

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

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff and Counter-Defendant,	)	No. 13 CH 23386
	)	
v.	)	Hon. Sophia H. Hall
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Calendar 14
DISTRICT 204,	)	
	)	
Defendant and Counter-Plaintiff.	)	

**DEFENDANT AND COUNTER-PLAINTIFF LT'S MOTION FOR LEAVE TO  
AMEND ITS AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT"), pursuant to 735 ILCS 5/2-616(a), respectfully asks this Court for leave to file amended affirmative defenses to the first amended complaint of Plaintiff Township Trustees Of Schools Township 38 North, Range 12 East ("the TTO"), and a second amended counterclaim. The form of the proposed amended pleading is attached hereto as Exhibit A. These amendments are necessary for several good and just reasons: (a) to reflect the facts that LT has learned in written and oral discovery in this case; (b) to streamline the counterclaims and defenses of LT in light of the information that LT has learned; (c) to reassert a previously raised issue that is ripe for resolution; and (d) to clarify and explain in more detail LT's factual and legal positions in this case.

In support of its motion, LT states as follows:

1. LT filed its affirmative defenses to the first amended complaint and its first amended counterclaim well before written discovery was completed, and before any depositions were taken. In the course of discovery, LT has learned additional facts that support and shape its defenses and counterclaims in this case.

2. In discovery, LT has learned that the TTO's records for the relevant period of 1992-2012 are incomplete, poorly maintained, and in some instances difficult or impossible for the TTO to interpret or explain. Some of the TTO's claims in this case involve missing invoices, vague ledger entries, and other gaps in information that the TTO cannot fill or explain. The TTO's Treasurer during the entire relevant period is in prison for Class X theft of LT's and other districts' funds, and thus cannot assist with any investigation. For these reasons, LT now believes that any forensic accounting of the TTO's records the Court could order would be futile.

3. Also, based on its discovery work, LT now believes that it is impossible for anyone to ascertain from the TTO's sketchy and incomplete records what interest the TTO actually earned on the pooled investment funds, and what amounts of interest the TTO should have paid LT on a periodic basis from 1995-2012.

4. In addition, LT wishes to re-assert a claim based on an issue that it previously asserted in its first amended counterclaim. This issue involves the TTO's failure to pay LT its rightful share of recoveries the TTO made on fidelity bonds. LT previously asserted that issue, along with several other issues, in a count for a declaratory judgment. In 2015, the TTO moved to dismiss that count and submitted an affidavit promising a resolution of the bond recoveries issue. The Court dismissed the count without prejudice. Since then, the TTO has provided LT with no information on the bond recoveries issue. It now is proper to reassert that claim as a breach of fiduciary duty.

5. LT's proposed second amended complaint seeks to streamline LT's affirmative claims for relief by eliminating the duplication of two claims that were asserted both in the current affirmative defenses and the current counterclaim.

6. LT's proposed first affirmative defenses eliminate two previously asserted legal theories (accord and satisfaction, and ratification) and add one additional legal theory (the voluntary payment doctrine). The proposed amendments will clarify the factual grounds for all of the affirmative defenses, as well as clarify whether they apply in whole or part to the TTO's claims, and to which of the TTO's claims they apply.

7. The TTO will suffer no prejudice as a result of the amendments. Instead, the TTO will receive more detailed and precise information about LT's affirmative defenses and counterclaims, and will not have to address the defenses and claims that LT proposes to eliminate or streamline.

8. "Generally, leave to amend a complaint is freely given." *Bd. of Educ. of City of Chicago v. Bd. of Trustees of Pub. Sch. Teachers' Pension & Ret. Fund of Chicago*, 395 Ill. App. 3d 735, 741, 917 N.E.2d 527, 532 (1<sup>st</sup> Dist. 2009). "The overriding consideration is whether allowing the amendment of the pleadings will further the ends of justice." *Selcke v. Bove*, 258 Ill. App. 3d 932, 937, 629 N.E.2d 747, 751 (1<sup>st</sup> Dist. 1994). The amendments that LT seeks will further the ends of justice for the reasons set forth above.

WHEREFORE, LT respectfully asks this Court to grant it leave to file amended affirmative defenses and counterclaims in the form attached hereto as Exhibit A.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

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

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**DEFENDANT AND COUNTER-PLAINTIFF LT'S FIRST AMENDED AFFIRMATIVE  
DEFENSES TO THE TTO'S FIRST AMENDED COMPLAINT,  
AND LT'S SECOND AMENDED COUNTERCLAIM (VERIFIED)**

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT") asserts the following First Amended Affirmative Defenses to the First Amended Complaint of Plaintiff Township Trustees of Schools Township 38 North, Range 12 East ("the TTO"); and the following Second Amended Counterclaim.

**First Amended Affirmative Defenses  
To First Amended Complaint**

**Factual Background: Payments for LT's Business Functions**

1. During the period of time relevant to this case, from 1992 through 2012, LT and the TTO had a difficult and, at times contentious, relationship. LT had little faith or trust in the competence and integrity of the TTO to perform its statutorily mandated functions. The TTO objected to providing meaningful information and supporting documentation to LT concerning the investment funds that the TTO managed, the expenses that the TTO incurred, and the many questions that LT and other member districts raised about the TTO's operations.



2. During the relevant period, the TTO operated with no meaningful oversight. The TTO's Treasurer and Trustees lacked accounting and investment experience and assumed their positions based on their politics and not merit. This created an environment in which the Treasurer, over a period of years, was able to steal millions of dollars belonging to LT and the other member districts.

3. During the relevant period, LT performed its own business/accounting functions – essentially, accounts payable, payroll, accounting computer services, and check preparation – through the employment of its own skilled and trained personnel. LT refused the TTO's invitations to take the business functions at LT inside the TTO's office due to LT's legitimate concerns about the ability of the TTO's personnel and systems to handle the complex functions needed for LT's large high school operations.

4. LT's performance of its own business functions meant that the TTO did not have to hire and pay for additional employees in order to perform LT's business functions.

5. During the relevant period, the chief administrator for the TTO was Lyons Township School Treasurer Robert G. Healy ("Healy").

6. During the relevant period, Healy sent LT an annual invoice for LT's pro rata share of the TTO's expenditures. These invoices were substantial, in the range of \$150,000 to \$200,000 for most of the relevant years (and, unfortunately, significantly higher in more recent years). This meant that in years that included the 1990's, LT paid the direct costs of its own business functions, plus an approximately 25 percent share of the TTO's services, which LT not want or need to use.

7. This inequity was the subject of many communications in 1999 between LT and the TTO.

8. On May 28, 1999, Healy attended the meeting of the Finance Committee of the Board of Education for LT. According to the minutes, the Finance Committee “directed Mr. Healy and Dr. Beckwith to work during the summer months to prepare options for the Board of Education to review that would provide more equity in the services provided the District.”

9. On July 27, 1999, the Board of Trustees for the TTO held a regular meeting. As reflected in the minutes, “There was a discussion regarding Lyons Township High School and the problems the district has with the Pro Rata billing system. The Trustees discussed with Treasurer Healy several options to improve relations with the high school. Some of the items discussed are for the Treasurer’s office to assume more duties, possibly fund certain business functions, computer sharing and legislation.”

10. On August 18, 1999, Healy sent Beckwith a long letter (“the 8/18/1999 Letter”, attached as Exhibit A) concerning the “Pro-Rata Billing System.” Healy said that the letter was “[i]n response to our most recent discussion regarding the possibility of instituting certain measures to balance the efforts of our respective staffs.” Healy said that he was presenting “proposed possible solutions.” The letter contains five distinct proposals from Township Trustees to Lyons.

11. The first proposal in the 8/18/1999 Letter was entitled “Deviation from Pro-Rata Billing.” Healy said that the first proposal would involve Lyons not paying its pro rata share of Township Trustees’ expenses, and having the other eleven member districts absorb Lyons’ share. Healy represented that this proposal would require all twelve member districts to sign an Intergovernmental Agreement, which Healy said was “highly unlikely.”

12. The second proposal in the 8/18/1999 Letter was entitled “Funding by Township School Treasurer of Some District Functions.” This was the proposal that Healy recommended to

LT. Healy explained, “If the responsibilities for the Accounts Payable and Payroll production were returned to the School Treasurer’s office [i.e., the Township Trustees] it would mean higher operating costs for the Treasurer’s office in the form of salaries and benefits for increased staff and higher related expenses to accommodate the increase in work load.”

13. In the 8/18/1999 Letter, Healy explained why the TTO’s Board of Trustees was likely to approve the second proposal: “I would expect that when the Trustees of Schools takes into consideration these necessary increases, they would logically conclude that a partial funding by the Treasurer’s office to cover District 204’s costs for the business functions District 204 now performs would be reasonable. Especially in light of the fact that the Treasurer’s office is currently performing the same business functions for the eleven other districts.”

14. In the 8/18/1999 Letter, Healy represented that unlike the first proposal, the second proposal would not require an intergovernmental agreement or the consent of the other member districts.

15. The 8/18/1999 Letter contained three more proposals, none of which Healy recommended. The third was for the TTO to take over LT’s business functions. The fourth was to change the pro-rata billing system through legislative action. The fifth was for the TTO to use LT’s computer system.

16. Healy sent copies of the 8/18/1999 Letter to the members of the TTO’s Board of Trustees.

17. On September 29, 1999, the Finance Committee of LT met and considered Healy’s written proposals. Healy was present at the meeting. The Finance Committee decided to proceed with the second proposal spelled out in Healy’s letter, and asked Beckwith and Healy to work on a definitive agreement: “The committee directed Dr. Beckwith to work with Mr. Healy to further



define the costs of the business office that can be charged to the Treasurer's office. These charges could include salaries for the accounts payable, payroll and computer services staff. Also an amount for computer processing was discussed. In addition to salaries, costs associated with reconciliation, printing of checks, audit, legal fees and office costs could also be transferred to the Treasurer's office. These costs would be included in the Treasurer's pro rata billing. Mr. Healy indicated the Township Board of Trustees is supportive of this method."

18. Healy and Beckwith negotiated the terms of a written agreement that fleshed out Healy's second option in the 8/18/1999 Letter. In the February 29, 2000 Memorandum that Beckwith sent to Healy ("the 2/29/2000 Memo," attached as Exhibit B), LT provided the TTO with the specific responsibilities that the Township Trustees would pay LT to perform in-house during the 2000 fiscal year:

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable., payroll, imprest, and student activities.
- Annual salary and benefits costs for 3 employees as listed below:

[Three job positions listed, with salary and benefit costs specified for each, for a total cost for the 1999-2000 fiscal year of \$106,403.]

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the year.

19. On March 21, 2000, the Board of Trustees of the TTO conducted a regular meeting. The Agenda for the meeting included an item for "8. District 204 Business Office." The meeting packet that the TTO produced in this case show that the Trustees received a copy of the written agreement set forth in the 2/29/2000 Memo.

20. According to the meeting minutes for the March 21, 2000 meeting, Healy presented the written agreement to the Trustees for their approval. Healy explained to the Trustees the basis on which he recommended the approval of this agreement:

Healy submitted to the Trustees the proposal from District 204 stating that this office absorb certain payroll, accounts payable and computer processing expenditures by District 204. As these costs would be incurred by the Treasurer's office if Lyons Township High School were to totally utilize the facilities of the Treasurer's office.

21. The Trustees of the TTO who attended the March 21, 2000 meeting then voted unanimously to approve the agreement between LT and the TTO:

A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the Lyons Township Trustees of Schools by Cook County High School District #204.

ROLL CALL:           Ayes – Joseph Nekola, Russell Hartigan  
                              Nays – None

22. On March 22, 2000, the Finance Committee of LT met and discussed the agreement with the TTO. According to the minutes, "The Committee reviewed the recommended changes in the Township Treasurer billing. The billing will include transferring the cost of 3 business office staff salaries and benefits to the Township Treasurer."

23. On June 14, 2000, Beckwith wrote a memorandum to the Board of Education of LT. Beckwith explained the details of the implementation of the agreement with the TTO and provided copies of the key documents – including the TTO's pro rata expense invoice and the 2/29/2000 Memo setting forth the terms of the agreement. Beckwith explained that the TTO's invoice was for \$165,476, and that the Treasurer would pay \$106,403 for the business functions at LT. Beckwith asked the Board to approve the agreement by authorizing the net payment to the TTO.

24. On June 19, 2000, the Board of Education of LT held a regular meeting. The agenda includes a line item for "P. Township Treasurer's Invoice." The minutes state that the

Board received the “Township Treasurer’s Invoice Exhibit T,” which was a copy of Beckwith’s June 14, 2000 memorandum. The Board approved the recommended handling of the TTO’s pro rata invoice and the offset for the TTO’s agreement to pay the costs of LT’s business functions by a unanimous vote of all present Board members on the consent agenda.

25. On or about July 15, 2000, LT authorized payment to the TTO of \$59,073. The TTO accepted this amount as full payment of LT’s pro rata share of the TTO’s expenses as offset by the costs of LT’s business functions .

26. In each year from 2001 through 2012, the TTO and LT took affirmative steps, with the approval of both boards, to reaffirm their agreement on the payment of LT’s business functions and accept the specific financial terms applicable to each year.

27. On September 7, 2000, Healy sent a letter to LT that expressly recognized that the TTO, in the 2001 fiscal year, would continue to operate under the parties’ agreement in the same manner as in 2000: “As was done last year the Trustees will continue funding certain business functions. Funding last year totaled \$106,403.00 (which brought the district’s net payment to \$59,073.00).”

28. On January 12, 2001 – four months after writing to affirm the agreement for the 2001 fiscal year – Healy sent LT a letter detailing the duties and responsibilities of Township Trustees. Healy specifically noted that “105 ILCS 5/8-4 requires that all school districts pay there [sic] proportionate share of the expenses of the Treasurer’s Office. The contribution formula is prescribed by statute and allows for no variation.”

29. Until 2013, the TTO viewed the agreement on the payment of LT’s business functions as fully consistent with Lyons’ obligations to pay its pro rata share of expenses under School Code Section 8-4.

30. Each year from 2001 through 2012, the TTO and LT followed the same procedure to reaffirm their agreement on the TTO's payment of the costs of LT's business functions: Healy sent Lyons a written invoice under Section 8-4 for LT's pro rata share of the TTO's expenditures; LT sent Healy a written memorandum (all similar to the 2/29/2000 Memo, and attached as Exhibit C) detailing the exact costs of LT's business functions that LT proposed the TTO would pay; the TTO accepted the amount in LT's memorandum and any net payment it indicated; the Board of Education of LT considered and approved the TTO's pro rata invoice, LT's memorandum specifying the TTO's payment of LT's business functions, and any net payment due to the TTO; and the Board of Trustees of the TTO (several times during the year) approved the expenditures of the TTO, which included the payment of LT's business functions.

31. The parties' agreement on the TTO's payment of the costs of LT's business functions, and the parties' long course of dealing under the agreement, ended in 2013. On April 19, 2013, the TTO sent a letter to Lyons denying the existence of the agreement, accusing LT of violating School Code Section 8-4 in past years; and demanding payment from Lyons of over \$2 million.

*Factual Background: Annual Audits*

32. Since at least 1992 through 2012, the TTO paid for the annual audits of LT.

33. The TTO's payment for each of LT's annual audits, through its payment of the multiple invoices for each of the annual audits, was knowing and intentional.

34. Each year from 1992 through 2012, the Trustees of the TTO voted several times during each year to approve the expenditures of the TTO, which expenditures included the TTO's payments for the annual audits of LT.

35. During the period 1992 through 2012, the TTO repeatedly represented to LT – both in writing and in oral communications – that the TTO was paying the annual audit costs not just for LT, but also for the other member districts of the TTO (“the Other Districts”).

36. During the period 1992 through 2012, LT accepted as true – and had no reason to doubt – the TTO’s repeated representations that the TTO was paying the annual audit costs for LT and the Other Districts.

37. At no time from 1992 to 2012 did the TTO ever refuse to pay for the costs of LT’s annual audits, or reject an invoice relating to the work performed on LT’s annual audits.

38. During the relevant time, because the TTO was paying for the annual audits, LT let the TTO select the accounting firm to perform the annual audit for LT. That audit firm was the firm now known as Baker Tilly Virchow Krause, LLP, and its predecessor firms (“Baker Tilly”).

39. No law or principal of equity prevented the TTO from paying for the annual audits of LT.

40. No law or principal of equity prevented LT and the Other Districts from accepting the TTO’s payment for the costs of its annual audits.

41. From 1992 through 2012, LT was the largest member district in the TTO, accounting for about 25 percent of the district’s pooled investment funds.

42. By paying for the annual audits of LT from 1992 through 2012, the TTO during this time period encouraged LT to continue to remain a member of the TTO, and to not seek to depart from this archaic, unprofessional, and unnecessary organization through a legislative act, as many other school districts have done successfully in order to save their taxpayers money.

43. From 1992 through 2012, LT relied on the TTO’s payments of LT’s annual audit costs in budgeting for and allocating LT’s funds to teacher and staff salaries, educational programs,

building construction and maintenance, and other education-related responsibilities and programs in each fiscal year.

44. From 1992 through 2012, the payments that the TTO made for the annual audits of LT were part of the expenditures of the TTO. The TTO's expenditures, in turn, formed the basis of the TTO's pro rata expense invoices. During this period, LT's pro rata share was about 25 percent. Therefore, through the pro rata billing process, the TTO invoiced LT for about 25 percent of the costs of LT's own annual audit.

*Factual Background: Interest Payments*

45. From 1995 through 2012, the TTO held and invested the funds belonging to LT and the other school districts within the TTO's jurisdiction ("the Other Districts").

46. From 1995 through 2012, the TTO would make payments to LT and the Other Districts of funds that the TTO represented to be interest on the investments the TTO made with their pooled funds.

47. From 1995 through 2012, the TTO would make these interest payments on a periodic basis, which sometimes but not always was done quarterly.

48. From 1995 through 2012, the TTO provided LT and the Other Districts with little or no information and supporting documentation about the specific investments that the TTO made of the members' funds, the rates of return on these investments, the terms of these investments, the amount of interest that the TTO actually earned on the pooled investments, or the amount of interest that each school district was entitled to receive as its share of the investment earnings.

49. From 1995 through 2012, the TTO never provided LT with sufficient information or documentation to allow LT to calculate the amount of interest on investments it was entitled to receive from the TTO.

50. From 1995 through 2012, the TTO never provided LT with sufficient information or documentation to allow LT to confirm that the amount of the interest earnings that it received from the TTO was correct.

51. From 1992 through 2012, LT relied on the TTO's representations on the amounts of interest on investments due to LT in budgeting for and allocating LT's funds to teacher and staff salaries, educational programs, building construction and maintenance, and other education-related responsibilities and programs in each fiscal year.

*First Affirmative Defense – Laches*

52. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

53. This case presents extraordinary circumstances showing that the TTO unreasonably delayed in pursuing its claims in this case.

54. These extraordinary circumstances include (a) entering into an agreement in 2000 with LT for the payment of LT's annual business functions, reaffirming that agreement every year from 2001 through 2012 with the approval of both boards, knowingly and intentionally accepting the agreed setoff against the pro rata invoice, and then – in 2013 – terminating the agreement and only then denying its existence or validity and seeking to recover 12 years of past payments to LT exceeding \$2 million; (b) making interest payments on investments to LT from 1995 to 2012, failing to provide LT with information or documentation sufficient to allow LT to confirm the

accuracy of the amount, failing to keep sufficient records at the TTO to document the interest earnings, and then – in 2013 – claiming that the TTO overpaid interest to LT over a 17 year period and demanding the return of over \$1.5 million; and (c) knowingly and voluntarily paying for the annual audits of LT from at least 1992 through 2012, representing repeatedly to LT that the TTO was paying for the audits of the Other Districts, selecting for LT the auditor that performed the annual audits (for LT, the TTO, and the Other Districts), and then – in 2013 – claiming that its own voluntary payments for the past 20 years to Baker Tilly were improper and seeking the return of over \$500,000.

55. During the relevant time period, LT relied on its financial arrangements with the TTO and its long course of dealings with the TTO in formulating budgets, allocating resources, and managing its public funds.

56. Under these extraordinary circumstances, the TTO's claims are barred in whole or part by the doctrine of laches.

*Second Affirmative Defense – Statute of Limitations*

57. LT incorporates by reference the allegations in paragraphs 1-51 of the Affirmative Defenses as set forth above.

58. The TTO's claims in the First Amended Complaint are subject to the five-year catch-all statute of limitations set forth in 735 ILCS 5/13-205.

59. The application of this statute of limitations bars those claims and alleged damages of the TTO that occurred or arose five years before the filing date of this case.



Third Affirmative Defense – Promissory Estoppel

60. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

61. Promissory estoppel is an equitable device invoked to prevent a party from being injured by a change in position made in reasonable reliance on another's conduct. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

62. From 1992 through 2012, the TTO agreed with LT to pay its chosen auditor Baker Tilly for the costs of LT's annual audit. The parties reaffirmed that agreement several times during each of these years as Baker Tilly sent periodic invoices to the TTO (or LT forwarded the invoices to the TTO), and the TTO paid them. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

63. In correspondence and communications between the TTO and LT that occurred over many years, the TTO repeatedly and unambiguously promised LT that it would pay for LT's annual audits, and in fact did so.

64. LT reasonably relied on the promises that the TTO made with respect to the annual audits payments, and LT also relied on the TTO's annual audit payments themselves.

65. LT's reliance on the TTO's promises to pay LT's annual audit costs, and the TTO's actual payments themselves, was expected and foreseeable by the TTO.

66. During the relevant years, LT relied on TTO's promises to pay for LT's annual audit costs to its detriment – if the TTO actually is able to avoid this agreement and reverse the parties' 20 year course of dealing. This detriment was based on the annual budgeting that LT conducted over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its continued use of the audit firm that the TTO selected for the use

of LT; and the disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 20 years' worth of payments that exceed \$500,000.

67. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

68. In correspondence and communications between the TTO and LT from 1999 through 2012, the TTO repeatedly and unambiguously promised LT that it would pay for LT's business functions, and in fact did so.

69. LT reasonably relied on the promises that the TTO made with respect to the business functions payments, and LT also relied on the annual offsets for the business function payments themselves.

70. LT's reliance on the TTO's promises to pay for LT's business functions, and the annual offsets for the business function payments themselves, was expected and foreseeable by the TTO.

71. During the relevant years, LT relied on TTO's promises to pay for LT's business functions to its detriment – if the TTO actually is able to avoid this agreement and reverse the parties' 12 year course of dealing. This detriment was based on the annual budgeting that LT conducted over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its hiring, retention, and payment of the salaries and benefits of the many employees who performed LT's business functions during the relevant years; its decision not to use the business services of the TTO in light of the TTO's agreement with LT; and the

disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 12 years' worth of offsets exceeding \$2 million.

72. Accordingly, the TTO's claims are barred in part by the doctrine of promissory estoppel.

*Fourth Affirmative Defense – Equitable Estoppel*

73. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

74. Equitable estoppel is a doctrine that is invoked to prevent fraud and injustice. It arises whenever a party, by its word or conduct, reasonably induces another to rely on its representations, leading the other party to change its position so as to be injured. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

75. From 1992 through 2012, the TTO agreed with LT to pay its chosen auditor Baker Tilly for the costs of LT's annual audit. The parties reaffirmed that agreement several times during each of these years as Baker Tilly sent periodic invoices to the TTO (or LT forwarded the invoices to the TTO), and the TTO paid them. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

76. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

77. In this case, the TTO made periodic payments to LT for interest on investments, and represented to LT with each payment that the amount was correct and proper – while not supplying LT with documentation and information sufficient for LT to verify the amounts of the payments.

78. The TTO, as detailed above, engaged in a pattern of conduct and voluntary communications over 20 years that (based on the TTO's current claims and positions taken in this case, and not necessarily on LT's positions or the factual record in this case) amounted to misrepresentation or concealments of material facts – namely, that the TTO would not abide by its agreement with LT to pay the annual audit costs; that the TTO did not have the ability to agree to pay for the annual audit costs of LT; that the TTO did not pay for the annual audits of the other districts; that the TTO could or would deny the existence of this agreement and seek to recover these payments many years later; that the TTO would not abide by its agreement to pay for LT's business functions; that the Board of Trustees of the TTO in 2000 did not accept the proposal of LT on the payment of LT's business functions, and did not approve the expenditures of the TTO that included those payments during each subsequent year from 2001 to 2012; that the TTO was not willing to accept LT's annual offset for the cost of its business functions against the annual pro rata expenses invoice; that the payment of LT's annual audits costs and costs of business functions were illusory and misleading incentives for LT to remain in the TTO's jurisdiction; that the TTO did not maintain complete and proper records of its investment income; that the TTO did not pay the investment income to LT and the other districts as required; and that the TTO made incorrect and arbitrary payments paid to LT and other districts.

79. Under the circumstances alleged above, the TTO had at least implied knowledge of these actions and communications amounting to misrepresentations and concealments, and

intended that LT would act on these misrepresentations and concealments. LT had no knowledge of the true facts (as the TTO now alleges them to be) and was innocent in its dealings with the TTO.

80. LT reasonably and in good faith changed its position and relied on the TTO's misrepresentations and concealments to its detriment, in that LT relied on the TTO's conduct and statements with respect to the annual audit costs, costs of business functions, and interest payments for investments in its preparation of annual budgets over the last 20 years; its deferral of efforts to remove itself from the archaic, corrupt, and unnecessary TTO system; its hiring, retention, and payment of the salaries and benefits of the many employees who performed LT's business functions during the relevant years; its decision not to use the business services of the TTO in light of the TTO's agreement with LT; its continued use of the audit firm that the TTO selected for the use of LT and the Other Districts; its decisions not to pursue more aggressively its repeated requests for reasonable information and documentation of the TTO's statements and calculations about LT's investments, its earnings on those investments, and the payments of interest to LT by the TTO; and the disruption to LT's educational mission and its teachers, students, parents, and taxpayers that will result from the reversal of 12 years' worth of offsets for LT's business functions exceeding \$2 million, 20 years of audit cost payments exceeding \$500,000, and 17 years of interest payments involving alleged overpayments of interest exceeding \$1.5 million.

81. Under the circumstances of this case, conscience and honest dealing require that the TTO be equitably estopped from pursuing all or some of its claims in this case.

*Fifth Affirmative Defense – Waiver*

82. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

83. The affirmative defense of waiver is based on a party's express or implied voluntary and intentional relinquishment of a known and existing right. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

84. From 2000 to 2012, the TTO had a statutory right to send invoices to LT seeking payment of LT's pro rata share of the TTO's expenditures authorized by statute, and to collect on those invoices.

85. From 2000 to 2012, LT never refused to pay its pro rata share of the TTO's annual expenditures. In each year, the Board of Education of LT received and approved the TTO's annual pro rata invoice through its approval of the consent agenda at Board meetings.

86. From 2000 to 2012, in accordance with LT's agreement with the TTO on the payment of LT's business expenses, LT annually offset against the annual pro rata expense payment the annual cost of its business functions, and informed the TTO in writing of the amount of the offset.

87. To the extent that the TTO alleges that it had a legal right to receive LT's pro rata expense payments separate from the offsets for the costs of LT's business functions, and to the extent that the offsets were in any way improper or illegal, the TTO voluntarily and knowingly relinquished this right through its course of dealings and communications conducted with LT over a 12 year period.

88. Accordingly, at least part of the TTO's claims in this case are barred by the doctrine of waiver.

*Sixth Affirmative Defense – Unclean Hands*

89. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

90. In the First Amended Complaint, the TTO fails to provide any legal theory of recovery to support its claims for declaratory relief and an award of over \$4 million in compensatory damages.

91. Nevertheless, it appears from the First Amended Complaint that the TTO is seeking equitable relief from this Court.

92. The TTO intentionally engaged in bad faith conduct toward LT starting in 2013. This bad faith conduct includes the TTO denying the existence of the long-standing agreement on payment of LT's business expenses; the TTO's claim that an intergovernmental agreement was required, despite its representations to LT to the contrary in 1999; the TTO's claims about the calculations of interest on investments that were made without regard for the absence of sufficient records at the TTO to support valid calculations of interest due; and the TTO's claims made about the payments for the annual audits of LT in spite of the voluntary and knowing nature of these payments, the lack of any legal bar to these payments, and the TTO's repeated representations to LT that it made these payments for the Other Districts.

93. Due to this bad faith conduct, the TTO's claims in this case are barred in whole or part by the doctrine of unclean hands.

*Seventh Affirmative Defense – Unjust Enrichment*

94. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

95. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

96. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

97. The TTO represented to LT that it was willing to enter into the agreement with LT concerning the payment for LT's business functions because if LT personnel did not perform those functions, the TTO would have to provide its own personnel at the TTO's expense to perform those functions.

98. Accordingly, in the event that the TTO's agreement with LT on paying the costs of LT's business functions is unenforceable or illegal, the TTO retained the benefit of the performance of LT's business functions without paying LT for that benefit. The TTO's retention of the benefits of these services would be to the detriment of LT, which paid for the salaries and benefits of employees that the TTO otherwise would have had to pay itself.

99. The TTO's retention of the benefit of these services is unjustified, given that the TTO had a statutory obligation to perform these services and chose to outsource these services to LT – with the promise of fair compensation for these services in an amount to be agreed on in each year.

100. The fair value of these business services is set forth in the annual memoranda that LT sent to the TTO from 2000 through 2012 (attached as Exhibit B).



101. Because the TTO's retention of the value of LT's performance of business services without payment would violate fundamental principles of justice, equity, and good conscience, the TTO's claims are barred in part by the doctrine of unjust enrichment.

*Eighth Affirmative Defense – Quantum Meruit*

102. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

103. In 2000, the TTO and LT reached an agreement in which the TTO agreed to pay for the costs of LT's business functions. The parties reaffirmed their agreement each year from 2001 through 2012. By this agreement, the TTO accepted LT's payment of the pro rata invoice with an offset for the TTO's payment for LT's business functions. Nevertheless, the TTO now claims in this case that this agreement did not exist, and/or that it was not legally enforceable.

104. This affirmative defense is pled in the alternative to LT's positions in this case and the facts contained in the record.

105. From 2000 to 2012, LT provided business services to the TTO by having its personnel perform the accounts payable, payroll, and reconciliation work that the TTO was statutorily obligated to perform for LT.

106. LT did not perform these business services gratuitously, and instead performed them under the promise of compensation from the TTO.

107. The TTO received an annual statement of the nature and the cost of the business services from LT, which the TTO received and approved.

108. The TTO accepted the business services that LT's personnel provided and used the information generated from these services.

109. In the event that the TTO is able to reverse its 12 year history of promises to pay and of acceptance of offsets for these services, LT would be uncompensated for the value of these services.

110. The fair value of these services is set forth in the annual memoranda that LT sent to the TTO from 2000-12 (attached as Exhibit C).

111. Accordingly, the TTO's claims in this case are barred in part by the doctrine of quantum meruit.

*Ninth Affirmative Defense – Voluntary Payment Doctrine*

112. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses as set forth above.

113. In accordance with the voluntary payment doctrine, money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal. Absent fraud, coercion, or mistake of fact, monies paid under a claim of right to payment but under a mistake of law are not recoverable.

114. During the period 2000 to 2012, LT annually submitted to the TTO a claim for reimbursement for the costs of LT's business functions. Those annual claims included a detailed description of the employees who performed the business functions, their salaries and benefits, and any ancillary expenses. With full knowledge of the relevant facts, the TTO each year during that period made payment on LT's claims by agreeing to offset the costs of LT's business functions against LT's annual pro rata expense invoices, and by its acceptance of any net payments that LT made to the TTO.

115. There was no fraud, coercion, or mistake of fact involved in the TTO's knowing and voluntary decisions to pay for the costs of LT's business functions.

116. During the period 1992 through 2012, LT made claims for payment several times a year in form of invoices that either LT or Baker Tilly submitted to the TTO for work on LT's annual audit. Those periodic claims included a description of the work that Baker Tilly performed, and the fact that the work was for LT's annual audit. With full knowledge of the relevant facts, the TTO several times a year during that period made payment on LT's claims by sending payment in full to Baker Tilly on the invoices.

117. There was no fraud, coercion, or mistake of fact involved in the TTO's knowing and voluntary decisions to pay for the costs of LT's annual audits.

118. During the period 1995 through 2012, LT periodically made claims for payment of interest on the funds that the TTO held and invested for the benefit of LT. These periodic claims came in the form of discussions concerning the nature and sufficiency of the investments, requests for more information about the investments, and – according to the allegations of the TTO in this case, which LT expressly denies – alleged requests of LT for payments of interest beyond the amounts that LT was entitled to receive. With full knowledge of the relevant facts, the TTO several times a year during that period made payment on LT's claims by paying interest to LT's funds through journal entries made at the TTO that increased the balances of LT's funds.

119. There was no fraud, coercion, or mistake of fact involved in the TTO's knowing and voluntary decisions to pay to LT periodic interest on invested funds.

120. Accordingly, the TTO's claims are barred in whole or part by the voluntary payment doctrine.

WHEREFORE, LT respectfully asks this Court to enter judgment in its favor and against the TTO and deny the TTO any recovery under the First Amended Complaint.

**Second Amended Counterclaim**

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

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

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

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

5. LT is a member district of the TTO. LT's membership in the TTO is not voluntary, and instead is mandated by state statute.

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

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

**Count I: Setoff**

8. LT incorporates by reference the allegations in paragraphs 1-52 of the Affirmative Defenses and paragraphs 1-7 of the Counterclaim as set forth above.

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

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

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

12. In each subsequent year from 2001 to 2012, the TTO and LT reaffirmed this agreement when LT presented the TTO with a written statement of the annual costs that it proposed the TTO would pay (attached as Exhibit C). In each of those years, the TTO accepted those amounts, as well as LT's offset of those amounts against the annual pro rata expense invoice that the TTO provided to LT. The boards of both parties provided their consents to this arrangement.

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

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

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

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count I and award LT its costs of suit.

**Count II: Breach of Fiduciary Duty**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, LT respectfully asks this Court to enter judgment in favor of LT and against the TTO on Count II; award LT compensatory damages in the amount of LT's rightful share of the \$1,040,000 payments on the Bonds; and award LT its costs of suit.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By

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*Its Attorney*

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



**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on February 17, 2017, he caused the foregoing pleading to be served by email on the following attorneys:

Gerald E. Kubasiak

*kubasiak@millercanfield.com*

Steven J. Rotunno

*rotunno@millercanfield.com*

Barry P. Kaltenbach

*kaltenbach@millercanfield.com*

Gretchen M. Kubasiak

*kubasiakg@millercanfield.com*

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

Suite 2600

225 W. Washington St.

Chicago, IL 60606

s/Jay R. Hoffman