. In order -- in determining that 204 actually got $308,000, did you rely on Mr. Healy's note of $100,000 that was written there?
A. No, I did not.
Q. What did you rely on?
A. The $308,538 is the sum of the general ledger entries. So it's the total on the next page, and it's the sum of all those general ledger sheets with the yellow -- with the yellow highlighting on it.
THE COURT: Mr. Kaltenbach?
MR. KALTENBACH: Yes, your Honor.
THE COURT: Sorry to interrupt you.

MR. KALTENBACH: Don't be.
THE COURT: On page 1 of 56C, there is an exhibit sticker at the top of the column with $100,000 numbers written in.
MR. KALTENBACH: Yes.
THE COURT: I'm assuming that there's nothing under that sticker?
MR. KALTENBACH: Good assumption, your Honor. We can, I believe, hopefully double-check that pretty quickly. I'm sure that someone is jumping on that on this end, and we will verify for the Court. I'm assuming we'll be able to do that. I certainly assume we didn't cover up anything material.
THE COURT: I just wanted to check on that. That's all.
MR. KALTENBACH: We will get that.
THE COURT: Okay.
BY MR. KALTENBACH:
Q. So, Mr. Martin, if we look back to this tiny spreadsheet you prepared, Exhibit 54B.
A. Yes.
Q. And we look for November 2007?
A. Yes.

Q. And that's -- I'm not going to try to count. It looks like it's probably about 20 down or so from the top?
A. Unfortunately, it's a gray line, so it's a little harder to read, too.
Q. It is. But it's -- and it's probably not easier to do this with the printed version, as it turns out, because it's just too small. But we see, it says 11/30/07, correct?
A. That's correct, yep.
Q. So if we read across, the 204 funds balance per Robert Healy, the next entry over, that's that $29,343,382. That comes from the green bar, right?
A. That's the number he wrote on the green bar, yes.
Q. And then the total average fund balance of $140,710,301, that comes from the green bar?
A. Yep, the number at the bottom.
Q. And the income, if we move over several columns until we get the income column, that million dollars of income, that comes from the green bar?
A. Yes, it does.

Q. And the percent column, you calculated yourself?
A. Yes, I did.
Q. So that's the percent, 204's percentage slice of the pooled pie; is that right?
A. That's right. That's the percent that they should receive of any amount that's determined to be sent out.
Q. Okay. And the calculated interest allocation, that's the $208,537.55 entry, right?
A. That's right. And that's that percentage times the million dollars.
Q. So that's the percentage that 204 should have received based on Mr. Healy's estimated allocation of a million dollars?
A. That's right.
Q. And then allocation two columns over, the allocation for TTL GL, that's $308,537.55, correct?
A. Yes, it is.
Q. And you got that by adding up each of the individual general ledger entries that were actually made to 204 for that quarter, correct?
A. That's correct. That's the sum of the

yellow highlighted ones in 56C, on the detail sheets of 56C.
Q. Okay. And then the next column, which is $100,000 even, what is that column?
A. So that's the difference between what's calculated based on the -- on the fund balance amounts on the green bar sheets and the amount that 204 should have received versus what was actually reported in the general ledger for that quarter.
Q. So is it -- what is your opinion with respect to whether there was an overallocation, underallocation, or proper allocation for the November 30th, 2007 distribution?
A. So in this case, 204 was overallocated $100,000.
Q. So the sum of the difference RH to TTL GL column, where that $100,000 appears, if we were to -- if we were to go all the way down, follow that spreadsheet as it continues on to page 6 of Exhibit 54B, we see that it's $1,427,908.51, right?
A. 938.51, but, yes, that's it.
Q. And that was you picking up all the

proper allocations, overallocations, and underallocations to District 204; is that accurate?
A. That's right. That's the sum of the difference of the recalculated share that 204 should have received and the total amount that was reported in the GL for those periods.
Q. Now, Mr. Martin, as part of forming your opinion, did you try to figure out why Mr. Healy overallocated District 204 $100,000 in this quarter?
A. I did not.
Q. Was that relevant at all to your allocations?
A. It was not.
Q. Was it relevant to your calculations, or is it just a curious coincidence, that there is $100,000 written next to 204, and the overallocation in your opinion that occurred this quarter is $100,000?
A. You know, again, I don't know any -- from what I saw, I didn't ever see anything that would ever explain that a district could receive something other than their share of the fund

balance. The ownership share of the fund balance is what would drive everything. And there wasn't any ability for someone to get an extra allocation for any other reason that would be for one district because it really would be to the detriment of other districts.

Q. Mr. Martin, the share -- because all the districts share in the fund balance, what happens if one district gets more than it should?

A. If interest is allocated to one district more than another, it's depleting the pool of any available interest to be allocated. And it would be shorting all the other districts' potential other income that they could get. So it's really to the detriment of all the other districts.

Q. Mr. Martin, let's look at just a final example of kind of what you did for one of these quarters. Let's look at Exhibit 56B, please.

A. Yep, I've got it.

MR. HOFFMAN: One second. Okay.

BY MR. KALTENBACH:

Q. Does everyone have 56B? Your Honor?

THE COURT: I have it.

MR. KALTENBACH: Okay. Thank you very much.

BY MR. KALTENBACH:

Q. So Mr. Martin, Exhibit 56B, we've walked through a couple of these now, and I know it could be a little confusing. But did you do the same analysis with this set of documents that we've looked at twice?

A. Yep. Same exact process. I would have taken the amount listed under 204, the total amount at the bottom of that left-hand column that's the total fund balance. And then in this case it was, again, a million dollars is what he was allocating for this period.

MR. KALTENBACH: Your Honor, my far better at technology team than I am did go -- we went back and removed -- that is an electronic exhibit sticker that we appended at the top of these documents. They removed it, and there is nothing underneath it. I am happy to e-mail a copy of that document with the electronic sticker removed to both Mr. Hoffman and the Court, if you like.

THE COURT: I don't need it. If Mr. Hoffman

wants it, that's fine. I accept your representation.

MR. HOFFMAN: Me, too.

MR. KALTENBACH: Okay. Thanks. I just wanted to make sure we did go back and verify that.

BY MR. KALTENBACH:

Q. Okay. So Mr. Martin, so, then, the first page of Exhibit 56B, you would have looked at the total average fund balance, correct?

A. Yes, that's right.

Q. And is that -- what is that number?

A. That's the $179,013,804. It's the total on the left-hand column.

Q. And for our court reporter, that's $179 million?

A. Yes.

Q. Okay. $179,013,804. And you would have then looked at 204's average fund balance, correct?

A. That's right. That number there, yes.

Q. And is that number $37,552,750?

A. Yes, I believe so. Yes, it is.

Q. And you would have looked at the total

amount, Mr. Healy's estimate allocation of a million dollars, that's in the lower right?

A. Yep, that's exactly right.

Q. And, again, you're not claiming that that's the actual amount by happenstance that was earned in that quarter, correct?

A. That's correct. I would not know that.

Q. Okay. Let's scroll down to page 4. And I assume everyone's there. Mr. Martin, is page -- what is page 4, please?

A. That's a summary I made of the -- of the entries that were made to the general ledger during this quarter for -- for interest allocation.

Q. And is this -- to which district, sir?

A. I'm sorry. 204.

Q. So this is the amount actually allocated to 204 in this quarter; is that right?

A. That's exactly so. And just like the other ones, it's the -- a sum of the -- of the amounts that are highlighted in yellow, which I added to the GL reports, just for clarity, to be able to follow where the numbers come from in the given years.

Q. Okay. So if we scroll through the next many pages that are general ledger entries, you're highlighting the allocation that you captured in that summary; is that accurate?
A. That's exactly so, yes.
Q. And if we go to the pie chart on page 20 of Exhibit 56B, I know you've said -- you've mentioned this before, but what is this, Mr. Martin? What are you depicting here?
A. That's the ownership percentage of each district based on the information on -- based on the information on the green bar sheet.
Q. Okay. So 204's slice of the pie was 21.21 percent?
A. Yes.
Q. And all the other district's slices are depicted there as well?
A. Yes, that's right.
Q. All right. Now, let's look at the next page, page 21. So the fund balance per sheet column, you are recreating the green bar there; is that right?
A. Yes.
Q. And then you're calculating the

percentage ownership for each district of the pooled fund; is that accurate?
A. Yes.
Q. So that's that 21.21 percent for District 204?
A. Yes, that's right.
Q. Okay. And then in the third column, we have a million dollars being -- that's the calculated allocation?
A. Yep.
Q. And then the allocation per sheet?
A. Right. So that's the -- that's the right-hand column, again, that I didn't rely on my report, but that's the number that Healy had written in on his right-hand column of the front -- page 1 of 56B.
Q. Okay. What does this -- what does page 21 of this exhibit show, Mr. Martin?
A. It just shows the -- it just shows the calculated ownership percentage, based on the fund balances that were presented during that period. And the amount that if a million dollars is what was sent out, what each district should have received.

Q. Okay. Let's look at the next page, then, page 22. It's the same format as the last page, correct?
A. That's exactly right.
Q. And what does that page show?
A. So, again, for -- for some reason, again, in this -- in this quarter, the general ledger showed that District 204 had received an additional $125,000 worth of interest. And, again, there is another notation which I'm sure you'll get to in a minute, but this is just showing that if you include that amount that's a notation on there, it really -- 204 got $337,145.
Q. Okay. When determining that 204 actually got $337,145, did you determine that from looking at the green bar?
A. No. I determined that from looking at the general ledger entries. That's the sum of the general ledger entries that were made that quarter.
Q. So that is -- that is the amount that District 204 actually received that quarter; is that correct?

A. Received that in their general ledger, yes.
Q. Okay. And if we go back and look, Mr. Martin, at the first page, let's go back and look at that green bar, what is that handwriting towards the bottom?
A. Again, I think it's -- if I can try to read it, I think it says 204 will be adjusted at EOY for larger -- I believe it's INT payment.
Q. And what did you -- do you -- what do you understand EOY to mean?
A. EOY would be a pretty standard abbreviation for end of year.
Q. Okay. And then looking across from that, you see the words 204 written, correct?
A. That's right.
Q. See the $212,145 entry, correct?
A. Yes, that's right. And that's -- that really appears to be the same of the amount in the calculated interest column, which, again, I did not rely on for my numbers, but it appears he's bringing that down below there.
Q. Okay. So you're talking about if we look up on, I guess it would be row 22 of the

green bar, where Mr. Healy wrote 204?
A. That's right.
Q. If we look all the way to the right --
A. Column 4.
Q. Column 4. We see $212,145?
A. That's right.
Q. Okay. And the total allocation, according to the general ledger that you tracked, was actually $337,145; is that right?
A. That's right. That's the sum of the GL entries.
Q. So if we take the $212,145 and we by happenstance add $125,000 to it, we would get the $337,145 entry; is that right?
A. That's right.
Q. So when determining that District 204 was overallocated $125,000 in this quarter, did you rely on those handwritten -- this handwritten comment at the bottom?
A. No, I did not.
Q. You relied on the actual allocations as compared to the percentage ownership of what Mr. Healy wrote was estimated to be allocated?
A. That's right. It was really the

percentage, the recalculated ownership percentage based on his numbers for 204 in the total, times the million dollars, and comparing that to the general ledger entries that were made.
Q. Okay. And if we go back to Exhibit 54B, which is your -- kind of the summary of your opinion?
A. Yep.
Q. And we go to page 5, which is the detailed breakdown?
A. Yep. Yes.
Q. And we look and find the -- the row dated 10/31/06. It's just a few below the last one we looked at of 10/30/2007. So we have the fiscal year 2007. The date is October 31st of 2006, correct?
A. Yes.
Q. And then the 204 fund balance per Robert Healy, that's the 37 --
A. $37,552,750.50.
Q. Okay. And that's from the green bar?
A. Yes.
Q. And then the total average fund

balance, the $177,013,804?
A. Yes.
Q. That's from the green bar?
A. Yes.
Q. And then you calculated the percentage of that, correct?
A. Yes.
Q. And that is 204's percentage as of that quarter, that's that 21.21 percent?
A. That's correct.
Q. And then the income of a million, you got that from that bottom right number that Mr. Healy wrote on the green bar, correct?
A. That's right. That's his number.
Q. Okay. And so if 204 was getting a distribution in proportion that quarter, it would have received $212,145.88; is that what that is showing me?
A. That is correct, yes.
Q. And in actuality, if we look at the allocation for TTO GL column, it shows that they actually received how much?
A. It's 337,145.
Q. And that's, to help our court reporter,

$337,145?
A. Yes.
Q. And then what is the calculated difference between those two, in the next column?
A. So that is -- it's $124,999.12.
Q. Okay. And you didn't rely on Mr. Healy's handwritten note that it looked like 204 was being given an extra $125,000, correct?
A. No. No, I did not.
Q. Again, that is just happenstance that that happens to be the amount that they were overallocated that quarter; is that correct?
A. That's correct.
Q. Now, if we go back to that note that Mr. Healy wrote, which is the bottom of page 1 of Exhibit 56B.
A. Yes.
Q. And I believe you said you thought that read 204 will be adjusted at end of year for larger interest payout, correct?
A. Yes, I believe that's what it says.
Q. Did you check -- what -- this was the quarter -- this was an allocation done in

October of 2006; is that accurate, Mr. Martin?
A. Yes.
Q. What fiscal year would that fall in?
A. That would be the first quarter of fiscal year '07.
Q. So that would be the fiscal year ending June 30, '07?
A. Yes.
Q. Okay. And did you look to see if 204 was adjusted at the end of the fiscal year for a larger -- for that $125,000?
A. Yes, I did. I checked again, and the general ledgers are attached further back. Again, those are the ones with the yellow on there. And I looked in all the other periods remaining in that year to see if there was an adjustment. Any amount that would have been adjusted or made would have been picked up on my Exhibit -- page 5 of Exhibit 54B in any case. But I did not see where there was an adjustment made to recoup that amount back from 204.
Q. So you checked at the end of fiscal year 2007 to see if that had happened?
A. Yes.

Q. Did you also check at the end of year 2008?
A. Yes. I also looked at fiscal year 2008 to look for a similar adjustment, and I did not see that.
Q. And regardless, at least all the way through the end of your analysis, which was fiscal year 2012, if at some point District 204 was underallocated $125,000 as an adjustment, would your analysis have picked that up?
A. Yes, absolutely.
Q. Because your analysis was not just looking for overallocations?
A. That's exactly right. In fact, if you look at the later periods, you know, fiscal year 2011 and 2012, on my page 5 of Exhibit 54B, that's exactly what there were. There were many quarters in a row where they were underallocated. So they were, in essence, reducing the amount that they had been overallocated in the past. So, yes, that would be picked up exactly like those were.
Q. Okay. And so your -- your opinion incorporates all of those underallocations that

you saw, correct?
A. That's right. My overall opinion of the $1,427,938 includes all the overages minus all the underages. It's the net.
Q. Mr. Martin, we were just looking at the October 31st, 2006 date. If we go the next row down on Exhibit 54B, which is the July 31st, 2006 date?
A. Yes.
Q. And right next to that date, it says no data. Do you see that?
A. Yes, I do.
Q. And if we read across, there are several cells that say either no data or they say hashtag value exclamation point. Do you see that?
A. Yes, I do.
Q. Can you explain why there's no data there, sir?
A. Yes. That's because the general ledger had income allocation entries for that period for 204, but there was no green bar sheet nor should there have been a scheduled interest distribution at that point. If you look, there

was a -- below that one, there was an interest allocation made in 6/30/06. The next scheduled one was 10/31/06. So it would not be typical that they would have one in July. And it does not look like a normal interest distribution. There was just entries made to allocate interest to 204.
Q. So if we look over in the allocation for TTO GL column, the $452,165 entry?
A. Yes.
Q. Is that the amount that was actually allocated to District 204 in --
A. Yes, that's the amount that's allocated in the GL for the benefit of 204.
Q. And that was an interest allocation that the other districts did not share in?
A. Yes.
Q. So that's why that is picked up as an overallocation in your total; is that right, sir?
A. That's right. And that's why there's no data for things that would typically come off the green bar. There just wasn't one for that.
Q. Okay. Now, Mr. Martin, we walked

through three specific quarters to kind of see what you did to determine that there was a proportionate overallocation; is that correct?

A. Yes, that's right.

Q. Did you repeat that same process for all of the quarters shown on the detail spreadsheet on pages 5 and 6 of Exhibit 54B?

A. Yes. That's the process I did for all that.

Q. Okay. And the bottom number there on Exhibit 54B at the bottom of that detailed spreadsheet, the $1,427,938.51, that is the sum of all the proper, over, and underallocations; is that correct?

A. Yes. That's the sum of the net differential between the calculated amount they should have received and what was actually booked in the GL, yes. That's the sum of both positives and negatives.

Q. Okay. And if we go back to your -- the less detailed summary on page 1, your number is a little bit lower, correct? It's $1,427,442.04?

A. Yes, that's correct.

Q. Can you explain the difference?

A. Yeah, that just drops any of the quarters that -- that the net difference was within $1,000 of being correct. I just didn't include that in this summary.

Q. And that actually inured in your analysis to your opinion as to 204's overallocations being a little bit lower than if you hadn't rounded to a plus or minus to 1,000 per quarter?

A. That's right. It's a little bit lower if you included it down to every last -- every last dime, for example.

Q. And is -- is that $1,427,442.04, is that the amount of your opinion, Mr. Martin?

A. Yes.

Q. And is it your opinion that District 204 was overallocated by that amount?

A. Yes, that's the amount that I believe District 204 was overallocated.

MR. KALTENBACH: Your Honor, I do have a few -- I do have some other things that I want to touch on. If we go through, I'll probably finish them up by 5:00. I wouldn't mind just a

couple minute break, however, unless you just want to call it a day and pick back up in the morning.

THE COURT: I'm fine to keep going. Do you think you can finish by 5:00 if we take how long of a break?

MR. KALTENBACH: A 10-minute break, we can finish by 5:00, no problem.

THE COURT: That's okay with you, Mr. Hoffman?

MR. HOFFMAN: Yes, it is.

THE COURT: Back here at 4:20.

MR. KALTENBACH: Sounds good.

THE COURT: Thanks.

(Whereupon, a short recess was taken.)

BY MR. KALTENBACH:

Q. Now, Mr. Martin, are you aware that Mr. Healy, the former treasurer, is a convicted felon?

A. Yes.

Q. And you're aware that he was sentenced to many years in jail for embezzling money from the treasurer's office?

A. Yes, I was.

Q. Did that cause you any concern when relying on the records that we reviewed?

A. It would have caused some concern, but I don't think there -- I don't think there -- there wasn't anything I saw that indicated what he did would impact the allocation of interest to the underlying districts. So in the context of what I did, it did not affect that. Although that would be an overall concern you'd have to consider.

Q. Are you aware -- you read Mr. Healy's deposition, right, Mr. Martin?

A. Yes, I did.

Q. Are you aware that Mr. Healy may have testified or did testify that he did a true-up at the end of each year?

A. I believe I remember him saying that, yes.

Q. Did you see any evidence of a true-up at the end of each year in the documents you reviewed?

A. I didn't see anything that would be a net true-up. He did -- he made quarterly

adjustments, including one for the fourth quarter, which would be the year-end one. It's possible he adjusted the amount he was allocating, that he chose to allocate, but I didn't see anything that was in essence a true-up entry or something that was described as a true-up.

Q. But if he adjusted the fourth quarter allocations, let's assume, for example, he was underallocating to true-up an earlier overallocation, would your analysis have picked that up?

A. Absolutely would have, yes.

Q. So if there was a true-up, that is built in to your $1,427,000 and change opinion; is that right?

A. Yes, because, again, I took from the recorder the actual general ledger entries that were made. So any entry that would be made for a true-up or whatever would have been picked up, yes.

Q. Okay. And I think we talked about this earlier, Mr. Martin, but I want to make sure. You were not able to determine going back to

fiscal year '95 the total amount of income earned on the pooled investments, right?

A. I was not able --

MR. HOFFMAN: Objection; asked and answered. I withdraw that objection. I'm sorry.

BY MR. KALTENBACH:

Q. Go ahead. And did that affect your analysis as you have described it?

A. No, it did not.

Q. Are you aware, sir, the additional -- the amount that Mr. Healy wrote in that bottom right of his green bar -- I think the examples we looked at were 500,000 or a million -- you don't believe that that's the actual amount that was actually earned in that quarter, right?

A. No, I think that's -- that's pretty clearly an estimate. I think he said he was going to book an estimate, and as I said earlier, if the actual interest came out to $1 million even, that would be -- that would be an incredible -- an incredible coincidence.

Q. If there were additional funds that were earned that could have been allocated, but Mr. Healy chose not to allocate them because he

was making a conservative estimate of what was available, would that impact your opinion?

A. No, it would not.

Q. Why not?

A. Because any -- any funds which were available but weren't allocated would just remain as unallocated interest that would still be owned by the same relative percentages by all the underlying districts.

Q. So any income that was allocated -- I'm sorry. Any income earned but not allocated, if it remained within the agency fund, that would -- I'm sorry -- would that be owned by the district still?

A. Yes, that's right. They own everything in there, whether it's allocated or not. If there's an unallocated deed, it would be owned by their districts in their same relative ownership percentages.

Q. Mr. Martin, are you aware of any criticisms of your opinion?

A. Yes, I read the -- there's a report prepared by Plante Moran.

MR. HOFFMAN: Objection.

MR. KALTENBACH: Well, Mr. --

THE COURT: Wait.

MR. KALTENBACH: Sorry.

THE COURT: What's the basis?

MR. HOFFMAN: The basis is there was no disclosure from the TTO of any opinions of Mr. Martin that had anything to do with the Plante Moran expert that LT retained as its expert.

The disclosures for Mr. Martin all relate to the subject matters we talked about today. He then was deposed. Following his deposition, we dealt with Mr. Terpstra, the Plante Moran expert, and between that time in 2017 and the present, we've never received a supplemental disclosure from TTO.

THE COURT: Mr. Kaltenbach?

MR. KALTENBACH: Your Honor, I'm just asking Mr. Martin if he's aware of criticisms of his opinion and asking him to respond to those criticisms. I'm not asking him to give an opinion on the rebuttal report prepared by 204's expert.

MR. HOFFMAN: Your Honor, if I may, the

Morrisroe versus Pantano case that I cited to earlier, 2016 Ill App. 1st, 143605, says -- and this was back when it was 213(g) as in girl, which is now (f)(3) -- "Rule 213(g) limits expert opinions at trial to, quote, the information disclosed in an answer to a Rule 213(f) interrogatory or in a discovery deposition citation. Rule 213 disclosures are mandatory and strict compliance is required."

And then it goes on from there. But this would be a new opinion as to what he thinks about Mr. Terpstra's criticisms or opinions or concerns or anything else that's in his report. This has never been disclosed.

MR. KALTENBACH: Your Honor, I am -- I don't have to do it by asking him about Mr. Terpstra's report. I can just ask him about criticisms of his opinion that I'm aware of.

THE COURT: You can -- look, I don't know what he's going to say, so I don't know whether he's going to be disclosing a new opinion or not. But I understand Mr. Hoffman's objection, and to the extent that he has opinions which respond to criticisms of Mr. Hoffman's expert,

that should have been disclosed. So I'm prepared to hear the question and the answer, subject to striking it if, in fact, it discloses something that was not previously disclosed.

BY MR. KALTENBACH:

Q. Very well.

Mr. Martin, you walked us through your analysis and identified the numbers that Mr. Healy wrote on his green sheets that you relied upon; is that correct?

A. Yes, that's right.

Q. Did you rely on mathematical calculations made by Mr. Healy?

A. No, I did not.

Q. You relied on underlying numbers that Mr. Healy wrote and made your own mathematical calculations; is that correct?

A. That's correct.

Q. Mr. Martin, you testified -- the examples we looked at, the highlighting of numbers in general reports, you testified that you were looking for things that indicated it was a quarterly allocation of interest; is that correct?

A. Yes, that's right.

Q. And you testified that there were a few exceptions to that at the beginning of your testimony. Do you remember that, sir?

A. There were -- I'm sorry. Could you repeat that?

Q. At the beginning of your testimony, I believe you testified that when you made some changes, when you formed your opinion and you made changes to the analysis the Trustees did, that you changed certain numbers; is that correct?

A. Yes. There was three quarters where I did not agree with their interpretation of the records in the general ledger.

Q. Okay. And I believe you testified that you asked the trustee's office in essence what their basis was for believing something was in an overallocation?

A. Yes. It was for those records that were in question. There were other ones besides the three that -- that we just -- that I did not end up agreeing with them on. There was other ones that I did accept their explanation. Yes.

I was on call with the trustee's office to ask them why they had interpreted the general ledger records the way that they did.

Q. But the ultimate decision you made, first of all, it was your decision and your opinion; is that correct, Mr. Martin?

A. That's right. It was at the end of the day my decision about what should be included.

Q. And the net of those decisions actually reduced the claim of overallocation by about $50,000; is that correct?

A. That's correct, yes.

Q. Now, Mr. Martin, we looked through three different sets of green bars. And on two of those sets, there was a notation, one of them was an extra $100,000, and the last one there was a notation about that 204 would be given additional interest that would be adjusted at the end of the year. Do you recall seeing those?

MR. HOFFMAN: Objection. We're covering the same ground that we covered earlier. I'm trying to be understanding about the need to --

THE COURT: Mr. Hoffman, I think

Mr. Kaltenbach might be getting to a question that I was actually going to ask. Let's see where he goes with this.

MR. HOFFMAN: Fair enough.

MR. KALTENBACH: Your Honor, if you'd like to ask it, go right ahead, is all I can say.

THE COURT: Let's see where you're going.

BY MR. KALTENBACH:

Q. Mr. Martin, did you rely on any side scribbles or side notes on the green bars?

A. Not to calculate the amount of the -- not to calculate my determination of the over or under amount of allocation.

Q. You looked at the total average fund balance, correct?

A. Yes.

Q. You looked at each -- the district's average fund balance?

A. Yes.

Q. And you looked at the amount that Mr. Healy wrote as what he testified -- well, did Mr. Healy describe -- you know on the green bars, on kind of the bottom right where he wrote $500,000 once and we looked at two of them where

it was a million dollars. Do you remember seeing those?

A. Yes.

Q. Did Mr. Healy address what those were in his deposition?

A. Yes. I believe he said those were the estimate of what -- his estimate of the earned income for the quarter that he was choosing to allocate out.

Q. And you relied on that number, correct?

A. Yes, I did.

Q. And you didn't rely on the other scribbles on the page?

A. That's correct.

Q. So you didn't rely on whether Mr. Healy, if you wrote $100,000 next to 204, you didn't use that in determining that they got an extra $100,000?

A. No, no. And there were other instances where there were other things written on there, whatever they meant, and I didn't rely on those. But after looking at recalculating the amount that they should have received and comparing that to what was in the GL, in a lot of cases

there was either a plus or a minus that came out to, you know, that same amount. But I didn't rely on that to calculate what the differential was, no.

Q. And Mr. Martin, you testified that you looked at additional districts to confirm your methodology was correct; is that right?

A. Yes. I calculated the allocated numbers for other districts to verify and prove that the number that he had written, that I picked up as the -- that I picked up as the estimated amount of interest he was allocating out. So it's on the green bar -- it's on the green bar three or four at the very bottom of the left, the round numbers, million dollars, $500,000 in the example we looked at.

That was actually something he was really picking up and setting out to the districts. And to verify that I calculated for one district for all periods and several districts for seven or eight periods or quarters, just to show that, yes, there is a basis to say that that was the amount he was attempting to allocate out to the districts.

Q. Do you believe you looked at enough districts that your methodology was sound?

A. Yes, I satisfied myself that the methodology was sound.

Q. Did you find in some instances that other districts were either overallocated or underallocated by Mr. Healy?

A. Yes, there were, in my analysis to prove that out. There were other misallocations that were identified on the report, yes.

Q. Were those -- were those anywhere approaching the $1,427,000 at issue with respect to District 204?

MR. HOFFMAN: Objection; foundation. Particularly he has not established that the witness engaged in the same type of analysis with respect to other districts that he engaged in with respect to LT. And the basis for that, I believe, is in his deposition transcript. But we haven't established that he's comparing apples to apples as a foundational basis. And I don't believe we are.

THE COURT: I think that's a subject you can cover on cross.

MR. HOFFMAN: Okay.
BY MR. KALTENBACH:
Q. Mr. Martin, can you answer the question, please?
A. Yes. There were not -- in the analysis of the other districts, there were not -- the amounts that were different were not the same magnitude as the ones -- the larger ones under 204.
Q. And just so we're clear, Mr. Martin, you did not do the exact quarter by quarter allocation for fiscal '95 through fiscal '12 for all the other districts to the same depth you did it for 204, correct?
A. That's correct, yes.
Q. You did a sampling of those districts; is that correct?
A. Yes, I did. I sampled them.
Q. And that's what you testified, you did so to make sure your methodology was sound?
A. That's correct. Yes, that's correct.
Q. Mr. Martin, do -- as we have discussed this, have you had any reason to alter or withdraw your opinion, sir?

A. No, I have not.
Q. And is your opinion stated to a reasonable degree of accounting certainty?
A. Yes, it is.
MR. KALTENBACH: Your Honor, can I just take a quick moment to confer with my co-counsel?
THE COURT: Sure.
MR. KALTENBACH: Very brief.
(Whereupon, a discussion was had off the record.)
MR. KALTENBACH: Your Honor, I have no further questions for Mr. Martin.
THE COURT: I have a couple of questions for Mr. Martin. And I think maybe I ought to ask them now so that Mr. Hoffman has a chance to cross-examine on whatever the answers are and follow up to the extent he wishes to.
EXAMINATION
BY THE COURT:
Q. The first question is, we looked at some of the green bar sheets where there appeared to be a notation made by Mr. Healy which matched precisely the overallocation that you found.

Did you find such notations, whatever they mean, did you find those for the other misallocations, did you find such notes on the green bars?
A. I'm sorry. Do you mean for -- was there a note for every single -- every single quarter where there was a misallocation under 204?
Q. Yes.
A. No. That -- no, there was not. There was -- some quarters would have a notation that just happened to have that. Other ones -- there were some where there was just a new number written in instead of the -- the rightful calculated percent was replaced by a different number. And there was some where it was just -- where it was just different. But there wasn't a consistent pattern to a notation that would explain what the -- or a notation that matched the difference.
Q. Okay. And what is the most recent date that you looked at the general ledger for?
A. Most recent date would have been the end of 2012.

Q. All right.
A. Or the end of fiscal year 2012.
Q. And at the end of fiscal year 2012, the general ledger would reflect, at least according to it, what the total investment pool's balance should be, right?
A. Yes, absolutely. The trustee's office should have a general ledger account or series of accounts that should say what the total investment account balance is, yes.
Q. I guess what I'm asking is, is there a number on the general ledger which purports to be the total balance?
A. Yes, there should be a number for that, yes.
Q. Well, I'm not asking you whether there should being I'm asking you whether there is.
A. Oh, I didn't see a -- did I see a report? I don't know if I saw a report for that. I'd have to see.
Q. Well, we talked earlier about whether or not you could tie out the general ledger account balance to the moneys that are actually held in all the various investment accounts,

right?
A. Yes.
Q. And you said you couldn't do that because you didn't have sufficient records from the accounts, right?
A. Right, from the trustee's account, yes.
Q. But did you have a number from the general ledger?
A. Yes. There would be -- there was reports from the general ledger that we saw that had the -- the fund -- the overall -- well, I saw at least ones that had the 204 balance on them from the general ledger.
Q. In any event, what I'm trying to get to is that as of the time that you completed your report, you made no attempt to compare the general ledger balance for the total fund with the now current investment account balances, correct?
A. That's correct.
Q. So we don't know whether or not and to what extent the general ledger account balance matches what's actually held in brokerage accounts, right?

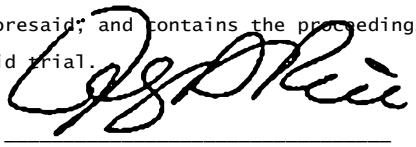
A. That's correct. The trustee's office likely should have been doing reconciliations of that, but I don't know when the last -- what the range of the reconciliations of that was.
MR. HOFFMAN: Objection; move to strike the answer as speculative.
BY THE COURT:
Q. Well, you've never seen such reconciliations, correct?
A. I've never seen reconciliations, no, certainly not for the period of time where I was doing the work.
THE COURT: Okay. Mr. Hoffman, I hope I didn't step on your cross, but we can --
MR. HOFFMAN: Well, first, I want to confirm that there's no exhibits being moved into evidence of any kind by the TTO.
MR. KALTENBACH: That is correct. None of the exhibits we looked at today are being moved into evidence. They are demonstrative exhibits only.
MR. HOFFMAN: Your Honor, I don't know if you want to entertain this now or at the close of the TTO's case-in-chief, but I do have a motion

to strike Mr. Martin's entire testimony as being irrelevant. And I don't believe that we should have to cross-examine him because I don't believe his testimony impacts on any relevant issue in this case. We can either address that now, or I can cross-examine him, and I can move for a directed finding at the close of the case.
THE COURT: Well, I'm not prepared to strike his testimony based on relevance based on what I've heard.
MR. HOFFMAN: Okay.
THE COURT: So I don't think it makes sense to argue that now.
MR. HOFFMAN: Fair enough.
THE COURT: So are we done for today?
MR. KALTENBACH: We are, your Honor. I'd imagine we -- I think -- I'm losing the days of the week. We're all off tomorrow for Veteran's Day. I think we're back on Thursday. I would imagine Mr. Hoffman would cross -- we would open by Mr. Hoffman cross-examining Mr. Martin.
MR. HOFFMAN: And may we also talk a little bit about scheduling for Thursday?
THE COURT: Sure. First of all, does anybody

want to be excused or let people go. Do we need the court reporter? Or can we let her go home.
MR. KALTENBACH: I don't think we need her, and I certainly don't think we need Mr. Martin on anymore.
(Off the record at 4:43 p.m.)

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

I, JENNIFER D. RIEMER, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; and that she reported in shorthand the proceedings of said trial, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains the proceedings given at said trial.



JENNIFER D. RIEMER, CSR

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EXHIBIT

C

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

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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST,
Plaintiff,
vs.) Case No. 13 CH 23386
LYONS TOWNSHIP SCHOOL DISTRICT 204,
Defendant.

REPORT OF PROCEEDINGS at the trial of the above-entitled cause before the Honorable Jerry A. Esrig, Judge of said Court, on November 17, 2020, at the hour of 9:32 a.m.

Reported by: Jennifer D. Riemer, CSR
License No.: 084-003901

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I N D E X

THE COURT: Mr. Hoffman?

KENNETH GETTY,

called as a witness herein, having been previously duly sworn, was examined and testified as follows:

CONTINUED CROSS-EXAMINATION

BY MR. HOFFMAN:

Q. Mr. Getty, let me find your box. There you are, sir. I'm going to pin you open.
Would you be kind enough, please, to open LT A, as in apple, 14?

A. I'm ready when everybody else is.

Q. If you could turn to page 2 of that document, I'd appreciate it, sir.

A. Okay.

Q. Now, the third column from the right is what TTO says the total expenses of the TTO were for each fiscal year, correct?

A. Yes, that's how it's listed.

Q. All right. And for 1999 that amount was about $634,000?

A. Correct.

Q. And then if you skip down to the bottom of that column, for fiscal year 2012, the amount

was district 106's superintendent. Mr. Hoffman designated the entirety of those depositions. I designated portions of those depositions. So I just want to make sure that our designation is part of the trial record, as well.

THE COURT: Are you objecting to Mr. Hoffman's designations that don't overlap yours?

MR. KALTENBACH: Some of them, yes, your Honor. And most of those are relevancy objections. So if the Court's going to read it, then take it for what it's worth.

THE COURT: But Mr. Hoffman, you're not objecting to any of the plaintiff's designations, correct?

MR. HOFFMAN: Yes, sir, that's correct.

THE COURT: So the plaintiff's designations will be admitted. And then Mr. Hoffman, if you remember at the end of your case to introduce yours, and we can talk about the relevancy objections then.

MR. HOFFMAN: I thought we might -- depending on how your Honor wants to handle it, maybe if we do have extra or spare or a slot of time

during the future of this trial, we could just deal with those evidence objections at that time. So that's -- that was my thinking on it. But, of course, any way you want to handle it is fine with me.

THE COURT: Yeah, we can do that. Okay.

MR. KALTENBACH: Okay. Your Honor, with that housekeeping matter taken care of, plaintiff rests, subject to the right, obviously, to call rebuttal witnesses -- I'm sorry.

Subject to the right to recall witnesses, your Honor, the plaintiff rests. And I believe we also -- the parties -- we do -- we would like to have the opportunity to file a posttrial memorandum for the Court.

THE COURT: Well, I don't know what you mean by subject to the right to recall witnesses. Are you resting or not?

MR. KALTENBACH: We are resting, your Honor.

THE COURT: Okay. Mr. Hoffman?

MR. HOFFMAN: As to a posttrial brief, it's our position that we should determine that at the end of the trial. Our inclination is not to spend that type of money and time, but I think

we all need to revisit that issue at the end of the trial, and that's where that belongs. So I won't belabor it.

THE COURT: When we get done with the trial, I'll let you know what I think would be most helpful to me.

MR. HOFFMAN: Exactly. And then, your Honor, as we indicated, LT has a motion for directed verdict -- directed finding, I think, because it was only part of the case. And I'd like to present that.

I do want to take a minute to have a break for the sole purpose of communicating to my first witness what our schedule is like and when I anticipate calling him.

So we've got 11:10 now, and we're going to have this argument. And I know he's available, and he's in his office awaiting my head's up. So I guess I just want to work out the schedule so I can fill him in.

THE COURT: If I gave you all the time you wanted, how long would it take you to present your motion?

MR. HOFFMAN: I don't think it's going to

take more than 15, 20 minutes to present. And then we, of course, will get a response, and then maybe have some further discussion.

THE COURT: Okay. So what I'm thinking is, we'll hear the motion, we'll take our lunch break, and then we'll resume, I'm going to say -- just to be safe, let's say at 1:30.

MR. HOFFMAN: Perfect. I'll tell the witness that, and I appreciate you being cognizant of his schedule. Thank you.

THE COURT: Okay. So you want to take a couple minutes now to get in touch with him?

MR. HOFFMAN: I do. Thank you. If we could have five minutes, that's all I need.

THE COURT: Yes. Let's be back at -- let's say 11:20.

MR. HOFFMAN: Perfect. Thank you, Judge.

(whereupon, a short recess was taken.)

MR. HOFFMAN: Your Honor, this is LT's motion for a directed finding on the TTO's investment earnings claim. We're bringing the motion under Sections 5/2-1110.

We've provided the Court with several

cases, as well as opposing counsel on Friday.
We have the Supreme Court's decision in Cryoent (phonetic). This tells us that a directed finding is warranted when all the evidence so overwhelming favors the movent and no contrary verdict on the evidence could ever stand. We recognize that this is a very high standard, we recognize it is unusual to grant these types of motions; however, we do believe it is warranted here for this particular claim.
We have a two-step analysis under the greater Pleasant Valley Church case. First, is there a prima fascia case made out? That's some evidence on every element essential to the claim. It is our position that it does not exist here.
The second step, if there is a prima fascia case, we consider and weigh the totality of the evidence, including evidence favorable to the respondent. And we believe that if that's done, if there is a prima fascia case, then the motion should be granted based on weighing the totality of the evidence that's been presented here.

We've got the Guske case, and that's just one of the main examples of a partial finding being made; need not address the entirety of a plaintiff's case.
Now, what is the claim we're dealing with? In the TTO's second amended complaint, there's a single count for declaratory relief, and within that there's three claims. There's the investment earnings claim, the audit payments claim, and the pro rata expense claim.
We included the Mack case from the First District to make clear that a declaratory judgment is a form of relief, and it's not a basis for a claim on its own. In that case the Court found it is not deemed to create substantive rights or duties, however, but instead merely affords an additional procedural method for their judicial determination. And the Court goes on to say, because the remedy is strictly procedural, an action for such relief must state a claim based on particular substantive legal theories.
So we need to look at the second amended complaint to determine the legal theory

behind the investment earnings claim. And we find that in the second amended complaint on page 7, paragraph 38. There's a reference in that paragraph to Sections 8-7 and 8-8 of the school code.
Now, 8-8, this is the only mention of the section in that complaint. It's LT Exhibit H, as in Harold, 5. It just simply governs -- well, not simply, but it governs the types of investments that the township Treasurer can make, and it doesn't speak to this specific issue involving the claim.
However, Section 8-7 is the section that controls here and that governs the claim that the TTO has made. And that's why they quote in paragraphs 39 and 40 in the complaint from those key provisions. That section, 8-7, is also LT Exhibit E4.
THE COURT: Let me stop you for one minute here. I'm trying to get some notes up in front of me, and I'm having a little trouble.
MR. HOFFMAN: Take your time.
THE COURT: Give me one second. Go ahead.
MR. HOFFMAN: Okay. Thank you, Judge.

In paragraphs 39 and 40, the TTO quotes from Section 8-7, paragraph 39, they quote the section that allows the Treasurer to combine moneys from more than one fund of a single school district for the purpose of investing such funds. And the evidence -- and there's no disagreement. That's exactly what they did and what they do.
The next section of 8-7 is critical here. And what we've got here, the key language says, "When moneys of a school district are combined with moneys from other school districts." Okay, so that's what we've got. We're not combining funds from one district, we're combining multiple school districts. Then it goes on to say, "The earnings from such investment shall be separately and individually computed and recorded and credited to the school district for which the investment was acquired."
First of all, this applies to the Treasurer's obligation. This is an obligation of the Treasurer per Section 8-7. The use of the word shall, we view, means mandatory. There's no best practices, there's no

discretion, there's no judgment, there's no business judgment. It uses the word shall.

Separately, with LT, there's no joint ownership of funds. There's no fractional ownership of a pooled investment. It's all divided completely among the pool members.

Individually, to us it means that it must be in the name of a particular school district that has that ownership interest; computed, that requires there be records to determine the earnings on a per school basis; recorded, the Treasurer must put the actual earnings into his or her official records; and credited, the earnings must increase the account balance of the individual school district in full for all of those earnings.

Again, there's no discretion in Section 8-7. There's no basis for estimating earnings in Section 8-7. There's no statutory power to process some earnings but not all earnings. There is no excuses for an inability to compute earnings. There are no exceptions for recording separate and individual earnings on an actual basis. And there's no power

granted to the Treasurer to credit less than full earnings directly to the school district.

Now we move to paragraph 44 of the second amended complaint, and it says, "In fiscal years 1995 through 2012, the Treasurer allocated $1.5 million and change in interest on investments to LT. And then they go on to say that it's not fair to the other districts. They allege that other districts suffered loss as a result of what they allege to be over allocations to LT.

And then we get to paragraph 47, and it says, because of its statutory obligations to 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.

Now, then the question is, what is the substantive legal theory of the investment earnings claim because there has to be one. The only theory that's identified in the complaint is Section 8-7. The TTO is claiming that the Treasurer at the time, Mr. Healy, violated

Section 8-7 when he allegedly over-allocated earnings to LT.

There is in Illinois law no general fairness action. There is a declaration of rights has to be on the parties' rights with respect to something substantive a statute, a contract, a regulation, property rights, something other than here's this thing we don't like, fix it for us, please.

We have the following testimony that's relevant. First of all, we've got an admission by Dr. Birkenmaier with respect to interest earnings. And in Exhibit A13, there's the question and answer as follows: "Between 1995 and 2012, which is the time period involved in the TTO claim with respect to interest in this case, did the TTO regularly pay out to the districts either the entire amount or nearly the amount of interest that the TTO earned on the pooled investment plan?"

And the representative of the TTO said, "I don't know."

Question, "Why do you not know that?"

Answer, "I don't know what the total

amounts were that were earned."

Now we have Mr. Martin's testimony. And Mr. Martin was the person who carried the ball for the TTO on the investment earnings claim. He admits that the TTO lacks records to determine the amount of investment earnings for the entire period, 1995 through 2012. And this is the time period that the TTO chose. He admits that in earlier years, the TTO was missing 50 percent of its source documents; in later years it's missing at least 10 percent. He admits he has no idea how much the TTO earned. He admits he has no idea how much LT is entitled to be credited. Admits he did not use the statute in -- originally in connection with his work. But I went back and asked him questions about it, and he made these admissions knowing what was in Section 8-7. He did not hide that from him.

He also admits that his analysis relied on handwritten notes that Healy wrote, which he claims -- which he admits were estimates. He also testified they were round numbers, like 500,000 or a million. And that they plainly

were not actual earnings.

So what does this mean for purposes of the TTO's case? Problem No. 1 is that the claim says the Treasurer allegedly violated Section 8-7. The TTO is claiming the Treasurer violated Section 8-7 and is suing LT for those violations. There's nothing in 8-7 that gives the Treasurer the right to sue a school district for a statutory violation by the Treasurer.

There is no claim of fraud or mistake directed at LT. This is because there's no evidence that the TTO gave the district any information of earnings sufficient to know how much in earnings they should have received. It was just a bottom-line number that was translated through journal entry.

There was no reports in evidence on investment earning distributions, which itself is shocking, and representative of how the TTO did business during these 17 years. There's just some handwritten notes.

And we don't have in this case claims by the Trustees against the Treasurer here. In fact, in this complaint, it says that the

plaintiff is the Board of Trustees, but it also says that the Treasurer is bringing this action.

So, now problem No. 2 is equally problematic in that there's no evidence of any actual violation of Section 8-7. For the TTO to prove a violation of Section 8-7, the TTO would need to show that actual earnings on pooled investments are separately and individually computed and recorded and credited to a school district, and that those credits exceeded the amounts that the school district was entitled to be credited.

Martin can't do that, which is why he falls back on what LT calls the one big stomach argument. So what Martin said was that it doesn't matter in his opinion that allocations were less than actual earnings. And we looked at audit reports from the TTO, which were problematic. They were only there for some years and not others. He didn't use them at all to rely on his testimony. They seem to indicate some years that there were net -- there was a leftover net amount undistributed, uncredited, but that wasn't part of his testimony. He

wasn't able to sort that out.

So what he said was it doesn't matter if the TTO or the Treasurer failed to comply with Section 8-7 and failed to credit the earnings, because the money that was uncredited would just stay in the unallocated portion of the investment pool.

There's no testimony of any kind from the TTO to quantify those uncredited earnings. And there's no evidence of any kind that that money actually remained in the pool or that actually -- that wasn't part of the fraud that Healy engaged in, the over a million dollar fraud.

And on top of that, the testimony's directly contrary to the language of Section 8-7. It's mandatory that earnings from pooled investments should be credited individually and separately to each school district. For Martin's approach to make any difference or have any relevance, Section 8-7 would have to say that earnings from pooled investments do not have to be separately and individually computed and reported and credited,

and instead, they can remain in the investment pool. That's just the opposite of what Section 8-7 provides. It provides plain language.

Now, we've also got this argument from the TTO about the other districts. Again, this is sort of a free-floating argument based on what they claim to be fairness. It's clear from Martin's testimony that he couldn't calculate the actual credits due any of the districts, not just LT. The information's not available.

It's also clear he only looked at a few quarters from other districts. He can't testify as to whether those other districts were over-allocated or under-allocated with whatever Healy chose to allocate. He only looked at ten quarters from District 109, and so on. It wouldn't be relevant. But he doesn't know that in any event.

I want to give the Court an analogy. Let's assume that there were earnings in a particular time period on pooled investments, an investment pool of $10. Let's also say that Healy decided -- wrote a note somewhere and let's say that's even accurate, which we

dispute, by the way, and he decided to distribute five of those ten bucks. Let's assume LT was getting 20 percent of its slice of the pie. All right? So that means that LT actually earned $2, 20 percent of the ten bucks.

So if LT got 20 percent of the $5 that was actually allocated by Healy, it would only get a dollar. Right?

Now, let's say Healy distributes a dollar and a half to LT. And somehow let's assume he distributes less proportionately to the other districts. What happened? What happened there is LT got 0.5 less than it earned. It earned 2, it got 1.5. And it got 0.5 more than some theoretical share of an allocation. Which, again, we're not saying happened, but that's taking Martin's testimony at full face value. That's what he says.

And the answer to that is so what? That's not a violation of Section 8-7. Healy violated Section 8-7 because he caused LT damages of 0.5 because they were credited with less than what they earned. And that violated Section 8-7.

Now, the other districts in this scenario might have been damaged to a greater percentage. There's no rule of law that says victims all have to be disadvantaged in the same proportion.

So that's the best read and the most generous take on Martin's testimony, keeping in mind the TTO's and his admissions.

Now, let me just wrap up by saying, what difference does it make to grant this motion? And why should we not be conservative and wait to hear all of the evidence that comes forward in this case?

I certainly understand the inclination and desire to be conservative and to present an appellate court with a full appellate record. However, if this motion is granted at this time, LT will not have to ask all of its witnesses and the TTO's individuals that it has called as witnesses, Healy and Hartigan, to explain everything about investment earnings. That's going to save hours of witness time for everyone.

And it's important not just for LT to

save money, but it's important for the TTO to save money if there is money to be saved. This Court knows from reading the trial brief that it is the position -- that LT is being charged a significant percentage of the attorney's fees of the TTO, including all of the lawyers who are on this call right now. And that next year we will get a bill for the five or however many lawyers they're billing today. And that's all taxpayer money. And it's all taxpayer money for LT and all the other districts.

We also would not have to call our expert witness, Martin Turmstrom. Martin Turmstrom is a lovely gentleman. He's retired, but he's available to testify. He will testify about many deficiencies in the TTO report, but those deficiencies are evidence in testimony Mr. Martin gave and this Court's own questioning of Mr. Martin.

Should we have a final argument, should we have a posttrial briefing, the same thing. We're going to have to deal with this $1.5 million claim. We're going to have to spend a lot of time and energy and effort.

So understanding that these are difficult motions to ask for, understanding that it's a -- it's a hard ask, we would ask this Court to very seriously consider it and respectfully grant our motion.

THE COURT: Before the plaintiff jumps in, let me ask you a couple questions. I'm looking at the prayer for relief in the second amended complaint.

MR. KALTENBACH: Okay. Let me just take one second. I have excerpts. Let me pull that up.

THE REPORTER: Your Honor, may I have just one minute?

THE COURT: Sure, let me know when you're ready.

(Whereupon, a short recess was taken.)

THE COURT: So, Mr. Hoffman, there's a number of lettered paragraphs there in the prayer for relief. Which are the lettered paragraphs that you believe are related to the investment claim?

MR. HOFFMAN: Yes, sir. It is D as in David and E as in Edward.

THE COURT: Just those two?

MR. HOFFMAN: Correct.
THE COURT: All right. And let me ask you this question. There's been reference at the trial and also in the motions you argued before me earlier to legislation that allows 204 to separate from this organization or arrangement once this lawsuit has ended. Is that right?
MR. HOFFMAN: That is correct. So I believe that's in our exhibits as a demonstrative.
THE COURT: And does that legislation provide for -- what does it provide, if anything, for how that separation is accomplished and how 204's share of the pool would be distributed to it?
MR. HOFFMAN: It does not provide. It is a source of great concern to LT. And it -- it has kept some people up at night, I think. But it doesn't -- it doesn't lay out any type of detailed construct for dispute resolution mechanism or anything of that nature that I think you might be envisioning.
It just says that once we -- once we depart, you know, we'll have a right to depart. So, look, there are going to be issues with

respect to our departure, but those issues will have to be resolved in the future. There are very -- you know --
THE COURT: The reason I ask this question is -- and, again, you folks know more about this than I do. But I don't understand how that separation could be accomplished without an audit which would determine 204's share and probably everyone else's share of the then-existing pooled income. Does anybody think that that separation could be accomplished without that?
MR. HOFFMAN: Your Honor, you're absolutely right. It is something that we would expect to occur. I think in our case-in-chief, you will hear more evidence about some concerns we have in terms of the TTO's accounting for funds, and we have counterclaims with respect to that.
But anything that I would say further we'd have to get into settlement discussions that we've had, and I don't want to do that. So there's --
THE COURT: I'm not asking about settlement discussions. I'm asking you, is there a way to

accomplish a separation absent some agreement between the parties without somebody doing an accounting?
MR. HOFFMAN: Well, don't forget the horrible possibility of another piece of litigation. In other words, like, for example, I think to be frank, a bench trial here, here's what I think is going to happen when we leave. The TTO is going to say, here's the money that you're entitled to get. We've made certain adjustments and deductions to it for the following reasons. Here's a check. Have a nice day.
And then we are going to have a problem with the amount that we receive, and we are going to have disputes with the TTO at that time. But that -- you know, that to us is an issue that will involve -- I mean, we're not -- let's just -- let's say that we have a comprehensive forensic audit that takes place in the year 2021.
Let's say we resolve this case, somebody wins, somebody loses, there's a decision made, and next year -- and let's say everybody decides to live with it and we don't

appeal. From my lips to God's ears. So then we're going to have to figure out a way of how to separate this prior to the end of the next fiscal year, and we're going to have to try to work out an agreed manner of determining what our assets are and what they can properly deduct.
And one of the issues in discussing that has been, can they deduct things that are at issue in this case.
But let's further assume that we have a forensic audit, and we come in and somehow we agree who's going to pay for it, how it's going to be done, miraculously. That forensic audit won't tell us anything more than Martin, Mr. Martin, was able to determine with respect to this issue on investment earnings because the TTO -- it is the record -- it is a matter of record in this case that LT filed a motion to compel the TTO to produce source documents on their earnings.
Judge Hall granted that motion, and those were the boxes and boxes and boxes that Mr. Martin looked at. Those were the documents

of Merrill Lynch bank statements, all that stuff he exhaustively went through. That's why his bill was around $120,000 and is more now is because he and his team went through all records that were possibly available to the TTO. And he was completely unable to do a forensic audit of the investments for this time period.

So no matter what happens with regard to our departure -- and, look, I'm willing to concede that Mr. Martin is good at what he does. We're not contesting that somebody else could come in and do a better job looking at all those records.

And we're not disputing that the -- that the TTO is missing a majority -- well, half of its records in many years and at least some missing records for all of the years. There's no dispute to that. The TTO's records are a mess.

And I will tell you, frankly, this is the reason that we did not file a counterclaim for this Healy time period for being under-credited for our investment earnings. The reason we did not sue them for under-crediting

us like we did in subsequent years is because the records are simply not there. They're unavailable, and we could never support a counterclaim for the Healy years on investment earnings. And so that's not going to change in 2021 when we're leaving and there's somebody just like James Martin in place to do a forensic audit.

THE COURT: Let me hear from the plaintiff.

MR. QUINLAN: Sure, Judge. Again, William J. Quinlan on behalf of the Lyon's Township Trustees and the plaintiff here.

Let me start by saying a couple of things. Obviously, the first is that Mr. Hoffman chose not to file a motion here and rather argue it orally. It's clear that much of what he's arguing here is something that's probably more proper for a motion on the pleadings, a motion to dismiss, or a motion for summary judgment.

He's speaking about interpreting statutes and the like. And it's something that, you know, at least the initial part of his argument, as I understood it -- I appreciate it

went on for a bit -- was something that could have been raised there and deals more with interpreting the statute.

I will say he made the point over and over again that the statute uses the word shall. And that, therefore, that gives this Court no discretion. And I will tell you just, you know, something, unfortunately, I learned in my time in government, but it is just a fact, that the Supreme Court of Illinois as well as the appellate court has routinely interpreted the word shall, even though placed by the legislature and the general assembly, to not mean shall and make it as discretionary.

And the cases that I quickly pulled up on that is People Ex Re Harris versus Paul, which is 35 Ill 2d 384. You also see it in People Ex Re Meyer versus Kerner.

MR. HOFFMAN: Bill, could you slow down a little when you're reading these because I didn't get these, and I haven't heard this before, so I'm trying to write it down.

MR. QUINLAN: Judge, I'm happy to do that, and I will slow down, and I do appreciate it.

But there's been a lot of interruptions. I'd like to finish. I've treated everyone courteously, and I just hope to do that.

MR. HOFFMAN: I didn't mean to be discourteous. I apologize.

THE COURT: At the end of Mr. Quinlan's arguments, I'm sure he can give you the case citations.

MR. HOFFMAN: Thank you.

MR. QUINLAN: And I'm happy to give it to the Court. I'm not trying to be difficult, but I'm trying to respond to what I heard, and I did in all fairness pull this up quickly.

And, you know, it continues. There's more, but this is -- you know, when I say unfortunately, here is a recent one. It's Brennan versus the Illinois State Board of Elections, 336 Ill. App. 3d 749. And that's from 2002.

Courtney versus County Officials Electoral Board, 314 Ill. App. 3d 870. They also applied it to the Corporation Act in Advanced Imaging Center of Northern Illinois Limited Partnership versus Cassidy, 335 Ill.

App. 3d 746. And I could go on.
But the point that -- like I say, fortunately, unfortunately, a tenent of Illinois law is that when the General Assembly inserts the word "shall," it also has in circumstances been interpreted to be "may."
And, you know, with respect to that, we brought this action. I know Mr. Hoffman talked about the Treasurer bringing the action, your Honor. And I looked at that, and he's right that the caption is the Township Trustees. It's a single paragraph where they reference the Treasurer. The rest of the paragraphs talk about the trustee.
And as your Honor knows, and we're happy to do this, this Court can conform the pleadings to the testimony which your Honor heard. To the extent that there's a foot fault with one paragraph that we're trying to play gotcha on, it's something the Court can either recognize by asking us to correct it in a mild amendment or further to just conform the pleadings to the actual testimony which the Court heard.

With respect to Mr. Martin's testimony, as your Honor knows, a few things. One, Mr. Martin, there's no disputing, is a forensic accountant and expert. The Court accepted his expert testimony and accepted his qualifications.
He testified on direct, redirect, and cross-examination that the figures that he opined that was misallocated to 204, that he believed those to be correct to a reasonable degree of accounting certainty. He did that. That has been undisputed other than on cross-examination.
We have not heard from their expert. Those figures are correct. There's been no dispute in these testimonies that the dollars that were spent on the Township Trustees' expenses were dollars that were actually spent. These aren't hypothetical dollars. They're not asking for --
THE COURT: No, no. That's not even an issue right now. The only thing that I understand to be an issue right now is the allocation of interest. In other words, we went through the

green bar sheets, and Healy says, I'm going to allocate X amount of dollars to the -- to 204. And then he allocates X amount of dollars and distributes another $100,000. That's what you're claiming.
MR. QUINLAN: Sure. And that's correct. And Mr. Martin testified to that, and questioning from both the Court and from opposing counsel, that he said, when the Court asked whether you could tie that to a bank account, the question was, do you need to? And he said he did not to, based on a reasonable degree of accounting certainty, and he explained exactly why.
Furthermore there was testimony, and I think what Mr. Hoffman argued was he's trying to take a snapshot and say this interest has to be allocated in a specific time, and it has to be done in this specific way. The statute does not say when it has to be allocated.
And further, Mr. Martin testified that future allocations that, you know, how it's affected -- how this is allocated in one year affects future allocations, which allowed him to get to his figure. That testimony is before the

Court. That is unrebutted.
And to the extent that we could go further with this, I'm happy to do that, you know, more in a pleading after I get the transcript to do that. But, you know, I think this is a high bar. I think we've demonstrated more than a fair case. I think we've proved the elements. I think Mr. Martin as well as all the other witnesses including Mr. Getty have testified as to how these allocations that were done at this time are both improper and, you know, the method and manner in which they were doing it, that we stated case with that.
Further, to end on that, without being difficult, is that the idea to ask this Court to grant it because we're concerned about dollars that are being spent, which, let's be clear, that's why we're here. The TTO does not benefit from this lawsuit personally; does not benefit as far as their experiences in any way. And for District 204 to say they're concerned about the money being spent when there's been testimony -- I mean, by Dr. Kilrea where I asked him specifically, what information do you need in

order to pay your bill, and basically the summation was, well, nothing, because we're in a lawsuit.

And in the same cross-examination, he recognized that them not paying their bill affected all the other districts.

So the concept that anyone's trying to save taxpayer money here, and we're supposed to just run short adrift on this in order to do that is at best rich, and at most disconcerting.

THE COURT: That's really not a concern for me. I'm certainly concerned about the spending of taxpayer money, but I'm not going to short circuit a trial if I think there's an issue because, you know, one side or the other may be put to expense.

But I am concerned with the theoretical underpinnings of the claim. Let me ask you this. Why -- why couldn't the trustee -- the Trustees have simply made a journal entry that says we found a misallocation back in 1999; we make a journal entry to correct it? Why do we even need to be in court?

MR. QUINLAN: I think that's a fair question,

Judge. And at the risk of myself testifying, because it's not something we did raise. It came down to this specific point. And we kind of end up spinning this around.

You heard, I'll say, the testimony from Mr. Hoffman about what happens if we break up and the money isn't spent, and we could end up in, I think the phrase was, more litigation.

The concern, and we end up spinning around, is if we make the journal entry, your Honor, and then 204 comes in and files a lawsuit, we are where we are today. It's just a difference between who's the plaintiff and who's the defendant.

At the end of the day, we need some resolution on behalf of all the other taxing districts and on behalf of 204 to get this resolved.

THE COURT: I understand. But I don't understand how that resolution comes out of this lawsuit absent a winding up, at least with respect to 204, of all the affairs of this organization.

Because Mr. Hoffman is right in that

the allocations are relative, as I've heard the testimony, and without knowing whether or not disproportionate allocations were made to the other districts, how do I know that there was an over-allocation to 204? And how do I know the amount of that over-allocation?

And more than that, how do I know that in some subsequent year, there wasn't an adjustment or an under-allocation or an over-allocation to some other district that doesn't even things out? And the question I have is, why should I -- or why should we -- now, things may have been different when this lawsuit was filed. But why should we focus on a limited period with respect to one of a dozen entities and decide what should or shouldn't happen for that limited time with respect to this entity without understanding what happened before and after and at the same time with respect to the other entities?

MR. QUINLAN: Your Honor, my answer to your question, which I think is fair, and I believe was posed to Mr. Martin, was that he did sample other districts, and he found that that was de

minimus. And I will say, with respect to other circumstances like this, which the Court might be familiar, that, you know, the Court, both the Supreme Court and others, have recognized that sampling like that is something where they can take an appropriate because the effort it would take to do the type of full-scale audit that you're talking about that we'd bring in an expert, and you see it in the evaluation of Medicare, Medicaid repayments, things like that, where you will do a sampling.

Sampling will -- before the Court has been upheld, and I'm happy to provide the Court with those cases. But here Mr. Martin said in response to the same type of questioning the Court is asking me, that I took a sampling of the other districts, and based upon the sampling, that any over or under-allocation was de minimus.

So he did look at it with respect to that to reach his reasonable degree of accountant certainty with respect to the money that was improperly allocated to 204. But I think your points are fair in that it really

says it's a very complicated issue which, you know, makes sense to at least hear from everyone else.

But Mr. Martin did address that and did address the Court's concern in trying to determine as an expert what those figures are that he stated again with his certainty was improperly allocated to 204.

THE COURT: Well, what is it -- if I reallocate, if I give you the relief that you're requesting, what is the implication of that for an eventual resolution of this case?

In other words, am I saying that during the period of time all of the other allocations with respect to all the other districts are correct? And that when somebody tries to unwind this thing, this period is already decided with respect to everyone? I don't know what the implications are of this ruling.

MR. HOFFMAN: You're muted, Bill.

MR. QUINLAN: I appreciate that. Judge, I just want to get you a thorough answer. I just want to ask Mr. Kaltenbach --

MR. HOFFMAN: I will want to reply later.

MR. QUINLAN: Guys, sorry for the delay. I want to get you a thoughtful answer.

I think the answer to your question is twofold. One is the concern here is the withdrawal of 204 and the effect that that has because as -- you know, again, I appreciate the others, but we're talking about a number that, you know, as far as on their ledger, that if you were to add them all up, there's not -- that kind of money is not in the pod.

So if they walk away, we're trying to adjust that ledger as it relates to the other districts. We're not asking you to make a ruling with respect to the other districts, whether that's right or not. And, in fact, they're not challenging anything.

In fact, they're here, and you heard Mr. Thiessen testify that to the extent there was some under-allocation, that he'd work it out with them. We have no basis to believe that he wouldn't. And it's not a particular issue.

In fact, you know, I think -- you could see that none of the -- you know, the other -- and I know this claim's not before the Court,

but it demonstrates the point that I think you're concerned about, which is when you see the other districts that are paying their fair share, not taking setoffs and the like, they are working with the TTO, or really working with the other districts because it's not the TTO, it's how it affects the other districts to get there.

The concern is based on the testimony from Mr. Martin, if you were to reallocate the interest, is to get us back to the center, so that they don't walk out where we're left with this deficit, which is really, we don't have money, they're gone, and they're taking this money out.

And then we really have to deal with the other districts where we've got this, you know, phantom numbers, because we haven't deducted it. As the Court suggested, why didn't we do it at the beginning to get us to a true number. So I don't think you have to worry about how it affects the other districts.

That, obviously, A, is not before you. But the more practical level, those districts aren't complaining. They're sitting here trying

to get this number back to center. And based on Mr. Martin's testimony, that, you know, it is de minimus.

And I think you also can see that they're not complaining and in here asking for this and this. We are bringing that claim to some degree on their behalf because it's our obligation to get these books right.

THE COURT: No, no. I'm -- they're not here complaining because all you're doing is asking for money from 204, which would inure to their benefit. What I'm saying is that the allocation, whatever it is, is all relative.

MR. QUINLAN: 100 percent. I completely -- it's a zero sum gain. As one goes up, another goes down. There's only so much money.

THE COURT: I guess what I'm saying is I don't understand how this problem can be resolved without looking at the fund from beginning to end and deciding who owes what to whom.

Now, I recognize that there are going to be limitations on the ability to do that based upon the inadequacy of records. And

Mr. Hoffman, that's something that everybody's going to have to live with. So somebody's going to have to come up with some method of allocating what's been unallocated. But -- okay. Let me just stop. Let me hear from Mr. Hoffman.

MR. QUINLAN: Can I say one thing? I'm not trying to be difficult.

THE COURT: Go ahead.

MR. QUINLAN: I think your point is fair, and I say this just because we're not in the same room, and otherwise I'd be able to say this to Jay kind of offline.

In the sense that I don't disagree that if we were to sit down with 204 and say could we agree to some mutual type of audit where we're going to get together and everyone sits down and figures out what these numbers are. And wouldn't it be better for the Court to do that offline is something I think we're open to because we want to get to -- I get your point.

You use the Churchill phrase, like this is, you know, the best way we know how to do it or the worst way we know how to do it, other

than anything else, Judge, short of some resolution.

THE COURT: My concern is that it's just not right, I guess, would be the way I'd put it. But let me hear from Mr. Hoffman.

MR. HOFFMAN: Well, a couple things. Let me just start with, look, in terms of what Bill just said, your Honor, our dealings with the TTO have been extremely frustrating, extremely contentious. I know I'm not on their Christmas card list.

I've lived this case for the past four years. Look, this is how the TTO chose to bring this case. They were the masters of their case, and this is how they did it. And so I made -- I telegraphed very clearly in our trial brief that we would be seeking a directed finding on this issue. And every meeting we've had, including the pretrial conference, I've told everyone that. It's no surprise. And I don't believe that it needed to be put into a written document.

I think we were benefited by having the Court hear the testimony. And I think it's very

common and traditional in cases I've tried to move for a directed verdict orally as I have. I also supplied all the cases that supported our position Friday in the e-mail I sent everyone. And the Court Thursday encouraged everyone to send what they had on Friday or over the weekend.

I'm just hearing about these cases Mr. Quinlan is citing today. But they don't appear to address our situation because they really get to the authority of the Treasurer. And that's not what we're dealing with. LT is being accused of violating this section by actions that their Treasurer took. Now --

THE COURT: No, no. That's not really what's happening. What they're asking for is a declaratory judgment. They're asking that the Court rule that certain funds belong to them. They're not -- that doesn't require misconduct on the part of 204. So I don't see that.

MR. HOFFMAN: Maybe not misconduct, but somehow they're alleging that this section wasn't done right. And by the way, in terms of the Treasurer bringing the action, Mr. Quinlan

is inaccurate in terms of his complaint. It is not one paragraph. It is three paragraphs. They have three claims. At the summation of paragraphs 37, 47, and 60, it says, the Treasurer brings this claim. So that's no error.

And they've known about this issue forever. We've argued about this in motions to dismiss that they filed. They've tried to say they have no obligation to us. They're not a fiduciary, dot dot dot. That's why we haven't been able to work out these things.

You're going to see in the context of our counterclaim that we don't feel we've been treated like someone who's a fiduciary, someone who supposedly had this company, this entity working for us in theory. They don't give us information. They don't treat us the way it needs to be treated.

But let's get back to the Healy era. This -- oh, in terms of the other districts, by the way, paragraph 46 talks about what they intend to do with this money and the reallocation. Now, they say to the extent that

LT has been over-allocated in the interest, it means that the other districts have necessarily been under-allocated. You know that's not how we view it or how LT views it.

Then it says, "The Treasurer anticipates that once this interest is able to be properly reallocated among the districts," and has examples, 102 gets $265,626; and Argo gets $319,077.

Okay. First of all, that doesn't even take into account the more than $3 million that they've spent in public funds on attorneys' fees in this case.

So we have a situation, and we're going to talk about this in the context of the counterclaim, where a million dollars came in. And according to the testimony we've heard from Mr. Getty, that a million dollars came in for a settlement on bond claims. None of that money was actually credited to the district. It all went to stuff. Okay?

Now, whether it went rightfully or wrongfully, we're going to decide in this case at some point in the future. But for them to

claim that if they get the 1.5 million, that they're going to take that 1.5 million, and they're going to split it up amongst the other districts is not consistent with what has occurred in the past, it doesn't take into account the enormous amount of fees that they've incurred, which they billed us for.

So to say that we don't care about public funds, look, if we lose on our legal position that we don't have to pay for the cost of being sued, we're going to have to pay that money. It's hundreds of thousands of dollars.

THE COURT: Okay. None of this is relevant to the legal issues that I'm trying to decide.

MR. HOFFMAN: Right. Correct. But it does address some of the things that Mr. Quinlan was talking about.

Now, these other districts are not part of this case. Now, that's a critical point. These districts are not parties, and they did not authorize this lawsuit by Board action. This is something that the TTO did entirely on its own.

Mr. Thiessen testified that he did not

go to the other districts and seek their approval for this. And their rights, while they're -- we feel sorry for the other districts. We feel sorry for them. We think they were mistreated by Healy, too. We think the amount of money Healy stole is well over a million dollars.

But, again, you saw a written document that -- that the TTO wrote saying several districts that asked for a forensic audit -- this was in 2013, I believe -- and we're not doing one. And then it said, by the way, other districts, we're not sharing the information about the lawsuit with you, either.

So what happened under Healy is a giant, black hole. No one, no matter how brilliant they are, will ever figure out, in our view, what happened during the Healy era. It doesn't matter who the forensic auditor is. Martin couldn't figure it out. We're not going to be able to figure it out. Again, that's why we didn't counterclaim.

So in our view, the Healy era should be a sad and unfortunate thing that happened to

everyone and that disadvantaged everyone. But we're never, whether we do it in the context of leaving the TTO or we do it right now, we're never going to figure out this information on investment earnings and whether we got more or less or whether it was more or less than we actually earned.

And that's our whole point in this motion. Martin tried his best. He could not determine how much earnings were made. The TTO through Birkenmaier admitted she had no idea what the actual earnings were. So I don't think it's a rightness problem.

Frankly, if we just kick this off for when we leave the TTO, what you will guarantee is an even bigger piece of litigation that we will have with the TTO in 2021 or 2022 or some other date.

This is how the TTO chose to bring this case. This is the forensic auditor that they hired. These are the documents that they had to give him. This is the claim that they have made. And they based it on Section 8-7.

It just doesn't work. And there's

no -- regardless of who's committed malfeasance and who did what to whom, they can't prove that we got more than we were entitled to get under the statute. It's impossible. The records aren't there.

They're not going to be there in 2021 or 2022, either. And if we defer this, then what you are guaranteeing is truly endless litigation. What we are hoping for, frankly, is by resolving the disputes that are in front of us now in this trial, that we will then be able to put together a path toward resolving this case, either before or after an appeal, and ultimately figuring out a way to get us out of this.

Now, this Court heard that some of the negotiations were had. I'm not going to talk about them at all. I'm just going to say that those proceedings took place over a month's period in front of Judge Mulroy. And I saw Mr. Quinlan on an almost daily basis. And we had our principals in at least a dozen times. It's very complicated, and it's very contentious, and there's not a lot of trust, and

there's not a lot of love. But it's going to have to be done at some point.

We need this decision to give us some foundation upon which to build ultimately leaving. And only through getting a decision now on this issue based on how the TTO chose to bring this case and based on the undisputed evidence that there's no documentation available at the TTO to prove this -- I mean, remember, Bradshaw's testimony was that she was -- in terms of investment income, they were making phone calls to banks trying to figure out where their money is. They were waiting for the mail to come in so they could get statements. That's how chaotic it was.

THE COURT: Okay. All right. Well, you've heard my concerns. However, I believe that there is sufficient evidence so far from which the Court could conclude, make the very limited conclusion, that certain general ledger entries that allocated funds to 204 should be reversed or recredited to the fund without in any way indicating whether other general ledger entries or allocations during that period of time also

should be reversed.

In other words, I -- I see that there's -- I believe that there's sufficient evidence from which the Court could make a very limited ruling and get around the problems which I've described as rightness.

So on that basis, I'm going to deny the motion and hear the remainder of the evidence. But I can tell you right now that I don't believe there's any way that this Court can conclude definitively that in general there's been an over or under-allocation. The limits of what the Court could conclude is that a particular journal entry doesn't square with Healy's notes and should be reversed. I don't know where that gets you or if it gets you anywhere. But if that helps move things along, that's about the best I can see the Court doing.

MR. HOFFMAN: Thank you, Judge.

THE COURT: Okay. I'll see you at 1:30.

MR. HOFFMAN: Thank you, judge.

MR. QUINLAN: Thank you.

MR. HOFFMAN: I appreciate your time.

(whereupon, a short recess was taken.)

MR. HOFFMAN: Your Honor, our first witness is Todd Shapiro, who is available and online with us.

TODD SHAPIRO,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HOFFMAN:

Q. Good afternoon. Thank you for being here for us. I'm Jay Hoffman. I'm a lawyer for LT in this case, as you know.

Sir, would you please spell your name for the court reporter.

A. Yes. Todd, T O D D; Shapiro, S H A P, as in Paul, I R O.

Q. As we go through this, if there's a name that you use, I may stop and ask you to spell it, and that's just so the court reporter can get all the information down in advance.

Sir, would you introduce yourself to the parties and tell us a bit about yourself,

EXHIBIT

D

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 SCHOOL)
DISTRICT 204,)
Defendant.)

EXCERPT
SIDEBARS ONLY

REPORT OF PROCEEDINGS at the VIDEOCONFERENCE TRIAL of the above-entitled cause before the Honorable Jerry A. Esrig, Judge of said Court, at the Richard J. Daley Center, Room 2001, on the 13th day of January, 2021, at the hour of 1:02 p.m.

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

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(whereupon, a sidebar discussion was had regarding Exhibit 57-D as follows:)

THE COURT: Okay. Do I have who I need here?

MR. KALTENBACH: I believe so, your Honor.

THE COURT: Okay.

MR. HOFFMAN: Your Honor, here's our objection. There's a couple parts to it. The first part is we've got a very unusual situation with respect to this witness. This witness is the former CEO, if you will, of the TTO, and I understand that they're not friendly with him, but LT certainly is not either. It's true that we called him as a witness, but we did so because the TTO did not. And we've had a discussion -- because we want to know what happened at this time. We've already had a discussion with the Court about whether LT is able to ask leading questions on direct examination. This Court ruled, and we understand that ruling and abided by it fully.

Now we have a situation where we've got a cross-examination where information is being suggested to someone who is essentially their former employee. So I do acknowledge that under Rule of Evidence 611 in Illinois it does say ordinarily you can ask leading questions on cross-examination. I would like to make clear for the record that ordinarily means not always. So our position is given

the unique circumstances of this case and given the fact that it was us who called him admittedly -- but this is not a witness under our control or that we prepared or that is any way aligned with us -- LT objects to the TTO being able to ask questions in, leading questions in cross-examination.

THE COURT: Well, first of all --

MR. HOFFMAN: That's one.

THE COURT: First of all, I don't have any sense that Mr. Healy is in any way trying to aid the TTO in their cause, and I'm aware that he went to prison for embezzling from the TTO. So I would think that they are as adverse to him in general as anyone could be. But, in any event, I don't find there are any circumstances here that would cause me to alter the ordinary course in which they are entitled to cross-examine a witness you call. So that objection's overruled.

MR. HOFFMAN: Fair enough. Number two, this is a document not in evidence, and it's a -- in our view it's a different document than the ones we were looking at. I'll tell you why. This was not produced to us by the TTO. It was a document that Barry Kaltenbach showed up with at the deposition of Marty Terpstra, our expert, and made an exhibit at that deposition. If you see at the bottom, it's marked Terpstra Exhibit 7, and we didn't ever get that in discovery.

And you note in the upper left-hand corner there's a date on the exhibit which is 4-04-2017, and that is a date that was just a couple days before the deposition -- well, about a month before the deposition that occurred, Six weeks before the deposition, okay?

So I'm not raising an objection on the failure to produce it previously, but I have a foundational objection to this document. Nobody testified -- even though this is a plaintiff's exhibit, nobody for the TTO testified as to what this is or what kind of run that it was based on. It's not a contemporaneous record.

It's also strange because if you notice -- so if you notice the date of this entry that they're focusing on, it's September 1 of 2012. Now, that is one month before the run that's -- the journal entry run that's dated October 10th, 2012, that's in Exhibit B-3. And then the final page of Exhibit B-3 is a run dated October 9th of 2012. And it picks up -- if you look on the final page of Exhibit B-3, it picks up another entry for 204 on August 1st, 2012, but it doesn't pick up any September 2012 entry. I'm looking at the last page of Exhibit B-3. So I guess -- I'm not making any accusations, but I'm saying it looks very strange and suspicious to us.

Therefore, you know, we need -- there has to

be some kind of foundation for the use of the document, and the witness can explain it. But if Barry's going to say isn't this X, I don't think that he's able to testify in that manner.

MR. KALTENBACH: Your Honor, I feel that Mr. Hoffman just put four documents into evidence on this exact issue, and I am looking to put a document in that clearly relates to this exact issue. Mr. Healy's testimony was substantially similar to what Mr. Hoffman used to get these documents in, which this is a computer document from TTO, and it shows X, Y and Z. He didn't recall it specifically, but he was able to read the document and understand what it was. I think, number one, I can show it to Mr. Healy. I haven't moved to admit it yet. I will move to admit it. I do think given Mr. Hoffman just --

THE COURT: Hold on one second, Mr. Kaltenbach.

MR. KALTENBACH: Sorry, your Honor.

THE COURT: I mean, before it's admitted in evidence the only way Mr. Healy can refer to it is if you're using it to refresh his recollection. He can't testify from the document as to something that happened until it's admitted in evidence. So the real question is whether or not it can be admitted in evidence. What we have here is, assuming that the document is authentic, which I have no reason to believe

it's not, it appears to be a computer printout from the ledger printed out in 2017 reflecting a transaction in 2012. But I don't know that, and I think there needs to be a foundation laid by somebody before he testifies to it. Now, whether or not he's able to do that given the date of the printout I don't know. You don't have to be the custodian of records to lay the foundation for a business record. You're correct that I allowed him to lay a foundation for computer documents which he recognized. I don't know whether he can do that for this or not, this document or not, but that seems to be the first order of business.

Were there other problems, Mr. Hoffman, that you had?

MR. HOFFMAN: I would -- the only thing I would just note for the record, your Honor, is that in contrast to other documents that were printouts that we looked at earlier in this case, this is one that was plainly prepared for the litigation given the date of it. But it also doesn't have the parameters that a lot of the documents admitted in evidence did, which would show what it was that they were looking for when they ran this. So there's -- and it also doesn't have any of the -- when Mr. Kaltenbach compares the two documents, the underlying documents that led to an entry are with Exhibit B-3. We don't have that for this entry. We

don't have the request for a journal entry that would explain it, that would say who made the request for a journal entry and what was going on. So this is a very different type of document in our view than what's in B-3.

MR. KALTENBACH: Your Honor, I designated this page because it's the page I used during Mr. Terpstra's deposition. I'd be happy to provide to Mr. Hoffman the complete report that would have the parameters page at the end that Miss Bradshaw testified to. I don't have it handy immediately in front of me. I'd be more than happy to provide that to Mr. Hoffman. And someone from the TTO's office, whether it's Mr. Getty or Miss Bradshaw, can certainly lay a foundation.

MR. HOFFMAN: I'm not --

THE COURT: Wait, Mr. Hoffman, please.

MR. HOFFMAN: Sorry.

THE COURT: Did you say Miss Bradshaw testified to this document or to --

MR. KALTENBACH: No, your Honor, if you recall, Miss Bradshaw testified at the end of reports there was what she, I think, referred to as parameters. It kind of tells you what the report query was. Mr. Hoffman's right. This one doesn't have that at the end because the -- just for the deposition exhibit I didn't include the entire set of pages.

I'm more than happy to substitute the exhibit and have the entire set of pages if that's what Mr. Hoffman would like.

MR. HOFFMAN: Well, a couple things. One is, for the record, my understanding is Loralee Conway and Kelly Bradshaw are both on this call listening to Bob Healy's testimony. So they cannot testify as rebuttal witnesses in this case because they participated in and listened to testimony from witnesses today. So that's not going to happen.

Secondly, I'm not just complaining about the lack of -- I mean, look, it wasn't up to me as to how this was produced and treated by the TTO. And Barry, at the deposition of Marty Terpstra, acknowledged that it was never produced, claimed that it was never requested, and this is what he chose to use. I objected to it as a trial exhibit for the reasons that I articulated in my objections, and those objections stand. They could have tried to overcome it or introduced any other document. But, again, it's not just the lack of the parameters on this run that was done right before a deposition of the expert; it's also that there's nothing in here whatsoever to confirm the underlying transaction like there is for B-3. So I'm not just saying, "Hey, give me the parameters, and we'll be fine." I want that clear.

THE COURT: Well, I don't know that the underlying

documents are that important, at least to me. The question is, at least in my mind, unless I'm missing something, is does the general ledger reflect an adjustment on June 30th, 2011, for this amount of money. That's the question, I think, unless I'm missing some issue of relevance here that I don't know about. Isn't that the issue?

MR. KALTENBACH: Your Honor, I think that's what Mr. Hoffman's issue is, and my issue is it was reversed. I don't know what this has to do with the case, by the way, but Mr. Hoffman is making an issue that we debited their account for $1.5 million, and I was trying to make the point, whether it should have been done or shouldn't have been done, it was put back the following year.

MR. HOFFMAN: Let me tell you what it has to do with the case. What it has to do with the case is -- Bill, I'm sorry, was there an issue?

MR. KALTENBACH: He was talking to me.

MR. HOFFMAN: Okay. What it has to do with the case is that the TTO has sued LT claiming they got $1.5 million too much in interest allocation from the treasurer, and they also produced documents that appeared to show -- and, again, we've never had anyone able to explain this transaction to us. We didn't just bring this up at trial. We asked the TTO's designated witness about this transaction. We asked their

expert, Martin, about this transaction. "What is it? What was going on? What happened? Why did you take $1.5 million out of our account? Why did the auditors apparently recommend this? What is this about?" It happens to be, coincidentally, the same amount of money that they're claiming that we have to pay them or that they can take out of our account. That's what they're claiming.

So what happened then was no information whatsoever until what was actually the very last deposition ever taken in this case, in the original case, was Terpstra's deposition and, boom, we've got this document. But nobody's ever provided any background for it. And, again, it's not up to me to ask for that. They have to -- so, you know, to say that this is irrelevant I think is really unfair.

And it also -- just one more point, and I'll be done. I think it's the folly of trying to go back and figure out what the hell happened from 1995 through 2012 with respect to the payment of interest and how it simply cannot reasonably be done.

THE COURT: Well, if I'm remembering this correctly, my view was that it can't be done or shouldn't be done for some finite period within the relationship. At some point in time somebody's going to have to do it for the entire relationship. But until all of the debits and credits are

balanced out it doesn't seem to -- it seems to me to be an exercise in futility for me to rule that, for example, there's going to be a debit to the school district's account. The only way I'd ever rule that is it would be subject to some adjustment later on in time after all these things are equaled out. MR. HOFFMAN: But you'll see later in this case, your Honor -- and this is part of our counterclaim. You will see later in this case that we still, even after the Healy era, weren't getting, let's say, full and fair information from the TTO about investments. And so, look, it's true that the TTO made no effort to true this up as to LT and all the other districts. We saw that, but it's not LT's responsibility then in the absence of a legitimate analysis to go back and, you know, like hire a forensic auditor and pay him $400,000 based on records that we can't really even get from the TTO anyway or that may have been destroyed in the flood, etc. So, again, it's part of our position that there is no way to go back and reasonably analyze this information.

THE COURT: I mean, we're getting ahead of ourselves here, but your desire, your client's desire is to leave this arrangement. In order to do that somebody is going to have to prepare an accounting as to what they're entitled to take when they do that.

MR. HOFFMAN: Well, it's very simple. We have a fund balance. We have an amount of money that is our money. So it's not like we own 57 shares of IBM. We have X amount of dollars and that gets reconciled constantly, right? And so there is no -- look, in 20 -- the evidence in this case is that in 2012 LT and other districts asked for a forensic accounting to figure out what happened to all the money and fix any problems that arose. It's in writing that the TTO said, "No, we're not going to do that." That's in evidence, right? And so we know we can't do it now. It's what -- it's essentially what Jim Martin tried to do, and there were no records with which to do it. Healy's testimony that 99 percent of the records are there is not consistent with what Mr. Martin found. So, no, I don't agree -- respectfully, I don't agree that when we leave there will be this forensic audit going back to the 1960s or '50s or '40s or '30s.

It's our position, you know, as you know, that, first of all, there's a five-year statute of limitations. And, frankly, in this trial -- this trial is like an ad for why there are statute of limitations because people have difficulty remembering things that took place 20 years ago.

THE COURT: Let me just get back to this exhibit. If

you want to use it, you're going to have to lay a foundation for it. You can't ask Mr. Healy what's in it until we have a foundation laid.

MR. KALTENBACH: Then I will attempt to do so with Mr. Healy, your Honor, and if I can't, then I can't.

THE COURT: Okay. All right I'm going to close this room and see you back there.

* * *

(Whereupon, a sidebar discussion was had regarding Exhibit B-1 as follows:)

THE COURT: Okay.

MR. HOFFMAN: Your Honor, I object to this line of questioning. We're looking at handwritten notes that Mr. Healy prepared at some point. I think anybody reading these handwritten notes would have a very difficult time understanding what they are, what some of these numbers mean and what transactions are being recorded. It's not obvious to me. It wasn't obvious to my expert and wasn't obvious to Jim Martin, their expert, and we've now talked to the author of this document who doesn't remember and can't say what they are.

THE COURT: That isn't true. There are certain entries that he can't explain, but he was quite clear that the left-hand column is, as I'm looking at it, are the district

numbers, etc., etc. So that's just not right.

MR. HOFFMAN: Okay. True. I'm sorry. I misspoke. So he's able to explain most of this document.

THE COURT: Right.

MR. HOFFMAN: But the choice that we're being given here in this question is, "Isn't it true that the document is more accurate than your testimony?"

THE COURT: No. Than your memory, right.

MR. HOFFMAN: Right.

THE COURT: Okay.

MR. HOFFMAN: So, look, I acknowledge -- I think we can all agree that people's memory wouldn't have all these numbers memorized, right? But essentially what he's trying to do is say "aren't the documents more accurate than your memory" without reference to any part of it. Like what's the deficiency in his memory and, if so, what does the document tell us that he can't remember. It'd be -- look, I just -- for example, if it said "we're --" If it said in the lower left-hand corner "we're giving 109 an extra amount of interest because of X," right, if it said that and then he couldn't remember -- like "I don't know why I did that" -- then okay, fine. Should we take the word of the document over your lack of recollection? But he's just being asked this in a generalized sense, and I don't think that's a fair

question.
THE COURT: Okay. I disagree.
MR. HOFFMAN: Okay.
THE COURT: I think this is a very obvious point that I would understand, even if he wasn't asked it, that the contemporaneous document written in 2008 is more accurate than his memory 12 years later. So I'm not sure why we're arguing over this. But, in any event, it's overruled.
MR. HOFFMAN: Understood. Maybe I misunderstood the question.
THE COURT: Okay. I'll bring you back.
* * *
(Whereupon, a sidebar discussion was had regarding motions and scheduling testimony of Mr. Hartigan as follows:)
THE COURT: You folks are anticipating getting a motion on file when?
MR. QUINLAN: Today is Wednesday. We'll endeavor to file it by Friday. Does that work for your Honor? Otherwise, I can do it by Monday.
THE COURT: I just want to know -- what I'd like to do is shortly after you file it to have you in, if I can find the time to squeeze you in, just to see how you want to handle it, whether Mr. Hoffman wants to file something in

writing, whether you want to set it for argument, what you want to do, if it's going to be contested so that we can figure out whether or not certain witnesses can be eliminated.
MR. QUINLAN: Sure. Does it make sense that you tell us when you're free and we can back it out? Tell me how you want to handle it.
MR. HOFFMAN: My suggestion, your Honor -- may I?
THE COURT: Yep.
MR. HOFFMAN: Based on what I understand that they're filing from our discussions, we will object, and we do have an objection, and we will want to file a written response. So I think you're absolutely right. It makes sense to just have a briefing schedule that's short and then have a hearing date.
And it was also my thought, you know, while we're knocking -- while we're having a hearing on that issue, I would ask that we have a hearing on one other issue which has already been framed by the pretrial submissions. That other issue relates to prejudgment interest, but we've already briefed that, and I would like -- I think it would be useful to get a decision on that as well.
THE COURT: All right. You're going to get your motion on file by Friday?

MR. QUINLAN: If that works, I can do it as soon as Friday.
THE COURT: Okay.
MR. QUINLAN: You tell me. If we're going to get a hearing three weeks, I might, you know, give the young associates a little more time.
THE COURT: How long are you going to need?
MR. HOFFMAN: I'm sorry?
THE COURT: How long are you going to need?
MR. HOFFMAN: If I get it on Friday -- I guess I can do it very quickly if it makes sense to get -- depending on when the hearing date is I guess I can turn it around in half a week if we can get a hearing date that's sooner rather than later, but I don't know what your schedule is.
THE COURT: Yeah.
MR. HOFFMAN: I'd almost like to work backwards from there if I could.
THE COURT: Well, I have some time on the afternoon of January 25th.
MR. HOFFMAN: Okay. So if I got, your Honor, if I got that filed, let's say, the 21st, Thursday, would that give you enough time to review it before the 25th or is that too tight?
THE COURT: That's cutting it too tight.

MR. HOFFMAN: Okay. Let me do the 20th. Would that work?
THE COURT: Hold on. Let me see because I've got three hearings on the 22nd.
MR. HOFFMAN: If I get it the end of the day on the 15th --
THE COURT: Yeah, I know but --
MR. HOFFMAN: -- wouldn't give me a lot of room to maneuver.
THE COURT: I just don't know how involved the issue is going to be and how much time I'm going to need to look at it. My problem is with three hearings on the 22nd it's unlikely that I'll have any time to look at it during that week. So the 25th, while I have time, might be a little optimistic. When would you be calling this expert? Would you call him the week of the 25th?
MR. HOFFMAN: No, I don't need to, and I can certainly put him off -- in other words, if your Honor had time on, let's say, the 28th or 29th --
THE COURT: Yeah, I think I can do it on the 29th if you can get me your briefs on the 22nd.
MR. HOFFMAN: You got it.
MR. QUINLAN: Can we have until the 18th then? That just gives us the weekend.

THE COURT: The 18th is a court holiday.
MR. QUINLAN: Okay. We can get it to Mr. Hoffman --
MR. KALTENBACH: We can E-mail it to Mr. Hoffman on the 18th and file it on the morning of the 19th.
THE COURT: Does that work for you, Mr. Hoffman?
MR. HOFFMAN: Well, gee, I mean, I feel -- well, I mean, look, I don't want to be contentious about this, but the hearing was eight weeks ago. So, you know, putting me -- how about if I -- can I file it on the 20 -- can I try and file it earlier but give me until --
THE COURT: I don't need it on the 22nd. You can give it to me on the 25th.
MR. HOFFMAN: 25th, perfect. That's exactly what I was going to ask. I mean, I do have some other cases that I've got to squeeze in here.
THE COURT: Understood. What I'm going to ask you to do, if you could -- well, it doesn't matter. Get it to me any time on the 25th. That's fine.
MR. HOFFMAN: I'll try to get it to you as early as I can. Look, if I get it done on the 22nd, I'm not going to hold on to it. I'll file it. No reason to play games.
THE COURT: Okay. Hold on one second before we go. I just want to send my administrator an E-mail right now so that I don't schedule anything else that makes this

impossible. Okay. All right. We'll do it that way. Okay.
MR. HOFFMAN: And, Judge, just for the -- just to round out -- what time on the 29th? Do we know?
THE COURT: Yeah. 1:30.
MR. HOFFMAN: 1:30. And then on the other issue that we'd like to get a ruling on -- and the gentlemen will correct me if I misspeak, but I believe it was framed in the TTO trial brief where they had asked for prejudgment interest, and then we filed a written response saying that it had not been raised previously and cannot be proceeded with. That was back in, I think, back in October, before we started the trial. So I believe that it's all framed out and briefed.
THE COURT: Why do we need a ruling on this? Is there witness testimony that depends on this?
MR. HOFFMAN: Well, it's a $1,000,000 issue, and it involves in our opinion a pretty straightforward legal question as to whether it's an appropriate request, whether both in terms of timeliness and --
THE COURT: All I'm telling you is I'm trying to squeeze it into --
MR. HOFFMAN: Okay.
THE COURT: I'm not complaining. I love this game. I'm happy to be busy. But if it's not something we need to rule

on because it affects witnesses, it would be much easier for me to take it up when we have final arguments.
MR. HOFFMAN: I think it's straightforward, but it absolutely does not affect witnesses.
THE COURT: Let's hold off on that.
MR. HOFFMAN: Okay. Fair enough.
THE COURT: Anything else we need to do today?
MR. KALTENBACH: I don't believe so, Judge.
MR. HOFFMAN: No, Judge. Thanks a lot.
THE COURT: Okay. See you in two weeks.
MR. KALTENBACH: Your Honor, we'll submit an order to your E-mail with setting the 29th at 1:30 and continuing the trial -- I don't think we have to continue the trial again to the 26th. I think the previous order did that.
THE COURT: Just use one of my briefing schedule orders.
MR. KALTENBACH: Thank you.
MR. HOFFMAN: Thank you, Judge.
THE COURT: Make sure you put the Zoom credentials in that briefing schedule order.
MR. KALTENBACH: Just to confirm, we are starting with Mr. Healy again on the 26th, right?
MR. HOFFMAN: No, not right, not right. We're starting with Judge Hartigan, and I'll tell you why. Judge Hartigan is a former circuit judge and is entitled to our respect and

the best treatment that we can give him. I've had to move him multiple times through this trial and even in past trials. So as a matter of courtesy to him and as someone who has a -- I like to think by rep -- I'm not trying to play games here, but I like to think that I have a reputation, and I'd like to accommodate him. If we know one thing about people in prison, they're used to waiting, and so I don't mind having Bob Healy wait between the two of them. I just -- look, I want to avoid -- I don't mean this to be snide at all. I want to be honest. I don't want a situation where we don't know when Bob Healy's going to finish on the 26th because that means I can't tell Mr. Hartigan whether to show up, at what time to show up. And we already had this problem with respect to today because I had Hartigan down to begin at 1 o'clock. Then it looked like Healy was going to spill over and I wanted to continue Hartigan. So he then told me, "Hey, I can't testify in midafternoon. I've got a professional commitment." So, look, I'm not trying to be difficult. I just want to accommodate Judge Hartigan and start him off at 1 o'clock, get him on and off, and then we can come back to Healy. I think it's understandable. I'm not trying to play games or be difficult. I'm trying to be respectful to Judge Hartigan.
MR. QUINLAN: Judge, you want us to respond or no?

MR. HOFFMAN: We have to wait two weeks anyway. What's the difference?
THE COURT: Did you want to respond, Mr. Quinlan?
MR. QUINLAN: Sure. I just didn't know, Judge. Sorry. The first is, as you know, it's not Mr. Hoffman's decision as to whether or not we continue our cross-examine. He needs to ask the Court in order to take anyone out of order, okay? So he doesn't get to decide when we stop our cross-exam or when we start.
THE COURT: I thought that was implicit, but go ahead.
MR. QUINLAN: I just wanted to be clear. Secondly, I want to work with every witness's schedule. We talked about calling Judge Hartigan today, but Mr. Hoffman was clearly able to get in his full direct of Mr. Healy which, you know, obviously took a long time. So if we were going to call Mr. Hartigan, that would have been impossible today unless we stopped and went out of order. I want to accommodate anyone. I just also want the opportunity, you know, we do, to cross-examine our witness and then go through that. I think we can endeavor to talk to Judge Hartigan and see what his schedule is and then see if we can work that out. I know Mr. Hoffman has said he doesn't have a lot of questions of Judge Hartigan, but, as you know, as the Court knows, these are really the two witnesses, I think you said earlier, you

want to hear from, if my recollection is correct. So I do want to be clear that we can present this in a clear and cogent fashion. So I guess I would say why don't we reach out to Judge Hartigan, see what his schedule looks like and see if we can, you know, find accommodation. But at this moment I'm not willing to say on behalf of the TTO that we're just going to, you know, try and plug Mr. Healy in because he's in prison.
MR. HOFFMAN: Your Honor --
THE COURT: No. First of all, I do not believe it would be appropriate for me to give any more deference to Judge Hartigan than any other witness simply because he's a retired judge, number one.
Number two, I am aware from what I've been hearing that his testimony has been rescheduled a number of different times, and I would treat him like any witness and say, "Look, I'm willing to bend a little bit to try to accommodate you given the fact that your schedule -- we've rescheduled a number of different times." That's number one.
Number two is we're interrupting Mr. Healy's cross-examination anyway for two weeks. So I can't imagine that if we interrupt it for another hour or hour-and-a-half or two hours to allow the testimony of Mr. Hartigan is going to make all that much difference. So I'm not opposed to you

folks working it out and talking to Mr. Hartigan and seeing if you can reach some accommodation with him. But bottom line is if Mr. Hoffman comes back to me and says, "Can I interrupt the TTO's cross-examination of Mr. Healy in order to put Mr. Hartigan on for fairly discrete testimony," I'm going to allow that to happen.
MR. QUINLAN: I think that's fair. If I wasn't clear, I just don't know his schedule.
THE COURT: Okay.
MR. HOFFMAN: Look, I've been in contact with him and, you know, I will continue to be in contact with him, Bill. I will do that. I don't think you need to call him. He's our -- I'm calling him, and I'm trying to coordinate this. If you want to call him and see what he wants to do, it's a free country. I don't have any problem with it, but I just want to be respectful towards this man who -- you know, that's all. I'm not trying to play games.
THE COURT: Okay.
MR. QUINLAN: I've known Judge Hartigan a long time, and I would not be disrespectful to him. I value his time as I do everyone. I wouldn't disrespect anyone.
THE COURT: Anything else?
MR. QUINLAN: No, Judge. Thank you.
THE COURT: Good. Thanks.

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

RONDA L. JONES, being first duly sworn, on oath says that she is a court reporter doing business in the State of Illinois; and that she reported in shorthand the proceedings of said hearing, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains the proceedings given at said hearing.

Ronda L. Jones

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

EXHIBIT

E

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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
Plaintiff,	)	**No. 13 CH 23386**
vs.	)	**Judge Jerry A. Esrig**
LYONS TOWNSHIP HIGH SCHOOL DISTRICT NO. 204,	)	**Commercial Calendar S**
Defendant.	)	

AFFIDAVIT OF BARRY P. KALTENBACH

The undersigned states as follows:

1. My name is Barry P. Kaltenbach and I am an attorney licensed to practice in Illinois and have been licensed since November 1999. My license has never been suspended or revoked and I have never been the subject of disciplinary action. I am one of the attorneys for the Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (the "TTO"), in this action. I have personal knowledge of the facts set forth in this Affidavit, which is being submitted in connection with a motion for voluntary dismissal.

2. The trial of this matter began on November 9, 2020.

3. I was present when the Defendant moved for a directed finding on the interest allocation claim (which is the claim alleged within Paragraphs 38 to 47 of the TTO's Second Amended Verified Complaint for Declaratory Relief) and when the Court denied Defendant's motion, all as stated on the record. True and accurate copies of the trial transcripts have been attached to motion for voluntary dismissal.

4. In order to accommodate the Court's comments about ripeness and the TTO's need to perform an adjustment of the books of all of the districts, including the books of the Defendant, upon Defendant's departure from the jurisdiction of the TTO, the TTO believes that voluntarily

dismissing the interest allocation claim without prejudice represents the best solution to the Court's concerns.

5. Additionally, voluntary dismissal of this claim would obviate the need to call or question witnesses regarding this claim, and the parties would not need to address this issue in post-trial briefs.

6. The TTO does not seek voluntary dismissal in order to avoid an unfavorable ruling on this claim, or because the TTO plans to re-file this claim in the future, whether in this Court or another court. The TTO has pursued this claim in good faith and not for any other purpose.

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 he verily believes the same to be true.

Dated: January 18, 2021.

/s/ Barry P. Kaltenbach
Barry P. Kaltenbach

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